

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

Case No: 23 CV 27630

Myntora Aguilar, Michelle Hester, &)
Nicholas Schindler, Homeless Individuals)
On Hunnell & Clausen Roads, City of Bend,)
On Behalf of Themselves & Other Homeless)
Individuals on Hunnell & Clausen Roads)
& Charles Hemingway, Homeless Advocate,)
All Pro Se)

v.

Eric King, City Manager, City of Bend;)
Melanie Kebler, Mayor, City of Bend; Megan)
Perkins, Mayor Pro Tem & Anthony)
Broadman, Barb Campbell, Ariel Mendez,)
Megan Norris & Mike Riley, City Councilors,)
City of Bend; David Abbas, Director,)
Transportation & Mobility, City of Bend &)
Mike Krantz, Chief of Police, City of Bend)

PLAINTIFF'S RESPONSES TO)
QUESTIONS RAISED BY THE)
COURT IN JULY 14, 2023)
EMERGENCY HEARING)

FILED)
CIRCUIT COURT)
2023 JUL 17 AM 8:53)
DESCHUTES COUNTY)
OREGON)

INTRODUCTION

Plaintiff's understand that the Court expressed concern, and therefore scheduled a follow-on Emergency Hearing for today, July 17, 2023 to hear additional testimony or evidence on whether Defendants have complied with their own regulations concerning the announced closure of Hunnell/Clausen.

Plaintiffs submit, with this Response, a claim that Plaintiff's rights to due process – notice and a right to be heard – have been violated and that Defendants will not have complied with their own

regulations so that a Temporary Restraining Order by this Court to delay enforcement of Defendant's closure actions is necessary.

RESPONSES

1. Compliance with Defendant's Own Americans with Disability Requirements

1

Defendants insist that City of Bend Policy 2023-4, Sec. III, Para. F.2.a. requires only that the City conduct an interactive review process, issue a modification decision and that Defendant's obligation ends there. Plaintiff's insist such is not the case.

Plaintiff's requested a modification seeking a delay of Defendant's pending enforcement action in the form of a Temporary Restraining Order. Plaintiffs sought relief under Sec. III, Para. F.2.a., under which Defendants are required to conduct an interactive process and provide a decision as to whether the Plaintiff's requested reasonable accommodation is granted or denied.

2

In Defendant's view, the matter ends there. But Plaintiff's on behalf of themselves and 19 others who have submitted requests for reasonable accommodation are fearful that Defendants will deny Plaintiff's and the 19 others their rights to appeal the modification decision under the City's own Americans with Disabilities regulation (Plaintiff's Response, Exhibit 1).

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To reiterate, Exhibit 1 specifies at Para. 2.5, that the Accessibility Manager, in this case Ms. Cassandra Keho, who has been going out on Hunnell and Clausen over the past several days:

engaging in the required interactive process, is to issue a written decision within 30 days of receiving the request “offering the City’s position on the issue and options for a substantive resolution of the issue.”

3

Para. 2.6 thereupon states that if the resolution offered by the Accessibility Manager does not satisfactorily resolve the issue, the resolution may be appealed within fifteen (15) calendar days after receipt of the resolution.

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Plaintiff’s did not specifically incorporate Exhibit 1 into their original pleading in this matter on the presumption that their right to appeal an adverse modification decision under Para F.2.a was automatically subsumed as a right under Exhibit 1.

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Should the Defendant’s contention that Plaintiff’s rights to seek a reasonable accommodation begin and end with the interactive process and the issuance of a modification, Plaintiffs will have been denied their full panoply of rights under the Americans with Disabilities Act. This will deprive Plaintiff’s of a full remedy and will amount to a gross denial of their due process rights.

2. Defendant’s Are Fearful Defendant’s “Interactive Review Process” May Be a Ruse to Permit the City to Proceed with Clearing Hunnell/Clausen Tuesday Morning

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Defendant’s are racing through the interactive review process and Plaintiffs, on behalf of

themselves and the other 19 persons who filed requests for reasonable accommodation, are fearful that the process being engaged in by the Accessibility Manager is not truly “interactive”.

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“Interactive”, in Plaintiff’s view, necessarily implies a back-and-forth exchange between parties, not simply a one-time interview by the Accessibility Manager with a party requesting a reasonable accommodation, followed by a unilateral determination about a modification issued by the Accessibility Manager. In this sense, Plaintiff’s contend, Defendants are not following their own regulatory requirements.

