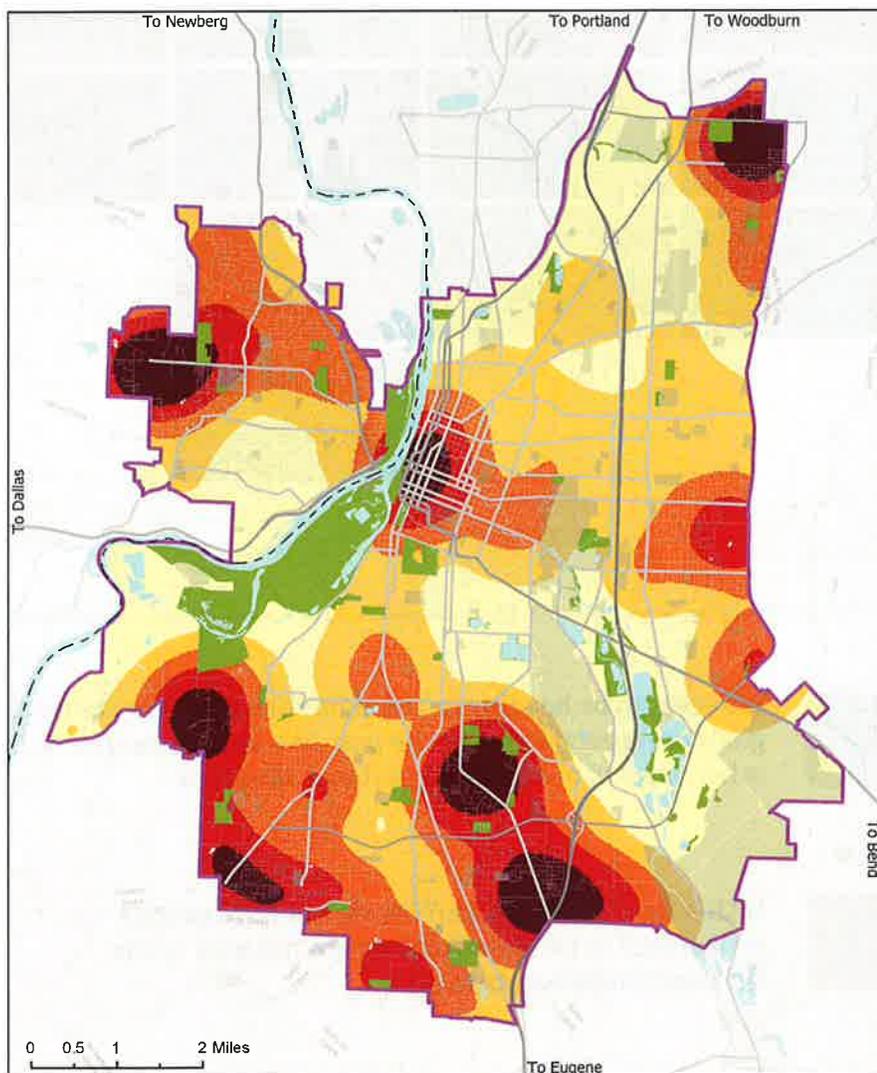


Scenario 2: HIGH POPULATION GROWTH

Housing development occurs at the maximum density allowed by existing zoning on all buildable lands.

ZONING BUILDOUT

2035: Location of new households in Salem.



Salem's Portion of UGB

Open Water

New Households

Value

Least Density of Housing

Orange

Red

Most Density of Housing

Larger Parks and Wetlands

Airport and Public lands

Population:

93,000 more people by 2035.

Development:

Much more infill and redevelopment of properties.

Complete Neighborhood

Housing near parks, transit, stores, and schools.



Bicycle and Pedestrian Use

Number of people who bike or walk to work.



GhG Emissions

Greenhouse gas emissions from electricity and travel

SCENARIO PLANNING KEY INDICATORS

More information about these indicators is available on our website:

www.cityofsalem.net/Pages/our-salem.aspx

Welcoming and Livable Community	Safe, Reliable, Efficient Infrastructure	Strong and Diverse Economy	Good Governance	Natural Environment Stewardship	Safe Community
Affordability	Walk and Transit Friendliness	Employment Mix	Revenue-to-Cost Ratio	Development in Environmentally Sensitive Areas	Traffic and Pedestrian Crashes
Housing Affordability	Access to Frequent Transit	Average Wage	Annual Level of Service (Expenditures per capita)	Tree Canopy	Active Transportation
Complete Neighborhoods	Bicycle and Pedestrian Use	Jobs and Housing Balance	Property Tax Revenue	Greenhouse Gas Emissions	
Proximity to Parks				Air Pollution from Travel	
Infill Development and Redevelopment					

Our rating system

The colored icons indicate how we think we're doing. More information is available on our website showing what we learned.

www.cityofsalem.net/Pages/our-salem.aspx



We seem to be heading in the right direction. We are meeting goals or targets we set in the past. We are comparable with other cities or are meeting national standards.



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We are not meeting targets we set for our city. We are falling behind other similar cities in this area. We seem to be moving in the wrong direction.

