



CITY OF MANZANITA

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COUNCIL WORK SESSION

Zoom Video Conference
<https://ci.manzanita.or.us>

AGENDA

November 9, 2022
03:00 PM Pacific Time

Video Meeting: Council will hold this meeting through video conference.
The public may watch live on the [City's Website: ci.manzanita.or.us/broadcast](http://ci.manzanita.or.us/broadcast)

or by joining the Zoom webinar:

<https://us02web.zoom.us/j/83399880080>

Call in number:

+1 253 215 8782

Please note that a passcode is not required to enter the webinar.

Note: Agenda item times are estimates and are subject to change.

1. **CALL TO ORDER** (3:00)
Mike Scott, Mayor
2. **HOMELESSNESS MANAGEMENT IN PUBLIC SPACES** (3:01)
Erik Harth, Chief of Police
3. **ADJOURN** (4:00)
Mike Scott, Mayor

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at cityhall@ci.manzanita.or.us or phone at 503-368-5343. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's youtube channel](#).



COUNCIL STAFF REPORT

To: Mayor and City Council

Date Written: October 27,
2022

Reviewed: Leila Aman, City Manager

From: Erik Harth, Police Chief

Subject: **Homelessness in Public Spaces**

ACTION REQUESTED

Listen to a presentation from the Chief of Police on HB 3115 and HB 3124 that impact the enforcement of removing homeless persons from public property. Staff will provide an outline of the legislation, identify potential changes to current city ordinances and facilitate an initial conversation around what solutions the city may need to impose to manage houseless persons in accordance with the law.

ANALYSIS

In the last legislative session the Oregon House passed two Bills, HB3115 and HB 3124 in response to case law changes regarding enforcement of homelessness in public spaces.

Below is a summary of the case law, and key information from HB 3115 and HB 3124 relevant to the City of Manzanita. Additional information can be found in (Attachment 1) League of Oregon Cities "Guide to Persons Experiencing Homelessness in Public Spaces.

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
- The court declared that a governmental entity cannot "criminalize conduct that is an 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 against whom the prohibition is being enforced

Blake V. Grants Pass

- In August 2020, Federal District Court opinion declared that 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.
- Persons experiencing homelessness who must sleep outside are entitled to take necessary minimal measures to keep themselves warm and dry while they are sleeping.
- A person does not have access to shelter if:
 - They cannot access the shelter because of their gender, age, disability or familial status; or
 - Accessing the shelter requires a person to submit themselves to religious teaching or doctrine for which they themselves do not believe; or
 - 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.
- The key unknown after *Blake*, is: What constitutes a minimal measure for a person to keep themselves warm and dry – is it access to a blanket, a tent, a fire, etc.?
- 9th Circuit Court of Appeals is presently reviewing the *Blake* decision

HB 3115

- Requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness.
- 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

HB 3124

- Applies to public property; it is not applicable to private property.
- Changes and adds 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.
- Provides instructions on how a city is to oversee and manage property it removes from an established campsite located on public property.
- A city is required to provide 72-hour notice of its intent to remove the established camp 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.
- The HB fails to define what constitutes an established camping site.
- 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 must be stored in a facility located in the same community as the camping site from which it was removed.

State Created Danger

In addition to the guidance provided by HB 3115 and HB 3124 cities must ensure that they are not establishing rules and regulations that result in "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.

The 9th Circuit Court 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.

- By creating managed homeless camps where unhoused persons can find shelter and services, 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).
- 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.
 - 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."
- 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.
- 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.

Manzanita Ordinances

The City of Manzanita's camping ordinances currently prohibit all camping inside the City Limits.

- **Section 14 of City of Manzanita Ordinance No. 94-6 (attachment 2)** 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.
- **ORDINANCE NO. 94 - 11 (attachment 3)**
 - **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. [Amended by Ord. 17-03, passed 6/7/17]

These new case laws and Oregon House Bills prohibit the enforcement of local ordinances regarding overnight camping with regards to persons experiencing homelessness, unless the city is able to provide a location for persons experiencing homelessness to sleep or rest. Some neighboring cities, Astoria, Seaside and Cannon Beach have created ordinances that impose reasonable time, place, and manner regulations. (See attachments 4 and 5)

Staff recommends that the city repeals the language contained in two current city ordinances regarding camping, 94-6 section 14 and 94-11 and create and adopt a new camping ordinance that is similar to the City of Seaside and Cannon Beach, that restricts certain defined public spaces and sets time and manner restrictions on camping for persons experiencing homelessness within the City of Manzanita. The ordinance needs to have clear definitions of terms used e.g., "Camping", "Camp Paraphernalia", "Campsite", "Camp facilities", etc.

