



**GLADSTONE CITY COUNCIL WORK SESSION
CIVIC CENTER COUNCIL CHAMBERS
October 25, 2022 - 5:30 PM**

5:30 p.m.
CALL TO ORDER
ROLL CALL
FLAG SALUTE

The City of Gladstone is abiding by guidelines set forth in House Bill 2560, which requires the governing body of the public body, to extent reasonably possible, to make all meetings accessible remotely through technological means and provide opportunity for members of general public to remotely submit oral and written testimony during meetings to extent in-person oral and written testimony is allowed. Therefore, this meeting will be open to the public both in person and virtually using the Zoom platform.

Please click the link below to join the webinar:
<https://us06web.zoom.us/j/84599367319?pwd=SHpwSXlvRUkvUFg0WkxMU3lmQ2daZz09>

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The public is welcome to attend the Work Session in person, or on-line however, no public comment will be allowed.

REGULAR WORK SESSION

- 1. PROPOSED AMENDMENTS TO GLADSTONE MUNICIPAL CODE (GMC) CHAPTER 5.04 BUSINESS LICENSES**
Staff will present proposed amendments to GMC Chapter 5.04 Business Licenses for the Council to consider prior to the 2023 business license renewal process.
- 2. PROPOSED AMENDMENTS TO GLADSTONE MUNICIPAL CODE (GMC) CHAPTER 9.60 CAMPING PROHIBITED IN CERTAIN PLACES, CHAPTER 10.16 ABANDONED AND HAZARDOUS VEHICLES, AND CHAPTER 10.04 PARKING AMENDMENTS**
City Administrator Betz, Police Chief Schmerber, and City Attorney Jacobs will propose amendments to current Gladstone code within the authority outlined in the League of Oregon Cities (LOC) *Guide to Persons Experiencing Homelessness in Public Spaces*.

3. SELECTION PROCESS FOR APPOINTMENTS TO VACANT BOARDS, COMMITTEES, AND COMMISSIONS POSITIONS IN 2023.

Staff will seek guidance from Council on the selection process for vacant positions on City Boards, Committees, and Commissions in 2023.

ADJOURN

Upcoming Meeting Dates:

- November 8, 2022 - Regular City Council Meeting - 6:30 p.m.
- November 22, 2022 – City Council Work Session- 5:30 pm
- December 13, 2022- Regular City Council Meeting- 6:30 p.m.
- December 27, 2022- No Meeting- Holiday week.

MEETING ACCESSIBILITY SERVICES AND AMERICANS WITH DISABILITIES ACT (ADA) NOTICE

The Civic Center is ADA accessible. Hearing devices may be requested from the City Recorder at least 48 hours prior to the meeting. Individuals requiring other assistance must make their request know 48 hours preceding the meeting by contacting the City Recorder at bannick@ci.gladstone.or.us. Staff will do their best to respond in a timely manner and to accommodate requests.

WORK SESSION

#1

City of Gladstone Staff Report

Report Date: October 17, 2022
Meeting Date: October 25, 2022
To: Gladstone City Council
From: Ashley Driscoll, City Attorney; Tami Bannick, City Recorder; Hayley Kratz, Office Assistant and Sean Boyle, Community Services Officer

AGENDA ITEM

Proposed Amendments to Gladstone Municipal Code (GMC) Chapter 5.04 – Business Licenses

History/Background/Proposal

The Gladstone Municipal Code Chapter 5.04 Business Licenses is primarily designed to collect information about businesses operating in the City and to generate revenue necessary to provide municipal services to local businesses. However, the City seeks to add some regulatory provisions to the chapter to provide City staff with additional enforcement mechanisms for businesses found to be in violation of the city's code and other laws and regulations that impact the public's health and safety.

The amendments under consideration here fall into three categories:

- (1) clarifying that long term and short-term rental units are considered “businesses” subject to the licensing and fee requirement, and to provide some additional requirements for short-term rentals;
- (2) providing an additional avenue to address businesses in violation of certain chapters of the Gladstone Municipal Code and other laws and regulations that impact health and safety; and
- (3) housekeeping clean up.

Short- and long-term rental units:

These amendments clarify that operating a rental unit qualifies as a “business” under the code and therefore is subject to the requirements of GMC 5.04. The amendments also establish that rental unit owners will be subject to both the general business license fee and an additional fee based on the number of units they operate. The amendments also clarify that a rental unit property management company is not subject to the rental property business license fees, only the general business license fee. Finally, the amendments additionally regulate short term rentals in that they require short term rentals to be current with the City's lodging tax and prohibit owners from renting units to more than one party at any given time. In the future, if the City desires to impose additional regulation on short- or long-term rentals, the City can either add the additional regulations to this chapter or create a stand-alone chapter specifically regulating short- and long-term rental businesses.

Additional Enforcement Provision:

The new amendments also provide that the city can deny, revoke or suspend a business license for an applicant or a licensee who is doing business in violation of chapters of the City's code that address health and safety issues, such as the City's fire code and zoning ordinances. The City could revoke a business license on these grounds only after having cited the business under the applicable section of the City's code. Further, the City can also deny, revoke or suspend a business license if the business is in violation of federal, state or county law, and the City Administrator finds the violation impacts the public's health or safety. This section is designed to be an additional enforcement tool for businesses not responding to the City's usual enforcement mechanisms, such as fines and penalties.

Housekeeping

Other amendments clarify which types of businesses are exempt from obtaining a business license (for example, daycares and non-profits) versus other situations that are excluded from the regulations entirely, such as persons engaged in garage sales.

Recommended Staff Action

No decision will be made at the work session however, if it is the consensus of the City Council, staff will bring this item back at a future Council meeting for consideration.

Department Head
Signature

Date

Jacque M. Betz 10-19-22

City Administrator
Signature

Date

ORDINANCE 1516

***AN ORDINANCE AMENDING GLADSTONE MUNICIPAL CODE CHAPTER 5.04,
BUSINESS LICENSES***

WHEREAS, Chapter 5.04 of the Gladstone Municipal Code is primarily designed to collect information about businesses operating in the City and to generate revenue for municipal services to local businesses; and

WHEREAS, the City seeks to amend Chapter 5.04 to clarify that long and short term rental units are considered “businesses” subject to Chapter 5.04’s licensing requirements and adopt regulations related to the operation of these businesses; to add an new avenue to address businesses in violation of certain chapters of the Gladstone Municipal Code and other laws and regulations that impact health and safety; and to do housekeeping clean up;

WHEREAS, the City desires to amend the municipal code to reflect these changes.

NOW, THEREFORE, the Common Council of the City of Gladstone ordains as follows:

Section 1. Chapter 5.04 of the Gladstone Municipal Code is hereby amended to read as set forth in the attached Exhibit A. New language is in red; repealed language is ~~struck through~~.

Section 2. This Ordinance is effective 30 days after City Council approval.

The Ordinance is adopted by the Gladstone City Council and approved by the Mayor on this _____ day of _____, 2022.

ATTEST:

Tamara Stempel, Mayor

Tami Bannick

**Chapter 5.04
BUSINESS LICENSES**

Sections:

5.04.010 Purpose.

5.04.020 Definitions.

5.04.030 License required.

5.04.040 Fees.

5.04.050 Presumption of doing business.

5.04.055 Short-Term Rental Regulations

~~5.04.060 Fee calculation.~~

5.04.070 Procedures.

5.04.070 Denial, Revocation, and Suspension of a License

5.04.075 Suspension or Revocation - Effect

5.04.080 Falsifying application information—Failure to comply.

5.04.090 Violation does not exempt payment of fee.

5.04.010 Purpose.

The purpose of this chapter is designed to collect information about businesses operating in the city, and to provide revenue for municipal purposes, and to provide the city with an additional process to ensure businesses are in compliance with laws and regulations impacting public health and safety. In order for business to be carried on and conducted in the city in a profitable and peaceful manner, the city must provide police protection, fire protection, street maintenance, street lighting and other municipal services. The city's issuance of a license under this chapter is not permission or license to engage in any particular business activity or occupation. This chapter's fees, penalties and other charges are in addition to any other regulatory or non-regulatory certificate, license or permit fees that may be required by any federal, state or local jurisdiction, including the city.

