

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as (if applicable)

Policy Session Worksheet

Presentation Date: May 3, 2023 **Approx. Start Time:** 11:00am **Approx. Length:** 30 Minutes

Presentation Title: Chapter 6.10 Removal of Persons from Unlawful Campsite

Department: County Counsel

Presenters: Stephen Madkour, Kathleen Rastetter, Amanda Keller, and Jeffrey Munns, Office of County Counsel

Other Invitees:

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD? Staff seek direction from the Board on amendments to the County's existing unlawful camping ordinance.

EXECUTIVE SUMMARY: The County currently has in its Code a section on the process to be followed to remove persons from an unlawful campsite. The County's ordinance was adopted to comply with state law, ORS 203.077 *et seq.* The 2021 Legislature amended ORS 203.077 to expand some definitions and to clarify and expand on the process for handling, storing, and disposing of personal property items.

SB 3113 allows the County to adopt "objectively reasonable" time, place, and manner regulations with regards to people experiencing homelessness. Currently the County does not have any time, place, and manner regulations pertaining to people experiencing homelessness.

Attached to this worksheet for the Board's information is the County's current Code Chapter 6.10, HB 3124, HB 3115, *Guide to Persons Experiencing Homelessness in Public Spaces*, and relevant portions of the City of Bend's Code.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$

What is the funding source?

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
- How does this item align with the County's Performance Clackamas goals? Building public trust through good government; Ensure safe, healthy, and secure communities.

LEGAL/POLICY REQUIREMENTS: Any Code change would require drafting of an amended or new ordinance, the holding of two public hearings, at least 13 days apart, and an effective date 90 days after passage, or immediately effective in the event an emergency were declared.

PUBLIC/GOVERNMENTAL PARTICIPATION: PGA has been included in these discussions, but it is not expected that their involvement would be significant.

OPTIONS: Option include the following:

1. Keep the County Code Chapter 6.10 as is;
2. Amend County Code Chapter 6.10 to align with HB 3124;
3. Amend County Code Chapter 6.10 to align with HB 3124 and adopt time, place, manner regulations consistent with HB 3115.

RECOMMENDATION:

ATTACHMENTS:

- Code Chapter 6.10
- HB 3115
- HB 3124
- League of Oregon Cities *Guide to Persons Experiencing Homelessness in Public Spaces*
- City of Bend Safe Parking, and Use of Public Rights-of-Way and City Property for Camping Ordinance

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

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| For information on this issue or copies of attachments, please contact Steven Madkour, Kathleen Rastetter, Amanda Keller, or Jeffrey Munns, in the Office of County Counsel 503-655-8362 |
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CHAPTER 6.10

6.10 REMOVAL OF PERSON FROM UNLAWFUL CAMPSITES

6.10.010 Definitions for Chapter 6.10

- A. CAMP, CAMPS, CAMPED OR CAMPINT means to set up, or to remain in or at a campsite for the purpose of establishing or maintaining a temporary place to live.
- B. CAMPSITE means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.
- C. PERSONAL PROPERTY means, for the purpose of this chapter, any item that is reasonably recognizable as belonging to a person and that has apparent utility.
- D. PUBLIC PROPERTY means public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or building owned or leased by the state or any political subdivision of the state, including any park, or under any bridge or viaduct.
- E. UNLAWFUL CAMPSITE means a campsite where a notice of unlawful camping has been posted as provided in this Chapter, and where persons remain camped, or personal property remains at the campsite, five days after the posting of the notice.

[Added by Ord. 02-2007, 2/8/07]

6.10.020 Unlawful Camping; Removal from Public Property

It is unlawful for any person who camps in or upon any public property to remain camped for 5 days after having been provided a notice of unlawful camping as set forth in this chapter. Any person found to be camping unlawfully on public property may be removed from the unlawful campsite as provided by this Chapter.

[Added by Ord. 02-2007, 2/8/07]

6.10.030 Notice of Unlawful Camping

Subject to the exceptions set forth in this chapter, a notice of unlawful camping must be posted before the County removes persons from a campsite on public property, or before the County removes personal property from a campsite on public property. The notice must meet the following requirements:

- A. The notice must be posted at the campsite in English and Spanish and must:
 - 1. State that personal property will be removed five (5) days after the notice is posted.
 - 2. State that anyone remaining at the campsite five (5) days after the notice is posted may be subject to removal.

3. Indicate the location where personal property can be retrieved if property was removed from the site for storage, and that it must be retrieved within thirty (30) days.
 4. Include the telephone number for Clackamas County Social Services Information and Referral.
- B. The notice must be provided in writing to persons present at the campsite, allowing the person a minimum of five (5) days to vacate the area.
 - C. Officials posting and providing such notice shall inform Clackamas County Social Services at the time notice is posted that notice has been provided to the persons and/or has been posted on the public property, and the location of the posting.
 - D. The notice required by this section may be reduced to not less than twenty-four (24) hours when expressly authorized in a particular case by the County Administrator or his designee.
 - E. Following the removal of persons from public property under the provisions of this chapter, 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.

[Added by Ord. 02-2007, 2/8/07]

6.10.040 Enforcement

After the notice period provided in the notice of unlawful camping has elapsed, the County may remove any person from an unlawful campsite on public property, and may remove personal property left at the campsite as provided in section 6.10.060.

[Added by Ord. 02-2007, 2/8/07]

6.10.050 Exceptions

- A. The notice described in sections 6.10.030 and 6.10.040 is not required:
 1. When there are grounds for law enforcement officials to believe that illegal activities other than unlawful camping are occurring;
 2. In the event of an emergency such as possible site contamination by hazardous materials, or when there is immediate danger to human life or safety, or when the Governor has declared an emergency under the provisions of ORS 131.715;
 3. For a campground designated by the County, state or federal government which is occupied under an agreement between the occupant and the campground; or
 4. For an area temporarily designated by the County Administrator for camping during an emergency or special event.