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Plaintiff’s are also fearful that Defendant’s written modification decisions will simply be a quick, cursory decision without engaging in a thoughtful review and discussion of Plaintiff’s (and the other 19 requestors) disabilities and modifications/accommodations that it would be appropriate for the City to propose and for Plaintiffs (and the 19 others) to consider.

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Instead, Plaintiff’s are fearful, on behalf of themselves and the other 19 requestors, that the City is simply engaging in this process as a quick means to an end so that Defendants may move as quickly as possible in meeting their arbitrary and capricious time schedule of starting to move everyone out from Hunnell/Clausen on Tuesday morning.

10

Plaintiff’s have not seen, at the time of this filing, any written modification decisions for any of the 22 persons who requested reasonable accommodation. Plaintiff’s offer, for the Court’s

consideration, a written example of the City's Accessibility Manager's thoughtful and complete engagement and discussion on a Hunnell resident's prior request for reasonable accommodation, (Plaintiff's Response, Exhibit 2). Ms. Julie Ehli is one of the current requestors for reasonable accommodation in this matter. Previously she had requested reasonable accommodation for a modification of the City's manner restrictions as it pertained to items she had placed outside her RV. Her request was granted in large part and Ms. Ehli has expressed her gratitude.

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Plaintiff's may be surprised. Without having seen any of the written modification decisions, Plaintiffs believe it would be appropriate for the Court to compare and contrast Exhibit 2 with the written modification decisions the 22 requestors receive. Plaintiff's expect that the Court will find that the City has not carried out its obligations under its own regulations for a true interactive process to consider the requestor's reasonable accommodation requests.

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Plaintiff's contend that Defendants have not followed their own regulations with regard to the interactive process and that it is a rush to judgment that should result in a Temporary Restraining Order from this Court with an order for the Defendants to truly engage in the interactive process.

3. Significance of National Weather Service Extreme Heat Advisory

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Plaintiff's, Defendant's and all of Central Oregon have been under a heat advisory issued by the National Weather Service (NWS) for the weekend period just past, which ended Sunday

evening. (Plaintiff's Response, Exhibit 3). The NWS advised that the hot temperatures may cause heat illnesses to occur.

14

This Court, at the conclusion of the hearing on July 14, 2023, apprised all parties to be careful in the heat. The court clerk even provided multiple bottles of cold water to the parties as they prepared to go out into the heat.

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Plaintiff's contend that Defendants have violated their own regulations pertaining to extremely hot weather by not issuing, per Sec. III, Para. E, a "Suspension of Enforcement for Weather or Other Emergencies". Para. E. specifies that "Enforcement...may be suspended...in the event of...weather conditions (including...extreme heat)...regardless of whether an emergency has been declared."

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Defendants could have, but chose not to, issue a notification of a delay in enforcement that would halt the City's action on July 18, 2023, where the City will begin hauling away vehicles, clearing out tents and removing vehicles and belongings from Hunnell and Clausen.

17

Plaintiff's contend that the City's failure forced Plaintiffs, the 19 other requestors for reasonable accommodation, and all other Hunnell and Clausen to either be out in the extreme heat over the weekend or to abide by the NSW warning that being out in the extreme heat could cause heat illnesses to occur.

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Plaintiff's contend that Defendant's failure to act amounts to a dereliction of duty that almost cost one of those who have requested reasonable accommodation his life (Plaintiff's Response Exhibit 4). Plaintiff's Exhibit 4 is a copy of a sworn Affidavit from Mr. Chris Moe, a person with substantial disabling conditions, who has filed a request for reasonable accommodation.

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Mr. Moe, in the heat Friday, was outside, rushing to work on his trailer so it could be possibly moved, when he was overcome by the heat and it aggravated his heart condition. The Affidavit explains that he passed out and could have died but for his partner being able to administer nitroglycerine to him, which revived him.

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Mr. Moe was unable to recover enough to get back outside Friday. Given the extreme heat of Saturday and Sunday Mr. Moe opted not to risk another possible death threat and to abide by the NWS warning. Mr. Moe states that as a result, he lost three days. Mr. Moe states he faces, on Tuesday, July 18, 2023, the City coming in and clearing out his vehicles and all other property despite his having lost 3 days due to the extreme heat.