Statutory Reference: ORS 221.410

History: Ord. 1437 §2, 2012.

5.04.020 Definitions.

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The following words or phrases, except where the context clearly indicates a different meaning, shall be defined as provided in this section ~~As used in this chapter:~~

~~(1) "Applicant" is a person who has applied for a business license under this chapter.~~

~~(2) "Business" includes all professions, trades, occupations, shops, apartments, tenements, office buildings and all and every kind of calling carried on for profit, gain or livelihood, included operating a rental unit.~~

~~(3) "Business license" or "license" means the document issued upon full compliance with this chapter for the year in question. A licensee is the holder of a business license.~~

~~(4) "City" means the City of Gladstone, Oregon.~~

~~(4) "Employee" means any person working for, within or under the auspices of a business (other than a bona fide independent contractor or leased employee) regardless of the employment, management or ownership status of that person, including common law and statutory wage earning, commission and salaried employees, executive and common employees, agents, sales representatives, sole proprietors, partners, corporate officers and any and all persons associated directly with the business.~~

~~(5) "Exemption Certificate Application" means a business license application that is submitted without fee according to guidelines set in GMC 5.04.030 (2), along with proof of exemption.~~

~~(6) "Exemption certificate" means the document issued by the city in lieu of a license to qualifying businesses and activities under this chapter (i.e.: business license).~~

~~(7) "Person" includes all domestic and foreign corporations, associations, syndicates, partnerships, joint ventures, societies and individuals transacting and carrying on any business in the city excepting individuals whose compensation is based on an hourly, daily, weekly, monthly or annual wage or salary.~~

~~(7) "Transfer" means to transfer ownership of a business. It does not mean a change in business location.~~

~~(8) "Full-time Equivalent Employee (FTE)" means an amount equivalent to the number of full-time workers with 1.0 equal to one full-time worker, and 0.5 equal to one-half of a full-time worker. Two 0.5 FTE's are equal to 1.0 FTE.~~

~~(9) "Rental unit" means a house, duplex, multiplex, apartment, condominium, accessory dwelling unit or other residential dwelling unit for which the property owner receives payment from another for use or occupation of the property. Each individual space or room would be considered a separate rental unit. Rental units can be either "long term rental units," which are used or occupied for 30 days or more to~~

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single party, or "short term rental units," which are used or occupied for less than 30 days to a single party.

(10) "Rental Property Owner" means the owner of a rental unit.

(11) "Property Management Company" means any company that is managing a rental unit for a rental property owner.

Statutory Reference: ORS 221.410.
History: Ord. 1437 §2, 2012.

5.04.030 License required.

(1) Except as provided in subsection (2) of this section, any person operating or carrying on business in the city must obtain a license and pay the required fee on an annual basis.

(2) In lieu of a business license and the requirement to pay related fees described in this chapter, the city will issue an exemption certificate without charge to a businesses and activities described in subsections (2)(a) through (f) of this section. Notwithstanding the foregoing, a qualifying business or activity must complete and file an initial and thereafter an annual renewal exemption certificate application. Any person claiming an exemption has the burden of demonstrating the applicability of such exemption. Businesses and activities qualified under this provision are:

(a) Religious, educational and charitable organizations specifically exempt from taxation under the Federal Internal Revenue Code;

(b) Daycare centers, foster homes, group homes and other like facilities which are required to be state regulated (b) One-time, annual events or special events if all other applicable permits and licenses have been applied for and granted by the city;

(c) Any business or occupation specifically exempt from the payment of ~~non~~regulatory business license fees under state law or federal law i.e. not for profit. (any person claiming an exemption under state or federal law has the burden of demonstrating the applicability of such an exemption);

(d) Any household, garage or yard sale conducted in accordance with any applicable city ordinances or regulations;

~~(d)~~ (e) Producers of farm products raised in Oregon, produced by themselves or their immediate families and sold by them or by a member of their immediate family;

~~(e)~~ (f) No person working as a domestic in a private home if the owner or occupant of the home employs or directly pays the domestic worker;

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(f) Contractors when their principal place of business is outside of City limits and they have proof that they have obtained a Regional Contractor's business license from the Metropolitan Service District, ("Metro").

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(3) A Person who holds a transient merchant license under Chapter 5.32 is deemed to have complied with this chapter and is only responsible for payment of a transient merchant license fee.

(4) The following situations are specifically excluded from the requirement of paying a business tax:

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(a) A service offered by a person under the age of 16, such as lawn mowing, newspaper delivery, lemonade stand, and the like.

(b) Persons engaged in delivery of goods or services from points outside the City, providing sales contacts and actual sales take place outside the City.

(c) Newspaper carriers.

(d) Garage sales, yard sales, and other similar activities.

(e) The sale of personal assets such as a personal automobile, residence, appliance, or other articles. Such exclusion shall not apply when such sales are conducted on a regular and continuing basis. That will be assumed to be the case if an individual or family sells its personal residence more than twice or personal automobile more than four (4) times in any given calendar year. Other items shall be determined by the Finance Director or designee on the basis of reasonableness on a case-by-case basis.

(f) Licensed real estate salespeople or associate real estate brokers who engage in professional real estate activity only as an agent of a real estate broker or real estate organization.

(g) Licensed insurers, insurance producers, or their representatives in accordance with ORS 731.841.

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(h) Municipal, state, or federal agencies.

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(54) All licenses issued in accordance with this chapter must be openly displayed in the place of business or otherwise kept on the person or on the vehicle of the person licensed. Failure to carry such license or produce the same on request from a city official is a violation of this chapter.

Statutory Reference: ORS 221.410.

History: Ord. 1437 §2, 2012; Ord. 1465 §1, 2016.

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5.04.040 Fees.

(1) A business license fee is imposed upon every business located and/or operating within the city, except for a business described in GMC 5.04.030 (2). The base fee-in-an amount and any additional fees that the city council will be set by City Council set by resolution and may be calculated upon any factors and in any manner established by Council consistent with this chapter. The Council may also establish a higher license fee for those person's subject to this chapter who do not reside in the city or maintain a physical place of business within the city.

(2) It is unlawful for any person to conduct any business in the city without first having paid such fees and without having first obtained a license as provided in this chapter, and renewing the license for each year thereafter, or without having obtained and renewed an exemption certificate, as applicable.

(3) A license or an exemption certificate is effective on the date of its issuance and may be renewed annually no later than the first day of the calendar year thereafter on that date.

(4) The fee imposed by this section is due at the time the application is received by the city no later than the date the city issues a business license and will be due annually no later than the first business day of the calendar year thereafter that date thereafter. A fee not paid within 30 days of its due date is delinquent. If an application for a business license is made within the first six months of the calendar year, the person must pay the full license fee. If an application is made during the last six months of the calendar year, the person is only responsible for paying one-half of the annual license fees for the remainder of the year. Fees are not refundable.

(5) Each branch or location of a business shall obtain a separate license, excepting warehouses used only in connection with a licensed business.

(6) The agent of a nonresident business for which a license is required will be jointly liable for payment of the fee and for any penalties for failure to pay the fee or to comply with the provisions of this chapter to the extent and with like effect as if such agent or agents were themselves proprietors.

