Navigating Legal Challenges in Responding to Houselessness – Portland's Experience



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Overview

- Scope of Houselessness in Portland.
- Efforts to Address Houselessness.
- Legal Parameters and Considerations
  - Where can people live unsheltered?
    - Eighth Amendment
    - Fourteenth Amendment
    - Americans with Disabilities Act
  - Removal and storage of personal property in the public right of way.
    - Fourth Amendment
    - Fourteenth Amendment
  - Regulating the time and location of mutual aid and community support.

Scope of Houselessness Portland

Year	Sheltered/voucher hotels	Unhoused Homeless	Transitional Housing
2009	847	1,591	
2011	1,009	1,718	1,928
2013	974	1,895	1,572
2015	1,042	1,887	1,042
2017	1,752	1,668	757
2019	1,459	2,037	519
2022	1,485	3,057	686



A 65-year old homeless woman sleeps in a doorway in Portland, Ore. (Israel Bayer)

Street homelessness on the rise in Multnomah County

by **Israel Bayer** | 14 Jun 2013

A **new report released today by the City of Portland and Multnomah County** shows a 10 percent increase in street homelessness since 2011.

Report: 80 homeless people died on Portland streets in 2016

GILLIAN FLACCUS December 14, 2017



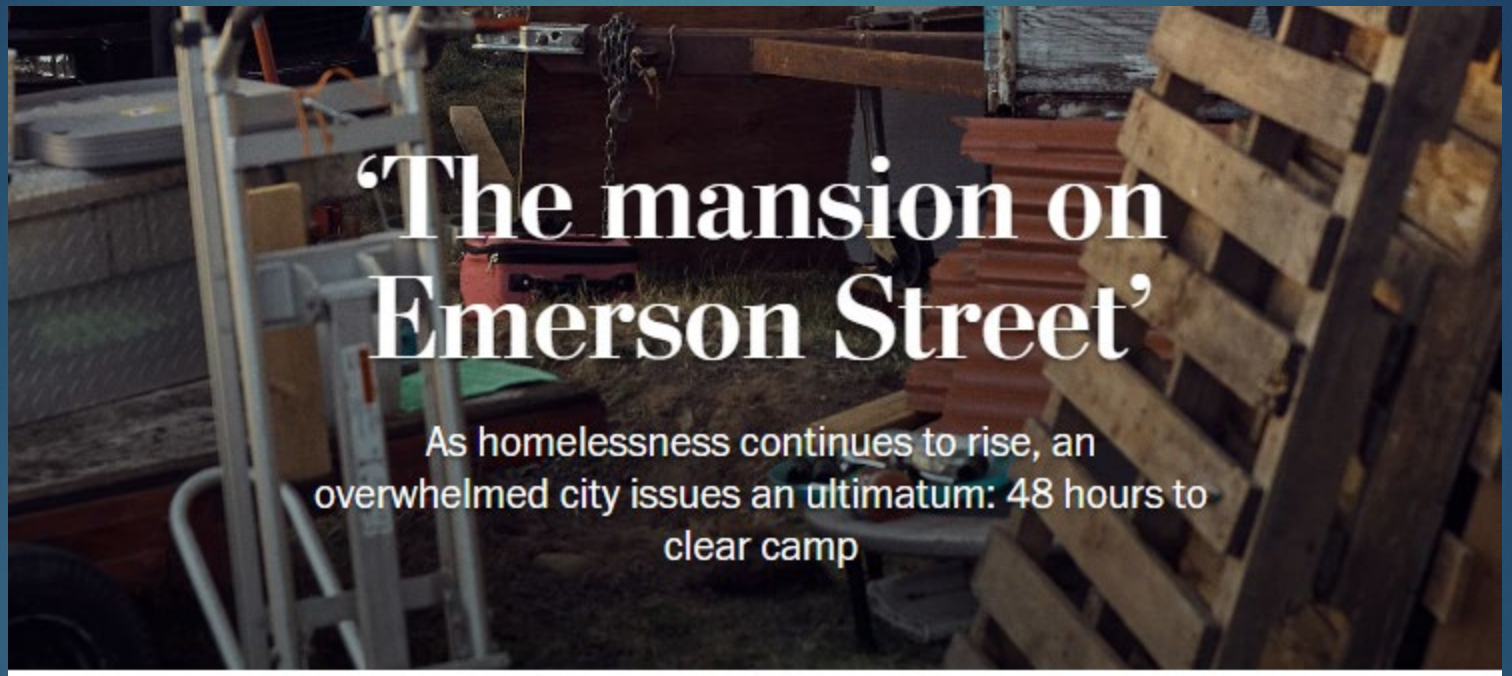
AD

Four homeless people die of exposure in Portland in first 10 days of 2017

Amid unusually brutal winter with lack of affordable housing, mayor will convert administrative building into shelter and opened up emergency beds



Portland has faced an unusually brutal winter, with temperatures dropping into the teens with record snowfall. Photograph: Shutterstock



‘The mansion on Emerson Street’