FOR MORE INFORMATION, PLEASE VISIT:
www.cityofsalem.net/Pages/our-salem.aspx

Eunice Kim ekim@cityofsalem.net
Project Manager 503-540-2308

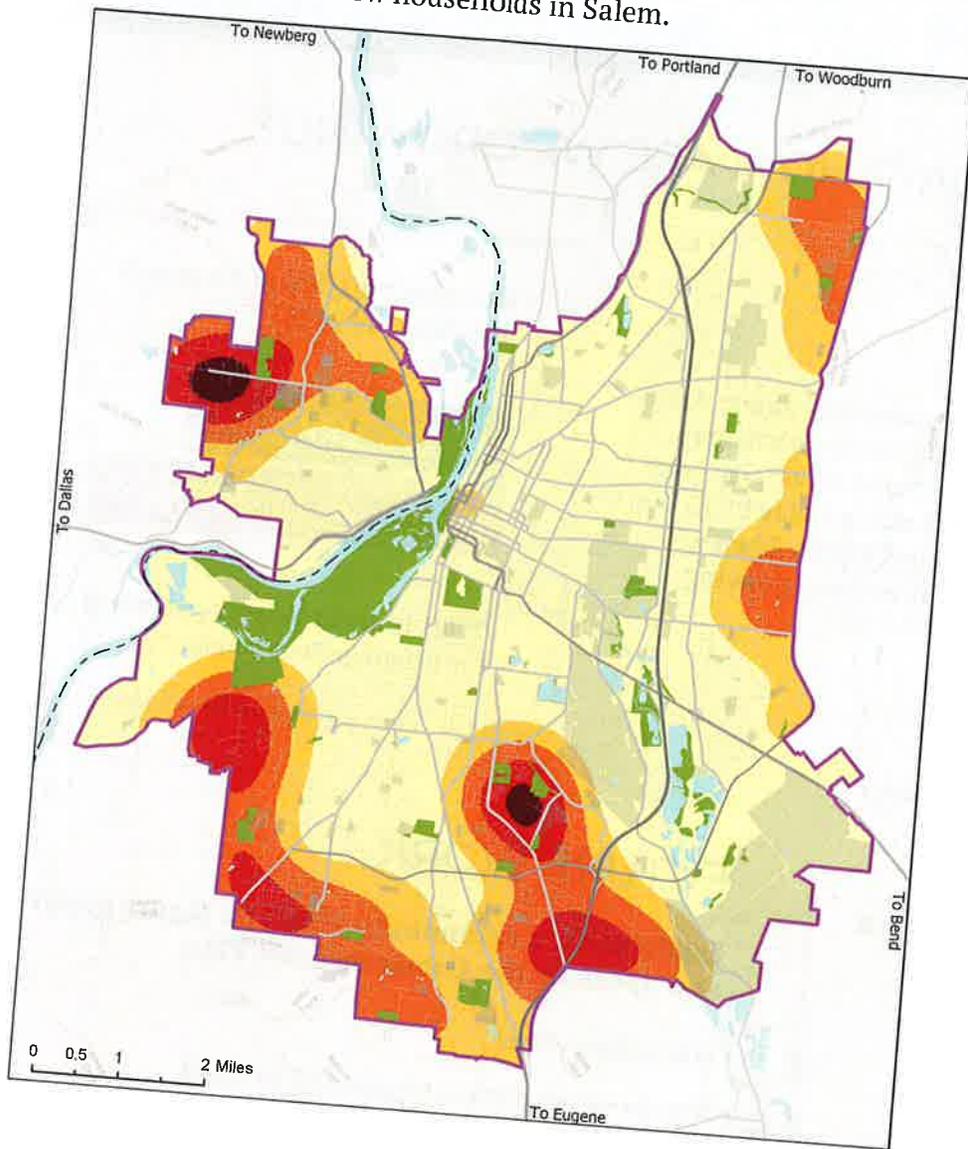
Spring
2019

Scenario 1: PREDICTED POPULATION GROWTH

Housing development follows current trends on buildable land—
lower density than what is allowed.

CURRENT TRENDS

2035: Location of new households in Salem.



Population:
54,000 more people by 2035.

Development:
Some infill and
redevelopment of properties.

For each scenario, we examined our “vitals,” some key indicators of how we’re doing as a community. Here are a few examples. For details, visit: www.cityofsalem.net/Pages/our-salem.aspx



Proximity to Parks
How far housing and jobs are from parks.



Tree Canopy
Amount of land covered by trees.



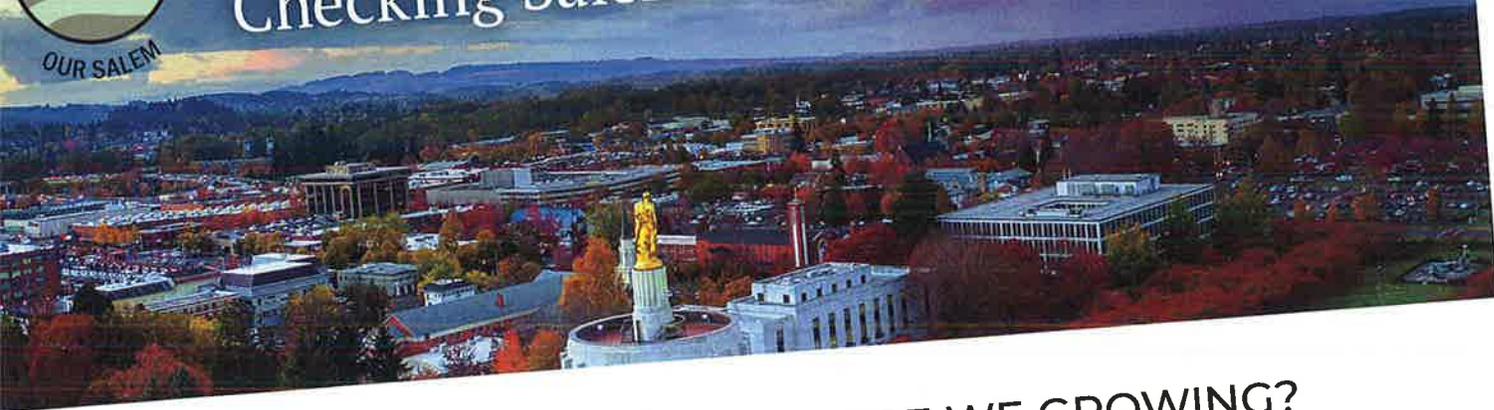
Average Wage
Average wage per job.





Our Salem Report Card

Checking Salem's vitals



HOW ARE WE DOING TODAY? HOW ARE WE GROWING?

- How livable are our neighborhoods?
- How strong is our economy?
- How sustainable is our community?

The City has launched a multi-year project to update the Salem Area Comprehensive Plan, which guides development in the Salem area. In spring 2019, we examined the existing conditions of our city—our vital signs. Specifically, we looked at how we're doing today in 20 key "indicators" that community members helped select. Then we looked at our future to see how we'll be doing if we keep growing the way we're growing.

Now we ask:

- "Are we heading in the right direction?"
- "What is our community vision for the future?"

THIS PHASE

Checking Salem's Vitals

- How are we doing today?
- What happens as we experience growth?
- Are we meeting goals and targets we've set?
- How do we compare to other cities?
- Are we heading in the right direction?

» 2018–SPRING 2019

We expect **60,000** more people in Salem* by 2035.



*This includes Salem's portion of the urban growth boundary

FUTURE WORK

Establishing a community vision for future growth, and updating the Comprehensive Plan

- What do we value?
- How do we want Salem to grow and develop?
- What goals do we have?
- How can we improve our community?
- What goals and policies do we want to guide development and how we grow?

» BEGINS SUMMER 2019



Welcoming and Livable Community

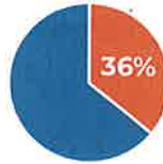
Are we heading in the right direction?



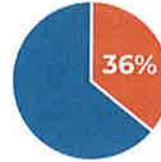
AFFORDABILITY (HOUSING + TRANSPORTATION + ENERGY)

Salem's percentage of average monthly household income used for housing, transportation, and energy expenses is below the national standard, which is 45%. This remains largely the same in the future.

