

February 13, 2023

# Stayton Homeless Task Force Meeting


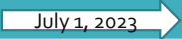


# Introductions

- Name
- Affiliation(s) with community
- What is your favorite season and why?

# Project Scope and Schedule



Feb	<ul style="list-style-type: none"> <li>▪ Kick off meeting</li> <li>▪ review existing laws and regulation, existing conditions</li> </ul>
Mar/April 	<ul style="list-style-type: none"> <li>▪ Community-wide outreach on the purpose of the task force and opportunities to provide input</li> <li>▪ Listening sessions and learning</li> <li>▪ Review outcomes from listening and learning sessions – identify options to study further and ideas to take off the table (for example, full prohibition of camping with development of alternative housing or some time/place prohibition?)</li> <li>▪ Review code audit for necessary changes to comply with HB 3115/ORS 195.530; develop recommendations</li> </ul>
May	<ul style="list-style-type: none"> <li>▪ Work session with Council</li> <li>▪ Review recommended changes to code for HB 3115/ORS 195.530</li> <li>▪ Review/discuss public input and potential paths – get input and buy in on the options being evaluated and those not being evaluated</li> </ul>
June 	<ul style="list-style-type: none"> <li>▪ Council adoption of initial code amendments to comply with HB 3115/ORS 195.530</li> <li>▪ Task Force begins evaluation of specific options – review in context of cost, benefit (note: to make HB 3115 amendments, we will know general direction desired and the remaining tasks will be digging in to the development)</li> </ul>
Aug	<ul style="list-style-type: none"> <li>▪ Public outreach on the options for consideration</li> </ul>
September	<ul style="list-style-type: none"> <li>▪ Taskforce review input from the outreach and begin formulating recommendation to Council</li> </ul>
October	<ul style="list-style-type: none"> <li>▪ Council work session</li> </ul>
November	<ul style="list-style-type: none"> <li>▪ Task force present formal recommendations to Council</li> </ul>
December/Jan	<ul style="list-style-type: none"> <li>▪ Council consideration of task force recommendations:</li> <li>▪ Code amendments as appropriate</li> <li>▪ If implementation has budgetary impacts, provide direction on timing (supplemental or incorporate into future budget)</li> </ul>

# Meeting Logistics

- Agendas will be emailed by Wed the week before the meeting
  - Materials requiring review and comment at the meeting will also be emailed at that time as well
- Limited copies of emailed materials will be provided
- Use name card to indicate a desire to speak
- Be respectful of others' views and comments/practice active listening
- Share your thoughts!
- Attendance is important; let us know if you are unable to attend
- Share out what you are learning and share back what you are hearing
- Any questions, comments, concerns – Call me at **503-769-5409** or email me at **[jhajduk@staytonoregon.gov](mailto:jhajduk@staytonoregon.gov)**

# Public Comment/ Correspondence

# Overview of Homelessness and Case Law



# Homelessness is . . .

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

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

The **leading causes of homelessness** according to the National Center on Homelessness and Poverty are:

- Insufficient income
- Poverty
- Lack of affordable housing
- Mental illness
- Substance abuse
- Foreclosures
- Domestic violence

# Stayton Demographic information

- *Info from US Census  
Bureau; 2021 information*

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The average household income in Stayton is \$65,813 with a poverty rate of 9.4%

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The median rental costs in recent years comes to \$1,010 per month

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Mean housing price: \$310,700

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Total population - 8,203;

Homeless population – unknown but estimated to be approximately 10 persons living outside (in parks or other public property)

# Marion/Polk Homeless assessment data

- Overall, 49% were male, 49% were female
- 44% of persons reported having a mental health disorder
- 44% of adults reported a history of domestic violence, and 30% of those were fleeing domestic violence at the time of their assessment
- Nearly the same number of adults assessed for homelessness had no income as those who had one or more sources of income
  - 48% had no income, and 47% had earned and/or other income.
  - 76% of those with income had only other income (most commonly Supplemental Security Income or Social Security Disability Income).
- 72% were covered by Medicaid and 11% had no health insurance.
- An estimated 37% of Marion-Polk adults experiencing homelessness are chronically homeless.

# Point-in-Time Count

The Point-In-Time (PIT) Count held in January 2022 across the Marion-Polk region identified 879 unsheltered individuals and 926 temporarily sheltered individuals for a total of 1,805 people (approximately 20 percent more than the 2021 PIT Count.) ~Mid-Willamette Valley Homeless Alliance, June 16, 2022

Stayton's PIT for 2023 identified 10 individuals

NOTE that the PIT only counts unsheltered individuals, not all people without stable housing

2019-2020 Homeless Student Data revealed that 78 students in the North Santiam School District were experiencing homelessness

# Stayton's Homelessness – complaints received

- People sleeping in cars on public property
- People sleeping under eaves on public property
  - Community Center
  - Library
- People sleeping in parks under picnic shelters
- People camping in parks
- Litter
- Concern about drug use and paraphernalia
- Concern about biohazards left behind

# COURT CASES AND RECENT LEGISLATION HAVE PLACED RESPONSIBILITY FOR ADDRESSING HOMELESSNESS DIRECTLY ON LOCAL GOVERNMENTS

*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*, , 920 F.3d 584, 605.