As homelessness continues to rise, an overwhelmed city issues an ultimatum: 48 hours to clear camp

Jeremy Wooldridge had spent the past two years living at this ramshackle encampment in the Sumner neighborhood of Portland, Ore. (Mason Trinca for The Washington Post)

Efforts to Address Houselessness

- Joint Office of Homeless Services
- Portland Housing Bond
- Metro Housing Bond
- Metro Homeless Services Tax
- Emergency Shelters (Extreme Weather Events)
- Safe Rest Villages
- Mayor Emergency Declarations
  - High Crash Transportation Corridors
  - Walking Routes to School

POLITICS

Portland Voters Pass Affordable Housing Measure

By Kieran Hanrahan (OPB)

Portland, Oregon Nov. 8, 2016 8:15 p.m.

POLITICS

In New Approach, Metro Leaders Ask Voters For $652 Million Housing Bond

By Anna Griffin (OPB)

Portland, Ore. Sept. 24, 2018 12 a.m.

Politics

Metro homeless services tax measure passes: Oregon election results

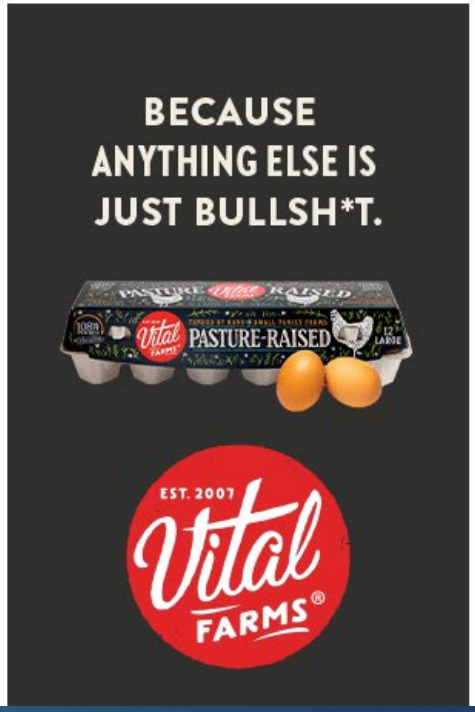
Updated: May. 20, 2020, 12:55 a.m. | Published: May. 19, 2020, 8:26 p.m.

Portland constructs 'pod' villages to address homelessness as resources dwindle

AP Gillian Flaccus and Michael Hill, Associated Press Dec 24, 2020, 5:04 PM



In this aerial photo taken with a drone, pods to be used in homeless camps are constructed in Portland, Ore., Tuesday, Dec. 8, 2020. AP Photo/Craig Mitchelldyer



Portland residents prepare for new 'Safe Rest' homeless villages

by Kellee Azar, KATU News | Friday, October 1st 2021



Portland residents prepare for new 'Safe Rest' homeless villages (KATU)

Hundreds sought refuge at cooling centers during record Portland heat wave

Updated: Aug. 02, 2022, 6:02 p.m. | Published: Aug. 02, 2022, 5:43 p.m.