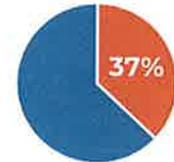
PERCENT OF INCOME SPENT ON HOUSING, TRANSPORTATION AND ENERGY



Today



2035 with current trends



2035 zoning buildout



HOUSING AFFORDABILITY

Housing prices in Salem are below our Corvallis, Eugene, and Portland Metro area neighbors. The percentage of average monthly household income used for housing is rising, similar to regional and national trends.

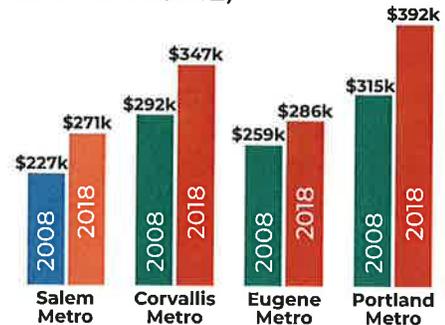
Percent of income spent on housing

Today: 22%

2035 with current trends: 23%

2035 zoning buildout: 24%

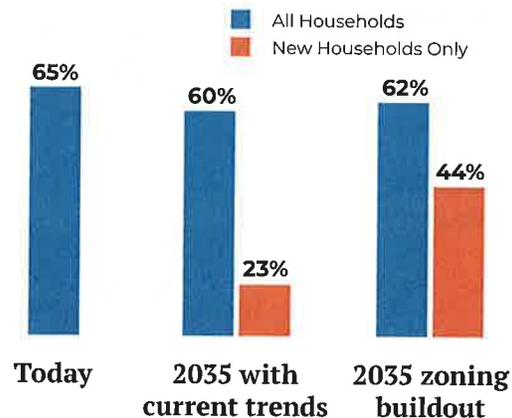
TREND OF RISING HOUSING PRICES (MEDIAN SINGLE FAMILY HOME)



COMPLETE NEIGHBORHOODS

A "complete neighborhood" means people live within walking distance of parks, schools, grocery stores, businesses, transit. Today, 65% of our households are in "complete neighborhoods" today, while Portland is only at 50%. Our percentage, however, drops in the future because many new households will be built further from existing amenities.

PERCENT OF HOUSEHOLDS IN "COMPLETE NEIGHBORHOODS"

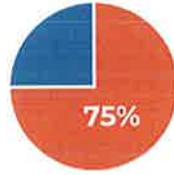




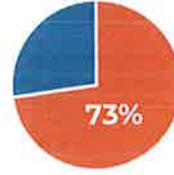
PROXIMITY TO PARKS

We looked at how close our housing in Salem is to existing parks. . Today, many of us live near a park. However, the percentage of households living within a half-mile of a park drops in the future, as new development is built further from existing or planned parks.

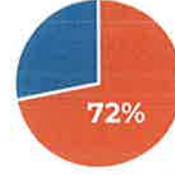
PERCENT OF PEOPLE WITHIN 1/2 MILE OF A PARK



Park access:
Today



Park access:
2035 with current trends



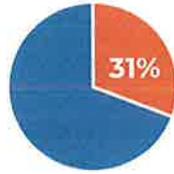
Park access:
2035 zoning buildout



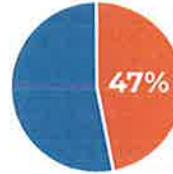
INFILL DEVELOPMENT/ REDEVELOPMENT

We calculated the number of housing units that have been and will be created from infill and redevelopment by looking at building permits since 2014. About a third of new housing development today is from recent infill or redevelopment. This will increase in the future. That aligns with existing policies that promote infill and redevelopment.

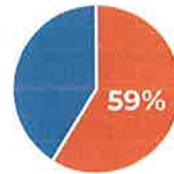
PERCENT OF NEW HOUSING THROUGH REDEVELOPMENT AND INFILL PROJECTS



Today



2035 with current trends



2035 zoning buildout



Our rating system

The colored icons indicate how we think we're doing. More information is available on our website showing what we learned.

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Safe, Reliable, Efficient Infrastructure + Safe Community

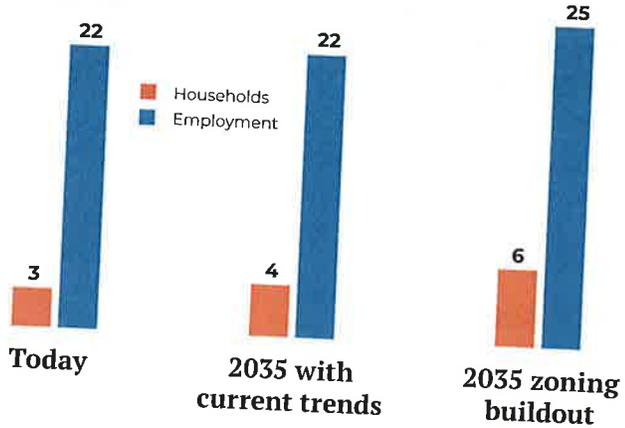
Are we heading in the right direction?



WALK AND TRANSIT FRIENDLINESS

The walk and transit friendliness score is based on ease of walking, access to transit, proximity to a variety of land uses, and other factors that allow for a range of travel choices. The score is between 0 and 100. A higher score means non-drivers—which may include seniors, youth, or mobility-challenged residents can safely access the places they need to go. Due to our development trends, we expect to stay the same. Many cities are striving to improve.

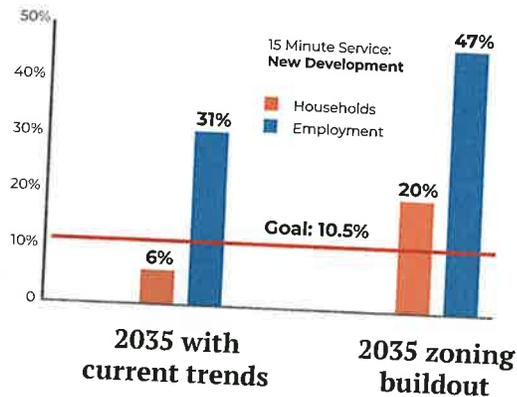
WALK AND TRANSIT FRIENDLINESS SCORE: 0-100



ACCESS TO FREQUENT TRANSIT

More than a third of our households are within 1/4 mile of frequent bus service. Looking forward, it is our adopted goal to have at least 10.5% of new housing units within 1/4 mile walking distance of a Cherriots bus stop with 15-minute service. If growth and development trends continue on the edges of the city, access to transit goes down for new households. If we develop more densely, we exceed our goal.