(7) Each business physically located within city limits must pay the FTE amount, over three (3) FTEs, in addition to the applicable base rate. The number of FTEs for which payment is required is based on the number of FTEs employees as of January 1st for full-year taxpayers and on the first day of business for other taxpayers. No additional payments or refunds are applied for changes in the number of employees during the tax year.

(8) Rental property owners are responsible for paying the rental property fee, applicable to the number of rental units owned, in addition to the business license base rate.

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(9) Property management companies who do not own the property they are managing are not required to pay the rental property fee but are required to hold a business license for conducting business as a property management company within the city.

Statutory Reference: ORS 221.410.
History: Ord. 1437 §2, 2012.

5.04.050 Presumption of doing business.

A person is presumed to be doing business in the city and subject to this chapter if engaged in any of the following activities:

- (1) Advertising or otherwise professing to be doing business within the city;
- (2) Delivering goods or providing services to customers within the city;
- (3) Owning, leasing, or renting personal or real property within the city, which is used in a trade or business;
- (4) Engaging in any transaction involving the production of income or the intent to produce income from holding property (which may be personal or real in nature) that this chapter does not otherwise exempt; or
- (5) Engaging in any business activity that is not otherwise exempt under this chapter.

Statutory Reference: ORS 221.410.
History: Ord. 1437 §2, 2012.

5.04.055 Short-Term Rental Regulations.

In addition to the other requirement of this chapter, the following requirements apply to short-term rental license:

- (a) Quarterly Transient Lodging Tax shall be submitted pursuant to GMC 5.70.
- (b) At any given time, no more than one (1) rental party (i.e. under one (1) separate reservation) shall occupy a dwelling unit at a time.

5.04.060 Fee calculation.

~~Business license fees will be set by council resolution. Business license fees may be calculated upon any factors and in any manner established by council. The council may establish a higher license fee for those persons subject to this chapter who do not reside in the city or maintain a physical place of business within the city.~~

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~~Statutory Reference: ORS 221.410.~~

~~History: Ord. 1437 §2, 2012; Ord. 1445 §1, 2014.~~

5.04.0670 Procedures.

(1) An application for a license or exemption certificate required under this chapter will be made to the City Recorder or designee, on forms that ~~are maintained by the city~~ the City Recorder maintains.

(2) Any new business that desires to conduct business within the city, or believes it is entitled to an exemption certificate, must apply at any time during the calendar year and prior to beginning operations. A license fee may be prorated as provided in Section 5.04.040(43). Any existing business must reapply annually to renew its license or exemption certificate, as applicable.

(3) ~~The City Recorder or designee will issue or renew a license or an exemption certificate, as applicable, only if: The Police Chief, Fire Chief and their designees may investigate and examine all places of business licensed or subject to license under this chapter at any and all reasonable times in order to determine whether the place of business is safe, sanitary and suitable for the business so licensed or for which application for a license is made.~~

(a) The circumstances listed in GMC 5.04.070(1) are not present; and

(b) The business to be licensed or any person associated with the business does not owe the city any monies, including, but not limited to, unpaid utility bills, fines, etc.; and

(c) The appropriate license fee due under this chapter is paid.

~~(4) If such officers or their agents determine that any such place of business is dangerous to public health, safety, welfare or is likely to become, or is at that time a menace or public nuisance, they will submit to the City Administrator a report detailing that determination and the reasons for it.~~

~~(5) The City Administrator will review the report and either:~~

~~(a) Recommend the City Recorder issue a license; or~~

~~(b) Deny the business license or revoke it in the case of a previously issued license.~~

~~(c) In making his or her decision the City Administrator may request additional evidence and testimony from the applicant, city officials and any other individual who the City Administrator reasonably believes may assist with the decision.~~

~~(6) If the City Administrator believes that substantial evidence supports the official's report that the business is a danger to public health, safety, welfare or is likely to become or is at that time a menace or public nuisance, the City Administrator will deny or revoke the license, as appropriate, and will notify~~

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~~the applicant in writing of the decision. If a license is denied or revoked, the business must immediately cease all operations within the city.~~

~~The applicant may appeal the City Administrator's denial or revocation to the municipal court. Any appeal must be filed within 10 days of the date of the Administrator's written decision.~~

~~The court will hear any appeal on the record and will uphold the City Administrator's decision if substantial evidence supports it.~~

~~(7) The City Recorder will issue or renew a license or an exemption, as applicable, only if:~~

~~(a) The City Administrator did not receive a report as described in subsection (4); or~~

~~(b) The City Administrator pursuant to subsection (5)(a) recommends that the City Recorder issue the license; and~~

~~(c) The business to be licensed or any person associated with the business does not owe the city any monies, including, but not limited to, unpaid utility bills, fines, etc.; and~~

~~(d) The appropriate license fee due under this chapter is paid; and~~

~~(e) The business to be licensed is in compliance with Chapter 9.00.~~

~~(8) A person may request a transfer of a business license on forms that the City Recorder maintains. The Council may establish a fee associated with such transfer.~~

Statutory Reference: ORS 221.410.

History: Ord. 1437 §2, 2012; Ord. 1446 §2, 2014.

5.04.070 Denial, Revocation, and Suspension of License

~~(1) The city may deny, revoke, or suspend a license if:~~

~~(a) The applicant or licensee fails to meet the requirements of this chapter or doing business in violation of this chapter~~

~~(b) The applicant or licensee is operating a business that is in violation of [Gladstone Municipal Code](#) GMC 15.08, Fire Code, and has received at least one violation under GMC 15.08.080.~~

~~(c) The applicant or licensee is operating a business that is in violation of [Gladstone Municipal Code](#) Title 17, Zoning and Development, and has received at least one violation under GMC 17.98.010.~~

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(d) The applicant or licensee is operating a business that is in violation of Gladstone Municipal Code GMC 8.06, Chronic Nuisance, and has received at least one action under GMC 8.06.060.

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(e) A finding by the applicable outside agency that the applicant or licensee is doing business in violation of federal, state, or county law and if the City Administrator finds the violation impacts the public's health or safety.

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(f) The applicant or licensee has provided false or misleading information or has omitted disclosure of a material fact on the business license application, related materials, or license.

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(g) The business license fee has not been paid by the due date.

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(2) The City Administrator or Chief of Police or their designees shall provide written notice to the applicant or licensee of a denial, suspension or revocation. The notice shall state the reason for denial, suspension, or revocation and inform the person of the right to appeal.

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(3) Notices of revocation or suspension shall be given at least 30 days before the action becomes effective. If the violation ends within the 30 days, the city may discontinue the proceedings.

(4) A person may appeal a denial, suspension, or revocation as follows:

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(a) A written notice of appeal to the City Council shall be filed with the City Administrator within 15 days after the applicant or licensee receives notice pursuant to GMC 5.04.070(2).

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(b) The City Council shall hear and make a determination in regard to the appeal at its next regular meeting immediately following the filing of the notice of appeal.

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(c) The decision of the City Council on the appeal shall be final and conclusive.

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(d) If an appeal is filed pursuant to this section the action will be stayed until the appeal is resolved.

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(5) A person whose application for any business license has been denied or whose license has been revoked may, after 90 days from the date of denial or revocation, apply for a license upon payment of the application fee and submission of an application form and required attachments.

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5.04.075 Suspension or Revocation - Effect

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If a business license is suspended or revoked, the concerned business shall immediately cease conducting any and all businesses within the City. Any business which continues to conduct business within the City subsequent to action by the City Council to suspend or revoke the City license for such

business shall be subject to the same fine and penalties as if such a business had never obtained a City business license and was carrying on business within the City without such a business license

5.04.080 Falsifying application information—Failure to comply.

(1) It is unlawful for any person to make any false or misleading statements for the purpose of determining the amount of any license fee to be paid to the city or to otherwise fail or refuse to comply with any of the provisions of this chapter.