BUDGET IMPACT

The City Attorney will be engaged in review and preparation of any changes to existing ordinances and the creation of an ordinance regarding homelessness and camping enforcement.

WORKLOAD IMPACT

The City Manager and Police Chief will be engaged in the development and review of changes to existing and preparation of new proposed ordinances including presenting this material for council consideration and approval.. If the City chooses to create an ordinance with reasonable specified times, place and manner regulations, there will need to be staff available to "evict"

those persons daily from their location at the specified time listed in an ordinance to make sure a “camp” doesn’t become an established camp.

STAFF RECOMMENDATION

Staff is seeking guidance and feedback from Council on the proposed direction to repeal existing language and develop an ordinance, setting time, place and manner restrictions for further conversation. If Council concurs, staff anticipate having this completed in February. It should be noted that the city will need to ensure that changes to existing and adoption of new ordinances are in place by the July 2023 deadline.

ATTACHMENTS

1. League of Oregon Cities “Guide to Persons Experiencing Homelessness in Public Spaces
2. Ordinance 94-6 highlighted
3. Ordinance 94-11
4. Cannon Beach ordinance
5. Seaside Ordinance

A photograph showing three tents pitched in a public space. On the left is a small black and yellow tent. In the center is a white tent with blue accents. On the right is a larger white tent with orange accents. They are situated on a dirt and gravel area next to a large concrete bridge structure. In the background, there are green trees and a clear sky.

GUIDE



Guide to Persons Experiencing Homelessness in Public Spaces

JUNE 2022

Guide to Persons Experiencing Homelessness in Public Spaces

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

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

Legal Principles Involved in Regulating Public Property

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

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

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

B. *Martin v. Boise*

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

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

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

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

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

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

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

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

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

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

C. Blake v. Grants Pass

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

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

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

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

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

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

D. House Bill 3115

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

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

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

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

E. House Bill 3124

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

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

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

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

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

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

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

F. Motor Vehicles and Recreational Vehicles

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

G. State Created Danger

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

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

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

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

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

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

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

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

How Cities Proceed

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

A. What Cities Must Do

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

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

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

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

B. What Cities Must Not Do

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

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

C. What Cities May Potentially Do

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

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

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

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

D. What Cities Should Practically Consider

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

Conclusion

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

Additional Resources

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

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

Recognition and Appreciation

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

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

Manzanita Ordinances
AN ORDINANCE PRESCRIBING GENERAL OFFENSES;
PROVIDING PENALTIES; REPEALING ORDINANCE NO. 52;
AND DECLARING AN EMERGENCY

ORDINANCE NO. 94-6

Section 1. Oregon Criminal Code Adopted.

(1) Oregon Revised Statutes, Chapters 161, 162, 163, 164, 165, 166, 167 and 471 all as amended through January 1, 2003, except for any provisions classified as a felony under state law, are adopted by reference. Violation of an adopted provision of those chapters is an offense against this City.

(2) The provisions of Oregon Revised Statutes, Chapter 161 as amended through January 1, 2003 relating to defenses, burden of proof, general principles of criminal liability, parties and general principles of justification apply to offenses defined and made punishable by this Ordinance.

(3) Except where the context clearly indicates a different meaning, definitions appearing in the general definitional and other particular sections of chapters adopted by subsection (1) above are applicable throughout this Ordinance.

Amended March 5, 2003, Ordinance No. 03-01.

Disorderly Conduct and Related Offenses

Section 2. Disorderly Conduct at Fires.

(1) No person at or near a fire shall obstruct or impede fighting of the fire, interfere with fire department personnel or fire department apparatus and equipment; behave in a disorderly manner, or refuse to observe promptly an order of a member of the fire or police department.

(2) For purposes of this section, members of the fire department are endowed with the same powers of arrest as are conferred on peace officers for violations of city ordinances.

Section 3. Drinking or Possessing Open Container in Public Places. No person shall drink, consume or possess an open container of alcoholic liquor in or on a street, alley, mall, parking lot or structure, motor vehicle, public grounds, or other public place unless the place has been licensed for that purpose by the Oregon Liquor Control Commission.

Section 4. Unnecessary Noise. No person shall create, assist in creating, permit, continue, or permit the continuance of unreasonable noise in the city. The following enumerations of violations of this section are not exclusive but are illustrative of some unreasonable noises:

(1) The keeping of any animal which by frequent or loud continued noise shall disturb the comfort and repose of any person in the vicinity.

(2) Using an engine, thing or device out of repair, so loaded, or operated in such manner as to create loud and unnecessary grating, grinding, rattling or other noises. (3) The sounding of any horn or signal device on any automobile, motorcycle, streetcar, or other vehicle on any street or public place of the city, except as a necessary warning of danger to property or person.

(4) The use of any mechanical device operated by compressed air, steam, or otherwise, unless the noise created thereby is effectively muffled.