[Added by Ord. 02-2007, 2/8/07]

6.10.060 Personal Property

Personal property may be removed by the County from an unlawful campsite on public property. All unclaimed personal property removed from the campsite shall be given to law enforcement officials. The property shall be stored for a minimum of thirty (30) days during which it will be reasonably available to any individual claiming ownership. Any personal property that remains

unclaimed for thirty (30) days may be disposed of in accordance with the provisions of County Code Chapter 2.02, Unclaimed Property. Personal property that has no apparent utility or is in unsanitary condition may be immediately discarded. Weapons, drug paraphernalia and items that appear to be stolen or evidence of a crime shall be given to law enforcement officials.

[Added by Ord. 02-2007, 2/8/07]

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

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Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

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Shemia Fagan, Secretary of State

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:

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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

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Shemia Fagan, Secretary of State

GUIDE



Guide to Persons Experiencing Homelessness in Public Spaces

JUNE 2022

Updated October 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 District Court's ruling in the *Blake* case we 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 unanswered questions. The key unknown after *Blake*, is this: 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.?

On September 28, 2022, the U.S. 9th Circuit Court of Appeals rendered their opinion and affirmed *Blake v. City of Grants Pass*.¹ The 9th Circuit Court of Appeals upheld the U.S. District Court’s prior ruling that persons experiencing homelessness are entitled to take necessary minimal measures to keep themselves warm and dry while sleeping outside. The 9th Circuit Court of Appeals noted that the decision in this case was narrow and that “it is ‘unconstitutional to [punish] simply sleeping somewhere in public if one has nowhere else to do so.’”²

The 9th Circuit Court of Appeals opined that cities violate the Eighth Amendment if they punish a person for the mere act of sleeping outside *or for sleeping in their vehicles at night* when there is no other place *in the city* for them to go.³ As a result of this ruling, this decision expanded the application of *Martin v. Boise*. The opinion concluded that class actions are permissible in these types of cases and remanded the decision for the District Court to make findings on several outstanding matters in the case.

This opinion, in most respects, affirmed what was already known from both the *Martin* and *Blake* cases. However, the opinion failed to provide much anticipated clarification on several issues, such as what constitutes “necessary minimal measures” to keep warm or dry or what “rudimentary protections from elements” means.

The City of Grants Pass intends to file a petition for an en banc panel rehearing—a petition for the three-judge panel opinion be re-heard by a panel of twelve judges. During the pendency of the petition process, the current opinion is in effect and the outstanding questions remain unanswered by the Court.

¹ *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) [formerly *Blake v. City of Grants Pass*; class representative Blake became deceased during pendency of the appeal.]

² *Id.* at 813.

³ *Id.*

Municipal attorneys are still challenged in determining the answers to such questions as the following: what types of changes should be expected, the severity of those changes, and when those changes will occur. Given the 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. Further, the Court of Appeals opinion in *Blake v. City of Grants Pass* has potential implications in determining how cities can regulate motor vehicles.

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 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 within the city's jurisdiction .
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 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 and legislative actions, 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/Johnson*, 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.



CITY OF BEND

RESPONDING TO CAMPING IN PUBLIC RIGHTS-OF-WAY AND ON CITY-OWNED PUBLIC PROPERTY

Policy No. 2023-4

Bend Code Chapter 1.30.005 provides for 'City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.' All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and council ordinances.

The following policy conforms to the above stated standards.

Authorized by City Manager:

Reviewed by Legal Counsel:

DocuSigned by:
Eric King
409FF733EB4E6403

DocuSigned by:
Mary Winters
BB6252FA6CD44F1...

Eric King, City Manager

Mary Winters, City Attorney

Dated: 2/28/2023

Dated: 2/28/2023



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City of Bend
City Manager Administrative Policy



I. PURPOSE

A. The purpose of this Policy is to give City personnel direction on implementing the City of Bend Municipal Code (“BMC”) on Use of Public Rights-of-Way and City Property for Camping, BMC Chapter 4.20. The City recognizes the social nature of the problem of homelessness. This Policy is intended to provide guidance and direction for implementing the City Code to ensure the most humane treatment for removal of homeless individuals from camping sites on public property, as required by ORS 195.500. In addition to the general authority to create administrative policies, this Policy is authorized by BMC 4.20.025.B.

B. The regulations adopted in BMC Chapter 4.20 and BMC Chapter 6.20 as applied to vehicles people are using to keep warm and dry are objectively reasonable with regard to persons experiencing homelessness, as required by HB 3115 adopted by the Oregon legislature in 2021, and shall be implemented as described in this Policy in an objectively reasonable manner, based on the totality of the circumstances, including the impact of the Policy on the person experiencing homelessness.

C. This Policy is intended to replace Policy ADM 2021-1, Management and Removal of Established Campsites in City Rights-of-Way. Policy ADM-2021-1 was intended to provide guidance for managing City rights-of-way in a manner consistent with state and federal law during the time the City did not have a camping code. Now that BMC Title 4 has been adopted, Policy ADM-2021-1 is no longer necessary, and is revoked and terminated effective March 1, 2023, or the date on which the provisions of BMC Title 4 become effective, whichever is later.

II. CAMPING ON CITY PROPERTY

A. It is prohibited at all times for any person to use City property¹ to camp or for camping or for the purpose of occupancy, habitation, or sheltering for survival in vehicles, automobiles, or recreational vehicles except on the following parcels:

1. No City-owned properties have been designated for camping at this time.

B. Juniper Ridge.

1. Camping on Juniper Ridge within City limits is subject to the provisions of this Policy, and enforcement shall be as set forth in this Policy.

2. Camping on Juniper Ridge outside City limits is governed by separate policy.

III. ENFORCEMENT

A. In accordance with state law, ORS 195.500, the provisions of BMC Chapter 4.20 and BMC Chapter 6.20 for vehicles in which people are camping should be

¹ City property, for purposes of BMC Title 4 and this Policy, is distinct from public right-of-way.

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implemented and enforced in ways that ensure the most humane treatment for removal of homeless individuals from camping sites on public property.