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Not just Mr. Moe, but Plaintiffs and all others on Hunnell/Clausen have been deprived of three days, not because of their own inaction, but because of the NWS Extreme Heat Advisory.

Plaintiffs contend that just as Defendant's are rushing through the interactive review process, Defendant's consciously failed, despite the extremely hot weather, to issue a Suspension of Enforcement for Weather under Sec. III.E simply so Defendants can rush in on July 18, 2023 and start clearing out Hunnell/Clausen.

Plaintiffs believe that this Court, given the extreme weather conditions that prevented Plaintiffs and all residents of Hunnell/Clausen, should at a minimum issue a Temporary Restraining Order granting Plaintiff's and all other Hunnell/Clausen residents at least another three days.

CONCLUSION

1. Plaintiff's request that the Court find that pursuant to the City's Americans with Disabilities, Plaintiff's action, together with the other 19 requestors, are true Requests for Reasonable Accommodation under the Americans with Disabilities Act and not simply a request for modifications that end with the City's issuance of a modification decision.
2. Plaintiff's request that the Court find that issuance of a Temporary Restraining Order is justified in order to enjoin Defendants from acting on July 18, 2023, to move in and start clearing out the vehicles, tents and other property of Plaintiffs, the 19 requestors and all other Hunnell/Clausen residents.
3. Plaintiffs contend that a Temporary Restraining Order is justified because the City is not truly engaging in the interactive process and the weather emergency provisions as contemplated in its

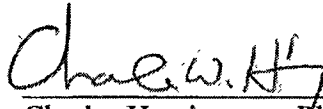
own regulations, but is simply engaging in a rush to judgment in order to start clearing Hunnell/Clausen on July 18th and is thus not following its own regulations.

4. Plaintiffs request of this Court (a) an injunction of at least 3 days for all residents of Hunnell/Clausen because of having lost 3 days due to the NWS Extreme Heat Advisory; (b) an injunction until Plaintiff's and all other requestors of reasonable accommodation have been fully able to exercise their rights under the Americans with Disabilities Act as required by the City's own ADA regulation or such date as the Court may deem appropriate.


Respectfully Submitted:


Myntora Aguilar, Plaintiff, Pro se

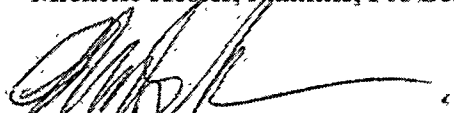
Date: 7/16/23


Charles Hemingway, Plaintiff, Pro Se

Date: 7/16/2023


Michelle Hester, Plaintiff, Pro Se

Date: 7/16/2023


Nicholas Schindler, Plaintiff, Pro Se

Date: 07-16-2023

Select Language

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City of Bend Americans with Disabilities Act Title II and/or Section 504 of the Rehabilitation Act of 1973.

Grievance Procedure Policy & Complaint Form

The purpose of this policy is to provide a procedure for the filing and resolution of grievance complaints alleging any action prohibited by the Americans with Disabilities Act (ADA) or the US Department of Health and Human Services regulations (45, Code of Federal Regulations, Part 84) implementing Section 504 of the Rehabilitation Act as amended (29 United States Code, 794).

It is a high priority for the City that complaints be reviewed in a thoughtful and sensitive manner. The City desires that this process help it meet its legal obligations and become aware of opportunities for improving access in the City of Bend. The City of Bend Employee Handbook governs employment related complaints of disability discrimination.

The Americans with Disabilities Act, Section 202, states, in part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity." Section 504 of the Rehabilitation Act states, in part, that "no otherwise qualified handicapped individual ... shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance."

This grievance procedure may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, or programs operated by the City of Bend.

I. ACCESSIBILITY MANAGER

1.1 The Accessibility Manager will coordinate the efforts of the City of Bend in order to comply with the ADA and/or Section 504 and shall receive all ADA grievances, communications, concerns and/or complaints regarding access issues.

1. COMPLAINT PROCEDURE

2.1 A complaint should be in writing, contain the name and address of the person filing it, and briefly describe

the action alleged to be prohibited by the ADA and/or Section 504 (45 CFR Part 84).

2.2 A complaint should be filed with the City within a reasonable time (60 days) after the person filing the complaint becomes aware of the action alleged to be prohibited by the ADA and/or Section 504. The form should be in writing but alternative methods of filing, such as personal interviews or audio recordings of the issue, will be made available for persons with disabilities upon request.