(2) In the event a person required by this chapter to obtain a license or an exemption certificate fails, refuses or neglects to obtain the same before it becomes delinquent, the City Recorder will collect, in addition to the fee, a penalty fee will be set by Master Fee Schedule for of five percent each calendar month or fraction thereof for the period of the delinquency.

Statutory Reference: ORS 221.410.

History: Ord. 1437 §2, 2012.

5.04.090 Violation does not exempt payment of fee.

(1) A violation of any provision of this chapter does not relieve a business of liability for paying any fee or penalty for which it is liable nor shall payment of any such fee or penalty be a bar to any action that the city may bring in law or equity to enforce or remedy violations of this chapter.

(2) A violation of any provision of this chapter is a Class "AD" infraction as specified in Chapter 1.08. Each and every day this chapter is violated constitutes a separate offense.

Statutory Reference: ORS 221.410.

History: Ord. 1437 §2, 2012.

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**WORK
SESSION
#2**

City of Gladstone Staff Report

Report Date: October 12, 2022
Meeting Date: October 25, 2022
To: City Council
From: Emily Matasar and Chad Jacobs, City Attorney's Office

BACKGROUND

Last year, the City of Gladstone (City) updated Chapter 9.60 of the Gladstone Municipal Code (GMC) related to camping prohibited in response to the changing landscape and laws regarding homeless camping on public property. Since then, concerns have been raised regarding how the law is working within the City and what options exist to continue addressing emerging and evolving problems. One such problem that arose since GMC 9.60 was amended is people living in cars parked (legally and illegally) on public streets.

Homelessness is a vast and complicated combination of issues that impacts cities and communities in numerous ways, but this memo focuses on the specific tools available to the City to address the specific problem of camping in cars on City streets.

Currently, GMC 9.60.020 prohibits camping in public parks, publicly owned or maintained parking lots, public property in residential zones, and when it reduces the clear, continuous sidewalk width to less than five feet. In addition, camping is prohibited on all public property between 6:30 am and 9:30 pm, and during those hours it is also unlawful to store more than 120 cubic feet of personal property on public property. "City property" is defined as "all real property owned by the city, other than public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the city." Thus, under the current code, it is legal to camp in a vehicle on the public rights-of-way if the person complies with all other laws.

CODE AMENDMENTS TO CONSIDER

We are proposing three possible code amendments to address the stated problem, which the City Council may consider alone or in combination.

First, the City could add a subsection to GMC 10.16.021, the code related to Hazardous Vehicles, that states that a "hazardous vehicle" includes a vehicle parked illegally that has 5 parking citations, each issued on separate days, within a 30-day period. The citations should include notice that 5 citations issued within a 30-day period could result in towing without further notice when parked illegally. Then, under GMC 10.18.010, a hazardous vehicle may be impounded without prior notice, but the violator has such notice based on the previous citations. The City should also add a provision stating that if the person appeals a citation per the process in code, then that citation doesn't count against them during the 30-day period. In addition, the City should build into its internal policy that if the violator is using their vehicle for habitation, they have special access to it in order to obtain their personal belongings. (See Exhibit A for draft language.)

Another possible code amendment would be to implement a shorter, 24-hour parking limit for vehicles parked in commercial zones within the City. Currently, GMC 10.04.230(1)(g) prohibits parking or storing a vehicle for longer than 72 hours on any public street in the City in any zone,

so the City could amend the code to provide for a shorter, 24-hour period within the City's commercial zones. Additionally, the City could increase the distance a person must move their vehicle to avoid violating the time limit from one block/200 feet to three blocks/600 feet, whichever is less. (See Exhibit B for draft language.)

Lastly, the City could amend GMC Chapter 9.60 to include public rights-of-way in the definition of city property such that camping would be prohibited on all city property *including public rights-of-way* between the hours of 6:30 am and 9:30 pm. (See Exhibit C for draft language.)

These potential code amendments, or any combination of them, would help the City better address various parking issues.

Department Head
Signature

Date

 10-19-22

City Administrator
Signature

Date

EXHIBIT A

Chapter 10.16

ABANDONED AND HAZARDOUS VEHICLES*

Sections:

- 10.16.011 Abandoned vehicles prohibited.
10.16.021 Hazardous vehicles.

* Prior history:

- 10.16.010 **History:** Ord. 892 §1, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.020 **History:** Ord.892 §2, 1977; Ord. 968 §1, 1980; Repealed by Ord.1180 §1, 1993.
10.16.030 **History:** Ord. 892 §3, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.040 **History:** Ord.892 §4, 1977; Ord. 968 §2, 1980; Repealed by Ord. 1180 §1, 1993.
10.16.050 **History:** Ord. 892 §5, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.060 **History:** Ord. 892 §6, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.070 **History:** Ord. 892 §7, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.080 **History:** Ord. 892 §8, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.090 **History:** Ord. 892 §9, 1977; Repealed by Ord. 1180 §1, 1993.
10.16.100 **History:** Ord. 892 §10, 1977; Repealed by Ord. 1180§1, 1993.
10.16.110 **History:** Ord. 892 §11, 1977; Repealed by Ord. 1180§1, 1993.

10.16.011 Abandoned vehicles prohibited.

(1) No vehicle that the Police Chief, or his designee, has reason to believe is abandoned may be parked or left standing for a period in excess of twenty-four (24) hours:

- (a) Upon the right-of-way of any city, county, or state highway, street or alley, or upon any city property.
- (b) Upon the right-of-way of any private street or alley or upon any private property used by business licensees, customers, or the public.

(2) It is no defense to any of the above prohibited acts of this section that the vehicle has been moved to a different location. When a vehicle has been tagged and notice sent to the registered owner, it is not necessary to re-tag or send subsequent notice if the same vehicle violates any of the above subsections and the registered owner has not changed since the initial parking violation.

Statutory Reference: ORS 819.100 to 819.270

History: Ord. 1180 §2, 1993.

10.16.021 Hazardous vehicles.

(1) The driver of a vehicle, or if no driver is present the registered owner of a vehicle, commits the offense of hazardous vehicle when:

- (a) The vehicle blocks, impedes or interferes with the vision or normal flow of vehicular or pedestrian traffic on public or private streets;
- (b) The vehicle poses an immediate danger to the public safety, such as a vehicle with a leaking fuel system;

EXHIBIT A

(c) The vehicle is parked or left standing on a street, public or private parking lot, or other area where immediate access is needed by the fire department or the police department and their respective equipment;

(d) The vehicle is parked or left standing on a street where snow removal equipment will soon clear the street and removal of the vehicle is reasonably necessary in order to clear the street; ~~or~~

(e) The vehicle blocks or is within ten feet (10') of a fire hydrant; or;

(f) The vehicle is illegally parked and has, within the previous 30 days, received 5 or more parking citations for violation of GMC Chapter 10.04 or state parking laws, provided one or more of the citations gives notice that 5 parking citation(s) within a period of 30 days may result in impoundment under GMC 10.18.010(1) and explains procedures available for obtaining a hearing described in GMC Subsections 10.18.020(2)-(4). If the owner challenges a citation as allowed in Gladstone Municipal Code, the citation that is the subject of the challenge shall not be counted towards the threshold number of citations necessary to qualify the vehicle as a hazardous vehicle.

Statutory Reference: ORS 819.100 – 819.270

History: Ord. 1180 §2, 1993.

