



Staff Report

For City Council Meeting - 4/7/2021

Subject - New Business - Discussion - Homelessness Ordinance Options

Synopsis: At the March meeting, Council requested the opportunity to discuss homelessness and whether or not an ordinance should be put in place. Attached is a 4-page Real-Time Risk article from CIS, the City's insurance provider, to aid in the discussion; its contents cover the risks associated with homelessness encampments. The statutes named and tips provided are important considerations from an underwriting perspective where there is potential to implement policy. Current Ordinance 660 - Prohibiting Overnight Camping (attached) is applicable to the subject of homelessness and should be reviewed concurrently.

Also attached to further discussion is a 10-page slideshow presentation Chief Bowman and Krysti attended at the online CIS Annual Conference at the end of February. It also provides great information to consider when weighing how to craft a homelessness and/or camping ordinance.

Recommendation: Staff has no recommendation at this time other than to potentially add this topic to the June 29th Council Worksession for further discussion.

Legal Analysis: The latest case law involving the City of Grants Pass and the 9th Circuit Court are binding on the City of Gearhart. It ruled you have to allow people to sleep, and you cannot prevent them from having a sleeping bag or blanket. Restrictions and/or regulations could occur in the form of tents/shelters, and where the sleeping occurs. City Attorney Peter Watts can elaborate on legislation currently in session.

Financial Analysis: N/A

Respectfully Submitted,

A handwritten signature in black ink, appearing to be the name "Chad", written in a cursive style.

Chad

ORDINANCE NO. 660

Introduced by Councillor 660

AN ORDINANCE PROHIBITING OVERNIGHT CAMPING ON PUBLIC PROPERTY.

The City of Gearhart ordains as follows:

Section 1. Overnight camping prohibited. Overnight camping, including, but not limited to, overnight sleeping in recreational vehicles, trailers, campers, trucks or automobiles, on all public property, including, but not limited to, public streets, public sidewalks, public parks, public parking lots, and other premises open to the public, is prohibited.

Section 2. Notification. The City shall erect signs notifying the public of the prohibition of camping as proscribed by this ordinance.

Section 3. Violation; Penalties. Violation of this ordinance shall be a Class B infraction as defined by ORS 153.310.

Section 4. Emergency Clause. The City Council of Gearhart declares that an emergency exists to protect the health and welfare of the public and, therefore, this ordinance shall become effective on June 3, 1992.

Passed by the Common Council of the City of Gearhart this 3rd day of June, 1992.

YEAS: 3

NAYS:

ABSENT:

ABSTAIN:

3rd Signed and approved by the Mayor of the City of Gearhart this day of June, 1992.

Candy Russo
Candy Russo, Mayor

ATTEST:

Bruce F Maltman
Bruce Maltman, Auditor



Real-Time Risk



TIMELY NEWS AND TIPS TO HELP REDUCE RISK

November 2020

Safe Cleanup for Homelessness Encampments

By Katie Durfee, CIS Risk Management Supervisor

The impact of COVID-19 continues to hit Oregonians hard. Many businesses that were shut down because of the coronavirus may not come back. This is leading to higher unemployment. Because of job loss — and no job opportunities — the possibility of eviction and home foreclosure is real.

So, how does this effect CIS members? Obviously, it may lead to a rise in homelessness in your region. And increases in homeless individuals will place higher demand on public entities. It will also require services to clean up homeless encampments.

Are you prepared to handle this type of public-service demand safely? CIS has some best practices regarding this and other situations you may encounter when working with the homeless.

Being Prepared for What's Ahead

There are different stages of homelessness. Some may be in a state of transition between homes. Others may experience temporary homelessness, as can occur from loss of job or eviction. Still others may experience chronic homelessness.

According to the National Alliance to End Homelessness, people experiencing chronic homelessness typically have complex and long-term health conditions, mental illness, substance use disorders, physical disabilities, transmittal diseases or other medical conditions.