2.3 The Accessibility Manager will contact the person filing the complaint form within fifteen (15) calendar days of receipt of the form to discuss the issue.

2.4 The Accessibility Manager, or that person's designee, shall conduct an investigation of the complaint as appropriate to determine its validity. This policy contemplates informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to tell their story, candidly discuss their concerns, and submit evidence if they choose relevant to the complaint. Investigations will be kept confidential to the extent allow by law and the City determines confidentiality can be maintained while allowing us to fulfill our obligations. The Accessibility Manager may assist persons with the preparation and filing of the complaints and participate in the investigation of complaints. He or she will advise in writing his/her supervisor of the resolution of the complaint, including: the date the complaint was received, nature of the complaint, and the actual/projected date of resolution. Copies will be sent to the appropriate department head and City Manager.

2.5 The Accessibility Manager, or that person's designee, shall issue a response in writing or in a format accessible to the person filing the form, such as large print, Braille, or audio recordings determining the validity of the complaint no later than 30 days after its filing offering the City's position on the issue and options for substantive resolution of the issue.

2.6 If the resolution issued by the Accessibility Manager or his/her designee does not satisfactorily resolve the issue, the resolution may be appealed within fifteen (15) calendar days after receipt of the resolution. The City Manager or his/her designee will meet with the persons filing the appeal to discuss the issue and possible resolutions. Within fifteen (15) calendar days of the meeting to resolve the appeal, the City Manager or designee will provide (by email or first class mail) a written resolution of the appeal. Alternative formats of the written resolution, such as personal interviews or audio recordings of the issue, will be made available for persons with disabilities upon request. The City Manager or designee's decision is final and binding.

2.7 The Accessibility Manager shall maintain the files and records of the City of Bend relating to complaints for at least ten (10) years from the resolution of the grievance complaint.

2.8 This policy shall be liberally constructed to protect the substantial rights of interested persons, to meet appropriate due process standards, and to assure the City of Bend's compliance with the ADA and Section 504 as stated above.

Discrimination Complaint/Grievance Form

Please fill out this form completely. If you need any assistance, please contact the Accessibility Program by calling (541) 693-2198 or email.

Complainant Information:

Name?

Home address?

City?

State?

Zip Code?

Email?

Home Telephone?

Business/Mobile Telephone?

Person discriminated against: (if other than the complainant)

Name?

Home address?

Verified Correct Copy of Original 3/17/2023

Original 7/17/2018
City?
State?
Zip Code?
Email?

Home Telephone?

Business/Mobile Telephone?

City program, activity, or service which you believe has discriminated?

Name?

*

Home address?

City?

State?

Oregon

Zip Code?

Email?

Home Telephone?

ext.

Business/Mobile Telephone?

ext.

ext.


When did the discrimination occur? (Date)

Verified Correct Copy of Original 7/17/2023 *

Describe the acts of discrimination providing the name(s) where possible for the individuals who discriminated (add additional pages or documentation if needed):

[Empty rectangular box for describing acts of discrimination]

NEXT PAGE

Select Language 

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City of Bend ADA Nondiscrimination Policy

Notice of nondiscrimination on the basis of disability under the Americans with Disabilities Act of 1990.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, the City will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities.

EMPLOYMENT

The City does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act (ADA).

EFFECTIVE COMMUNICATION

The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

MODIFICATIONS TO POLICIES AND PROCEDURES

The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. For example, individuals with service animals are welcome in City offices, even where animals are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a City program, service, or activity, should contact the Accessibility Program, at (541) 693-2198 or [email](#), or the Department operating the program, service, or activity, as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the City to take any action that would fundamentally alter the nature of its programs services, or impose an undue financial or administration burden.

Complaints that a City program, service, or activity is not accessible to persons with disabilities should be

directed to the Accessibility Manager/Department.

The City will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Direct Copy of Original 7/1/2020
_ Verified C



_ Verified Correct Copy of Original 7/17/2023. _

June 20, 2023.

Dear Ms. Ehli,

Thank you for entering in the interactive process with the City of Bend.