EXHIBIT B

10.04.230 Prohibited—Certain vehicles and places.

(1) No person shall park, store, or leave standing:

(a) A vehicle upon a bridge, viaduct, or other elevated structure used as a street or within a street tunnel unless authorized;

(b) A vehicle in an alley other than for the expeditious loading or unloading of persons or materials but in no case for a period in excess of 30 consecutive minutes;

(c) A vehicle upon a parkway or freeway, except as authorized;

(d) A vehicle in a manner which causes a traffic hazard to any normal flow of traffic;

(e) A vehicle in a manner which violates ORS 811.550, prohibiting parking on sidewalks, parkways, near fire hydrants, private drives, within intersections, crosswalks, double parking or parking in violation of posted regulatory signs;

(f) A vehicle subject to the motor carrier tax for use of highways established by ORS 767.815 on a residential street or on property adjacent to a residential street except when parking is required for deliveries to adjacent properties between 7:00 a.m. and 7:00 p.m. For purposes of this section, a “residential street” is any street which abuts property on either side of that which is zoned R-7.2, R-5 or M-R. Nothing in this section shall prohibit the parking of only the truck (or tractor) portion on private property;

(g) A vehicle upon a public street or other public property controlled by the city in excess of 24 hours in a Commercial Zone or 72 hours in any non-Commercial Zone. Failure to move a motor vehicle for 24 hours in a Commercial Zone or 72 hours in a non-Commercial Zone constitutes prima facie evidence of storage. Specific types of vehicles are subject to more stringent parking requirements as set forth in subsection (1)(h) of this section;

(h) No person shall at any time park, store, or leave standing a house or camping trailer, motor home or recreational vehicle whether attended or unattended, on any improved public highway, public street or other public way within the city limits, for a period of greater than 30 minutes, between the hours of 12:00 a.m. and 6:00 a.m.

(A) Exception. A house or camping trailer, motor home or recreational vehicle may be parked on a public street longer than the period allowed in subsection (1)(h) of this section if: (i) it is owned by the resident or guest of the resident of the property in front of which it is parked; (ii) it is parked on the public street adjacent to the lot of the resident; and (iii) it is parked on the public street no longer than 72 hours. Failure to move a motor vehicle for 72 hours constitutes prima facie evidence of violation of this section. Such vehicle must be parked in a manner which does not interfere with traffic or create a hazard by obstructing the view of drivers;

(i) Failure to move a vehicle or other personal property regulated by this section after expiration of any of the time periods set forth in subsections (g) and (h) of this section constitutes prima facie evidence of violation of this section. For purposes of subsection (g) of this section, “move” is defined as transporting the vehicle or personal property a distance of ~~one-three~~ one-three city blocks or 2600 feet, whichever is less. For purposes of subsection (h) of this section, “move” means transporting the house or camping trailer, motor home or recreational vehicle off the city’s public streets;

(j) No trailer shall be parked upon any roadway unless it is attached to a motor vehicle by which it may be propelled or drawn. This subsection shall not apply to trailers which are disabled to such an extent that the driver cannot avoid temporarily leaving the disabled trailer on the roadway; provided, that the trailer is parked in a manner which does not interfere with traffic or create a hazard. A disabled trailer must be removed within 72 hours;

(k) No vehicle shall be parked or operated on a street when the vehicle registration as indicated by registration stickers or registration card is expired;

EXHIBIT B

- (1) No vehicle shall obstruct the driveway of any post office or postal station, or park within 10 feet of a private mailbox during the hours of delivery.
- (2) No operator shall park and no owner shall allow a motorized or nonmotorized vehicle or personal property to be parked upon a street or other public property controlled by the city for the principal purpose of:
- (a) Displaying the vehicle for sale;
 - (b) Displaying advertising from the vehicle;
 - (c) Repairing or servicing the vehicle, except minor repairs or repairs necessitated by an emergency, if the total lapsed time in making the repairs does not exceed eight hours' duration, or that the owner of the vehicle has the express written permission from the Chief of Police or his designee to exceed the eight-hour limitation. In no event shall a vehicle in the process of the repair on a public street be left unattended while it is placed on jacks or blocks, or otherwise elevated.
- (3) No operator shall park and no owner shall allow a motorized or nonmotorized vehicle to be parked upon public property controlled by the city:
- (a) In a manner that violates any posted parking restriction;
 - (b) Without paying any required fee; or
 - (c) Without displaying any required permit or receipt.

Statutory Reference: ORS 810.160, 811.550 to 811.640

History: Ord. 798 §23, 1972; Ord. 951 §1, 1980; Ord. 1005 §1, 1982; Ord. 1207 §1, 1995; Ord. 1244 §2, 1997; Ord. 1298, 2000; Ord. 1373, 2006; Ord. 1380 §1, 2006; Ord. 1491 §1, 2018; Ord. 1511 §1, 2021.

[**Ed. Note:** The publication(s) referred to or incorporated by reference in this ordinance are available from the office of the City Recorder.]

EXHIBIT C

Chapter 9.60

CAMPING PROHIBITED IN CERTAIN PLACES

Sections:

- 9.60.010 Definitions.
- 9.60.020 Prohibited camping.
- 9.60.030 Violation—Penalties and enforcement.

9.60.010 Definitions.

As used in this chapter:

- (1) “To camp” means to set up, or to remain in or at, a campsite.
- (2) “Campsite” means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire, is placed, established, maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.
- (3) “City property” means and includes all real property owned by the city, ~~other than~~ including public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the city.
- (4) “To store” or “storage” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- (5) “Camp paraphernalia” means, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.
- (6) “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, or vehicles.

Statutory Reference: ORS

History: Ord. 1226 §1, 1996; Ord. 1510 §1 (Exh. A), 2021.

9.60.020 Prohibited camping.

- (1) Except as expressly authorized by the Gladstone Municipal Code, it is unlawful at all times for any persons to establish or occupy a campsite on the following city property:
 - (a) All public parks;
 - (b) In a manner reducing the clear, continuous sidewalk width to less than five feet;
 - (c) All publicly owned or maintained parking lots; and
 - (d) All public property located within an area zoned for residential use under GMC Title 17.
- (2) Except as expressly authorized by the Gladstone Municipal Code, it shall be unlawful for any person to camp or maintain a campsite on any city property during the hours of 6:30 a.m. to 9:30 p.m.
- (3) Except as expressly authorized by the Gladstone Municipal Code, it shall be unlawful for any individual to store more than 120 cubic feet of personal property, including camp facilities and camp paraphernalia, on city property during the hours of 6:30 a.m. to 9:30 p.m.
- (4) Notwithstanding the provisions of this chapter, the City Administrator or designee may temporarily authorize camping or storage of personal property on city property by written order that specifies the period of time and location:
 - (a) In the event of emergency circumstances;

EXHIBIT C

(b) In conjunction with a special event permit; or

(c) Upon finding it to be in the public interest and consistent with council goals and policies.

(5) The City Administrator may adopt administrative rules to implement any of the provisions of this chapter.

Statutory Reference: ORS

History: Ord. 1226 §1, 1996; Ord. 1236 §1, 1997; Ord. 1510 §1 (Exh. A), 2021.

9.60.030 Violation—Penalties and enforcement.

(1) Violation of this chapter is a Class “C” violation. Each day that a violation occurs will be considered a separate offense.

(2) In addition to any other penalties that may be imposed, violation of this chapter shall constitute a public nuisance and may be abated in accordance with ORS 202.077 and 203.079.

Statutory Reference: ORS 202.077, 203.079.

History: Ord. 1226 §1, 1996; Ord. 1496 §1, 2019; Ord. 1510 §1 (Exh. A), 2021.

GUIDE



Guide to Persons Experiencing Homelessness in Public Spaces

JUNE 2022

Guide to Persons Experiencing Homelessness in Public Spaces

Cities possess a significant amount of property – from parks, greenways, sidewalks, and public buildings to both the developed and undeveloped rights of way – sizable portions of a city belong to the city itself, and are held in trust for particular public purposes or use by residents. Historically cities have regulated their various property holdings in a way that prohibits persons from camping, sleeping, sitting or lying on the property. The historic regulation and management of a city’s public spaces must be reimagined in light of recent federal court decisions and the Oregon Legislature’s enactment of HB 3115, both of which direct cities to consider their local regulations within the context of available local shelter services for those persons experiencing homelessness.