- (5) The erection, including excavation, demolition, alteration, or repair of any building, other than between the hours of 7:00 a.m. and 6:00 p.m., except upon special permit granted by the City Council.
- (6) The use of any gong or siren upon any vehicle other than police, fire, or emergency vehicle.
- (7) The operation of any gasoline engine without having the same equipped with and using thereupon a muffler.
- (8) The use of a “muffler cutout” on any motor vehicle upon any street.
- (9) The use or operation of any automatic or electric piano, phonograph, radio, loudspeaker, or any sound-amplifying device so loudly that it disturbs persons in the vicinity thereof or in such manner as renders the same a public nuisance; provided, however, that upon application to the City Council, permits may be granted to responsible persons or organizations to broadcast programs of music, news, speeches, or general entertainment.
- (10) Any noise occurring outside LC and C-1 zones that exceeds 55 dBA during the hours of 10:00 pm until 7:00 am the next day, subject to the following (a) sanitation and refuse collection are exempt from the requirements of this section and (b) emergency response vehicles and responders including utility work are exempt from this section. Noise levels shall be measured from the public rights-of way near to where the alleged offense is occurring. Measuring devices used to determine noise levels must be either a Type 1 or Type II, as defined by American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).
- (11) Any noise occurring on properties located within LC and C-1 zones that exceeds 70dBA during the hours of 10:00pm until 12:00am and any noise exceeding 55 dBA on the same properties from 12:01am until 7:00am, subject to the same exceptions and measurement requirements provided under Section 4(10).

(Sections 5 to 10 reserved for expansion)

Section 11. Discharge of weapons.

- (1) No person other than a peace officer shall fire or discharge a gun or firearm, including a spring or air activated pellet gun, air gun, BB gun, or other weapon that propels a projectile by use of gunpowder, jet or rocket propulsion.
- (2) No person other than a peace officer shall shoot any device commonly known as a bow, causing an arrow to be propelled through the air.
- (3) No person other than a peace officer shall shoot any device commonly as a sling shot, causing a projectile to be propelled through the air.

Section 12. Concealed Weapons. Except as provided in ORS 166.260 and 166.290, no person shall carry concealed on his or her person or conceal in a vehicle a revolver, pistol or other firearm, a knife other than an ordinary pocket knife; a dirk; dagger or stiletto; metal knuckles or any weapon that could be used to inflict injury on a person or the property of another. For the purposes of this section, an ordinary pocket knife is one with a maximum blade length of 3 1/2 inches that is not a switchblade or spring blade knife.

Section 13. Fireworks The following sections of the Oregon Fireworks Law are adopted by reference and made a part of this ordinance: ORS 480.110, 480.120, 480.130, 480.140(1), 480.150 and 480.170.

Section 14 of City of Manzanita Ordinance No. 94-6 is hereby amended to read as follows:

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.

Sexual and Related Offenses

Section 15. Public Indecency. No person shall, while in or in view of a public place, perform:

- (1) An act of sexual intercourse.
- (2) An act of deviate sexual intercourse.

- (3) An act of exposing his genitals with the intent of arousing the sexual desire of himself or another person.
- (4) An act of urination or defecation except in toilets provided for that purpose.

Offenses Relating to Minors

Section 16. Endangering Welfare of Minor.

- (1) No person shall employ a person under 18 years of age in or about a card room, pool room, billiard parlor, dance hall, unless the establishment is a “recreational facility” as defined in Section 17.
- (2) No person shall solicit, aid, or cause a person under 18 years of age to:
 - (a) Violate a law of the United States or a state, or to violate a city or county ordinance.
 - (b) Run away or conceal himself from a person or institution having lawful custody of the minor.

Section 17. Places of Amusement.

- (1) No person under 18 years of age shall enter, visit or loiter in or about a public card room, pool room or billiard parlor.
- (2) No person operating or assisting in the operation of a public card room, pool room, or billiard parlor shall permit a person under 18 years of age to engage in a game of cards, billiards, dice or games of chance, for amusement or otherwise.
- (3) This section shall not apply to playing billiards in a recreational facility. As used in this section, “recreational facility” means an area, enclosure or room in which facilities are offered to the public to play billiards or pool for amusement only and:
 - (a) Is clean, adequately supervised, adequately lighted and ventilated.
 - (b) No alcoholic liquor is sold or consumed.
 - (c) Where access does not require passing through a room where alcoholic liquor is sold or consumed.

Section 18. Providing Liquor to Minors. No person shall sell, give, serve or otherwise make available any alcoholic liquor to a minor except as provided in Section 20 of this ordinance.

Section 19. Purchase or Possession of Liquor by Minor.

