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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF DESCHUTES
6

7 MYNTORA AGUILAR, MICHELLE)
8 HESTER, NICHOLAS SCHINDLER,)
9 homeless individuals on Hunnell and) Case No. 23CV27630
10 Clausen Roads, City of Bend, on behalf of)
11 themselves and other homeless) DECLARATION OF CASSANDRA
12 individuals on Hunnell and Clausen) KEHOE IN SUPPORT OF CITY OF
13 Roads; and CHARLES HEMINGWAY,) BEND'S RESPONSE TO PLAINTIFFS'
14 homeless advocate, all *pro se*,) MOTION FOR EMERGENCY HEARING
15)
16 Plaintiffs,)
17)
18 v.)
19)
20 ERIC KING, City Manager, City of Bend;)
21 Melanie Kebler, Mayor, City of Bend;)
22 MEGAN PERKINS, Mayor Pro Tem;)
23 ANTHONY BROADMAN, BARB)
24 CAMPBELL, ARIEL MENDEZ, MEGAN)
25 NORRIS, and MIKE RILEY, City)
Councilors, City of Bend; DAVID ABBAS,)
Director, Transportation and Mobility, City)
of Bend; and MIKE KRANTZ, Chief of)
Police, City of Bend,)
Defendants.)

22 I, Cassandra Kehoe, declare:

23 1. I am over the age of 18 years and I make this declaration based on
24 personal knowledge of the facts contained herein.
25

1 2. I am the Accessibility and Equity Manager for the City of Bend (the
2 “City”) and I make this declaration in support of the City’s *Response to Plaintiffs’ Motion*
3 *for Emergency Hearing*.

4 3. I have a *juris doctor* degree from the Hamline School of Law and an LLM
5 in Civil Rights from the James E. Rogers College of Law at the University of Arizona. I
6 have spent five years as a civil rights investigator, including conducting individualized
7 and interactive processes to review reasonable accommodation and modification
8 requests under the Americans with Disabilities Act (“ADA”).

9 4. Part of my duties in my official capacity as the Accessibility and Equity
10 Manager for the City is to review requests for reasonable modification of City programs,
11 policies, and services under Title II of the ADA.

12 5. Hunnell and Clausen Roads are located in the city. Houseless individuals
13 have been living in vehicles on and around Hunnell and Clausen Roads for a period of
14 time. It is my understanding that beginning on or around June 23, 2023, and in notices
15 following that date, the City notified such individuals that they would be required to
16 vacate the Hunnell Road area and that the area would be closed after July 17, 2023.
17 See Def. Response, Exhibits D, E, and F. The notification was made to enforce Chapter
18 4.20 of the Bend Municipal Code, “Use of Public Rights-of-Way and City Property for
19 Camping” (the “Code”). See Def. Response, Exhibit A.

20 6. The Code is implemented by City staff in accordance with a City Manager
21 Administrative Policy, ADM 2023-4, “Responding to Camping in Public Rights-of-Way
22 and on City-Owned Public Property” (the “Policy”). See Def. Response, Exhibit G. The
23 Policy includes a process that if a person asserts an inability to comply or a need for
24 modified application of the provisions of the Code because of a disability, the City must
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1 engage in an interactive process to review the requested change in application of the
2 Code.

3 7. I have recent experience in considering reasonable modification requests
4 under the Code and Policy. In June 2023, I communicated in writing to a person staying
5 on Hunnell Road after the person, through their designated personal representative
6 Plaintiff Hemingway, requested several modifications to the manner regulations in the
7 Code. After conducting an interactive process, I determined that two of the requested
8 modifications could be granted, but that two could not because they were not requested
9 because of a disability. Because the written response summarizing the interactive
10 process and its results was emailed to Plaintiff Hemingway, I believe that Plaintiff
11 Hemingway is aware that the City has a process for and understands its obligations to
12 consider reasonable modification requests for individuals with a disability.

13 8. On July 12, 2023, the City received twelve modification requests on behalf
14 of people living in the Hunnell Road area (the "Modification Requests"), including the
15 three Plaintiffs who classify themselves as "homeless individuals on Hunnell and
16 Clausen Roads".

17 9. The Modification Requests generally state the same information: that the
18 person identified has a disability and the nature of the individual's disability, and that the
19 person seeks more time to move out of the Hunnell Road area due to their disability/ies.

20 10. All but one of the Modification Requests named Plaintiff Nicholas
21 Schindler as the individual's designated "personal representative" for the request and
22 provided his phone number.

23 11. On July 12, 2023, I began reviewing the Modification Requests.

24 12. On July 13, 2023, I went to Hunnell and Clausen Roads to attempt to meet
25 with the individuals who had submitted requests to continue my evaluation of each and

1 engage the subject individuals in an interactive process to review the requested change
2 in application of the Code.

3 13. I was able to meet with nine of the twelve individuals who had submitted a
4 modification request.

5 14. I learned information that supported and supplemented the information
6 presented in the written Modification Requests.

7 15. I heard from some individuals they did not know Plaintiff Nicholas
8 Schindler and did not want him to be their personal representative. A number of
9 individuals nominated Plaintiff Chuck Hemingway instead. Two individuals opted to
10 represent themselves.

11 16. While I was at Hunnell and Clausen Roads on July 13, 2023, Plaintiff
12 Hemingway produced three additional requests in sealed envelopes. Plaintiff
13 Hemingway requested that I share a scanned copy with him, as they were the originals.
14 Plaintiff Hemingway also indicated that he had one more Modification Request that was
15 unsigned but that he would submit it when he obtained the signature.