As the homelessness crisis intensifies, and the legal parameters around how a city manages its public property contract, cities need guidance on how they can regulate their property in a way that respects each of its community members, complies with all legal principles, and protects its public investments. A collective of municipal attorneys from across the state of Oregon convened a work group to create this guide, which is intended to do two things: (1) explain the legal principles involved in regulating public property in light of recent court decisions and statutory enactments; and (2) provide a checklist of issues/questions cities should review before enacting or amending any ordinances that may impact how their public property is managed.

Legal Principles Involved in Regulating Public Property

Two key federal court opinions, *Martin v. Boise* and *Blake v. Grants Pass*, have significantly impacted the traditional manner in which cities regulate their public property. In addition to these two pivotal cases, the Oregon Legislature enacted HB 3115 during the 2021 legislative session as an attempt to clarify, expand, and codify some of the key holdings within the court decisions. An additional piece of legislation, HB 3124, also impacts the manner in which cities regulate public property in relation to its use by persons experiencing homelessness. And, as the homelessness crisis intensifies, more legal decisions that directly impact how a city regulates its public property when it is being used by persons experiencing homelessness are expected. Some of these pending cases will seek to expand, limit, or clarify the decisions reached in *Martin* and *Blake*; other pending cases seek to explain how the well-established legal principle known as State Created Danger applies to actions taken, or not taken, by cities as they relate to persons experiencing homelessness.

A. *The Eighth Amendment to the U.S. Constitution*

The Eighth Amendment to the U.S. Constitution states that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. In 1962, the U.S. Supreme Court, in *Robinson v. California*, established the principle that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” 370 U.S. 660 (1962).

B. *Martin v. Boise*

In 2018, the U.S. 9th Circuit Court of Appeals, in *Martin v. Boise*, interpreted the Supreme Court’s decision in *Robinson* to mean that the Eighth Amendment to the U.S. Constitution “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter ... because sitting, lying, and sleeping are ... universal and unavoidable consequences of being human.” The court declared that a governmental entity cannot “criminalize conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping.” 902 F3d 1031, 1048 (2018).

The 9th Circuit clearly stated in its *Martin* opinion that its decision was intentionally narrow, and that some restrictions on sitting, lying, or sleeping outside at particular times or in particular locations, or prohibitions on obstructing the rights of way or erecting certain structures, might be permissible. But despite the narrowness of the decision, the opinion only truly answered some of the many questions cities are rightly asking. After *Martin*, municipal attorneys could advise their clients in limited ways: some things were clear, and others were pretty murky.

One of the most commonly misunderstood aspects of the *Martin* decision is the belief that a city can never prohibit a person experiencing homelessness from sitting, sleeping or lying in public places. The *Martin* decision, as noted, was deliberately limited. Cities are allowed to impose city-wide prohibitions against persons sitting, sleeping, or lying in public, provided the city has a shelter that is accessible to the person experiencing homelessness against whom the prohibition is being enforced. Even if a city lacks enough shelter space to accommodate the specific person experiencing homelessness against whom the prohibition is being enforced, it is still allowed to limit sitting, sleeping, and lying in public places through reasonable restrictions on the time, place and manner of these acts (“where, when, and how”) – although what constitutes a reasonable time, place and manner restriction is often difficult to define.

A key to understanding *Martin* is recognizing that an analysis of how a city’s ordinance, and its enforcement of that ordinance, can be individualized. Pretend a city has an ordinance which prohibits persons from sleeping in city parks if a person has nowhere else to sleep. A person who violates that ordinance can be cited and arrested. A law enforcement officer finds 11 persons sleeping in the park, and is able to locate and confirm that 10 of said persons have access to a shelter bed or a different location in which they can sleep. If any of those 10 persons refuses to avail themselves of the available shelter beds, the law enforcement officer is within their rights, under *Martin*, to cite and arrest the persons who refuse to leave the park. The practicality of such an individualized assessment is not to be ignored, and cities are encouraged to consider the ability to make such an assessment as they review their ordinances, policies, and procedures.

What is clear from the *Martin* decision is the following:

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.

After *Martin*, what remains murky, and unknown is the following:

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?

The city of Boise asked the United States Supreme Court to review the 9th Circuit's decision in *Martin*. The Supreme Court declined to review the case, which means the opinion remains the law in the 9th Circuit. However, as other federal circuit courts begin considering a city's ability to enforce sitting, sleeping and camping ordinances against persons experiencing homelessness, there is a chance that the Supreme Court may review a separate but related opinion to clarify the *Martin* decision and provide clarity to the outstanding issues raised in this guide.

C. *Blake v. Grants Pass*

Before many of the unanswered questions in *Martin* could be clarified by the 9th Circuit or the U.S. Supreme Court, an Oregon federal district court issued an opinion, *Blake v. Grants Pass*, which provided some clarity, but also provided an additional layer of murkiness.

From the *Blake* case we also know the following:

1. 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, then the prohibition, regardless of its form, is unconstitutional.
2. Persons experiencing homelessness who must sleep outside are entitled to take necessary minimal measures to keep themselves warm and dry while they are sleeping.
3. A person does not have access to shelter if:

- They cannot access the shelter because of their gender, age, disability or familial status;
- Accessing the shelter requires a person to submit themselves to religious teaching or doctrine for which they themselves do not believe;
- They cannot access the shelter because the shelter has a durational limitation that has been met or exceeded; or
- Accessing the shelter is prohibited because the person seeking access is under the influence of some substance (for example alcohol or drugs) or because of their past or criminal behavior.

But much like *Martin*, the *Blake* decision left some unanswered questions. The key unknown after *Blake*, is: What constitutes a minimal measure for a person to keep themselves warm and dry – is it access to a blanket, a tent, a fire, etc.?

And while defining the aforementioned unknown question after *Blake* is most certainly difficult for cities, what cities must also keep ever present in their mind is the fact that the 9th Circuit Court of Appeals is presently reviewing the *Blake* decision. When the 9th Circuit finishes its review and issues an opinion, cities should reasonably expect the rules and parameters established by the Oregon district court in *Blake* to change. What types of changes should be expected, the severity of the changes, and when those changes will occur are questions municipal attorneys cannot answer at this time for their clients. Given the very real fluidity surrounding the legal issues discussed in this guide, before adopting any new policy, or revising an existing policy, that touches on the subject matter described herein, cities are strongly encouraged to speak with their legal advisor to ensure the policy is constitutional.

D. House Bill 3115

HB 3115 was enacted by the Oregon Legislature during its 2021 session. It is the product of a workgroup involving the LOC and the Oregon Law Center as well as individual cities and counties.

The bill requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness. What is objectively reasonable may look different in different communities. The bill retains cities’ ability to enact reasonable time, place and manner regulations, aiming to preserve the ability of cities to manage public spaces effectively for the benefit of an entire community.

HB 3115 includes a delayed implementation date of July 1, 2023, to allow local governments time to review and update ordinances and support intentional community conversations.

From a strictly legal perspective, HB 3115 did nothing more than restate the judicial decisions found in *Martin and Blake*, albeit a hard deadline to comply with those judicial decisions was imposed. The bill provided no further clarity to the judicial decisions, but it also imposed no new requirements or restrictions.

