



**UNSANCTIONED CAMPING CODE  
BEND MUNICIPAL CODE UPDATE  
JUNE 15, 2022**

## WHAT WILL BE COVERED IN THIS PROJECT?



- This project will engage the community and develop regulations for camping\* on property owned or controlled by the City of Bend.
  - Streets
  - Sidewalks
  - Undeveloped rights-of-way
  - Other City-owned property (parking lots, City-owned vacant lots or property, etc.)
- Bend Municipal Code – presently does not prohibit camping in the right-of-way, does have regulations that apply to use of the right-of-way.
- Municipal code provisions and enforcement of the code must comply with state and federal law.

## INITIAL CHOICES FOR COUNCIL



- Form working group to hold meetings open to the public and create a draft policy document or code framework?
  - If yes, should group be formed and appointed by Council or by City Manager?
- Direction on who should serve on working group?

# OVERALL APPROACH



## Priority Area

## 500 Shelter Beds

## City ROW

## Efficiency & Partnerships

Development Code Changes Review & Adoption | Updated Development Code

Contract Negotiations NavCenter (Shepherd's House) | Open NavCenter

Select Outdoor Shelter Operator | Contract Negotiations with Operator | Outdoor Shelter – Phase 1 Outreach

Safe Parking Program additional locations

Due Diligence for an additional Emergency Shelter | Open additional Emergency Shelter

New Community Service Request form & process

Continued outreach, coordination and clean up at unsanctioned camps

LC for Collaborative Office

Deschutes County & Cities coordination

# 2022 POINT IN TIME COUNT

THE ANNUAL  
ONE NIGHT COUNT  
OF THOSE  
EXPERIENCING  
HOMELESSNESS IN  
CENTRAL OREGON

**1286**

unhoused adults  
and children

**1063**

living outside  
or in a vehicle

**17%**



more people  
than in 2021

**223**

youth  
under 18

**104**

youth ages  
18-24

**41**

Veterans

## 2022 POINT IN TIME COUNT



**785** individuals in Bend

**65%** have been in Central Oregon more  
than 3 years

**79%** unsheltered in Central Oregon.  
Approx. 200 sheltered, 900 unsheltered in  
Deschutes County

**280** shelter beds in Bend

## WHAT WILL NOT BE COVERED IN THIS PROJECT?



- Use of private property or property not owned/controlled by the City
  - Governed by the Bend Development Code (i.e., City zoning code)
  - Uses subject to land use process (the new Shelter Code provisions, for example)
  - Bend Police will respond to assist with trespass issues
  - Other publicly owned property
- City does not have sole authority to make all public property in the City available for camping or sleeping. Other public property owners:
  - Bend Park and Recreation District property/parks
  - School district property
  - County property
  - ODOT property
  - Federal land (USFS, BLM) outside city limits



- Framework for managing camping in public roads through enforcing existing ordinances against blocking right-of-way
- Manage trash, debris, public health & safety, keep clear passageways, keep tents away from travel lanes
- City Manager may direct closure of campsites with greatest impact on public health and safety
  - Discretion means City chooses where and how to enforce, based on criteria in the policy
- City also has parking rules (no parking in same space more than 3 days)

## FEDERAL CASE LAW - MARTIN V. BOISE, BLAKE V. GRANTS PASS



- **Unconstitutional to punish people for sleeping or resting outside on public property, when there are not enough shelter spaces available**
  - Practically, this is looked at on an individual basis: does this person have a bed available to them at the time of enforcement?
- 8<sup>th</sup> Amendment prohibition on cruel and unusual punishment; interpreted to prohibit punishment based on a person's status or unavoidable consequence of being human
  - E.g., drinking in public can be regulated, but it is not a crime to be an alcoholic
- Cases do allow reasonable “time, place and manner” restrictions on sleeping, camping in public space – don’t have to allow sleeping outside anywhere, at any time, in any manner





- “As long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”
- “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...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.”



- “The United States Constitution prohibits punishing people for engaging in unavoidable human acts, such as sleeping or resting outside when they have no access to shelter.”
- “The City’s suggestion that because it is geographically smaller than Boise or other cities, it should be allowed to drive its homeless population onto ‘nearby’ federal, state, or Josephine County land, is not supported by *Martin*.”
- “The Court reminds governing bodies of the importance of empathy and thinking outside the box. We must try harder to protect our most vulnerable citizens. Let us not forget that homeless individuals are citizens just as much as those fortunate enough to have a secure living space.”
- Government not required to “provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the street at any time and any place.”