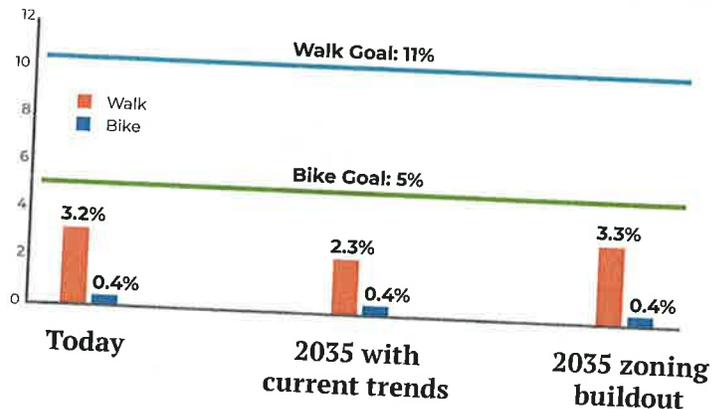
PERCENTAGE OF NEW HOUSEHOLDS WITHIN 1/4 MILE OF FREQUENT TRANSIT



BICYCLE AND PEDESTRIAN USE

Salem has adopted targets to increase walking and biking trips. By 2020, we aspire to have 3% of our trips to work be by bike and 7% of our trips to work be by foot. By 2030, we are aiming for 5% by bike and 11% by foot. We are not on track to meet these goals.

PERCENTAGE OF TRIPS BY BIKE OR WALKING

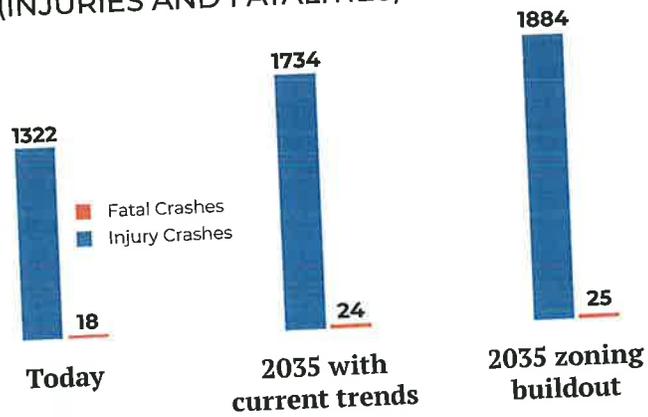




TRAFFIC AND PEDESTRIAN CRASHES

Our goal has been to reduce crashes involving pedestrians by half and to have zero traffic fatalities by 2030. Based on County and national data, the number of injury and fatal crashes is expected to rise in Salem. While the number is less per capita in the future, unfortunately, more people means more crashes.

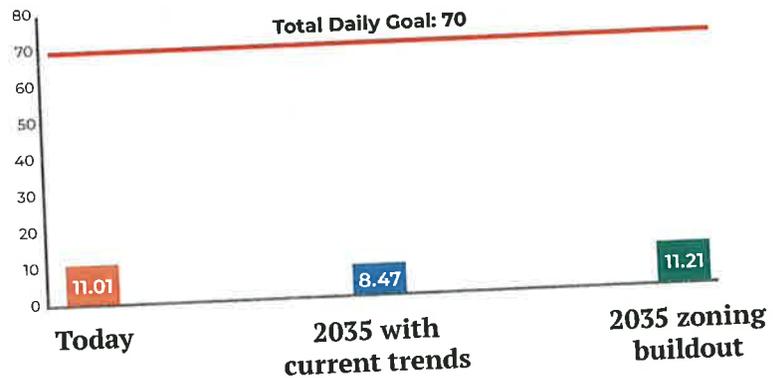
ANNUAL TRAFFIC CRASHES (INJURIES AND FATALITIES)



ACTIVE TRANSPORTATION

Exercise experts measure how active people are in metabolic equivalents, or METs. A minimum of 70 daily METs are recommended. We looked at our activity levels by only measuring METs used to get to work.

PER CAPITA DAILY METs SPENT IN ACTIVE TRANSPORTATION TO WORK



Our rating system

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Eunice Kim
Project Manager

ekim@cityofsalem.net
503-540-2308

Spring
2019



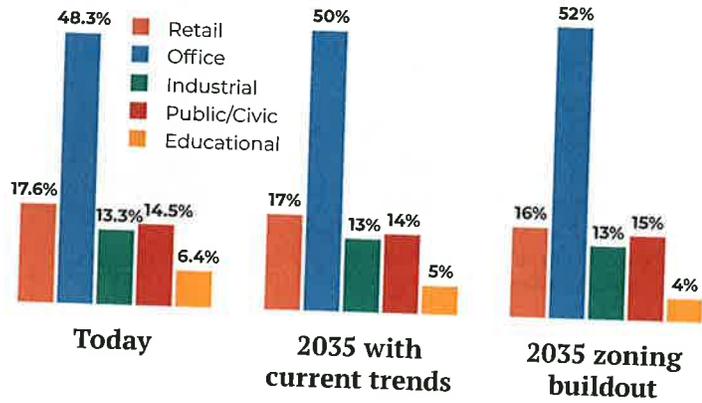
Strong and Diverse Economy + Good Governance

Are we heading in the right direction?



EMPLOYMENT MIX

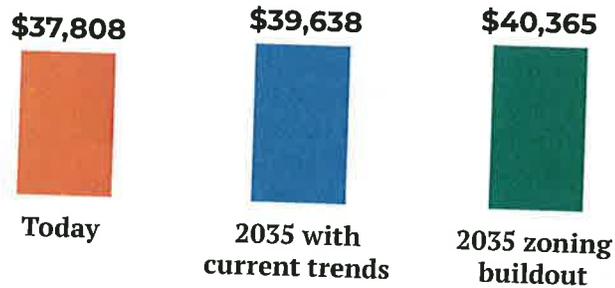
Office uses make up the largest proportion of jobs in Salem today, and are expected to make up a slightly larger share in the future. The percentage of jobs in retail, industrial, public sector, and education remains fairly steady in the future. Overall, we have a greater share of public-sector jobs than many of our peer cities.



AVERAGE WAGE

Workers in similar-sized Oregon cities earn more money than us, but our cost of living remains lower. Based on today's economy and expected population and job growth, average annual wages per job continues to increase in Salem. Wage projections are shown in today's dollar.

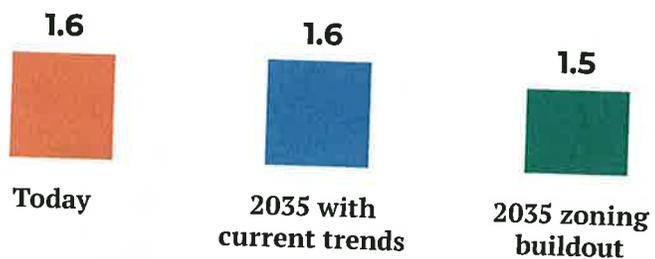
AVERAGE WAGES BASED ON TODAY'S ECONOMY AND TODAY'S DOLLAR



JOBS/HOUSING BALANCE

As our population grows, the number of new jobs also grows. A jobs-to-housing-units ratio of 1.5 jobs to 1 household is recommended by planning scholars. That is roughly the ratio in Salem today, and it remains unchanged across scenarios in the future.