A man sits next to the Salmon Street Springs fountain in downtown Portland on Tues., July 26, 2022. Temperatures were expected to reach triple digits as a heat wave that is forecast to last all week continued. Dave Killen / The Oregonian

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3 overnight shelters opening around Portland due to snow

April 12, 2022





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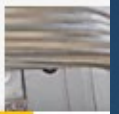

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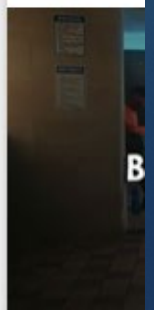

Emergency Order Banning Camping Along High Crash Corridors Went Into Effect Friday

A letter sent to Mayor Wheeler by 22 advocacy groups earlier Friday decried the ban.

Expand



camp Homeless camps in snow in December 2021. (Justin Yau)

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Portland

Portland works quickly to remove homeless camps near schools

Updated: Sep. 02, 2022, 9:38 a.m. | Published: Aug. 24, 2022, 7:00 a.m.

Mayor Will Announce Plan to Ban Unsanctioned Camping Across Portland and Build 500-Capacity Homeless “Campuses”

Many details remain uncertain, but one thing is clear: The mayor’s office is taking aggressive steps to move homeless Portlanders into large sanctioned camps.

Legal Considerations

- Where can people live unsheltered?
- What are the requirements when removing personal property from the public right of way?
- Can municipalities regulate the time and location where community members provide mutual aid and community support?

Where can people live unsheltered?

8TH AMENDMENT

- *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)
  - "[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter."
  - "Naturally, our holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible."

Where can people live unsheltered?

8TH AMENDMENT

- *Johnson v. City of Grants Pass,* 2022 WL 4492090
  - Class definition limited to *involuntarily* homeless persons is sufficient to establish commonality element for class certification. *Martin* does not require application of an individualized analysis.
  - Ordinance provision that prohibits homeless persons from using "bedding, sleeping bag, or other material used for bedding purposes," is prohibited by Eighth Amendment. "The only plausible reading of *Martin* is that it applies to the act of 'sleeping' in public, including articles necessary to facilitate sleep."
  - Injunction of portion of ordinance that prohibits the use of stoves or fires, as well as the erection of any structures, improper given the record.
  - District court instructed "to craft a narrower injunction recognizing Plaintiffs' limited right to protection against the elements, as well as limitations when shelter bed is available."

Where can people live unsheltered?

14th AMENDMENT – STATE CREATED DANGER

- *Santa Cruz Homeless Union v. Bernal*, 514 F. Supp. 3d 1136 (N.D. Cal. 2021)
  - "The Ninth Circuit recognizes liability under substantive due process where a state or local official acts to place a person in a situation of known danger with deliberate indifference to their personal and physical safety."
- Removing encampments during COVID-19?
- Confiscating shelter during inclement weather?
- Creating a village or designating an area for camping?

Where can people live unsheltered?

AMERICANS WITH DISABILITIES ACT - 42 U.S.C. § 12132

- *LA Alliance for Human Rights, et al. v. City of Los Angeles, et al.*, 14 F.4th 947 (9th Cir. 2021)
  - Plaintiffs must show that they "were denied the benefits of the City's sidewalks or were otherwise discriminated against by the City and that such denial of benefits or discrimination was by reason of their disabilities."
- Camping blocking sidewalk access.
- Affirmative services for unhoused individuals.

What are the requirements when removing personal property from the public right of way?

4TH AMENDMENT & 14TH AMENDMENT

- *Lavan v. City of Los Angeles, 693 F.3d 1022, 1025 (9th Cir. 2012)*
  - "[t]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking."
  - Affirmed injunction requiring city to leave notice that property has been taken and maintaining the property in a secure location for not less than 90 days.
- *Garcia v. City of Los Angeles*, 11 F.4th 1113 (9th Cir. 2021)
  - The fact that Plaintiffs' items are larger than sixty gallons does not reduce their possessory interests in those items.


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City crews remove large number of bicycles from street encampment on SE Alder

May 11, 2022 by Jonathan Maus (Publisher/Editor)



Crews from Rapid Response move bikes from the sidewalk on SE Alder near 30th.