- B. Enforcement of BMC Chapter 4.20 may be by the following methods:
1. Notice and removal or clean-up of camp material or other personal property that are creating or contributing to the violation,
 2. 72-hour advance notice of removal of an established campsite,
 3. Emergency removal without 72-hour advance notice, or
 4. Citation for violation. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

Note: See Section IV for procedures for issuing notices. See Section V for procedures for removing camps or property.

C. Enforcement of BMC Section 6.20.005. (Prohibited Parking) for vehicles that are being used for camping may be by the following methods:

1. Notice and removal by towing or impoundment, or
2. Citation for violation.
3. Except in extreme cases, towing or impoundment of a vehicle in which it appears someone is camping or sheltering for survival, should be to a facility where the vehicle can be reclaimed as Personal Property (See Section VII(G)), without payment of storage fees.

Note: See Section IV.D. for procedures for issuing notices and removing vehicles.

D. Pre-Enforcement process.

1. Except in the case on an emergency, before a civil infraction citation or notice of removal is issued, City personnel will contact the person and provide a reasonable opportunity to cure or remedy the alleged violation. City personnel should assess whether the person subject to citation or removal has been referred to service providers and/or the Deschutes County Coordinated Homeless Response Office ("CHRO"), and make a referral if it appears none has been made. City personnel will communicate to the person in a manner designed to help them understand the issue or problem:
 - a. The activity constituting the alleged violation, that the person appears to be responsible for the violation or the camp at which the violation is occurring;
 - b. The action required to fix the violation and the time and/or date by which the violation must be fixed; and

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- c. A written or verbal warning that if the violation is not fixed within the time given a citation may be issued or the City may post the property or camp for removal. City personnel should inform the person of the maximum monetary citation that could be imposed.
- 2. City personnel should also advise the person of the relevant time restriction (i.e.: 24-hours for tent camping, and three (3) business days for vehicle parking).
- 3. City personnel should also provide written information on services available and the rules applicable to the camp.

E. Suspension of Enforcement for Weather or Other Emergencies.

Enforcement of any section or element of this Policy may be suspended or modified in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager’s authority, regardless of whether an emergency has been declared.

- 1. **Weather.** In recognition of the potential health effects of severe weather, including heat and cold, declared weather emergencies shall be taken into account in determining an appropriate enforcement response.

- a. **Weather Warning.** City personnel may suspend or delay enforcement of a 72-hour notice of campsite removal if the National Weather Service or other recognized service providing weather forecasts that cover the city of Bend has declared a weather warning, including for wind chill, winter weather, ice storm, winter storm, blizzard, or excessive heat, but not including frost or freeze.

| | |
|-----------------|---|
| WARNING | A warning is issued when a hazardous weather or hydrologic event is occurring, imminent or likely. A warning means weather conditions pose a threat to life or property. People in the path of the storm need to take protective action. |
| ADVISORY | An advisory is issued when a hazardous weather or hydrologic event is occurring, imminent or likely. Advisories are for less serious conditions than warnings, that cause significant inconvenience and if caution is not exercised, could lead to situations that may threaten life or property. |
| WATCH | A watch is used when the risk of a hazardous weather or hydrologic event has increased significantly, but its occurrence, location or timing is still uncertain. It is intended to provide enough lead time so those who need to set their plans in motion can do so. A watch means that hazardous weather is possible. People should have a plan of action in case a storm threatens and they should listen for later information and possible warnings especially when planning travel or outdoor activities. |

From: National Weather Service, www.weather.gov.

- b. **Weather Advisory or Watch.** When the National Weather Service or other recognized service providing weather forecasts that cover the city of Bend issues a weather advisory or watch, City personnel shall coordinate with the CHRO or other service providers to identify additional services to individuals camping on City rights-of-way that may be needed to mitigate threats to human health from the forecasted weather event including identifying additional places indoors for people to seek shelter

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and/or offering additional protective equipment like bottled water or cooling stations.

c. When assessing whether to suspend or delay enforcement of a 72-hour notice of campsite removal, City personnel should take into consideration forecast temperatures over a period of time, including wind, precipitation, humidity, and other factors. City personnel should consider whether health and safety will be more likely enhanced by a delay of enforcement or by taking action on a posted notice.

2. **Wildfire Smoke.** In recognition of the potential health effects of wildfire smoke, air quality shall be taken into account in determining an appropriate enforcement response.

a. The air quality index (AQI) should be measured on City-owned or operated testing devices, the U.S. EPA AirNow website, the Oregon Department of Environmental Quality's air quality website, or the Interagency Wildland Fire Air Quality Response Program.

b. When the AQI is above 100, City personnel may suspend or delay enforcement of a 72-hour notice of campsite removal or any other section of BMC Chapter 4.20. City personnel should also coordinate with the CHRO or other service providers to identify additional services to individuals camping on City rights-of-way that may be needed to mitigate threats to human health from the forecasted AQI, including identifying additional places indoors for people to seek shelter and/or offering respiratory protective equipment.

3. When considering whether to suspend enforcement under this section, City enforcement personnel shall take into consideration whether removal or non-removal will be more likely to result in increased safety to the person or people subject to removal.

F. Tailored Enforcement for Disabilities or Other Reasons.

1. Enforcement should be tailored for various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with the code, or for other reasons that may support discretion in enforcement. Typical requests are likely to be for more time before a person can move (for modification of BMC 4.20.030.B, Time), or for an allowance to maintain an item or items in violation of BMC 4.20.030.D, Manner, or BMC 4.20.035, Vehicles. In all but the most unusual situations, extension of time limitations should not exceed more than one week total. When the modification of enforcement relates to Manner restrictions, items must not block sidewalks, driveways, bike lanes, or drive aisles.