RATIO BETWEEN NEW HOUSING AND NEW JOBS



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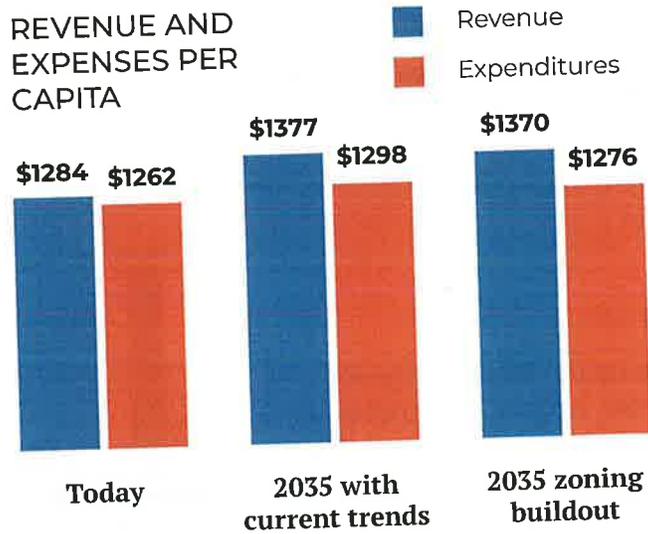


ANNUAL LEVEL OF SERVICE (EXPENDITURES PER CAPITA)

With more development in the future, the City can expect more revenue. However, costs also increase over time. The average annual revenue and expenditures per capita stays about the same. As costs for goods and services increase, however, we are able to get less with our expenditures. This is a common problem everywhere.

Note: Includes all funds and revenue sources, i.e. building permits and utility fees, not just general fund

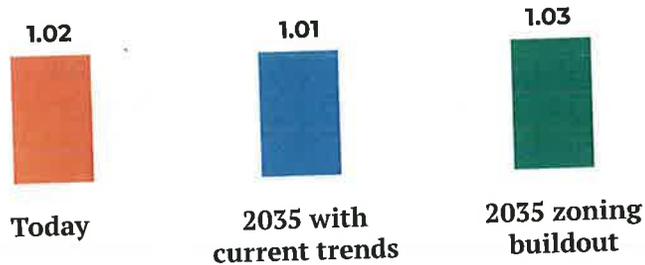
REVENUE AND EXPENSES PER CAPITA



REVENUE-TO-COST RATIO

Salem has a policy of adopting a structurally-balanced budget, which is a 1:1 ratio (revenue to cost). To see how we fare, we looked at the cost of providing infrastructure, such as pipes and roads, to each person today compared to more people in the future. It generally costs more to extend infrastructure and services to more properties than it is to make more use of existing infrastructure. Our revenue-to-cost ratio looks to be holding steady in the future.

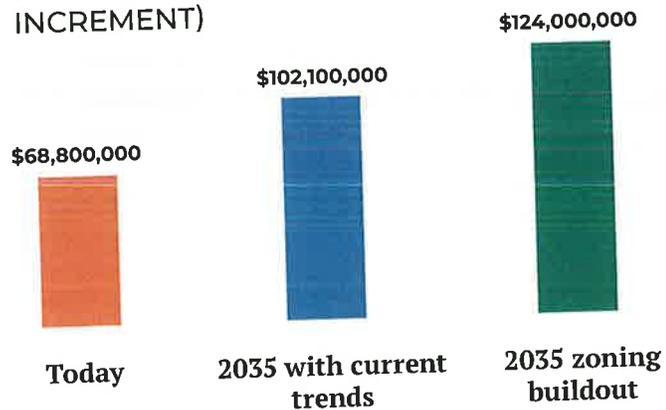
RATIO OF REVENUE TO COST



PROPERTY TAX REVENUE

Projected property tax revenue will increase with more development. This isn't good or bad – it just reflects our property tax system. Development of vacant land and redevelopment generally means more property tax revenue per acre. This is typical across the state. Higher rates of redevelopment in the zoning buildout scenario therefore results in higher revenues per acre.

ANNUAL PROPERTY TAX REVENUE (EXISTING + INCREMENT)





Natural Environmental Stewardship

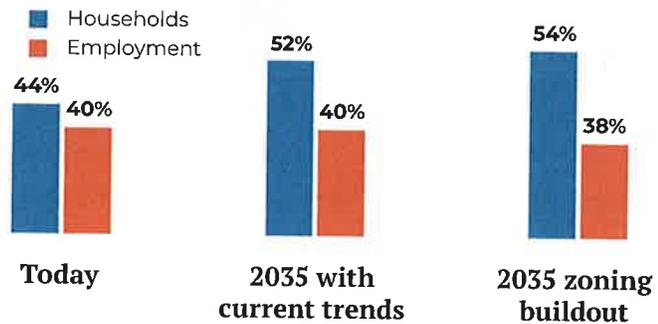
Are we heading in the right direction?



DEVELOPMENT IN ENVIRONMENTALLY SENSITIVE AREAS

With continued demand for new housing and jobs in the future, development in Salem will increase on environmentally-sensitive areas such as on steep slopes, in floodplains, or in riparian (streamside) areas. A lot of new housing will occur on steep hills in West and South Salem in the future.

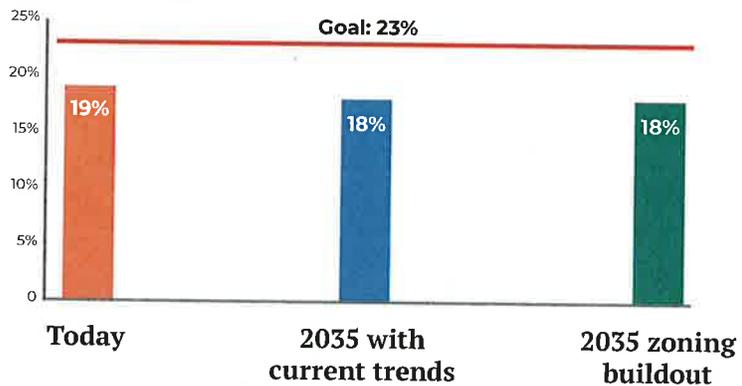
PERCENTAGE OF DEVELOPMENT IN RIPARIAN AREAS AND FLOODPLAIN



TREE CANOPY

Our target for tree canopy coverage is 23% of our land within Salem city limits. Trees provide environmental and quality-of-life benefits. We currently don't meet our target, and we expect to lose some tree canopy in the future as land continues to get developed. Tree canopy today: 19%; Target: 23%