On April 3, 2023, the City of Bend ('City') received a 'Request for Reasonable Accommodation/Modification per Sec. III.F., City of Bend Policy No. 2023-4, BMC Title 4, Sec. 4.20 for Ms. Julie Ehli' ('Memo') submitted by Chuck Hemingway, designated representative of Julie Ehli, whom resides on Hunnell Road, near Loco Street in Bend, Oregon.

Under Title II of the ADA, the City of Bend is required to make reasonable modifications of policies, practices and procedures when necessary to avoid discrimination on the basis of disability (28 CFR S 35.130(b)(7)(i)). In accordance with statutory responsibilities and policies, the City will arrange for reasonable modifications, unless it is determined that making the modifications would fundamentally alter the nature of the service, program, or activity, or cause a threat to public health or safety.

Bend Municipal Code 4.20.025(C) describes that, "Enforcement should be tailored for various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act...or for other reasons that may support discretion in enforcement."

The City of Bend is committed to making reasonable modifications to practices, policies, and procedures to avoid discrimination on the basis of disability. This commitment is reflected in the ADA advisory located at the bottom of the 'Notice of Clean Up' ('Notice') that Ms. Ehli received on March 17, 2023. The ADA advisory (available in both English and Spanish) states:

Accommodation Information for People with Disabilities

To obtain this information in an alternative format, and/or reasonable accommodation for the removal, relocation and cleanup, please contact: Makayla Oliver at 541-323-8571 or moliver@bendoregon.gov.

In the interim period between Ms. Ehli's request for a reasonable modification, and the time spent collecting information pertaining to this request, Ms. Ehli has been in the same or similar position as prior to receiving the Notice on March 17, 2023. The City neither disposed of, nor deprived Ms. Ehli of her property. The City maintains that it did not instruct Ms. Ehli to remove or store her table, wooden stair, water containers or propane tanks.

Ms. Ehli has several qualifying disabilities under the ADA, and is requesting a reasonable modification of BC 4.20.030(D). Specifically, that Ms. Ehli be permitted a table near the entrance to her RV, a wooden step to gain entrance into her RV, and to allow for all propane tanks and water containers to be stored on top of and underneath the outside table. Lastly, Ms. Ehli would like all reasonable modification(s) detailed in a letter.

Each reasonable modification sought by Ms. Ehli is analyzed and addressed in the subsections below, relying upon information gathered, Mr. Hemingway's Memo (wherein Ms. Ehli

Plaintiff Response Exhibit 2

appointed Mr. Hemingway as her designated representative) and emails between Mr. Hemingway and City staff members.

I. Table

As a result of her disability, Ms. Ehli requests a reasonable modification of BC 4.20.030(D), in the form of a table, to be located adjacent to the entrance of her RV.

Mr. Hemingway has shared information that describes Ms. Ehli's reliance upon the table by her door in order to facilitate a smooth transition with minimal physical impact that may aggravate or worsen Ms. Ehli's disabilities. Ms. Ehli employs a two-step measured approach, as described in Mr. Hemingway's Memo:

"When she needs a water container or propane tank she will lift it up from the ground to the table. She rests for a second and then moves it from the table into her RV. Being able to put the water container or propane tank on the table before it does into the RV makes it so much easier on her back and on the rest of her body due to her frailty and physical condition."

As David Abbas shared in his correspondence with Mr. Hemingway on April 4, 2023, at no time did City staff verbally, or in writing via the Notice from March 17, 2023, instruct Ms. Ehli to dismantle or remove the table. This action was taken by Ms. Ehli, upon receiving the Notice. Mr. Hemingway explained:

"Julie only got down the Notice as far as the top: the date and time of the notice and that both blocks were checked (one for garbage the one for personal property). Julie, at the point of getting the notice posted, was in survival mode. All she saw was that part about having 3 days and that the property was either going to be considered garbage or improperly placed property that the city would be removing if she did not act fast. She got no further down the form.

I suppose you or me might have paid attention to the info on the rest of the form about being able to contact social services and about accommodation information. But to Julie in her panicked state, all she saw was the time and date of the notice and the two blocks that were checked. In her state of mind, all that mattered was what was going to happen to her property and, as I said, she got no further down the form than that.

Yesterday Jason and Sherri reiterated again that they had never told Julie she had to remove the table, the propane and water and the step."

To avoid triggering an episode, relapse or worsening of Ms. Ehli's disabilities, it is appropriate under the ADA and the Bend Municipal Code 4.20.025(C), to implement a reasonable modification of BC 4.20.030(D), that shall allow Ms. Ehli to have a table directly adjacent to the entrance of her RV.

