

Laws Relating to Persons Experiencing Homelessness

MAY, 2024

Homelessness is . . .

“Lacking regular access to safe, adequate, stable housing”

Portland State University (PSU) – Homelessness Research & Action Collaborative

Homelessness is . . .

A person reports sleeping in:

- An emergency shelter,
- A legal alternative shelter such as a camping program or Conestoga Hut.
- Or on the streets, in a vehicle, or other place not meant for human habitation.

Does not include people who are in transitional housing projects or doubled up (“couch surfing,” staying with friends or family).

Definition used by Lane County Human Services Division

The leading causes of homelessness are:

Insufficient income / Poverty

Lack of affordable housing

Mental illness

Substance abuse

Foreclosures

Domestic violence

[National Center on Homelessness and Poverty](#)

Lane County homelessness data (April 2023)

4,748 persons (90-day active)

6,874 persons (Year-to-date active)

63% male; 35% female

61% between ages of 25 – 55

75% in Eugene

247 in Florence (5.2%)

Lane County Human Services Division

COURT CASES AND RECENT LEGISLATION

Martin v. Boise (9th Cir. 2019):

“ . . . an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.”

Martin v. Boise

FN 8: Requires an individualized analysis

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. **Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures.** Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes.

Martin v. Boise

Clear direction from *Martin*:

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.

But:

What 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?

Johnson v. City of Grants Pass (2022)

Applies *Martin*:

1. Persons experiencing homelessness are entitled to take necessary minimal measures to keep themselves warm and dry while sleeping outside.
 - The opinion does not provide clarification on what constitutes “necessary minimal measures” to keep warm or dry and what “rudimentary protections from elements” means.
2. Cities violate the Eighth Amendment if they punish a person for the mere act of sleeping outside or in their vehicles at night when there is no other place in the city for them to go.
3. Whether a city’s prohibition is a civil or criminal violation is irrelevant.

Johnson v. City of Grants Pass (2022)

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.

2021 Legislation: HB 3115/ORS 195.530

(Effective July 1, 2023)

1. 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.

In other words, the City may regulate unhoused camping on public property in a reasonable manner, but may not prohibit camping everywhere.

2. Reasonableness shall be determined based on the totality of the circumstances, including, but not limited to, the impact of the law from the perspective of a person experiencing homelessness.

3. A person experiencing homelessness may bring suit for injunctive or declaratory relief to challenge the objective reasonableness of a city or county law.

4. The court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff *if* 90-day written notice is provided.

Objectively reasonable time, place and manner regulations with regards to persons experiencing homelessness

- Prohibitions on blocking sidewalks/rights of way
- Prohibiting safety risks (including regulating fires/flame)
- Overnight limits in some, but not all, City parks
- Enforcing reasonable parking limits, with notice
- Alternative shelter sites improve the totality of the circumstances, as applied persons experiencing homelessness.
 - “Where a city has participated in making multiple shelters available, it reflects a commitment to assisting their unhoused neighbors, and it lends itself to the reasonability of whatever restrictions are in place.” *Bilodeau v. City of Medford*, 01/16/2024

What Cities **Must Not** Do

- 1. Punish an unhoused person for sitting, sleeping, or lying on public property when that person has no place else to go within the city's jurisdiction.
- 2. Prohibit persons experiencing homelessness from taking “rudimentary precautions” or necessary “minimal measures” to keep themselves warm and dry from the elements when they must sleep outside.
 - “Minimal measures” include “articles necessary to facilitate sleep” and “car camping.”

What Cities **May** Do

1. Impose reasonable time, place and manner restrictions on where persons, including those persons experiencing homelessness, may sit, sleep, or lie.
2. Prohibit persons, including those persons experiencing homelessness, from blocking rights of way.
3. Prohibit persons, including those persons experiencing homelessness, from erecting either temporary or permanent structures on public property.
4. When clearing an “established camp,” discard unsanitary items or those with no apparent value or utility, and allow law enforcement officials to retain weapons, drugs, and stolen property. (Established=?; Eugene > 24 hrs, lost MtD)
5. Create managed camps where persons experiencing homelessness can find safe shelter and access to needed resources.

State Created Danger - Elements

1. The City's own actions created or exposed a person to an actual, particularized danger that the person would not have otherwise faced.
2. The danger must be known or obvious.
3. The City acted with deliberate indifference to the danger.
 - Deliberate indifference requires proof of three elements:
 - An objectively substantial risk of harm;
 - City "subjectively aware of facts from which an inference could be drawn that a substantial risk of serious harm existed"; and
 - City "either actually drew that inference or a reasonable official would have been compelled to draw that inference."

LA Alliance for Human Rights v. City of Los Angeles, 2021 WL 1546235.

Cottage Grove Camping Legislation (2022)

CGMC Chapter 8.40, Overnight Camping Program. Implements ORS 195.520 to allow any public or private property owners to offer overnight camping on their property to homeless individuals or families living in vehicles.

CGMC Chapter 10.30.020 Authorizes camping in a legally parked, operational vehicle, further than 200 feet from school, daycare or playground, so long as personal property remains within vehicle.

CGMC Chapter 12.24, Public Places. Expanded definition of “park”; defined “camp”; prohibits camping when parks closed, *unless* permitted for unhoused individuals, pursuant management plan adopted by Council resolution. Updated park exclusion process. 12.24.010, 12.24.020.I, 12.24.040

Resolution 2086, Exhibit A, Public Land Management Plan prioritizes public lands for camping use, as needed.

Policy Choices for Council

- No further Code changes are legally required
- Multiple Optional Policy Choices (Examples):
 - Modify priority of public lands listed in Management Plan
 - Add reasonable camping regulations for properties opened for camping (i.e., How often to require camp clean up? **72-hr notice required for “established camps”)
 - Invest in facilities / accommodations (restrooms, cleaning stations, shelters, etc.)
 - How often to patrol for compliance with regulations