2. People with disabilities.

a. If a person asserts an inability to comply or a need for modified application of the provisions of BMC Chapter 4.20 because of a disability,

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City personnel must engage in an interactive process to review the requested change in application of the provision at issue. A modification is not required to be given if it would pose an undue financial or administrative burden on the City or would fundamentally alter the nature of the program, activity, or services by the City. City personnel should use their discretion in applying this section and may consult with the City's Accessibility Manager and/or City Attorney's Office on specific or unusual requests.

b. City personnel should inquire about the nature of the asserted disability if not already apparent from the request. A person does not have to disclose a diagnosis or specify the disability to qualify for a modification of rules.

c. City personnel should ask what the person needs modified due to the disability.

d. Requests should be considered on an individual basis. Accommodations must be reasonable and not cause an undue burden or threat to public health or safety.

3. If a person asserts an inability to comply or a need for modified application of the provisions of BMC Chapter 4.20 because they have minor children in their care or have employment obligations that related to the ability to comply with the code, or other reason, the request should be considered on an individual basis. Modifications must be reasonable, related to the reason for the inability to comply or request for alternate enforcement, and not cause an undue burden or threat to public health or safety.

G. Suspension of Enforcement when Engaged in Services. Enforcement of the time limitation under BMC 4.20.030.B or BMC 6.20.005.J may be suspended when a person does not have access to shelter because the person cannot stay at the Navigation Center or another shelter within the city of Bend, and has identified a shelter bed or other location to stay at the end of the suspended enforcement time period (this identification shall be considered "engaged in case management or behavioral health services" for purposes of this suspension of enforcement). In all but the most unusual situations, extension of time limitations should not exceed more than one week.

H. The City Manager may determine that a right-of-way should be closed to camping because construction, heavy vehicle use, or other use of the roadway is incompatible with camping (BMC 4.20.030.C.1.f). The City Manager shall provide a written order setting forth the particular roadways to be closed and reasons and duration for the closure and direct City personnel to post signs indicating the closure.

1. Notice and removal or citation of people camping in the closed area shall be as described below, Section III Notices for Removal. Prior to citation or removal, the steps described above in "Pre-Enforcement process" should be followed.

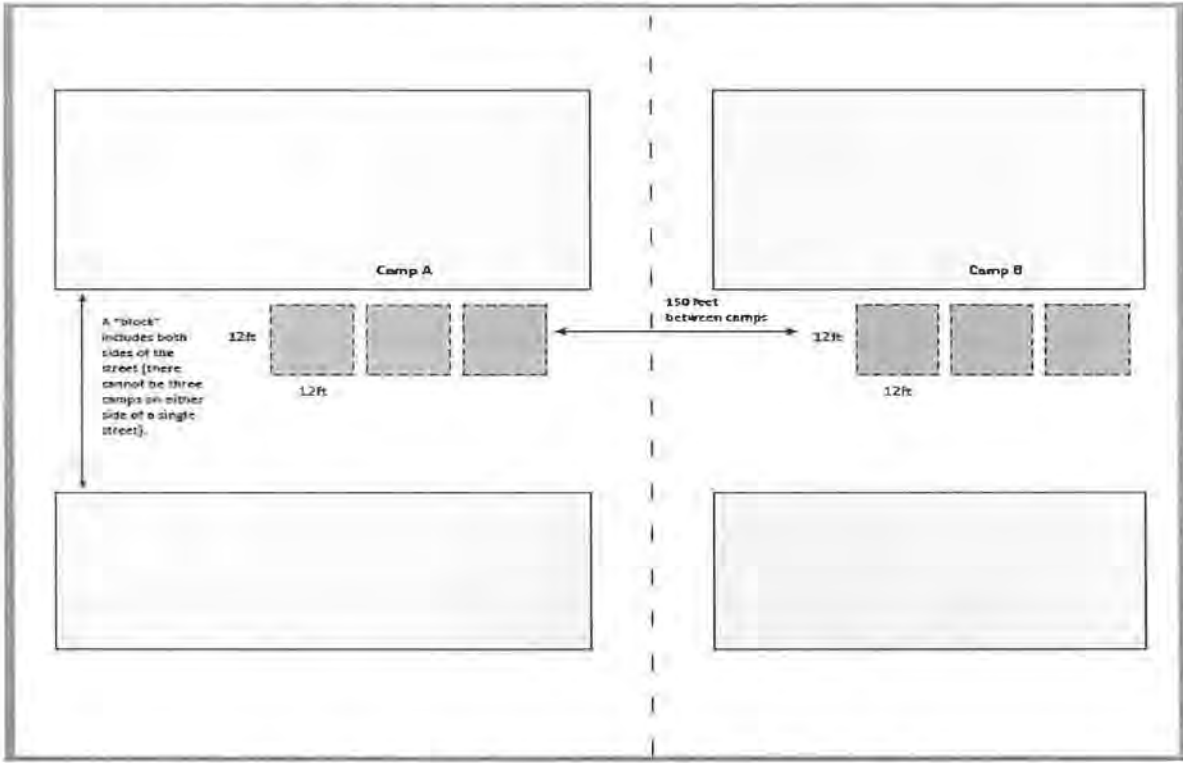
I. Grouping of camps. BMC 4.20.030.D.c. If more than three camps are set up on a block, City personnel must follow the "Pre-Enforcement process" described above, and verbally or in writing inform all the individuals present that no more than three camps

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are allowed on one block, and that there must be at least 150 feet between groups of up to three camps.

1. A "block" includes both sides of the street (there cannot be three camps on either side of a single street).



2. A "camp" is one space up to 12 feet by 12 feet, and may include more than one tent.

IV. NOTICES REQUIRED FOR REMOVAL

For all notices under this Section, citation and removal of property or towing of vehicles should be an option of last resort, and the steps described above in "Pre-Enforcement process" should be followed.

Note: See Section V for procedures for removing camps or property.

- A. 72-hour notice for removal of an established campsite.
 1. When City personnel determine an established campsite should be removed for violation of the Bend Municipal Code, City personnel must post a notice at the entrance to the campsite, if any, or as near as practicable to the campsite that the campsite will be removed not sooner than 72-hours later.
 2. When a notice is posted, City personnel will notify the CHRO. Notice to the CHRO may be provided in advance of posting a 72-hour notice, or within a reasonable time after posting, but before expiration of the 72-hour timeframe.