- (1) Except as provided in Section 20 of this ordinance, no minor shall attempt to purchase or acquire, or have in his or her possession alcoholic liquor.
- (2) For purposes of this Section, possession of alcoholic liquor includes acceptance or consumption of a bottle of such liquor, or any portion of it, or a drink of such liquor. However, this Section does not prohibit a person from accepting or consuming sacramental wine as part of religious rite or service.

Section 20. Lawful Consumption of Liquor by Minor. Nothing in this ordinance shall be construed as prohibiting a parent or other responsible relative of a minor from giving the minor alcoholic liquor and permitting the minor to consume it within the home of the parent or other responsible relative; or at another private place not in view of the public where the parent or other responsible relative is present.

Section 21. Purchase of Property From Minors. No person shall purchase any property or article of value from a minor, or have dealings respecting the title of property in the possession of a minor without the written consent of the parent or guardian of the minor.

Section 22. Curfew for Minors.

- (a) It is unlawful for any minor under the age of 18 years to be in or upon any street, park or other public place between the hours specified in this Section, unless such minor is accompanied by a parent, guardian or other adult person over the age of 21. If the minor is with someone over the age of 21 that adult person must be authorized by a parent or guardian of the minor to be in their care and custody. If the minor is engaged in a school activity or lawful employment that makes it necessary to be in or upon such street, park, or other public place during the hours specified in this Section, the curfew hours described herein shall not apply. For minors under the age of 14 years who have not begun high school, the curfew is between 9:00 p.m. and 6:00 a.m. of the following morning. For minors 14 years of age or older who have begun high school, the curfew is between 10:00 p.m. and 6:00 a.m. of the following morning.
- (b) No parent, guardian or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, park or other public place during the hours specified in subsection (a) of this section.
- (c) Any minor who violates subsection (a) of this section may be taken into protective custody as provided by ORS 419C.080, 419C.085 and 419C.088.
(Amended by Ord. 99-01.)

Offenses Relating to Animals

Section 23. Poisoning Animals. It shall be unlawful for any person to put out or place any poison where the same is liable to be eaten by any horse, cattle, sheep, hog, dog, or other domestic animals.

Section 24. Cruelty to Animals.

- (1) Except as otherwise authorized by law, no person shall intentionally or recklessly:
 - (a) Subject any animal under human custody or control to cruel mistreatment.
 - (b) Subject any animal under his or her custody or control to cruel neglect.
 - (c) Kill without legal privilege any animal under the custody or control of another, or any wild bird.
 - (d) A peace officer may, in the furtherance of his or her duties after all other possible courses of action have been exhausted or attempted, shoot or dispatch an animal for the express purpose of ending pain and suffering.
- (2) As used in this section, "animal" includes birds.

Sidewalk and Street Offenses

Section 25. Obstruction of Building Entrances. It shall be unlawful for any person to obstruct any entrance to any building.

Section 26. Vending Goods on Streets or Sidewalks. No person shall use or occupy a portion of a street or sidewalk for the purpose of vending goods, wares or merchandise by public outcry unless a license has been obtained.

Section 27. Obstruction of Fire Hydrants. No owner of property adjacent to a street upon which a

fire hydrant is located shall place or maintain a bush, shrub or tree or other obstruction within eight feet of the fire hydrant.

Section 28. Skateboard and Skating Operating Rules. No person shall ride a skateboard, roller skates or rollerblades on any city basketball or tennis facilities or on any sidewalk, public street, walkway, pedestrian area or parking lot within the C-1 zone of the city. Skateboards, roller skates or rollerblades operated, parked or left in violation of this ordinance may be immediately impounded by the police department, in addition to a citation issued.

Miscellaneous

Section 29. Fire Alarms. It shall be unlawful for any person to turn in any false fire alarm.

Section 30. Notices and Advertisements.

(1) No person shall attach or cause to be attached a placard, bill advertisement or poster upon real or personal property without first obtaining permission of the owner or proper public authority. This section shall not be construed as an amendment to or a repeal of any city regulation of the use and location of signs.

(2) No banners, flags or streamers of any kind shall be placed across a street or avenue without first securing the permission of the City Recorder.

Section 31. Begging. No person shall accost another in a public place to solicit alms.

Section 32. Lodging. No person shall lodge in a car, outbuilding or other place not intended for that purpose without permission of the owner or person entitled to possession.

Section 33. Hauling. No person shall haul sand, gravel, rock, wood or other substance in a vehicle or conveyance that is so constructed or in such condition to allow the sand, gravel, rock, wood or other substance to fall on and litter public streets.

Section 34. Loitering. A person commits the crime of loitering if he:

(1) Loiters in or near a school building or grounds, any reason or relationship involving custody or responsibility for a student; or, upon inquiry by a peace officer or school official, not having a specific, legitimate reason for being there; or

(2) Loiters or prowls in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of persons or property in the vicinity and, upon inquiry by a peace officer, refuses to identify himself and give a reasonably credible account of presence and purposes.