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Real-Time Risk

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Because there are many situations leading to homelessness, your staff must be equipped with the knowledge to help them navigate these interactions. Some homeless people can become unpredictable and aggressive.

Oregon OSHA recommends employers have a Violence Prevention Program that includes information on how employees can recognize situations involving homeless people who may become hostile. Employers should also provide violence prevention training to help employees know how to respond during hostile situation to prevent them from getting injured.

First Rule of Encampment Cleanup is Safety First

According to Oregon OSHA, employees who clean up hazards associated with homelessness are required to use personal protective equipment (PPE). This includes disposable N95 respirator, protective eyewear, and hypoallergenic disposable gloves.

During the COVID-19 pandemic, liquid hand soap and alcohol-based hand sanitizers that contain at least 60% alcohol should also be used. As an added precaution employers should consider supplying employees with work vests that visibly note, "the maintaining of six feet required." This reminds the public to maintain a safe distance when seeking assistance.

Training for Safe Handling of Human Waste Essential

Sites may also be contaminated by human waste, which adds to the risk of being exposed to transmissible diseases (if not properly handled).

Oregon OSHA recommends precautions be used when cleaning up human waste. They include using both disposable gloves and disposable scoops. Upon picking up the waste, place both the scoop and waste into a plastic garbage bag.

Additional law enforcement training on the topic of homelessness is available through the Learning Center; see *Law Enforcement and Homeless Populations: Balancing Outreach with Enforcement*. National Alliance to End Homelessness also has valuable resources and statistics on homeless.

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Real-Time Risk

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When encountering liquid waste, pour absorbent material, such as kitty litter, onto the waste. Another option is to use paper towels to soak up the liquid, use a disposable scoop to put the material in a plastic garbage bag along with gloves.

Lastly, pour 10% bleach solution onto all contaminated areas of the surface. Let the bleach solution remain on the contaminated area for 20 minutes, then wipe up the remaining bleach solution. Disinfect all non-disposable cleaning materials, such as mops and scrub brushes, with 10 percent bleach solution and let them air dry.

Needles Also Pose Danger During Cleanups

Sadly, needles and other sharps can often be encountered at homeless camps.

Oregon OSHA suggests using tongs, pliers, or a “trash grabber” to pick up sharps. Using a puncture-resistant leak-proof container, the sharps should be dropped into the container, which should then be sealed and closed.

Label the container “Sharps, Do Not Recycle” on the outside of container before dropping it into a sharps box or taking to a hazardous waste facility. Do not dispose the container into the trash.

If the job requires exposure to blood or other potentially infectious materials (OPIM), annual bloodborne pathogen training and availability to the Hepatitis-B vaccination are required and should be provided by the employer.

Other Oregon OSHA requirements for clean-up include a certified hazard assessment and first aid supplies made available on-site.

For more information on what employers need to know about hazards associated with homeless and bloodborne pathogens, please see Oregon OSHA Fact Sheet.

Proper Policy is Critical

The State requires local governments to develop a policy for humane removal of homeless camps from public property to coincide with ORS 203.079.

For employees who are cleaning up encampments, good training is critical on the proper handling of a homeless person’s belongings. According to ORS 203.079, “personal property” means any item that is reasonably recognizable as belonging to a person and that has apparent utility. Items that have no apparent utility or are in an insanitary condition may be immediately discard upon removal of the homeless individuals from a camp site.

Sometimes it can be difficult to determine what personal property has apparent utility (value versus no value), broadly this would encompass camping items and medicine. It is recommended a person who has

HELPFUL LINKS

OR-OSHA Violence Prevention Program -
osha.oregon.gov/OSHAPubs/2857.pdf

OR-OSHA Bloodborne Pathogens Fact Sheet -
osha.oregon.gov/OSHAPubs/factsheets/fs84.pdf

Homeless Camping Policy Requirements for Local Governments -
www.oregonlaws.org/ors/203.079

National Alliance to End Homelessness Resources and Statistics -
endhomelessness.org/homelessness-in-america/who-experiences-homelessness/