E. House Bill 3124

Also enacted during the 2021 legislative session, HB 3124 does two things. First, it changes and adds to existing guidance and rules for how a city is to provide notice to homeless persons that an established campsite on public property is being closed, previously codified at ORS 203.077 *et seq.*, now found at ORS 195.500, *et seq.* Second, it gives instructions on how a city is to oversee and manage property it removes from an established campsite located on public property. It is important to remember that HB 3124 applies to public property; it is not applicable to private property. This means that the rules and restrictions imposed by HB 3124 are not applicable city-wide, rather they are only applicable to property classified as public.

HB 3124 does not specify, with any true certainty, what constitutes public property. There has been significant discussion within the municipal legal field as to whether rights of way constitute public property for the purpose of interpreting and implementing HB 3124. The general consensus of the attorneys involved in producing this guide is that rights of way should be considered public property for purposes of HB 3124. If an established homeless camp is located on rights of way, it should generally be treated in the same manner as an established camp located in a city park. However, as discussed below, depending on the dangers involved with a specific location, exceptions to this general rule exist.

When a city seeks to remove an established camp site located on public property, it must do so within certain parameters. Specifically, a city is required to provide 72-hour notice of its intent to remove the established camp site. Notices of the intention to remove the established camp site must be posted at each entrance to the site. In the event of an exceptional emergency, or the presence of illegal activity other than camping at the established campsite, a city may act to remove an established camp site from public property with less than 72-hour notice. Examples of an exceptional emergency include: possible site contamination by hazardous materials, a public health emergency, or immediate danger to human life or safety.

While HB 3124 specifies that the requirements contained therein apply to established camping sites, it fails to define what constitutes an established camping site. With no clear definition of what the word established means, guidance on when the 72-hour notice provisions of HB 3124 apply is difficult to provide. The working group which developed this guide believes a cautious approach to defining the word established at the local level is prudent. To that end, the LOC recommends that if, for example, a city were to enact an ordinance which permits a person to pitch a tent between the hours of 7 p.m. and 7 a.m., that the city also then consistently and equitably enforce the removal of that tent by 7 a.m. each day, or as close as possible to 7 a.m. Failing to require the tent's removal during restricted camping hours each day, *may*, given that the word established is undefined, provide an argument that the tent is now an established camp site that triggers the requirement of HB 3124.

In the process of removing an established camp site, oftentimes city officials will also remove property owned by persons who are experiencing homelessness. When removing items from established camp sites, city officials should be aware of the following statutory requirements:

- 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 from established camping sites in counties other than Multnomah County must be stored in a facility located in the same community as the camping site from which it was removed. Items removed from established camping sites located in Multnomah County must be stored in a facility located within six blocks of a public transit station.

Cities are encouraged to discuss with legal counsel the extent to which these or similar requirements may apply to any camp site, “established” or not, because of due process protections.

F. Motor Vehicles and Recreational Vehicles

Cities need to be both thoughtful and intentional in how they define and regulate sitting, sleeping, lying, and camping on public property. Is sleeping in a motor vehicle or a recreational vehicle (RV) that is located on public property considered sitting, lying, sleeping, or camping on public property under the city’s ordinances and policies? This guide will not delve into the manner in which cities can or should regulate what is commonly referred to as car or RV camping; however, cities do need to be aware that they should consider how their ordinances and policies relate to car and RV camping, and any legal consequences that might arise if such regulations are combined with ordinances regulating sitting, lying, sleeping, or camping on public property. Motor and recreational vehicles, their location on public property, their maintenance on public property, and how they are used on or removed from public property are heavily regulated by various state and local laws, and how those laws interact with a city’s ordinance regulating sitting, lying, sleeping, or camping on public property is an important consideration of this process.

G. State Created Danger

In 1989, the U.S. Supreme Court, in *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, interpreted the Fourteenth Amendment to the U.S. Constitution to impose a duty upon the government to act when the government itself has created dangerous conditions – this interpretation created the legal principle known as State Created Danger. 489 U.S. 189 (1989). The 9th Circuit has interpreted the State Created Danger doctrine to mean that a governmental

entity has a duty to act when the government actor “affirmatively places the plaintiff in danger by acting with ‘deliberate indifference’ to a ‘known or obvious danger.’” *LA Alliance for Human Rights v. City of Los Angeles*, 2021 WL 1546235.

The State Created Danger principle has three elements. First, the government’s own actions must have created or exposed a person to an actual, particularized danger that the person would not have otherwise faced. Second, the danger must have been one that is known or obvious. Third, the government must act with deliberate indifference to the danger. *Id.* Deliberate indifference requires proof of three elements:

“(1) there was an objectively substantial risk of harm; (2) the [state] was subjectively aware of facts from which an inference could be drawn that a substantial risk of serious harm existed; and (3) the [state] either actually drew that inference or a reasonable official would have been compelled to draw that inference.” *Id.*

Municipal attorneys are closely reviewing the State Created Danger principle as it relates to the use of public spaces by persons experiencing homelessness for three reasons. First, many cities are choosing to respond to the homeless crisis, the legal decisions of *Martin* and *Blake*, and HB 3115, by creating managed homeless camps where unhoused persons can find shelter and services that may open the door to many State Created Danger based claims of wrongdoing (*e.g.* failure to protect from violence, overdoses, etc. within the government sanctioned camp). Second, in California, at least one federal district court has recently ruled that cities have a duty to act to protect homeless persons from the dangers they face by living on the streets, with the court’s opinion resting squarely on the State Created Danger principle. Third, when imposing reasonable time, place, and manner restrictions to regulate the sitting, sleeping or lying of persons on public rights of way, cities should consider whether their restrictions, and the enforcement of those restrictions, trigger issues under the State Created Danger principle. Fourth, when removing persons and their belongings from public rights of way, cities should be mindful of whether the removal will implicate the State Created Danger principle.

In creating managed camps for persons experiencing homelessness, cities should strive to create camps that would not reasonably expose a person living in the camp to a known or obvious danger they would not have otherwise faced. And if there is a danger to living in the camp, a city should not act with deliberate indifference to any known danger in allowing persons to live in the camp.

And while the California opinion referenced above has subsequently been overturned by the 9th Circuit Court of Appeals, at least one federal district court in California has held that a city “acted with deliberate indifference to individuals experiencing homelessness” when the city allowed homeless persons to “reside near overpasses, underpasses, and ramps despite the inherent dangers – such as pollutants and contaminant.” *LA Alliance for Human Rights v. City of Los Angeles*, 2022 WL 2615741. The court essentially found a State Create Danger situation when a city allowed persons experiencing homelessness to live near interstates – a living situation it “knew” to be dangerous.

Before a city official enforces a reasonable time, place, and manner restriction which regulates the sitting, sleeping and lying of persons on public property, the official should review the enforcement action they are about to take in light of the State Created Danger principle. For example, if a city has a restriction that allows persons to pitch a tent on public property between the hours of 7 p.m. and 7 a.m., a city official requiring the person who pitched the tent to remove it at 7:01 a.m. should be mindful of all environmental conditions present at the time their enforcement order is made. The same thoughtful analysis should be undertaken when a city removes a person and their belongings from the public rights of way.

How Cities Proceed

The law surrounding the use of public spaces by persons experiencing homelessness is newly emerging, complex, and ripe for additional change. In an effort to simplify, as much as possible, the complexity of this legal conundrum, below is an explanation of what municipal attorneys know cities must do, must not do, and may potentially do.

A. What Cities Must Do

In light of the court decisions discussed herein, and the recent House bills enacted by the Oregon Legislature, cities must do the following:

1. Review all ordinances and policies with your legal advisor to determine which ordinances and policies, if any, are impacted by the court decisions or recently enacted statutes.
2. Review your city's response to the homelessness crisis with your legal advisor to ensure the chosen response is consistent with all court decisions and statutory enactments.

If your city chooses to exclude persons experiencing homelessness from certain areas of the city for violating a local or state law, the person must be provided the right to appeal that expulsion order, and the order must be stayed while the appeal is pending.