Section 35. Parental Responsibility.

(a) The parent, legal guardian or person with legal responsibility for the safety and welfare of a minor under the age of 18 years, hereinafter "supervisor," shall have the legal responsibility for the actions of such minor which are in violation of any provision of any Ordinance of the City of Manzanita occurring on private property or property which is open to public use.

(b) It shall be a defense to the charge of failure to supervise if:

(i) the offense occurred in the presence of the supervisor, or

(ii) the offense occurred on property owned by the supervisor, and

(iii) the supervisor took reasonable steps to control the action of the minor or

reported the action to the appropriate authorities.

(c) In addition to any fine or penalty imposed pursuant to this Ordinance, the Court may order the person to pay restitution to the victim of the minor's unlawful conduct. The amount of restitution ordered pursuant to this Ordinance shall not exceed \$2,500.

(d) If a violation of subsection (a) of this section occurs where the minor is 11 years of age or younger, any citation shall be issued to the supervisor and not to the minor.

(e) The first time a person is convicted of violating subsection (a) of this section, the person shall not be required to pay a fine exceeding \$100.00 if the person successfully participates and completes a parent effectiveness program to the satisfaction of the Court. (Amended by Ord. 99-01.)

(Sections 36 to 40 reserved for expansion)

General

Section 41. Offenses Outside City Limits. This ordinance applies to acts committed on property owned or leased by the city that is outside the corporate limits of the city.

Section 42. Soliciting or Confederating to Violate Ordinances. No person shall solicit, aid, employ or engage another, or confederate with another to violate a provision of any city ordinance.

Section 43. Separate Violations. When in any city ordinance, an act is prohibited or is made or declared to be unlawful or an offense, or doing an act is required, or the failure to do an act is declared to be unlawful or an offense, each day a violation continues constitutes a separate offense.

Section 44. Penalties. Violation of a provision of this ordinance is punishable by a fine not to exceed \$500.00. However, if a violation of a provision is identical to a state statute with a lesser penalty, punishment shall be limited to the lesser penalty prescribed in state law.

Section 45. Nuisance Abatement. No provision in this ordinance shall preclude abatement of a nuisance as provided in the city's general nuisance ordinance.

Section 46. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 47. Application of State Statutes. Provisions of the Oregon Criminal Code of 1994, as now constituted, relating to defenses, burden of proof, general principles of criminal liability, parties, and general principles of justification apply to offenses defined and made punishable by this ordinance.

Section 48. Repeal. Ordinance No. 52, passed September 3, 1965, is hereby repealed.

Section 49. Emergency Clause. Inasmuch as it is necessary for the health, safety, comfort and convenience of the people of the City of Manzanita that this Ordinance have immediate effect, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

Passed by the Council on September 7, 1994 and signed by the Mayor on September 9, 1994.
Amended by Ordinance 21-07 on September 8, 2021

Manzanita Ordinances

AN ORDINANCE PROHIBITING THE USE OF CAMPING VEHICLES FOR RESIDENTIAL OR BUSINESS PURPOSES WITHIN THE CITY OF MANZANITA AND REPEALING ORDINANCE NO. 72 - 3

ORDINANCE NO. 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. [Amended by Ord. 17-03, passed 6/7/17]

Section 3. Temporary Use Permitted. The owner of record of a parcel of property may park a camping vehicle upon that property for the purpose of providing temporary living facilities for the applicant while the applicant is constructing a residence on that property. Before such permission is granted, the applicant must obtain and display a building permit for the permanent residence and demonstrate that adequate provisions have been made to comply with health, sanitary and safety regulations of the city. Such permission shall be granted for a period not to exceed six months, but may be renewed at the discretion of the City Manager. [Amended by Ord. 17-03, passed 6/7/17]

Section 4. Storage of Camping Vehicles. It shall be unlawful to store any camping vehicle within the city unless it is parked or placed on property owned by the owner of the vehicle and in conformance with fire and safety regulations, or is parked within a garage or carport. It must be maintained in a structurally safe condition and not permitted to become unsafe, unsightly or a hazard. Camping vehicle storage shall not encroach into City rights-of-way. [Amended by Ord. 17-03, passed 6/7/17]

Section 5 . Penalties. It is a Class C Civil Infraction as provided in Manzanita Ordinance No. 15-01 to store camping vehicles on private property contrary to any provision of this Ordinance. Each day a violation continues constitutes a separate violation. [Amended by Ord. 17-03, passed 6/7/17]

Section 6. Repeal. Ordinance No. 72 - 3, enacted February 9, 1972 is hereby repealed.