II. Wooden Step

As a result of her disability, Ms. Ehli requests a reasonable modification of BC 4.20.030(D), in the form of a wooden step, that allows her physical access into her RV.

The facts indicate that Ms. Ehli has not removed the wooden step to her RV, nor did City staff instruct Ms. Ehli to remove the wooden step, either verbally, or in writing via the Notice.

While the step is not in controversy, it is subject to manner restrictions under BC 4.20.030(D).

The facts demonstrate that without the use of the step, Ms. Ehli would be physically precluded from her residence:

“...Ms. Ehli states that her RV door is too high from the curb to allow her to step into her RV and that it is dangerous for her, in her condition, to try to step into or outside without a step.”

Indeed, Mr. Hemingway describes that Ms. Ehli, “cannot, because of her disabilities, get into her RV without this wooden step.”

Any attempt to jump, climb or pull herself up, absent a solid stair, could potentially result in an injury, or trigger an episode, relapse or worsening of her disabilities. As a result, under the ADA, and Bend Municipal Code 4.20.025(C), it is appropriate to implement a reasonable modification of BC 4.20.030(D) that shall allow Ms. Ehli to utilize a wooden step to gain access into her RV.

III. Propane Tank Storage

Ms. Ehli requests a reasonable modification of BC 4.20.030(D), in the form of storing propane tanks near the entrance to her RV, and under the table.

Mr. Hemingway has presented information that Ms. Ehli stores 8-9 propane tanks near the front door to her RV. Filling all of Ms. Ehli's propane tanks (8-5 gallon and 1-8 gallon) once a month has been framed as an economic requisite:

“She keeps the bulk number of propane tanks...because: She has social security income and food stamps. She receives those once a month. Her practice is to go once a month to buy...all her propane for the month. Sometimes she might have to go twice a month. Because she has no car and cannot drive, she has to pay someone to take her to get her propane tanks filled....All this gets really expensive for a poor person of her limited means. She buys in bulk to get what she needs for the month...”

Mr. Hemingway also described that Ms. Ehli opts to store the propane tanks under the table and near the entrance to the RV as an anti-theft measure:

“...to shield these from visibility from the road and cut down on the chances of theft,” and because “...it provides a way to keep her propane tanks be not visible from the street so the tanks are less likely to be stolen.”

The City of Bend did not instruct Ms. Ehli to move her propane tanks into her residence.

The City of Bend Fire Department (BFD) has shared the following safety standards for the storage of propane:

- Store the tanks outside and away from the exit of the home.
- Give yourself a clear access and egress from the home.
- Storage inside compartments or designed storage on trailers/campers are also acceptable.

Given the information provided by BFD, it is not appropriate to store propane directly adjacent to the front door (and only means of egress) as Ms. Ehli has historically done, due to the potential threat to both her safety, and overall public safety.

All propane tanks that are not in use should be stored away from the entrance to the RV. If Ms. Ehli has storage compartments that can be utilized on her RV, that is also an acceptable alternative, as set out by the BFD.

Ms. Ehli shall continue to work closely with Sherri Meisel, Health and Safety Compliance Coordinator, to establish acceptable outside storage arrangements that contemplate the safety considerations put forth by BFD, and requirements under BC 4.20.030(D).

The storage of propane tanks under the table adjacent to Ms. Ehli's front door has not been sufficiently demonstrated as a necessity due to Ms. Ehli's disabilities, but rather, to avoid detection by bad actors that would result in theft.

Moreover, a reasonable modification of BC 4.20.030(D) is not appropriate in this instance, as modifications must not cause a threat to public health or safety. In the instant case, BFD's safety standards require that propane tanks be stored away from the entrance to Ms. Ehli's door.

As Ms. Ehli and Ms. Meisel work to establish an acceptable resolution, Ms. Meisel shall take into consideration the distance and potential physical hardship the movement of the propane tanks may have on Ms. Ehli. However, the facts indicate that each month, Ms. Ehli loads, moves, fills and stores her propane tanks. Ms. Ehli is physically able to complete these tasks, or, has been assisted by a third party, whom Ms. Ehli compensates.