16 17. On July 14, 2023, I received seven additional Modification Requests that
17 were substantially similar to the Modification Requests submitted on July 12, 2023, for
18 additional individuals, making similar requests for more time before the City closes
19 Hunnell Road.

20 18. In the afternoon of July 14, 2023, I returned to Hunnell and Clausen
21 Roads to engage in the interactive process required by the ADA with the individuals
22 who had submitted reasonable modification requests earlier in the day, and for three
23 individuals whom I had not yet spoken with. I learned information that supported and
24 supplemented the information presented in the Modification Requests. I again heard
25 from some of these individuals that they did not know Plaintiff Nicholas Schindler and

1 did not want him to be their personal representative. Individuals opted to elect Plaintiff
2 Hemingway, or represent themselves.

3 19. After conducting additional interviews on July 14, 2023, I met in-person
4 with a total of nineteen of the twenty-one individuals who had submitted a modification
5 request. I am working with City staff to attempt to contact the remaining individuals
6 today, on July 17, 2023.

7 20. As I understand it, the City's program with regard to homeless people
8 camping on Hunnell and Clausen Roads in Bend, since March 1, 2023, has been to
9 apply the "manner" regulations of the Code, and the City now intends to apply the "time"
10 regulations of the Code, including a requirement that individuals move their campsites
11 and vehicles by July 17, 2023, at midnight.

12 21. The City's program, based on my conversations with City staff on July 13,
13 2023, and before, for closing a portion of right-of-way and acting on notices requiring
14 people to move by a certain deadline under the Code, includes mobilizing City
15 contractors that remove and transport personal property not removed by individuals who
16 were previously camping at a closed location, City staff to plan for and implement a road
17 closure consistent with State and other laws for closing roads, and City Police Officers
18 to create a stand-by plan and be available if a law enforcement response is necessary.
19 The City's program includes a City code enforcement officer and the Health and Safety
20 Compliance Officer issuing notices informing individuals that a closure is planned, then
21 issuing notices that individuals have at least 72-hours before they must have vacated an
22 area. I am also aware that the City notifies service providers including shelter operators
23 so that they can determine what, if any, additional resources they can provide to
24 individuals living on the City streets at issue. In this case, I'm aware that the City's
25 program includes preparing to clean and wash the roadway surface and storm drains,

1 once all individuals have left Hunnell and Clausen Roads, and to paint stripes on
2 Hunnell Road for vehicle travel and bicycle lanes.

3 22. Based on the information I learned from the Modification Requests and my
4 conversations with the individuals I was able to meet with on July 13 and 14, 2023, my
5 knowledge of the City's program for Hunnell and Clausen Roads, my experience
6 conducting individualized interactive processes for modification and accommodation
7 requests under the ADA, and conversations with City staff about the impact on the
8 program of a delay in enforcement, I considered each request for additional time and
9 how a modification could be granted that does not fundamentally alter the nature of the
10 City's program or impose an undue administrative or financial burden on the City.

11 23. I concluded that the City could grant a modification of one additional week
12 before the individuals submitting the Modification Requests would need to leave Hunnell
13 and/or Clausen Roads without fundamentally altering its program or incurring an undue
14 administrative or financial burden. This conclusion is based on the particular
15 circumstances of this situation, and may not be available, or available to the same
16 extent, in the future or in other situations. Because there are additional people residing
17 in the area of Hunnell and Clausen, and because nearly two dozen requests were
18 received less than one-week before the City's scheduled closure, it would be unduly
19 burdensome for the City to grant different amounts of additional time to different people.
20 Further, more than one week, as I understand through discussions with City staff, would
21 require the City either to schedule contractors and staff for additional shifts or work at
22 Hunnell and Clausen, or cause the City to reschedule the entire closure to make
23 efficient use of contractor and staff time. With a one-week delay for some people
24 present on Hunnell and Clausen, the City and contractors can continue the scheduled
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1 work in other parts of the Hunnell/Clausen area, and come back to the locations people
2 with a modification later vacate as part of a single mobilization effort.

3 24. On the morning of July 17, 2023, I will deliver written notice to the
4 individuals I can locate on Hunnell and Clausen Roads who have submitted Modification
5 Requests, of the additional week.

6 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
7 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR
8 USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

9 Dated: July 17, 2023

10 DocuSigned by:
Cassandra Kehoe
11 D3319CA2595C427...
Cassandra Kehoe, Accessibility and
12 Equity Manager, City of Bend
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CERTIFICATE OF TRUE COPY

I hereby certified that the foregoing DECLARATION OF CASSANDRA KEHOE IN SUPPORT OF CITY OF BEND’S RESPONSE TO PLAINTIFFS’ MOTION FOR AN EMERGENCY HEARING is a true and exact copy of the original thereof.

Dated: July 17, 2023.

/s/ Elizabeth Oshel

Elizabeth Oshel, OSB #104705
Assistant City Attorney, City of Bend
eoshel@bendoregon.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2023, I served a true and correct copy of the foregoing DECLARATION OF CASSANDRA KEHOE IN SUPPORT OF CITY OF BEND’S RESPONSE TO PLAINTIFFS’ MOTION FOR AN EMERGENCY HEARING on the following via email, pursuant to Plaintiffs’ “Notice of Plaintiff’s Contact Information”, filed July 14, 2023, and will provide copies to any Plaintiff who appears in court on July 17, 2023:

Charles Hemingway
hemingwaych@bendnet.com.

Pro Se Plaintiff

/s/ Elizabeth Oshel

Elizabeth Oshel, OSB #104705
Assistant City Attorney, City of Bend
eoshel@bendoregon.gov