## *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.



## 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.

## Questions after *Martin*:

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?

# *Johnson v. City of Grants Pass (2022)*

- **Applies *Martin*:**
- 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.
- Cities violate the Eighth Amendment if they punish a person for the mere act of sleeping outside **or for sleeping in their vehicles** at night when there is no other place in the city for them to go.
- 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.

## 2021 Legislation: HB 3115/ORS 195.530 codified caselaw (Effective July 1, 2023)

*Definitions - "Keeping warm and dry means using measures necessary for an individual to survive outdoors given the environmental conditions" Does NOT include measures involving fire or flame.*

*"Public property" means public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by this state or any political subdivision therein.*

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.**

It is an **affirmative defense to a charge of violating a city or county law** described that the law is not objectively reasonable.

Reasonableness shall be determined based on **the totality of the circumstances**, including, **but not limited to**, the **impact of the law on persons experiencing homelessness.**

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

[T]he court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff . . ." if 90 day written notice provided.

# Current City Compliance Actions – with current case law in mind:

- Addressing behavior, ordinance and crime violations. (Issuing 30-day park exclusions where appropriate)
  - 8.12.040 noise
  - 8.12.040 (3) damage
  - 8.12.040 (6) fires
  - 8.12.050 alcohol (drinking in public)
  - 8.04.050 scattering rubbish
  - 9.20.010 public urination
  - Other crimes listed under ORS like theft, criminal mischief, assaults, drugs
- Educating private property owners about their rights prior to towing vehicles and trespassing people.
- Working with private property owners on trespass letter of consent
- Enforcing reasonable parking limitations, with required notice
- Abandoned vehicle laws, posting, 72 hours
- Responding to citizen complaints.
- Doing proactive walk and drive throughs of problem areas and city parks

## 2021 Legislative Session: HB 3124, codified at ORS 195.505

1. Notify homeless persons that an “established camping site” on **public property** is being closed.

- The term “established camping site” is undefined
- Post specified notice at every camping site entrance
- 72 hours before acting (increased from 24)

2. Oversee and manage private property removed from an “established camping site” located on public property

- 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 must be stored in a facility within City.

## What is the minimum the City is required to do under the Case Law and Statutes.

- Cease **sanctions** for camping, sleeping on public property when no alternative shelter is available. (*Martin v. Boise/Blake v. Grants Pass*)
- Amend existing City ordinances to remove language regulating sitting, lying, sleeping, or keeping warm and dry outdoors on public property open to public. (HB 3115, codified at ORS 195.530)

# Existing Public Property Camping Limitations

## **SMC 8.12.020(1) CAMPING PERMIT**

*No person shall camp in or upon any public property or under any bridge unless a permit is obtained from the Chief of Police or designated representative or by declaration of the Mayor in emergency circumstances. An application shall be filed with the City for each RV, tent, or campsite.*

## **SMC 8.12.030 PARK HOURS**

*Public parks of the City shall be closed to access and use by the public between the hours of 10:00 p.m. and 6:00 a.m. unless a permit has been issued by the Chief of Police or designee or a facility use permit has been issued by the City.*

## **8.12.060 EXCLUSION OF PERSONS FROM PARKS AND PUBLIC FACILITIES**

Such restrictions on overnight use of City parks *may* not constitute objectively reasonable “time, place and manner” restrictions, depending upon alternative shelter access.

## Minimum Action under Court Case and State Law would result in:

- Camping, sleeping, lying, and keeping warm and dry would be allowed on all outdoor public property within the City limits of Stayton including:
  - Parks
  - Right of Ways (some restrictions may be objectively reasonable)
  - Sidewalks
  - Planting strips



## 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.

# Consider Additional Protections/Allowances

## *Example: Camping in right of way*

- A. A person may camp in a vehicle on city right of way if:
- The vehicle is parked in conformance with all established parking regulations.
  - Vehicle is not parked within 100 feet of a public or private school or public playground.
  - The vehicle is not being repaired in the right of way.
  - The vehicle is operational and can legally operate on the street.
  - No material, items, supplies or waste are on the street, sidewalk, bike lane or planting strip.
- B. No camping in a tent, structure, shelter or other non-vehicle is allowed in the right of way including bike lanes, sidewalks and planting strips.

# Task Force charged with advising on the policy choices of:

- Do minimum Code amendments sufficiently meet the law, manage public property, and protect or enhance the quality of life in Stayton?
  - or
- Take additional action to protect the use of public space for the enjoyment of all citizens.
  - or
- Provide alternative shelter, in order to better protect the use of public right of way for vehicle and pedestrian traffic and manage public property.
  - or
- Any additional actions to help people in our community who have been thrust into homelessness?