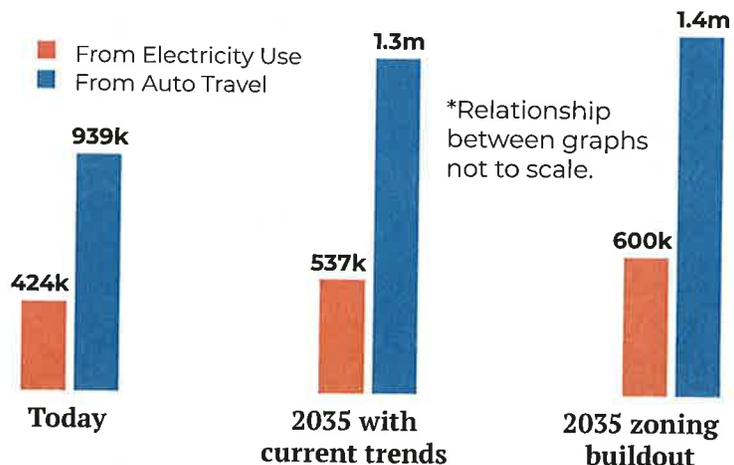
PERCENTAGE OF TREE CANOPY



GREENHOUSE GAS EMISSIONS

Greenhouse gas emissions (GhG) are known to pollute the air and cause long-term changes to climate. Emissions will increase in the future under either growth scenario. That's because the sources of emissions remain the same—such as electricity use in buildings and cars—and there will be more buildings and vehicles in the future if current development and transportation trends continue. Salem falls in the middle for GhG emissions per capita among major cities in Oregon.

ANNUAL METRIC TONS OF CO₂e

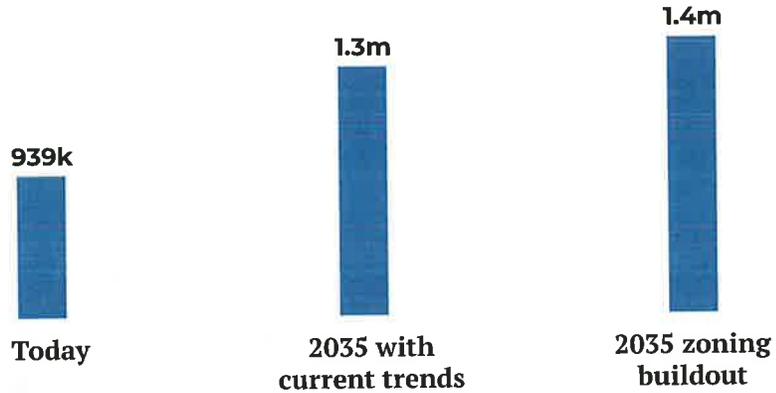




AIR POLLUTION FROM TRAVEL

The total volume of carbon dioxide due to cars—more cars—will increase under each future scenario. Cities around the world are looking to reduce air pollution.

ANNUAL METRIC TONS OF CO₂e FROM TRANSPORTATION



Our rating system

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www.cityofsalem.net/Pages/our-salem.aspx



We seem to be heading in the right direction. We are comparable with other cities. We are meeting goals or targets we set in the past.



Is this the right direction? Community members are sharing a desire for better outcomes. Other cities are working to improve in this area. Our current policies could be changed for different results.



We are not meeting targets we set for our city. We are falling behind other similar cities in this area.

FISCAL YEARS **2021 - 2025**

CITY OF *Salem*
AT YOUR SERVICE

FIVE-YEAR FORECAST



City of Salem Oregon
Five-Year Financial Forecasts
Fiscal Year 2021 through 2025

General Fund
Transportation Services Fund
Utility Fund
WVCC Fund
Airport Fund
Building and Safety Fund
Cultural and Tourism (TOT) Fund
Document Services, City Services Fund
Emergency Services Fund
Fleet Services, City Services Fund
Radio Communications, City Services Fund
Self Insurance Fund, Benefits
Self Insurance Fund, Risk
Streetlight Fund

Steve Powers, City Manager
City of Salem Budget Office
January 2020



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B – Property Tax Tables	A5 – A8
C – Other Background Information	A9 – A14

Five-Year Financial Forecasts, FY 2021 – FY 2025

The forecasts in this document were developed collaboratively with the Budget Office and other City departments.

Finance Department / Budget Office

Robert Barron, Chief Financial Officer
Josh Eggleston, Budget Officer
Kelli Blechschmidt, Administrative Analyst II
Kali Leinenbach, Management Analyst II
Ryan Zink, Senior Fiscal Analyst

Community Development Department

Forecasts: Building and Safety Fund, Cultural and Tourism (TOT) Fund

Norman Wright, Director
Rebai Tamerhoulet, Building and Safety Administrator
Chris Neider, Management Analyst II

Public Works Department

Forecasts: Streetlight Fund, Transportation Services Fund, and Utility Fund

Peter Fernandez, Director, PE
Alicia Blalock, Administration Division Manager
Mark Becktel, Public Works Operations Manager, AICP
Keith Bondaug-Winn, Management Analyst II
Heidi Rietman, Management Analyst I
Mirla Alvarez, Management Analyst I

Fire Department

Forecast: Emergency Services Fund

Mike Niblock, Chief
Rachael Hostetler, Management Analyst II

Police Department

Forecast: Radio Communications, City Services Fund, WVCC Fund

Jerry Moore, Chief
Mark Buchholz, Public Safety Communications Director
Linda Weber, Management Analyst II

Human Resources Department

Forecasts: Fleet, City Services Fund; Self Insurance Fund, Benefits; and Self Insurance Fund, Risk

Mina Hanssen, Director
Michele Bennett, HR Manager
Marcus Pitts, Risk Manager

Information Technology Department

Forecast: Document Services, City Services Fund

Krishna Namburi, Director
Tiffany Corbett, Business Services Manager

Urban Development Department

Forecast: Airport Fund

Kristin Retherford, Director
Renee Frazier, Financial Services Manager

City of Salem, Oregon

Vision

A safe and livable capital city with a sustainable economy and environment that is open to all.

Mission

The City of Salem provides fiscally sustainable and quality services to enrich the lives of present and future residents, the quality of the environment and neighborhoods, and the vitality of our economy.

Why We Forecast

A forecast is a planning tool to aid the City Council and Salem's executive management team in maintaining consistent service delivery to the community within available resources. The financial forecasts presented in this document represent one of many tools employed by staff to support the provision of services in the community through sound financial management. City staff access a variety of costing models, plans, and analyses, and use assumptions to project anticipated Citywide revenues and expenditures for the current year and the forecast period.