Passed by the Council March 8, 1995 and signed by the Mayor March 9, 1995.

Amendments passed by the Council June 7, 2017 and signed by the Mayor June 7, 2017.

Chapter 12.20 CAMPING PROHIBITED

- 12.20.010 Definitions.
- 12.20.020 Camping prohibited in certain places.
- 12.20.030 Violation—Penalty.

12.20.010 Definitions.

Definitions used in this chapter have the following meanings:

- (1) “Camp” or “camping” means to set up, use, maintain or remain in or at a campsite.
- (2) “Campsite” means any place where one or more persons have established temporary living accommodations by use of camp facilities and/or camp paraphernalia.
- (3) “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, lean-tos, shacks, or any other structures, vehicles or parts thereof.
- (4) “Camp Paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.
- (5) “Park” shall have the meaning given in CBMC 12.42.030.

12.20.020 Camping prohibited in certain places.

Unless otherwise specifically authorized by the city code or by declaration of the mayor and/or city manager in emergency circumstances, it is an infraction for any person to camp in or upon any public property:

- (1) within or upon any Park;
- (2) on streets, roads, highways, bridges, alleys, trails, paths, public easements and all other public ways or areas including planter strips, medians and parking spaces;
- (3) on sidewalks, if by doing so, the person or the person’s campsite reduces the clear, continuous sidewalk width to less than three (3) feet;

- (4) within forty (40) feet of a privately owned parcel zoned for residential use, or within forty (40) feet of a residential structure regardless of zoning;
- (5) within one hundred (100) feet of any public or private school attended primarily by children under the age of 18;
- (6) between the hours of 7 a.m. to 9 p.m.; or
- (7) overnight on the ocean shore within the City limits, consistent with OAR 736-030-0020.

12.20.030 Violation—Penalty.

Any person who is convicted of a violation of any provision of CBMC 12.20.020 shall be subject to a civil fine of not more than one hundred dollars for each offense. The fine amount should reasonably relate to the damage the violation caused to public use, enjoyment, or property.

Chapter 12.42 PARK CODE

- 12.42.010 Title.
- 12.42.020 Purpose.
- 12.42.030 Definitions.
- 12.42.035 Park Hours.
- 12.42.040 Restrictions.
- 12.42.050 Violation—Penalty.

12.42.010 Title.

This chapter may be cited as the “Park Code for the Ceity of Cannon Beach.” (Ord. 20-01 § 1)

12.42.020 Purpose.

The parks of this city are established and maintained as areas of recreation, relaxation, and enjoyment for the public. It is intended that they shall be regulated and used to permit enjoyment by a maximum number of people engaged in widely diverse interests and activities as may be practical within the limits of space, design, and accommodations available in each park unit. Limitations may be required to ensure the use of park areas in safety and to protect the rights of others in surrounding areas. (Ord. 20-01 § 1)

12.42.030 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this section:

“Park,” as used in this chapter, means and includes all the properties controlled by the city, and operated as parks available for use of the public. These are including, but not limited to, City Main Park, Les Shirley Park (including the Haney Addition and Ecola Pump Station), Ne Cus’ Park, Ecola Creek Park, Whale Park, Madison Park, Elk Run Park, Sitka Spruce Reserve, Tolovana Hall Property, and the Sewage Lagoon Loop Trail System. (Ord. 20-01 § 1)

12.42.035 Park Hours.

All Parks shall be open only from dawn to dusk. Unless specifically authorized by city permit, it shall be unlawful for any person to be in a Park at any other time.

12.42.040 Restrictions.

For the conduct of persons using or frequenting the parks of Cannon Beach, the following rules and regulations to be observed and enforced within the parks are established.

A. All city ordinances shall apply to and be in full force and effect within the parks of the city.

B. No person shall cut, remove, or damage any flowers, trees or shrubs without written permission from the public works director.

C. No person shall build any fire within a park. Private cooking stoves, whether propane or charcoal, are allowed for the preparation of food.

D. No person shall set up or operate a powered public address system, amplified music speaker system or other means of amplifying sound except such systems may be operated at the bandstand at the city's main park with written permission from the public works director. Battery-operated portable music players are permitted provided they shall not be operated at a volume or in any manner that can be heard outside of park boundaries.

E. No person shall set up or construct any temporary structures or enclosures, including, but not limited to, tents, arbors, and other structures. Open-sided canopies up to and including ten feet by ten feet in size are allowed if approved under city permitted event application.

F. No person shall set up, construct, or operate temporary lighting or generators.

G. No person shall engage in any activity or conduct which is disruptive or incompatible with the appropriate use of the premises or which interferes with the reasonable use and enjoyment of the park by others.

