



# Homelessness and city ordinance requirements

# Agenda

- New Case Law and State Legislation
  - New requirements for local jurisdictions that are the impetus for change
- State Created Danger
  - What this means for law enforcement and addressing the limitations we must work within
- Next Steps
  - Understand and outline current ordinances and identify any conflicts with new state law
  - Highlight what we need to do, and what we don't need to do
  - Propose recommendations for next steps
- Discussion
  - Answer questions and get feedback to move forward on drafting policy for council consideration.

# New Case Laws and House Bills

## Case Law

- *Martin V. Boise*

- 2018 U.S. 9th Circuit Court of Appeals case
- “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”
- The court declared that a government entity cannot “criminalize conduct that is unavoidable consequence of being homeless – namely sitting, lying, or sleeping.”
- 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

## Case Law

- *Blake V. Grants Pass*

- 2020, Federal District Court opinion
- 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 is unconstitutional
- Persons experiencing homelessness who must sleep outside are entitled to take the necessary minimal measures to keep themselves warm and dry while they are sleeping
- "Minimal measures" is not defined in this case (tent, blanket, fire, etc.)
- The 9<sup>th</sup> Circuit Court of Appeals is currently reviewing the *Blake* decision

# House Bills

- House Bill 3115
  - Requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness.
  - 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.
  - Implementation date of July 1, 2023, to allow local governments time to review and update ordinances

## House Bills

- House Bill 3124
  - Addresses established campsites
  - Applies to public property, it is not applicable to private property
  - City is required to provide 72-hour notice of its intent to remove an established campsite
  - In event of exceptional emergency, or the presence of illegal activity other than camping at the established campsite, a city may act to remove it from public property with less than 72-hour notice
  - The HB fails to define what constitutes an established camping site

# House Bills

- House Bill 3124 (continued)
  - When removing items from established campsites:
    - 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 belongings 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
    - Items removed from established camping sites must be stored in a facility located in the same community as the camping site from which it was removed



# State Created Danger Principle

# State Created Danger

- The legal principle known as State Created Danger came from a 1989 case where the Supreme court interpreted the Fourteenth Amendment to the U.S. Constitution to impose a duty to government to act when the government itself has created dangerous conditions, this interpretation created the legal principle known as State Created Danger.
- When imposing reasonable time, place, and manner restrictions to regulate the sitting, sleeping or lying of persons on public rights of way, the city should consider whether their restrictions, and the enforcement of those restrictions, trigger issues under the State Created Danger principle.
- When removing persons and their belongings from public rights of way, the city should be mindful of whether the removal will implicate the State Created Danger principle.

# Next Steps

# Current Manzanita Ordinances

- 94-6 Section 14

- **Overnight camping prohibited.** Overnight camping, including overnight sleeping in recreational vehicles, trailers, automobiles, temporary shelters, tents, or sleeping bags on all public property, including, but not limited to, public streets, public sidewalks, public parks and public parking lots, on all premises open to the public and on all ocean shore areas under the jurisdiction of the State Parks and Recreation Department located within the City limits is prohibited.

- 94-11

- **Section 1. Camping Vehicle.** A camping vehicle means either a vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use and which is being used for vacation and recreational purposes, but is not intended for residential purposes, and is equipped with plumbing, sink or toilet.
- **Section 2. Uses Prohibited.** It shall be unlawful for any camping vehicle to be occupied, lived in or otherwise used as a residence or place of business in the City of Manzanita, except as otherwise provided in this ordinance. Camping vehicles not subject to the exception specified in Section 3 of this Ordinance must not be connected to a water hook-up and be stored with steps up.

# What the City needs to do

At a minimum the following are required:

- Review all ordinances and policies with our legal advisor to determine which current ordinances and policies, are impacted by the court decisions or recently enacted statutes.
- Comply with HB 3115 by July 1<sup>st</sup>, 2023.
- If there becomes an established homeless person's campsite and the city chooses the 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.
- If the 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.

# Not required

## The city is NOT required to do the following:

- Create or provide a shelter
  - Will not be able to have a city-wide ban on camping in regards to homelessness
- Provide a designated campsite for homeless
  - However, to be able to enforce a time, place and manner restriction we must allow a place for them to sit, lie, and sleep.

# Staff Recommendation

- Create and adopt one new city ordinance
  - Takes into account new laws
  - Restricts time, place, and manner for “camping” in regards to homelessness
  - Provides clear definitions to terms
  - Includes restrictions on public and private properties
- Have a draft ordinance presented to council at the February or March work session for further discussion
- At the adoption of a new ordinance, repeal the two current city ordinances regarding camping
  - 94-6 section 14
  - 94-11





# Discussion