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3. When a 72-hour notice has been posted at an established campsite, the City may act on the notice and remove the campsite beginning 72 hours after posting and up to 10 days following the posting.

B. Notice of clean up or removal of personal property (other than vehicles).

1. When personal property is in violation of BMC Chapter 4.20, City personnel must post a notice as near as practicable to the property that the property is in violation, will be removed not sooner than 24-hours later.

2. This notice is to be used when personal property will be cleaned up or removed, whether or not the property is at or part of an established campsite, but the established campsite will not be removed.

3. When a 24-hour notice has been posted at an established campsite, the City may act on the notice and remove the campsite beginning 72 hours after posting and up to 10 days following the posting.

C. Exceptional Emergency. A campsite or property at or comprising a campsite, other than vehicles, may be removed without advance 72-hour notice in the following circumstances:

1. When there are grounds for law enforcement officials to believe that illegal activity, other than camping, is occurring at the campsite or in the immediate vicinity of the campsite, or the property that comprises the campsite is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or

2. In the event of an exceptional emergency, such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety. If the danger to human life or safety can be reduced by moving the established campsite to a safer location, such as an adjacent landscape strip, the campsite should be relocated rather than removed.

a. City personnel should follow the Pre-Enforcement process as described above, and provide a verbal and/or written notice to person(s) in/around the property. If people are present, City personnel should provide a reasonable time for people to move their own belongings. If there is a nearby location to move property to, out of the immediate danger, after giving the person responsible for the property an opportunity to move the items, City personnel should relocate property. If no location is available, City personnel may dispose of garbage, collect and remove property, and place into storage.

b. Dumping of black water and open flames (BMC 4.20.030.D.1.e. and f. and BMC 4.20.035.B.2 and 3.), or other violations, may be cause for immediate citation or removal in extreme circumstances when conditions pose an immediate danger to human life or safety. If a violation is not an immediate danger, the Pre-Enforcement process should be followed, with citation or removal after the appropriate notice if the person

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does not remedy the violation or take steps to prevent the violation from recurring.

D. Removal of debris and garbage. No notice is required prior to removing debris, garbage, or items that are clearly discarded within the right-of-way. City personnel are expected to use objectively reasonable discretion in determining whether advance notice should be provided when it cannot be clearly determined that items were discarded, and are not personal property, erring on the side of respecting the rights of those surviving on the streets.

E. Notice of removed property. Following removal of a campsite or personal property, the City must post a notice stating the location where removed personal property is being stored, and how individuals can contact the City to retrieve their personal property.

V. REMOVAL OF VEHICLES

Note: Citation and towing of vehicles used as shelter should generally be an option of last resort, after following steps described above in "Pre-Enforcement process".

A. The provisions of this Section are in addition to existing processes for towing of hazard vehicles or vehicles eligible for towing for violation of state law.

1. A vehicle may be towed from City right-of-way as an abandoned vehicle under ORS 819.110, if it has been parked or left standing for more than three business days and is not being used for shelter. ("Abandoned" for purposes of this Section means that the vehicle has been parked or left standing in excess of allowed time, even if people are using the vehicle in its parked location without moving it.) Prior to towing, notice shall be given as provided in ORS 819.170, and, if requested, a hearing under ORS 819.190.

2. Vehicles that are disabled or left standing in a location as to constitute a hazard or obstruction on City rights-of-way may be immediately towed in accordance with the provisions of ORS 819.120. Notice shall be given as described under ORS 819.180 and, if requested, a hearing described under ORS 819.190.

a. If City personnel believe a vehicle that constitutes a hazard or obstruction under ORS 819.120 is being used as shelter, the vehicle may not be towed until after a request has been made that the person sheltering in the vehicle move the vehicle or remedy the hazard or obstruction. If the vehicle is not moved or cannot be moved, or continues to pose a clear danger, City personnel may proceed with a hazard tow.

B. As an alternative to the removal processes described in this Section, if the cost of the removal or tow will be paid by the City, the City and the owner or person apparently in charge of a vehicle used as shelter may jointly request a tower remove the vehicle to private or publicly-owned property designated for camping or safe parking purposes, or other private property on which the person has the consent of the property owner to locate the vehicle. City's consent will be given in the City's sole and reasonable discretion.

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C. City Rights-of-Way

1. On City rights-of-way, vehicles in which people are camping or sheltering must comply with the Manner restrictions of BMC Chapter 4.20, and the Time and Place restrictions of BMC Chapter 6.20.

2. Manner.

a. After the Pre-enforcement procedures in Section III.D, if a vehicle being used for shelter is not brought into compliance with the Manner restrictions of BMC Chapter 4.20, City personnel may issue a citation for noncompliance and/or issue a 72-hour notice for removal. When a notice is posted, City personnel will notify the CHRO. Notice to the CHRO may be provided in advance of posting a 72-hour notice, or within a reasonable time after posting, but before expiration of the 72-hour timeframe.

b. Vehicles being used for shelter or camping may be removed for violations of the Manner restrictions in BMC Chapter 4.20, and stored as described in Section VII, Personal Property. City personnel should take into account limitations on storage locations, and removal should generally be prioritized for vehicles that are in violation of the Manner restrictions in ways that pose a threat to human health or safety, and once the vehicle has been parked overtime as described in Section 3 below.

c. If a vehicle poses a clear danger to public safety, the vehicle may be towed as a hazard under ORS 819.120.

3. Time.

a. In addition to engaging in the Pre-Enforcement procedures in Section III.D for vehicles that appear to be in violation of the time limitation of BMC Chapter 6.20, prior to posting notice that a vehicle is in violation of those Time limitations, City personnel must document whether the vehicle has been parked in one location for longer than three business days. Documentation should include taking overall photos of the vehicle condition and location, the tire chalk (if marked) and valve stem position. No sooner than three business days, City personnel should return to the vehicle for follow-up. Based upon the totality of the circumstances, if City personnel believes the vehicle has remained parked in the same location, during the three business days, the vehicle may be posted with a notice of violation. If the vehicle is not being used as a shelter or as a campsite, a vehicle tow may be requested as an abandoned vehicle under ORS 810.110 and BMC 6.30.005.

b. For vehicles being used as a shelter or campsite, vehicle tow should only be requested at the end of the above process if there are also serious manner violations. Notice of the tow must be posted at least 72-hours in advance of the tow. Vehicles used for shelter shall be removed to a City storage facility and stored in accordance with this Policy.