H. No motor vehicle shall be operated, stopped, parked, or left standing any place in a public park except on roads and parking areas provided thereof. This section does not apply to maintenance vehicles, vehicles with city issued permits, emergency vehicles, bicycles, and wheel chairs.

I. No person shall allow horses under their control to enter any park, city parking lot with the exception of horse trailers, for the temporary loading and unloading of animals, in the west Les Shirley parking lot and the east end of Elk Creek Road.

J. No person shall enter any area in a park that has been designated and posted by the public works director as a “restricted area” or “closed area.”

K. Commercial activities, defined as the exchange of any goods or services for money, are not allowed.

L. Usage of all park facilities is on a “first come-first serve” basis, except for events of fifty or more persons, which must go through the city event permit process. (Ord. 20-01 § 1)

12.42.050 Violation—Penalty.

A fine not to exceed five hundred dollars shall punish any person violating any of the provisions of this chapter, on conviction thereof before the municipal court. (Ord. 20-01 § 1)

ORDINANCE NO. 2021-06

AN ORDINANCE OF THE CITY OF SEASIDE, OREGON, ADDING CHAPTER 102 TO THE CODE OF SEASIDE, ESTABLISHING CAMPING REGULATIONS, DEFINITIONS, TEMPORARY CAMPING PROGRAM, PROHIBITED CAMPING, PENALTIES AND ENFORCEMENT

WHEREAS, the City Council is interested in creating a Camping Ordinance in the City of Seaside, Oregon.

NOW, THEREFORE, THE CITY OF SEASIDE ORDAINS AS FOLLOWS:

SECTION 1: Chapter 102 of the Code of Seaside is hereby created and added to read:

Chapter 102 CAMPING REGULATIONS

102.01 Title and purpose.

The title of this chapter shall be known as the "City of Seaside, Oregon, camping regulations." The purpose of this chapter is to protect the safety of citizens and regulate use of publicly owned property by establishing time, manner, and place guidelines.

102.02 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the content clearly indicates or requires different meaning:

- A. "Camp" or "camping" means to pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.
- B. "Camp facilities" include, but are not limited to, tents, huts, temporary shelters, or vehicles.
- C. "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or outdoor cooking devices or utensils and similar equipment.
- D. "Campsite" means any place where one or more persons have established temporary Sleeping accommodations by use of camp facilities and/or camp paraphernalia.
- E. "City manager" means the Seaside City Manager, or the city manager's designee.
- F. "Family" means two or more persons related by blood, marriage, adoption, legal guardianship, or other duly authorized custodial relationship, or not more than two unrelated adults.
- G. "Motor vehicle" has the meaning given that term in ORS 801.360.
- H. "Park areas" has the meaning all public parks in the City of Seaside.
- I. "Parking lot" means a developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material.
- J. "Prohibited campsite" means any campsite:
 - (a) Described in Code of Seaside 102.03 and 102.04; or
 - (b) Not authorized under the Code of Seaside.
- K. "Public owned property" means any real property or structures owned, leased, or managed by the city or other government agency including public rights-of-way.
- L. "Public rights-of-way" has the meaning set forth in Code of Seaside 95.01.
- M. "Recreational fire" means a fire for the cooking of food, warmth, fellowship or ceremonial purposes.
- N. "Recreational vehicle" has the meaning given that term in ORS 174.101.
- O. "Solid waste" means any garbage, trash, debris, yard waste, food waste, or other discarded materials.
- P. "Solid waste disposal services" means contracted solid waste collection service for a campsite with the city's exclusive franchisee for the collection of solid waste.

- Q. "Store" or "storage" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- R. "Street" means any highway, lane, road, street, right-of-way, alley, and every way or place in the city of Seaside that is publicly owned or maintained for public vehicular travel.