3. If your city chooses to remove a homeless person's established camp site, the city must provide at least 72-hour notice of its intent to remove the site, with notices being posted at entry point into the camp site.
4. If a city obtains possession of items reasonably identified as belonging to an individual and that item has apparent value or utility, the city must preserve that item for at least 30 days so that the owner can reclaim the property, and store that property in a location that complies with state law.

B. What Cities Must Not Do

When the decisions rendered by the federal district court of Oregon and the 9th Circuit Court of Appeals are read together, particularly in conjunction with Oregon statutes, cities must not do the following:

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 cannot prohibit persons experiencing homelessness from taking necessary minimal measures to keep themselves warm and dry when they must sleep outside.
3. Cities cannot presume that a person experiencing homelessness has access to shelter if the available shelter options are:
 - Not accessible because of their gender, age, or familial status;
 - Ones which requires a person to submit themselves to religious teaching or doctrine for which they themselves do not believe;
 - Not accessible because the shelter has a durational limitation that has been met or exceeded; or
 - Ones which prohibit the person from entering the shelter because the person is under the influence of some substance (for example alcohol or drugs) or because of their past or criminal behavior.

C. *What Cities May Potentially Do*

As previously noted, the recent court decisions, and those which are presently pending before the various federal district courts and in the 9th Circuit Court of Appeals, lack clarity in many key respects. This lack of clarity, while frustrating, also provides cities some leeway to address the homelessness crisis, specifically with how the crisis impacts the management of public property.

1. Cities may impose reasonable time, place and manner restrictions on where persons, including those persons experiencing homelessness, may sit, sleep, or lie. Any such regulation imposed by a city should be carefully vetted with the city's legal advisor.
2. Cities may prohibit persons, including those persons experiencing homelessness, from blocking rights of way. Any such regulation should be carefully reviewed by the city's legal advisor to ensure the regulation is reasonable and narrowly tailored.
3. Cities may prohibit persons, including those persons experiencing homelessness, from erecting either temporary or permanent structures on public property. Given that cities are required, by *Blake*, to allow persons experiencing homelessness to take reasonable precautions to remain warm and dry when sleeping outside, any such provisions regulating the erection of structures, particularly temporary structures, should be carefully reviewed by a legal advisor to ensure the regulation complies with all relevant court decisions and Oregon statutes.
4. If a city chooses to remove a camp site, when the camp site is removed, cities may discard items with no apparent value or utility, may discard items that are in an

unsanitary condition, and may allow law enforcement officials to retain weapons, drugs, and stolen property.

5. Cities may create managed camps where person experiencing homelessness can find safe shelter and access to needed resources. In creating a managed camp, cities should work closely with their legal advisor to ensure that in creating the camp they are not inadvertently positioning themselves for a State Created Danger allegation.

D. What Cities Should Practically Consider

While this guide has focused exclusively on what the law permits and prohibits, cities are also encouraged to consider the practicality of some of the actions they may wish to take. Prior to imposing restrictions, cities should work with all impacted staff and community members to identify if the suggested restrictions are practical to implement. Before requiring any tent pitched in the public right of way to be removed by 8 a.m., cities should ask themselves if they have the ability to practically enforce such a restriction – does the city have resources to ensure all tents are removed from public property every morning 365 days a year? If a city intends to remove property from a camp site, cities should practically ask themselves if they can store said property in accordance with the requirements of HB 3124. Both questions are one of only dozens of practical questions cities need to be discussing when reviewing and adopting policies that touch on topics covered by this guide.

Conclusion

Regulating public property, as it relates to persons experiencing homelessness, in light of recent court decisions, legislative actions, and forthcoming judicial opinions is nuanced and complicated. It is difficult for cities to know which regulations are permissible and which are problematic. This guide is an attempt to answer some of the most common legal issues raised by *Martin, Blake*, HB 3115, HB 3124, and the State Created Danger doctrine – it does not contain every answer to every question a city may have, nor does it provide guidance on what is in each community’s best interest. Ultimately, how a city chooses to regulate its public property, particularly in relation to persons experiencing homelessness, is a decision each city must make on its own. A city’s decision should be made not just on the legal principles at play, but on its own community’s needs, and be done in coordination with all relevant partners. As with any major decision, cities are advised to consult with experts on this topic, as well as best practice models, while considering the potential range of public and private resources available for local communities. Cities will have greater success in crafting ordinances which are not only legally acceptable, but are accepted by their communities, if the process for creating such ordinances is an inclusive process that involves advocates and people experiencing homelessness.

Additional Resources

The League of Oregon Cities (LOC), in preparing this guide, has obtained copies of ordinances and policies that may be useful to cities as they consider their own next steps. Additionally, several municipal advisors who participated in the development of this guide have expressed a willingness to share their own experiences in regulating public rights of way, particularly as it

relates to persons experiencing homelessness, with Oregon local government officials. If you believe these additional resources may be of use to you or your city, please feel free to contact a member of the LOC's [Legal Research Department](#).

Recognition and Appreciation

The LOC wishes to extend its sincerest thanks to the municipal attorneys who assisted in the development of this guide. Attorneys from across Oregon came together over several months to vet legal theories, share best practices, and create this guide. These attorneys donated their time, experience, and resources – seeking nothing in return. And while a core team of attorneys was gathered to build this guide, the LOC recognizes that the team's work stands on the shoulders of every city and county attorney in Oregon who has been working, and who will continue to work, to assist their community in addressing the homelessness crisis. For those attorneys not specifically named below, please know your contributions are equally recognized and respected:

- Aaron Hisel, Montoya, Hisel & Associates;
- Chad Jacobs, Beery Elsner & Hammond;
- Eric Mitton, City of Medford;
- Kirk Mylander, Citycounty Insurance Services;
- Elizabeth Oshel, City of Bend;
- Mary Winters, City of Bend; and
- Grace Wong, City of Beaverton.

**WORK
SESSION
#3**

City of Gladstone Staff Report

Report Date: October 18, 2022
Meeting Date: October 25, 2022
To: Gladstone City Council
From: Jacque Betz, City Administrator

AGENDA ITEM

Selection Process for appointments to vacant Boards, Committees, and Commissions positions in 2023.

BACKGROUND

Typically, the City advertises for vacant positions on City Boards, Committees, and Commissions in November each year. The City Council makes the appointments at the last meeting in December so that the volunteers can start their term in January of the following year.

With the pending election, however, there will be a new City Council in January 2023, and staff suggests that the selection process is revised this year. We propose that the City advertise for vacant positions in November and December, with a deadline of December 12, 2022. Copies of the applications will be provided to incoming elected officials to review over the holidays. The new City Council will make the appointments at the January 10, 2023, City Council meeting.

There will be nine vacancies in 2023.

- One position for Planning Commission
- Two positions for the Budget Committee
- Three positions for the Traffic Safety Advisory Board
- One position on the Parks and Recreation Board
- Two positions on the Senior Center Advisory Board

Additionally, in May 2022, the City Council provided staff guidance to create an Ad Hoc Committee to review Gladstone City Council Rules for conformity to the new Gladstone City Charter, and to potentially review the 2013 Gladstone City Council Guidebook and make recommendations on its status. It was the consensus that staff would wait to solicit applications until after the November election, as there may be candidates not elected to the City Council wanting to participate in the Ad Hoc Committee in 2023.

Suppose the Council agrees with the staff's suggestion on the selection process for vacant Boards, Committees, and Commissions in 2023. In that case, staff will also advertise for members to participate with the Ad Hoc Committee and be appointed on January 10, 2023, City Council meeting.

If there is no consensus from the City Council to move forward with the staff's suggestion, the City will follow the typical process.

Department Head
Signature

Date


City Administrator
Signature

10-19-22

Date