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c. Vehicles being used for shelter or camping may be removed for violations of the Time restrictions in BMC Chapter 6.20, and stored as described in Section VII, Personal Property. City personnel should take into account limitations on storage locations, and removal should generally be prioritized for vehicles that are in violation of the Time restrictions of BMC Chapter 6.20 and Manner restrictions of BMC Chapter 4.20 in ways that pose a threat to human health or safety.

D. City-Owned Property

1. Public parking is only allowed where signed on City-owned property, including signed and designated parking lots in the Downtown Business District. Parking shall be in accordance with the posted signs and enforcement shall be by separate policy.

2. For City-owned property that has not been made available for parking or camping under BMC Chapter 4.20 and this Policy, parking is prohibited. Vehicles parking on City-owned property, that are not being used as shelter or part of an established campsite, may be removed as private property under ORS 98.812 or ORS 98.830, subject to the required notices.

3. For vehicles being used as shelter or as part of an established campsite on City-owned property, City personnel shall follow the Pre-Enforcement procedures in Section III.D to notify a person that camping and parking are not allowed and that the person must remove the vehicle. If a vehicle is not voluntarily removed from City-owned property, City personnel may post a notice of removal at least 72-hours before the vehicle may be removed. The Vehicle may then be removed and stored as personal property removed from an established campsite, in accordance with this policy and ORS 195.505. City personnel must complete the form for towing as required by ORS 98.830.

VI. PROCEDURE FOR REMOVING CAMPSITES AND PROPERTY

A. City personnel should make a reasonable effort to determine if any suspension or tailoring of enforcement, as described in Section II above, is appropriate.

B. If people are present when City personnel or contractors return following a posted notice to remove the property or campsite that was subject to the notice, people apparently in charge of the campsite, property, or vehicle should be given another verbal and/or written warning and a reasonable time to move their own campsite, property, or vehicle.

C. When removing individuals from an established campsite, the City will make reasonable efforts to remove individuals without the use of force, arrest, or citation. No person may be arrested or cited for failing to move under this Policy prior to being asked by law enforcement or other City official to move.

D. Following removal of a campsite or personal property, the City must post a notice stating the location where removed personal property is being stored, and how individuals can contact the City to retrieve their personal property. When practicable and

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when the person or people responsible for the personal property are present, the notice should also be personally delivered to the individual(s).

E. When removing personal property, the City will make reasonable efforts to determine if property belongs to an individual and has any apparent utility. The City will make reasonable efforts to identify which campsite property was removed from, to aid in connecting people with their property removed by the City. Items that are of no apparent use or are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, and discarded as part of any cleanup efforts by the City.

F. "Personal property" means items reasonably recognizable as belonging to individuals and which have apparent utility. Personal property may consist of tents or other materials used as shelter, and other items not used for shelter. Personal property includes but is not limited to:

1. Identification documents
2. Medications
3. Photos/photo albums
4. Tents, sleeping bags, bedding (not soiled or contaminated)
5. Luggage, backpacks, purses
6. Clothing, jewelry, eyewear
7. Electronic equipment (in apparent working order, not dismantled)
8. Tools or materials in apparent useful condition for shelter or other purpose
9. Bicycles and other non-motorized means of transportation in apparent working order
10. RVs, trailers, or other vehicles or movable items used as shelter

G. Weapons, controlled substances other than prescription medication, and items that appear to be either stolen or evidence of a crime shall be given to law enforcement officials. Additionally, items that appear to have a value of \$1,000 or more shall be given to law enforcement officials for secure storage.

VII. STORAGE OF PERSONAL PROPERTY

A. Personal property removed from campsites and unclaimed at the time of removal will be stored by the City at or near one of the City business campuses, as identified on the notice posted at the time of removal, where people can reasonably access to retrieve belongings. Stored personal property will be reasonably available for any individual claiming ownership.

1. The City will not store, and will discard, items that have no apparent use or are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination. The City will not

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store perishable food items or other items that, if left in storage for up to 30 days, could contaminate other stored property.

B. The City will keep records of the date property was received, a general description of the location the property was recovered from, the date the property must be stored until, and if known, a description or identification of the presumed owner of the property.

C. The City will make reasonable efforts to provide a range of times the storage location will be available for people to collect property.

D. The City will take reasonable precautions to secure stored property, including vehicles, but will not be responsible for loss or damage to stored property.

E. The City may dispose of any personal property that remains unclaimed after thirty (30) days, or such duration as required by statute. The City intends to offer unclaimed property to nonprofits that provide services to people experiencing homelessness prior to disposal.

F. Property held by the Bend Police Department shall be disposed of in accordance with Bend Police Department policies and all applicable state laws.

G. Vehicles.

1. Towed or removed vehicles in which people are camping or sheltering should be stored as personal property removed from an established campsite in accordance with this Policy.

2. The City will store vehicles in a reasonably secure location, consistent with practices for storing other removed personal property. Other than as required to facilitate tow or removal of a vehicle, or as may be required for other valid or law enforcement purpose in extraordinary circumstances, City personnel will not enter vehicles or perform any search, including an inventory search, of vehicle contents.

3. The City will release vehicles to a person entitled to lawful possession with proof of valid license for the person driving the vehicle away. A person must provide proof of ownership or other indicia of ownership, or written authorization from registered owner. The City will not charge for storage or release of a vehicle.

4. If not retrieved after thirty (30) days, the vehicle will be considered unlawfully parked or abandoned pursuant to ORS 98.810 or other applicable statutes, and can be towed & impounded to a towing lot subject to storage and other lawful fees, liens, and disposal.