The mission of the City is to provide fiscally sustainable and quality services to enrich the lives of present and future residents, the quality of our environment and neighborhoods and the vitality of the economy. Fiscal sustainability – framed as *Sustainable Service Delivery* – is one of seven goal areas in the City Council's strategic plan.

The intended outcome of this goal is alignment of the cost of City services and resources and maintenance of working capital for the future through identification of the desired level of services that can be sustained with existing revenues, and exploration of alternate ways to deliver services, realize revenues, and generate cost savings. The information presented in the forecasts exemplifies City Council's commitment to the goal of *Sustainable Service Delivery* and the associated actions.

A financial forecast is a widely accepted best practice to evaluate current and future fiscal conditions. The Government Financial Officer's Association recommends that governments at all levels forecast major revenues and expenditures and that the forecast extend several years into the future. It is important to note that to realize the outcome illustrated in the forecast document, all revenue, expense, and savings assumptions would need to be experienced exactly as predicted. The General Fund section of the document includes a demonstration of variability with the forecast assumptions (page 16).

In addition to the General Fund, this document includes forecasts for 14 funds. It highlights in greater detail four of the forecasts prepared by City staff – General Fund, Transportation Services Fund, Utility Fund, and the WVCC* Fund. The forecasts are developed within the framework of City Council goals, fiscal responsibility, and continuity of City services.

*Willamette Valley Communication Center, 9-1-1 services

How To Use This Document

The General Fund, Transportation Services Fund, Utility Fund, and WVCC Fund each have a section in the document, which includes:

- a brief summary and additional information about forecast results,
- a schedule demonstrating the result of revenue and expenditure assumptions for the five-year forecast period,
- revenue and expenditure detail, and
- revenue risk factors and rankings.

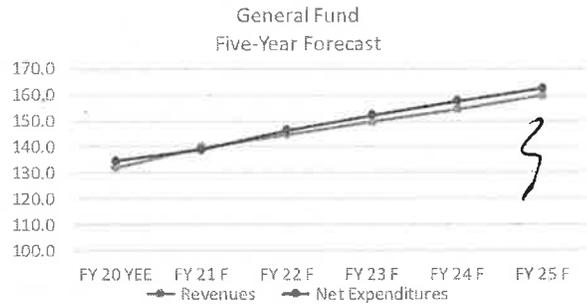
The remaining 10 fund forecasts are presented next in the document with a one-page summary for each fund. The page includes a numeric table with the five-year result, a brief narrative explanation, highlighted risk factors, and graphic displays of historical and projected revenues and expenditures.

To provide additional context for the forecasts presented in this document, a brief national, state, and local economic outlook by the City's economic consultant, Dr. Tim Duy, follows the fund forecast sections.

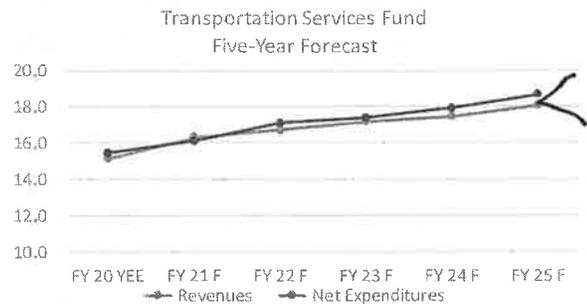
An analysis of Citywide expenditure risk factors and rankings closes the document. The appendices focus primarily on the General Fund and property tax, but also provide additional detail on assumptions employed in developing the forecasts.

Forecast Snapshot

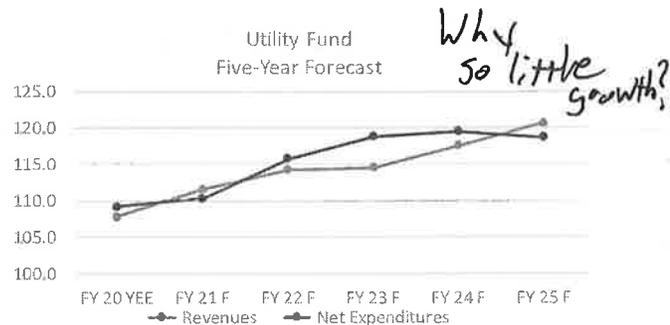
The forecast for the *General Fund* demonstrates a structural imbalance between current, available revenue and the cost of providing services. With the approval of the City Operations fee to support General Fund services, this imbalance over the forecast period is reduced, but not completely resolved. (More detail on page 8.)



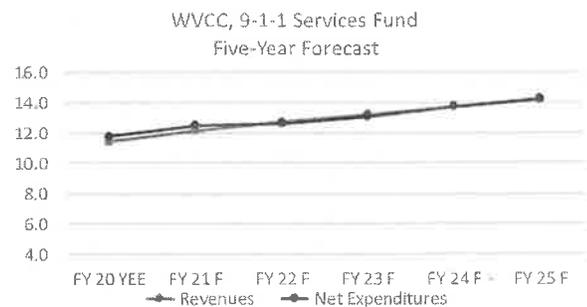
The *Transportation Services Fund* forecast reflects cost savings as the result of shifting the operation and maintenance of the streetlight system to the Streetlight Fund (forecast on page 52) and anticipated increases in state highway fund revenues. However, these two contributions are not sufficient to stall an imbalance between current revenues and the expense of transportation services. (More detail on page 19.)



Consistent rate increases are modeled in the forecast for the *Utility Fund* and provide sufficient resources to operate and maintain the water, wastewater, and stormwater utility systems over the five-year period. In addition, the forecast demonstrates an approximate \$34-39 million annual contribution through debt service payments and pay-as-you-go funding for Utility capital improvements. (More detail on page 27.)



In the past few years, the *WVCC Fund* transitioned from a period of financial stress to improved fiscal health due to the willingness of member agencies to align the rates they pay to the cost of service. This forecast includes the addition of a capital project to replace the CADD system. (More detail on page 35.)