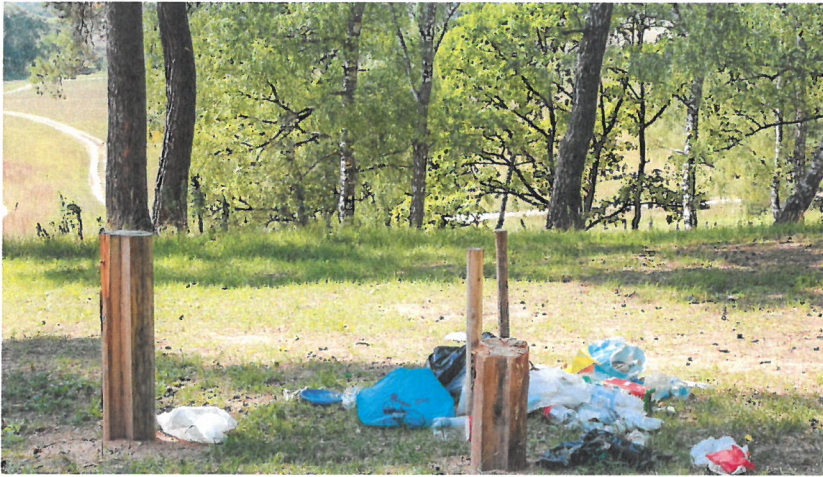
CIS Learning Center Courses -
learn.cisoregon.org

- Big Rock Candy Mountain - Homelessness and the Constitution
- Law Enforcement and Homeless Populations: Balancing Outreach with Enforcement



Real-Time Risk

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“According to ORS 203.079, “personal property” means any item that is reasonably recognizable as belonging to a person and that has apparent utility.”

training on what has value, be available on-site during cleanup to ensure items in garbage bags are not accidentally discarded as not having value.

To prevent lawsuits, keeping unclaimed property for 30-days is considered a best practice. Weapons, drug paraphernalia and items that appear to be either stolen or evidence of a crime must be given to law enforcement.

Under ORS 203.079, a 24-hour notice is not required when there are grounds for law enforcement officials to believe that illegal activities other than camping are occurring — and in the event of an exceptional emergency, such as possible site contamination by hazardous materials or when there is immediate danger to human life or safety. This should include the reporting of endangered pets.

Towing of any vehicles should also follow guidelines set forth under the Constitution’s Fourth Amendment for Search and Seizure.

For more information on avoiding policy pitfalls for overnight camping and trespassing of homeless, an archived conference session of Big Rock Candy Mountain — Homelessness and the Constitution, is available in the CIS Learning Center.

As we traverse through this unprecedented time of change in our country, remember, we are in this together and CIS will continue to be a partner in supporting your safety at work. If you have questions contact your risk management consultant or Katie Durfee via email at kdurfee@cisoregon.org.



Homelessness and Camping Ordinances

An update on homelessness and camping ordinance case law impacting Oregon communities and provide suggestions on how to address homelessness and camping via local ordinance.

Presented by: Aaron Hisel
Associate Attorney
The Law Offices of Gerald L. Warren and Associates

Outline

- Recent Relevant History – *Boise, Grants Pass, Lobbying Efforts*
- Future – *Legislative, Litigation, Local Ordinances*
- ~~Perfect Solutions~~
- Suggestions - Things To Consider When Reviewing Local Ordinances
- Questions

Recent Relevant History – *Boise* and *Grants Pass*

Boise (9th Cir. Decision Sep. 2018)

Holding: If available shelter beds < homeless in jurisdiction (per most recent P.I.T. count) = the homeless in that jurisdiction are “involuntarily homeless” and once deemed “involuntary” individuals cannot be “punished” for the acts of sleeping or resting on public property.

Status: Petition made to Supreme Court for review but was not accepted.