4.05.010 Findings and Purpose.

- A. The City of Bend finds that each community member of Bend is entitled to a basic level of dignity, respect, and wellness, regardless of whether they are housed or unhoused. It is the official policy of the City that its responses to homelessness will be undertaken in accordance with these principles.
- B. It is the policy of the City of Bend to utilize all existing and potential sources of funding that are made available from the Federal and State governments for the provision of services and shelter for homeless individuals.
- C. The intent of the City Council is to regulate camping and survival sheltering in public right-of-way only in the context of the work that has been done by the City and will continue to occur at the City and regional level, and the City remains committed to a comprehensive homelessness policy, including through a camping resolution strategy.
- D. As its regional efforts continue, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources.
- E. The City Council acknowledges the lack of nightly shelter beds and housing currently available regionally and recognizes the systemic lack of State and Federal investment in shelter and public health services for those experiencing homelessness.
- F. The City Council acknowledges that it is currently unavoidable that some people will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Bend, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other agency property (such as ODOT).
- G. Public rights-of-way are generally intended for public use and travel. The City Council is the road authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences. The City has had increasing concerns regarding safety due to camping on or in rights-of way in or near streets, roads, sidewalks, and public access points.
- H. Over the long term and working with the Deschutes County Coordinated Homeless Response Office, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival sheltering outside is not a solution for people without houses.
- I. The City owns extremely limited property where camping can or should be allowed, particularly since the City does not own or manage parks in the City. City utility properties (stormwater, water, sewer) are sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.
- J. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way, which are intended to be as compatible as possible with the needs of everyone in Bend to be

1. Provide persons camping overnight with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present for overnight camping; and
 2. Not require payment of any fee, rent or other monetary charge for overnight camping authorized by this section.
- C. A property owner who permits overnight camping pursuant to this section may revoke that permission at any time and for any reason. Any person who has permission to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.
- D. The provisions of this section are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2458, 2022; Ord. NS-2402, 2021. Formerly 5.70.005]

4.10.015 Overnight Camping.

- A. Notwithstanding any other provision of this code or the Bend Development Code, up to three vehicles may be used by people who lack access to permanent or safe shelter and who cannot obtain other low-income housing for overnight camping in a parking lot, or paved or gravel surface of a parcel of any size owned or leased by a religious institution, nonprofit, business or public entity, with permission of the property owner and lessee, if applicable.
- B. A property owner or lessee who allows overnight camping on a property pursuant to this section shall:
1. Provide persons camping overnight with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present for overnight camping; and
 2. Not require payment of any fee, rent or other monetary charge for overnight camping authorized by this section.
- C. A property owner who permits overnight camping pursuant to this section may revoke that permission at any time and for any reason. Any person who has permission to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.
- D. The provisions of this section are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2458, 2022; Ord. NS-2402, 2021. Formerly 5.70.010]

- a. The name of the property owner or lessee and person or entity providing site supervision, and a telephone number where the entity or individual providing supervision may be contacted;
 - b. The number of approved vehicles and/or tents; and
 - c. The hours that overnight campers may stay at the site in addition to 9:00 p.m. to 7:00 a.m.
- D. Property owners who allow temporary transitional overnight parking under this section may revoke permission for program operation at any time and for any reason. Any person who is on property for temporary transitional overnight parking accommodations under this section must leave the property immediately after permission has been revoked.
- E. The provisions of this section for temporary transitional overnight parking are not intended to limit or otherwise change any land uses that may be permitted on property under the Bend Development Code. [Ord. NS-2458, 2022; Ord. NS-2402, 2021. Formerly 5.70.015]

4.10.025 Enforcement.

- A. Notwithstanding any other provision of this section, the City Manager or designee may:
1. Revoke authorization for temporary transitional overnight parking for violations of the requirements of this chapter;
 2. Prohibit overnight camping or temporary transitional overnight parking on a property if the City finds that any activity related to the overnight camping or temporary transitional overnight parking on that property constitutes a nuisance or other threat to the public welfare; or
 3. Revoke permission for a person to camp overnight, whether in a temporary transitional overnight parking accommodation or not, on City-owned property if the City has a reasonable suspicion that the person has violated any applicable law, ordinance, rule, guideline or agreement, or that the activity constitutes a nuisance or other threat to the public welfare.
- B. No activity associated with overnight camping or temporary transitional overnight parking is allowed to occur that constitutes a nuisance or other threat to the public welfare.
- C. Violation of the provisions of this chapter is a Class A infraction each day a violation occurs.
- D. The City Manager may adopt administrative rules in the manner provided in BC 1.30.005 to implement this section.
- E. Nothing in this section of this code creates any duty on the part of the City or its agents to ensure the protection of persons or property with regard to permitted overnight camping or temporary transitional overnight parking accommodations. [Ord. NS-2458, 2022; Ord. NS-2402, 2021. Formerly 5.70.020]

C. **Established campsite** means a location or locations in the public right-of-way or on City property where a camp, camps, and/or camp materials have been set up for 24 hours or more.

Note: "Camp," "camping," "camp materials" and "established campsite" do not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated at BC [4.20.035](#).

D. **City parking lot or parking structure** is a type of City property, and means a developed or undeveloped area or facility owned, maintained, and/or leased by the City that is designated and/or used for parking vehicles.

E. **Public rights-of-way** means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular, pedestrian, or other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.

F. **City property** includes all real property, land and public facilities owned, leased (either to the City or by the City), controlled, or managed by the City of Bend including City parking lots or parking structures, but excluding City owned or managed rights-of-way. [Ord. NS-2458, 2022]

4.20.020 Camping Prohibited on City Property.

It is prohibited at all times for any person to use City property to camp or for camping or for the purpose of occupancy, habitation, or sheltering for survival in vehicles, automobiles, or recreational vehicles; provided, that the City Manager may, in their discretion, designate certain City properties or portions of properties as areas where camping or using vehicles for sheltering and/or sleeping may be allowed on a limited basis, and may set the terms and conditions of any camping or vehicle use that may be allowed. Any use of City property will follow the applicable processes, including, where applicable, the Bend Development and/or City Code. [Ord. NS-2458, 2022]

4.20.025 Enforcement.

A. The City Manager is specifically authorized to modify or suspend enforcement of any section or element of this chapter in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared.