## "TIME, PLACE, AND MANNER"



- “City may implement time, place, and manner restrictions for when homeless individuals may use their belongings to keep warm and dry and when they must have their belonging[s] packed up.” – Blake v. Grants Pass
- “When, where, and how” of camping and sleeping in public
  - **Examples of When:** could be sunset to sunrise only, or no camping from 8am to 6pm
  - **Examples of Where:** could be only on certain identified streets or public areas; or not within distance of other uses such as schools, established shelters; not in ecologically sensitive areas
    - Can clearly ban camping on public property not open to the public (ie: water or other infrastructure locations, parking lots for City equipment, etc.)
  - **Examples of How:** could be limitation on size of camp, ie: all belongings within 12x12 space, no open fires



- City policy must recognize social nature of problem of homelessness
- Even where camping is prohibited, enforcement is regulated:
  - At least 72-hour notice before removing an established campsite from public property, and
  - Storage of any property removed for at least 30 days
- House Bill 3115 – local laws regulating sitting, lying, sleeping, or keeping warm and dry outdoors on public property open to the public must be objectively reasonable as to time, place, and manner for persons experiencing homelessness
  - Meant to codify *Martin v. Boise*, not be a new standard

## WHAT DO THE FEDERAL AND STATE RULES NOT DO?



- The cases do not restrict a city's ability to enforce criminal laws
- Although cities cannot criminalize homelessness or the unavoidable consequences of being human (e.g., sleeping), criminal laws can be enforced regardless of an individual's status
- Bend Police enforce criminal laws, but there are no enforceable laws in Bend making sleeping outside or being homeless a crime
- The project to update the Municipal Code will not (cannot) change that, but will consider reasonable, legally-authorized regulations on when, where, and how some public places can be used



- Citation/fine for violations of municipal code
  - Fines cannot be excessive (“grossly disproportionate to the gravity of the offense”)
- Arrest for state-law crimes, may or may not include being held in jail, especially before conviction
  - “Even one day in prison would be cruel and unusual punishment for the ‘crime’ of having a common cold.” (U.S. Supreme Court, 1962)
- Clear the camp – staff removing the property of a camp
  - Comply with 4<sup>th</sup> amendment prohibition on unreasonable seizure of personal property
- Enforcement does not entail forced move to specified area, in or out of the City, or exclusion from the city limits

QUESTIONS



## BROADER BANS ON CAMPING



- If there is a blanket ban on camping on public property entirely, can only enforce when enough shelter beds available, or other programs provide sufficient legal places to sleep.
  - Other jurisdictions that ban entirely in certain areas (all streets, residential zones, etc.) either provide other spaces (parks, private property) or do not enforce when shelter beds are full, or do not enforce against certain populations (women and children, people with disabilities)
  - Even in cities that have broader bans, city managers have authority to allow camping in certain places at certain times
  - Few or no cities in the 9th Circuit ban camping entirely in the city at all times; likely not allowed under *Martin v. Boise*
  - Police may still enforce other criminal laws at unsanctioned campsites (e.g., crimes against persons, crimes against property, crimes against public order, firearms...etc.)
- Requires coordination between enforcement and shelter providers
  - Time and personnel intensive to verify space for person against whom enforcement is proposed – does this person have a bed available to them?



## OTHER CONSIDERATIONS



- Laws cannot be too vague or ambiguous so it is too hard to know what is prohibited
  - Cities have run into problems trying to define “camping” – definitions may be overbroad and capture a car packed for a camping trip, but in which someone is not presently camping or sleeping
- City does not control parks, other publicly owned property
  - Other public landowners in city limits: Bend Park & Recreation District, School District, irrigation districts, Deschutes County, ODOT (State of Oregon)
- Vehicle habitation code
  - Regulate over-sized vehicles (RVs) differently than other parked vehicles?
  - Regulate overnight use of vehicles?

## OTHER CONSIDERATIONS



- Must not unlawfully selectively enforce – if code would prohibit sleeping in an RV, is City only enforcing against those who appear to be homeless or enforcing with discriminatory effect or purpose?
- State law still requires 72-hour notice prior to removing “established campsite”
  - Even where camping prohibited by code, if campsite becomes “established” then 72-hour notice required
  - Must give notice, and store property that has not been abandoned



- **Proposed process, generally**
  - Input from & outreach to community should both be included
  - Education process throughout: intentional outreach to include community education about legal guidelines within which we can regulate and frequent communication on policies being considered
    - City public forum(s); City Q & A sessions
    - Static information sources (City website)
  - Working group to propose draft policy document or code framework
    - Continued City-led outreach
- Staff will come back to Council with public engagement plan

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