IV. Water Containers

Ms. Ehli requests a reasonable modification of BC 4.20.030(D), in the form of storing water containers near the entrance of her RV, both on top of and below the table.

Mr. Hemingway has presented information that Ms. Ehli stores 30-40 gallons of water containers near the front door to her RV. Filling all of Ms. Ehli's water containers (8-5 gallon and 1-8 gallon) once a month has been framed as an economic requisite:

"She keeps the bulk number of...plastic water containers because: She has social security income and food stamps. She receives those once a month. Her practice is to go once a month to buy all her water for the month...Sometimes she might have to go twice a month. Because she has no car and cannot drive, she has to pay someone to take her...to purchase water and groceries....All this gets really expensive for a poor person of her limited means. She buys in bulk to get what she needs for the month..."

A reasonable modification of BC 4.20.030(D) is not appropriate in this instance, as the Memo does not sufficiently demonstrate the storage of water containers as a necessity due to Ms. Ehli's disabilities, rather, as an economic necessity.

Unlike the safety concerns governing the storage of propane tanks, water containers may be stored where practical, including underneath the footprint of the approved table, in compliance with BC 4.20.030(D).

V. Letter of Reasonable Modification

This letter shall serve as a memorandum of the Reasonable Modifications in place for Ms. Ehli under 28 CFR S 35.130(b)(7)(i) and 44.20.025(C). A copy of this letter shall be shared with Health and Safety Compliance Coordinator Sherri Meisel, and Code Enforcement Officer III, Jason Gault. Multiple paper copies shall be printed and made available to Ms. Ehli, to present if necessary, insofar as the table or wooden step are concerned.

Summary:

1. **Table:** Ms. Ehli is permitted to have a small table set up directly adjacent to the entrance of her RV. **A reasonable modification of BC 4.20.030(D) is appropriate in this instance.**
2. **Wooden Step:** Ms. Ehli shall continue to utilize the step, in order to gain entrance into her RV. **A reasonable modification of BC 4.20.030(D) is appropriate in this instance.**
3. **Propane Tank Storage:** The storage of propane tanks under the table adjacent to Ms. Ehli's front door has not been sufficiently demonstrated as a necessity due to Ms. Ehli's disabilities. Rather, it is described as an anti-theft technique to avoid detection by bad actors and as a necessity of Ms. Ehli's financial structure. Most critically, the storage of propane tanks near the egress of Ms. Ehli's residence is a threat to safety. **A reasonable modification of BC 4.20.030(D) is inappropriate in this instance.** Ms. Ehli shall continue to work closely with Ms. Meisel, to establish acceptable outside storage arrangements that contemplate both the safety considerations put forth by BFD, and City Code requirements under BC 4.20.030(D).
4. **Water Containers:** The storage of water containers under the table adjacent to Ms. Ehli's front door has not been sufficiently demonstrated as a necessity due to Ms. Ehli's disabilities, but rather, as a necessity of Ms. Ehli's financial structure. **A reasonable modification of BC 4.20.030(D) is inappropriate in this instance.** However, water containers may be reasonably stored under and on top of the footprint of the table, insofar it complies with BC 4.20.030(D).

Thank you for engaging in the interactive process with the City of Bend. If you have any questions regarding the reasonable modifications that have been put into place, or if you would like to provide supplemental information, please do not hesitate to contact me. I can be reached by telephone at 541-693-2141, or by email at ckehoc@bendoregon.gov.

Sincerely,

Cassandra Kehoe
Accessibility and Equity Manager



BREAKING WEATHER: AIRPORT DELAYS

HOME PAGE

Your CURRENT Local Weather Forecast Here.

Weather Alert

Heat Advisory issued July 13 at 1:03PM PDT until July 16 at 8:00PM PDT by NWS Pendleton

...HEAT ADVISORY IN EFFECT FROM 11 AM SATURDAY TO 8 PM PDT SUNDAY... * WHAT...Temperatures up to 100 expected. * WHERE...Grande Ronde Valley, Ochoco-John Day Highlands, East Slopes of the Oregon Cascades and Central Oregon. * WHEN...From 11 AM Saturday to 8 PM PDT Sunday. * IMPACTS...Hot temperatures may cause heat illnesses to occur.

A warning is issued when a hazardous weather or hydrologic event is occurring, imminent or likely.

A watch is used when the risk of a hazardous weather or hydrologic event has increased significantly, but its occurrence, location or timing is still uncertain.