Grants Pass (Or. Dist. Ct. Opinion July 2020)

Holding: Expanding on *Boise* and effectively ruling that local ordinances that do not expressly carve out exceptions for homeless – even if enforcement is consistent with the constitution – violate the 8th Amendment. Even the threat of a possible fine in any amount would be unconstitutional “punishment” under this ruling.

Status: On appeal to the Ninth Circuit. Ruling not expected until sometime in 2022.

- (1) The mathematical formula created here is difficult, if not impossible, to meet; and
- (2) This type of affirmative action on the part of those experiencing homelessness is novel to the law and therefore almost no jurisdiction in Oregon currently has any carve outs in their ordinances for the homeless

Recent Relevant History – Lobbying Efforts

BILLS TO WATCH

HB 3124

ORS 203.079 currently allows for the removal of property 24 hours after notice is given. This would extend that period to 72 hours and require storing any removed property for 90 days.

Recent Relevant History – Lobbying Efforts

BILLS TO WATCH

HB 2367

Establishes the “Oregon Right to Rest Act”: Those experiencing homelessness (which by definition includes everyone with a roommate due to economic hardship, everyone that lives in shelters, hotels, motels, everyone living in trailer parks or any other substandard housing) have the right to:

- Be free from time limitations that are based on housing status
- To rest in public spaces as long as they do not obstruct human or vehicle traffic
- To “occupy” any legally parked vehicle.
- If cleared by law enforcement an “alternate place” “without time limitations in the near vicinity” must be provided.
- Exercising these rights is an affirmative defense to any charge for overstaying their welcome and they can also sue.

Recent Relevant History – Lobbying Efforts

BILLS TO WATCH

- HB 3115**
- “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 prove it was not “objectively reasonable” to regulate the individual in the manner that they were regulated.
 - Any person experiencing homelessness can sue to challenge the reasonableness of regulations (injunctive and declaratory) relief only.
 - Plaintiff’s (only) may be awarded their attorney fees if they win and provided 90 days notice prior to suing.

Future – *Legislative, Litigation, Local Ordinances*

- Disclaimer: I am neither a prophet nor a genie.
- Litigation – The 8th Amendment's prohibition on "cruel and unusual punishment" and the 14th Amendment's "due process" and "state created danger" doctrines.
- Note: The Supreme Court is likely to weigh in on these issues but not for several more years.
- Local Ordinances – If the legislation discussed earlier or something similar to it gets passed, every local government would be required to make changes to their ordinances to create "reasonable" time, place and manner restrictions.

~~Perfect Solutions~~

Why: each jurisdiction has unique issues and different and evolving political appetites for how to spend the limited resources of the jurisdiction to best address the issues surrounding homelessness.

Note: Insert Audio

Suggestions

- What is the definition of “camping” in your ordinances?
- What are the fines and/or punishments associated to violations of sleeping/camping ordinances?
- Are there ways to address those experiencing homelessness in a more individualized manner?
- If you or your attorney still have questions, reach out to Kirk Mylander at:

[n.org](#),

4. Based upon the above determinations, the Court enjoins Defendant from enforcing City Ordinances against the plaintiff class as follows:

a. Defendant is enjoined from enforcing GPMC 6.46.350 (the park exclusion ordinance):

b. Defendant is enjoined from enforcing GPMC 5.61.030 and GPMC 6.46.090 (the camping ordinances) without first giving a person a warning of at least 24 hours before enforcement:

c. Defendant is enjoined from enforcing GPMC 5.61.030, GPMC 6.46.090 (the camping ordinances) and GPMC 5.57.020(A) (criminal trespassing on city property related to parks) from 9:00 p.m. to 7:30 a.m. during the months of April through September and from 7:00 p.m. to 7:30 a.m. during the months of October to March, in all City parks with the exception of Reinhart Volunteer Park located at 1690 SW Webster Rd. The Court's injunction does not apply to the Reinhart Volunteer Park, which the parties have agreed has

Questions

Aaron Hisel
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The Law Offices of Gerald L. Warren and Associates



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