B. The City Manager may adopt administrative rules or policies governing or guiding enforcement of this chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

C. Enforcement should be tailored for various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with the code, or for other reasons that may support discretion in enforcement.

- e. Within 1,000 feet from any safe parking site or shelter approved under the Bend Development Code and/or any applicable provision of State law.
- f. On any street or public right-of-way, the City has closed to camping due to construction, heavy vehicle use, or other use of the roadway that is incompatible with camping in the right-of-way. The City does not need to close a street to vehicle traffic to close a street to camping under this section.

D. *Manner.*

1. Camping, when and where allowed, is subject to all of the following:
 - a. Individuals, camp materials, camps, or personal property may not obstruct sidewalk accessibility or passage, clear vision, fire hydrants, City or other public utility infrastructure, or otherwise interfere with the use of the right-of-way for vehicular, pedestrian, bicycle, or other passage.
 - b. A camp or camping must be limited within a spatial footprint of 12 feet by 12 feet, or 144 square feet. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
 - c. To prevent larger camping sites from forming and the impacts that can result, no more than three camps may be set up per block. If there are any camps set up on a particular block, no other camp may be within 150 feet of any of those camps, including but not limited to across the street or on another block face. A group of up to three camps may not be within 150 feet of any other group of camps.
 - d. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in public rights-of-way, on City property, or on any adjacent public or private property.
 - e. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by Bend Fire and Rescue are prohibited. Types of cooking stoves and other devices for keeping warm are permitted, as allowed by adopted City policies.
 - f. Dumping of gray water (i.e., wastewater from baths, sinks, and the like) or black water (i.e., sewage) into any facilities or places not intended for gray water or black water disposal is prohibited. This includes but is not limited to storm drains, which are not intended for disposal of gray water or black water.
 - g. Unauthorized connections or taps to electrical or other utilities, or violations of building, fire, or other relevant codes or standards, are prohibited.
 - h. Obstruction or attachment of camp materials or personal property to fire hydrants, utility poles or other utility or public infrastructure, fences, trees, vegetation, vehicles, or buildings is prohibited.
 - i. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents and similar items used for shelter that are readily portable are not structures for purposes of this section.

5. Vehicles must be operational, i.e., capable of being started and driven under their own power, or ready to be towed if designed to be towed and may not be discarded or left inoperable in public rights-of-way or on City property.
 6. No building or erecting of any structures connecting or attaching to vehicles is permitted, including tents that are not designed and manufactured to be attached to a vehicle.
 7. Persons may not accumulate, discard or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in public rights-of-way, on City property, or on any adjacent public or private property.
 8. Use of emergency power generators that result in a violation of BC 5.50.020(A) is prohibited.
 9. All animals must be leashed or crated at all times.
- C. Notwithstanding BC Chapter 6.20 or any other applicable rules or policies governing parking on public rights-of-way, under no circumstances may anyone use a vehicle for shelter and/or sleeping:
1. Within 500 feet of any safe parking site or shelter approved under the Bend Development Code and/or any applicable provision of State law.
 2. Within 1,000 feet of the City's emergency shelter at 275 NE 2nd Street, but bound by the geographic barriers of the US-97/Parkway to the west and 3rd Street to the east, generally described as follows:
 - a. NE 2nd Street between NE Burnside Ave and NE Franklin Ave;
 - b. NE Emerson Ave from its western terminus east of US-97/Parkway to NE 3rd Street;
 - c. NE Dekalb Ave from its western terminus east of US-97/Parkway to NE 3rd Street;
 - d. NE Burnside Ave from NE 2nd Street to NE 3rd Street;
 - e. SE Scott Street from the US-97/Parkway overpass to SE 3rd Street; and
 - f. SE Aune Street from the US-97/Parkway overpass to SE Scott Street.
 3. In any City parking lots or parking structures.
- D. Enforcement of violations of this section will be in accordance with applicable State law and City ordinances and policies, including laws, ordinances, and policies governing towing and impounding of vehicles. [Ord. NS-2458, 2022]

4.20.040 Violations.

- A. A citation for a violation of this chapter will be for a Class C civil infraction. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

contamination by hazardous materials or when there is immediate danger to human life or safety. If the danger to human life or safety can be reduced by moving the established campsite to a safer location, such as an adjacent landscape strip, the campsite should be moved rather than removed.

3. Once the 72-hour notice has been posted, the City may act on the notice and remove the campsite beginning 72 hours after posting and for up to 10 days following the posting.
 4. After a camp has been removed subject to a 72-hour notice or under circumstances when no advance notice is required, the camp and all associated camp facilities must be moved at least one block or 600 feet, whichever is greater, and the City may order that no camp be set up in that same location or a 100-foot radius for up to 14 days. The City will post signs informing the public that camping is prohibited at the location.
 5. When removing individuals and property from an established campsite, personnel will make reasonable efforts to remove individuals without the use of force, arrest, or citation. No person may be arrested or cited for failing to move under this chapter prior to being asked by City personnel to move.
 6. When removing personal property, the City will make reasonable efforts to determine if the property belongs to an individual and has any apparent utility. The City will make reasonable efforts to identify which established campsite property was removed from, to aid in connecting people with their property. Items that are perishable, or that have no apparent use, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
 7. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be given to law enforcement officials. Items that appear to have a value of \$1,000 or more shall be given to law enforcement officials for storage and safekeeping, and shall be made available as described in subsection (F) of this section.
 8. Following removal of personal property from the right-of-way, the City must post a notice at or as near as possible to the location the property was collected, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.
- E. Personal property or camp materials may be removed from City rights-of-way, City property, or a camp or campsite if in violation of the provisions of this chapter. Advance notice and an opportunity to cure will be provided in most cases.
- F. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of 30 days, or the duration required by law at the time of the removal.
1. Items that are perishable, that have no apparent use, are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way may be immediately discarded.