102.03 Temporary camping program.

- A. With written authorization of the private property owner of the property:
- (a) Up to three total motor vehicles or tents, in any combination, may be used for camping in any parking lot on the following types of property:
 - (1) Real property developed and owned by a religious institution, place of worship, regardless of the zoning designation of the property;
 - (2) Real property developed with one or more buildings occupied and used by any organization or business primarily for nonprofit, commercial or industrial purposes;
 - (3) Vacant or unoccupied commercial or industrial real property, after the property owner has registered the temporary camping location with the city. The city may require the site to be part of a supervised program operated by the city or its agent.
- B. Up to one family may use a residentially zoned property developed with an occupied residential dwelling, with further authorization from property owner and tenants of the property, for camping by either:
- (a) Using a tent to camp in the back yard of the residence; or
 - (b) Using a single motor vehicle parked in the driveway of the dwelling.
- C. A property owner who authorizes any person to camp on a property pursuant to subsection (A) and (B) of this section must:
- (a) Provide or make available sanitary facilities; (i.e., including toilets, wash facilities, and drinking water facilities).
 - (b) Provide garbage disposal services so that there is no accumulation of solid waste on the site;
 - (c) Provide a storage area for campers to store any personal items so the items are not visible from any public street;
 - (d) Require a tent or camping shelter in a residential backyard to be not less than five feet away from any property line; and
 - (e) Not require or accept the payment of any monetary charge nor performance of any valuable service in exchange for providing the authorization to camp on the property; provided, however, that nothing in this section will prohibit the property owner from requiring campers to perform services necessary to maintain safe, sanitary, and habitable conditions at the campsite.
- D. A property owner who permits camping pursuant to subsection (1) of this section may revoke that permission at any time and for any reason.
- E. Notwithstanding any other provision of this chapter, the city manager or their designee may:
- (a) Revoke the right of any person to authorize camping on property described in subsection A of this section upon finding that any activity occurring on that property by the camper(s) is incompatible with the uses of adjacent properties or constitutes a nuisance or other threat to the public welfare; or
 - (b) Revoke permission for a person or family to camp overnight on city-owned property upon finding that the person or family member has violated any applicable law, ordinance, rule, guideline or agreement, or that any activity occurring on that property by a camper(s) is incompatible with the use of the property or adjacent properties.
- F. Any person whose authorization to camp on property has been revoked pursuant to subsections (D) and (E) of this section must vacate and remove all belongings from the property within four hours of receiving such notice.

- G. All persons participating in the temporary camping program described in this section do so at their own risk, and nothing in this code creates or establishes any duty or liability for the city or its officers, employees or agents, with respect to any loss related to bodily injury (including death) or property damage.

102.04 Prohibited camping.

- A. Except as expressly authorized by the Code of Seaside, at all times it is unlawful for any persons to establish or occupy a campsite on the following city property:
- (a) All Park areas;
 - (b) All publicly owned or maintained parking lots; and
 - (c) All publicly owned or maintained restrooms; and
 - (d) All publicly owned property located within and adjacent to the following residential zoning districts:
 - (1) Low density residential (R1)
 - (2) Medium density residential (R2)
 - (3) High Density Residential (R3)
 - (4) Resort Residential (RR)
 - (5) Residential Commercial (RC)
 - (e) All publicly owned property along 12th Avenue.
 - (f) All publicly owned property between 1st Avenue to Avenue A.
 - (g) All publicly owned property along ~~and~~ Avenue G.
 - (h) All publicly owned property along Avenue U.
 - (i) All publicly owned property along ~~and~~ Necanicum Drive.
 - (j) All publicly owned property along Holladay Drive.
 - (k) All publicly owned property along Highway 101.
 - (l) All publicly owned property along Wahanna Drive.
 - (m) All publicly owned property along Sunset Boulevard.
- B. Except as expressly authorized by the Code of Seaside, it shall be unlawful for any person, other than persons camping in a vehicle or recreational vehicle, to camp or maintain a campsite on any publicly owned property during the hours of 6:00 a.m. to 8:00 p.m.
- C. Except as expressly authorized by the Code of Seaside, it shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia, on any public property during the hours of 6:00 a.m. to 8:00 p.m.
- D. Except as expressly authorized by the Codes of Seaside or special event permit, it shall be unlawful to have a recreational fire on public property.
- E. A person or persons camping in a vehicle or recreational vehicle must adhere to parking regulations, Code of Seaside Chapter 72, and public right-of-way regulations, Code of Seaside Chapter 95.01.
- F. Notwithstanding the provisions of this chapter, the city manager or designee may temporarily authorize camping or storage of personal property on public property by written order that specifies the period of time and location:
- (a) In the event of emergency circumstances;
 - (b) In conjunction with a special event permit; or
 - (c) Upon finding it to be in the public interest and consistent with council goals and policies.
- G. The city manager may adopt administrative rules to implement any of the provisions of this chapter.

102.99 Penalties and enforcement.

- A. Violation of any provisions in Code of Seaside 102.03 is a Class D violation pursuant to ORS 153.012. Each day that a violation occurs will be considered a separate offense.

- B. Violations of any provisions in Code of Seaside 102.04 is a Class D violation and may result also in a violation of Oregon Revised Statutes.
- C. In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by this section or other provisions of this code shall constitute a public nuisance and may be abated as such.

SECTION 2: Ordinance 2021-06 will take effect on the thirtieth day after its adoption.

ADOPTED by the City Council of the City of Seaside on this ____ day of _____, 2021 by the following roll call vote:

YEAS:
NAYS:
ABSTAIN:
ABSENT:

SUBMITTED to and **APPROVED** by the Mayor on this ____ day of _____, 2021

JAY BARBER, MAYOR

ATTEST:

Mark J. Winstanley, City Manager