

Camping Ordinances in 2022: **Martin v. Boise, Blake v. Grants Pass, and HB 3115**

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Martin v. Boise (2018)

- 9th Circuit Opinion
- 8th Amendment to U.S. Constitution forbidding cruel and unusual punishment prohibits cities from prosecuting people experiencing homelessness for “involuntarily sitting, lying, and sleeping in public” if there are not enough shelter beds available
- Can’t punish “the unavoidable consequence of one’s status or being”
- Does not apply to persons who have access to shelter

Blake v. Grants Pass (2020)

- District of Oregon (Medford Div.) Opinion
 - On appeal to 9th Circuit
- Clarifies/extends Martin:
 - Under 8th Amd, can't punish civilly either
 - Must allow “necessary minimal measures” for people experiencing homelessness to “keep themselves warm and dry”
 - Must provide procedural due process to exclude people from public places such as parks

HB 3115 (2021)

- Codifies principles of cases in Oregon
- Provides that local law regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness
 - Affirmative defense to charge of violating such a law
 - May independently challenge reasonableness of law - Not for \$ but declaratory/injunctive relief
- “Objectively reasonable” based on totality of circumstances
 - Not one-size fits all, differs in Hillsboro vs. Astoria vs. Beaverton vs. Burns
- 7/1/23 Deadline

HB 3115 (2021)

- Common Provisions:
 - No person may camp in or upon any place where the general public has access or under a bridgetway or viaduct, unless otherwise specifically authorized by this code or by declaration of the manager in emergency circumstances.
 - CAMP, to set up or to remain in or at a campsite for the purpose of establishing or maintaining a temporary place to live.
 - CAMPSITE, a place where bedding, a sleeping bag, or other sleeping matter, or any stove or fire is placed, established or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, vehicle or part thereof.

HB 3115 (2021)

- What CAN cities do?
 - Do Nothing?
 - Create enough shelter beds
 - Time: Prohibit camping during certain hours, etc.
 - Place: Prohibit camping in certain areas of cities, such as parks, etc. or designate certain areas to camp.
 - Manner: Restrict amount and use of personal property, etc.
 - Enforce other, existing ordinances, such as scattering rubbish, fires on public properties, vandalism, etc.

HB 3115 (2021)

- What CAN cities do?
 - Do Nothing?
 - Simply repeal any restrictions on camping
 - Is your city remote enough?
 - Is the potential problem insignificant enough?
 - Is the risk worth taking?

HB 3115 (2021)

- What CAN cities do?
 - Create enough shelter beds
 - Not required by *Boise* decision or HB 3115
 - Realistic?
 - Funding?
 - Location / Accessibility
 - What is a shelter bed?
 - ❖ Accept individuals based upon their specific circumstances
 - ❖ Religious objections, gender, age, pets, durational limits, drug/alcohol use, criminal convictions, families, etc.

HB 3115 (2021)

- What CAN cities do?
 - Time: Prohibit camping during certain hours, etc.
 - What is reasonable? Sunrise to Sunset; 6:00 a.m. to 8:00 p.m.?
 - What about individuals who work at night?
 - Realistic expectations for enforcement

HB 3115 (2021)

- What CAN cities do?
 - Place: Prohibit camping in certain areas of cities, such as parks, etc. or designate certain areas to camp.
 - NIMBYism
 - Managed vs unmanaged sites
 - State Created Danger Doctrine
 - Camping in rights-of-way (obstruction limitations; dangers; ADA concerns)
 - Camping on private property

HB 3115 (2021)

- What CAN cities do?
 - Manner: Restrict amount and use of personal property, etc.
 - What is reasonable?
 - Size and amount of property that can be stored in and on public property
 - How to define “store”
 - Types of property that can be used – tents, lean to’s, shacks, tarps, etc. (what is needed to keep warm and dry?)
 - Clearing of property (see HB 3124 for “established campsites” – 72 hours notice/how and where to store property)

HB 3115 (2021)

- What CAN cities do?
 - Enforce other, existing ordinances, such as scattering rubbish, fires on public properties, vandalism, etc.
 - HB 3115 (and court decisions) do not permit violations of other ordinances
 - Car and RV ordinances (camping in vehicles is happening more and more often)
 - Use of trespass and exclusion laws (tolling while on appeal)

Community Discussions

- Regardless of which option you pursue, you will need to have meaningful community discussions.
 - Serious problem with no simple answers
 - Strong feelings on many sides
 - Need to work towards understanding of everyone's points of view – walk a mile in their shoes
 - Need to continue to review as law is evolving
 - Need to set expectations – understand from staff what is realistic
 - Need to understand limitations

Limitations of Camping Ordinances

Ordinances regulating camping do not:

- Reduce the number of persons living outside.

Homelessness will still be visible in your community until we reduce unsheltered homelessness through proven solutions.

- Provide a solution to homelessness.

Only proven solutions such as expanding prevention, outreach, and available shelter and housing options can reduce homelessness.

- Manage all the impacts that may result from camping activities.

Ordinances simply-regulate camping by providing some basic parameters that are objectively reasonable given your current local context.

Questions or Comments?

- Please feel free to call or email with any questions or comments.

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