An advisory is issued when a hazardous weather or hydrologic event is occurring, imminent or likely.

Plaintiff Response Exhibit 3

AFFIDAVIT

My name is Chris Moe. Being duly sworn I hereby state under Oath under penalty of perjury the following:

I am a resident of Clausen Road with my partner Audrey Harrison. On Clausen we live in a trailer, a broken-down RV and have a non-running Ford Blazer.

We both have received Notices from the City of Bend that if we have not moved our vehicles and other property from Clausen that beginning on July 17, 2023 the Defendants will initiate an action to clear us out and if we do not leave, all our vehicles and property will be towed away and cleared out.

We understand that we will not be permitted to remain and that if we do attempt to remain we will be arrested and physically removed. If this action is taken we will lose everything.

I have submitted a Request for Reasonable Accommodation based on my disabilities:

Polycythemia Vera, which causes blood clots; Klinefelters Syndrome, which I was born with; a heart condition for which I need nitroglycerine; loss of all my large intestines except nine feet due to a suicide attempt while homeless; Cirrhosis of the liver; I have been diagnosed with Disassociation Disorder, Borderline Personality Disorder, I am Bi-Polar and I have Complex PTSD from the trauma of all that has happened to me growing up and since becoming homeless at age 14 and from spending 18 months in solitary confinement while in prison.

On July 14, 2023 it was a very hot day. The temperature must have been in the 90's. I was working outside on our trailer, rushing to try and get it ready to move. I was overcome by the heat. I collapsed. Fortunately my partner Audrey was nearby. She was able to administer nitroglycerine to revive me.

Plaintiff Response Exhibit 4

SEE ATTACHED CREDIBLE PERSON CERT.

Saturday was excessively hot. Today is excessively hot. The National Weather Service has issued a heat advisory from Saturday at 11 am to 8 pm today and warned that getting out in this heat is likely to cause heat illnessness to occur.

I was too exhausted to get back in the heat Friday. I was afraid to go out into the heat yesterday and I am afraid today too for fear of being overcome again by the heat and possibly dying this time.

I have lost three days through no fault of my own due to the heat.

I am hoping that due to the heat advisory and the loss of time that the city will give us more time.

FURTHER Affiant saith not.



Chris Moe

DATE: 7/16/2023

NOTARY ACKNOWLEDGEMENT

State of Oregon ✓

County of Deschutes ✓

The foregoing Affidavit was acknowledged before me on July 17, 2023 by —

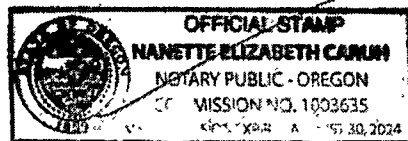
CHRISTOPHER JAMES MOE

Nan Carum Notary
Signature of Notarial Officer



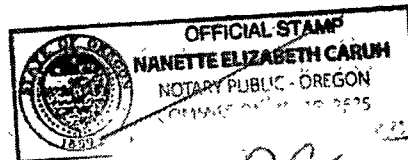
My Commission expires Aug. 30, 2024

Stamp:



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nc



nc

See ACH Attached CREDIBLE PERSON CERT.

CREDIBLE PERSON CERTIFICATE

State of OR
County of DESCHUTES

On this the 16th day of JULY, 2023, before me,

Nan Carul, the undersigned Notary Public,

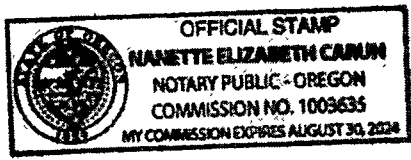
personally appeared CHRISTOPHER JAMES MOG
Name(s) of Signer(s)

Whose identity was proved to me on the oath of:

CHARLES WILLIAM HEMINGWAY
(name of credible person) Charles W Hemingway

a credible person by me duly sworn, and acknowledged that the signer signed the
above/attached document.

The credible witness is
 personally known to me - OR
 proved to me on the basis of satisfactory
evidence.



WITNESS my hand and official seal.

Nan Carul, Notary
Notary Public
Exp. Aug. 30, 2023

Description of Attached Document

Title or Type of Document: Affidavit

Document Date: July 16, 2023 Number of Pages 2

Signer(s) Other Than Named Above: 1 - CHRISTOPHER JAMES MOG

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