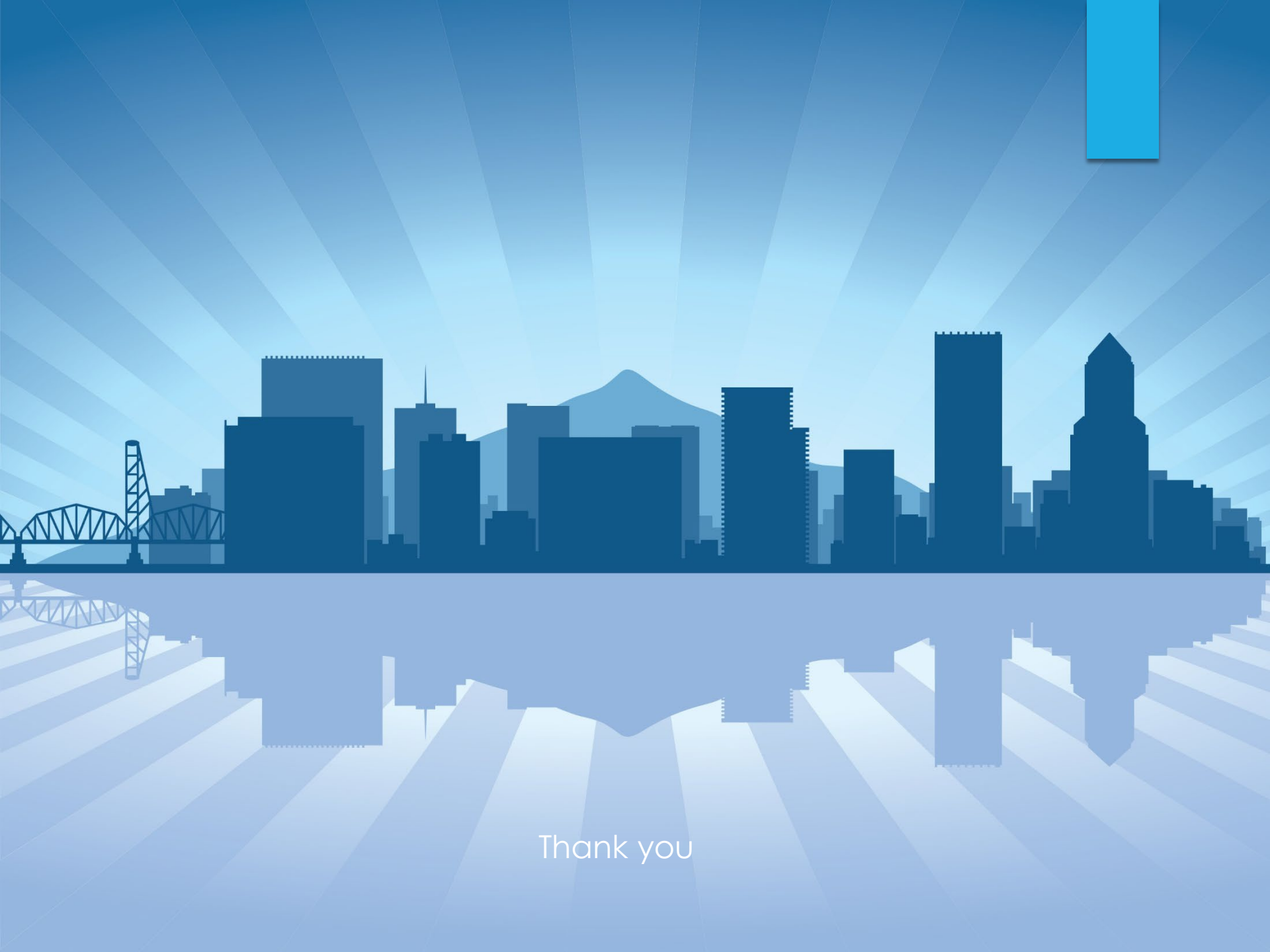
Can municipalities regulate the time and location where community members provide mutual aid and community support?

1ST AMENDMENT

- *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F3.d 1235 (11th Cir 2018)
  - (1) whether "[a]n intent to convey a particularized message was present;" and (2) whether "in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it."

Other Considerations

- Additional requirements imposed by state law.
- State and local land use requirements.


Thank you