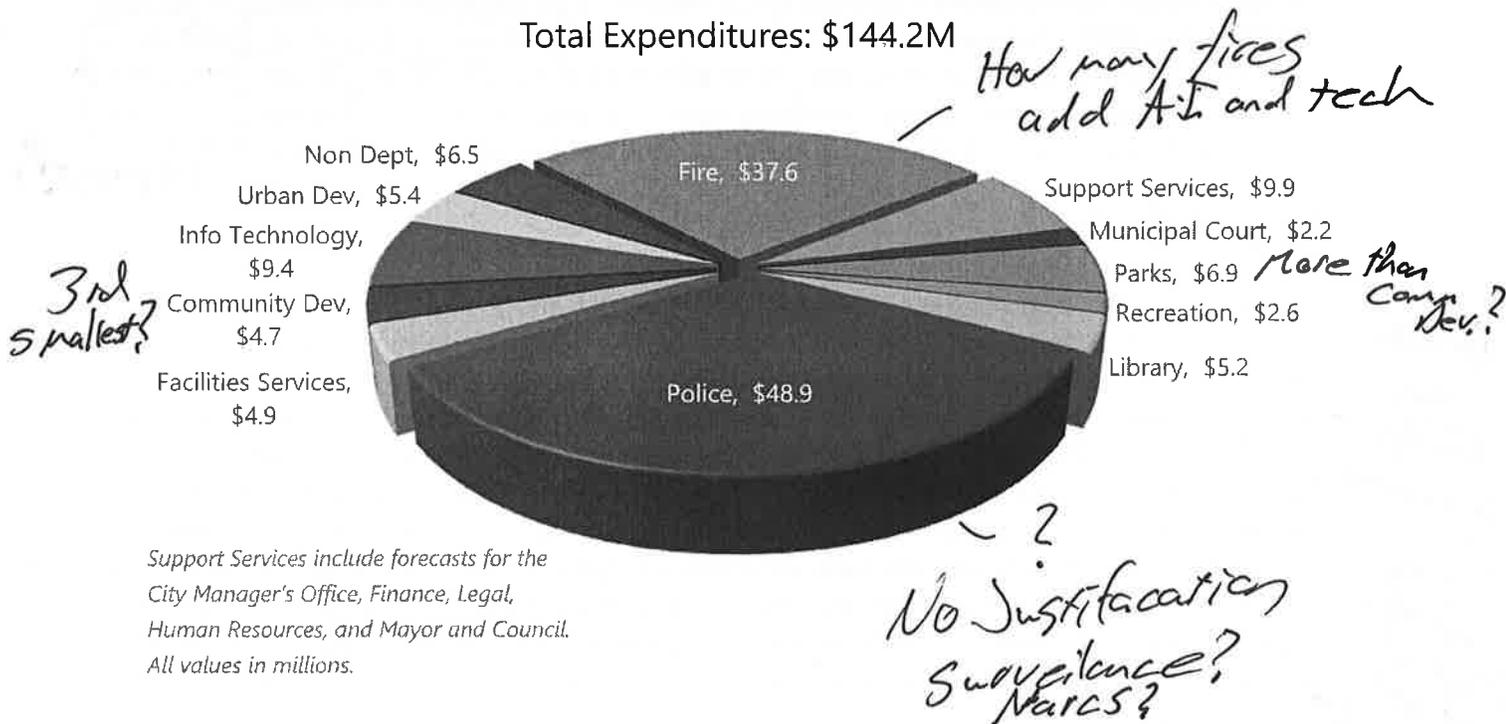
General Fund

Summary

The City's General Fund supports operations in the areas of public safety, planning, code enforcement, public library, municipal court, parks and recreation, urban development, and support services that provide a Citywide benefit. The General Fund five-year forecast is built with a baseline set of assumptions that represents a reasonable level of consistency with current service delivery.

General Fund FY 2021 Forecast

Total Expenditures: \$144.2M



The forecast is an objective proposal that seeks to estimate revenues and expenditures as accurately as possible. There are bound to be variations from the estimates. However, major drivers of expenditures and revenues are analyzed and evaluated at a very granular level. For example, property tax information is received from the counties and individual properties are compared year-over-year. This level of analysis has produced highly accurate estimates in the City's budget. Personnel costs – the major expense associated with delivering services – are calculated at the position level to afford accuracy in future year projections.

The General Fund forecast for FY 2021 – 2025 continues the trend experienced with the three most recently completed fiscal years where expenditures exceed revenues. The gap widens in this forecast with the costs of services escalating more steeply.

Current Status

The City's strong financial management practices have helped to maintain General Fund working capital at a level near the City Council's policy of 15 percent of budgeted revenues. Ensuring fiscal sustainability of City services – aligning revenues with the cost of services and maintaining sufficient working capital – is a goal area of the Council's strategic plan. Fiscal sustainability in the General Fund allows for the continuity of services valued by the community, supports a favorable credit rating and reduces borrowing costs for capital improvements, and provides resources to manage the cyclical nature of revenue receipts. The City needs nearly \$27 million in available cash or working capital to avoid borrowing and to pay for expenses from July through November each fiscal year in the General Fund.

Ue!

more to do w/ Revenue than credit Risk

FY 2020 began with working capital of \$22.2 million. The change to this balance from July 2016 to June 2019 – the span of three fiscal years – was a decrease of \$5.9 million. The year-end outlook for FY 2020 continues the use of working capital, or one-time funds, to balance anticipated expenditures. Current working capital is projected to be depleted to \$19.8 million, a reduction of \$2.4 million, by the end of the fiscal year.

3 years? WTF

Future Outlook

The outlook for the next five years is more positive than the results presented in prior forecasts. While the gap between General Fund revenues and expenditures as demonstrated in the prior two forecasts persists for most of the forecast period, revenue from the Operations Fee narrows the gap and ending working capital remains positive through the fifth year. Working capital is also positively impacted by legislative PERS changes to the amortization of unfunded liability, reducing the growth in rates. The City's actual experience for use of working capital was less than the amount documented in the prior two forecasts. This is partly due to purchases and projects carried over from one year to the next, an assumption demonstrated in the forecast display in Table 3. While the exact prediction for use of working capital in FY 2019 was not realized, the resource was accessed to balance expenditures. This trend is anticipated to continue but not to the extent of exhausting working capital during the forecast period.

Politicians always promise a rainbow

Saying last year's Fed up and left money unaccounted for

Factors contributing to the use of working capital to balance General Fund expenditures include:

FY 2021 is the second year of a biennium with employer rates for PERS Tiers 1 / 2 at 25.49 percent, an increase of 21.0 percent from the FY 2019 rate.

3% in what time frame 3 1/2?

The benefit of the 3 percent statutory limit on property tax growth is the consistent source of revenue it provides. Property tax is estimated at \$74.4 million for FY 2021, representing 54 percent of all General Fund revenues. This demonstrates the disadvantage of the consistent rate of growth for property tax is its insufficiency relative to the rate of cost increases for General Fund services. The forecast for FY 2021 through FY 2025 anticipates property valuation gains of approximately 4.1 percent, the statutory limit plus an estimated increase due to new growth.

Unions Negotiated! Look for corruption

Forecasted costs for the General Fund's two largest departments – Police and Fire – equate to \$86.5 million for FY 2021, 60 percent of the fund's budget (without contingency). The FY 2021 forecast expense for the two public safety departments exceeds the current year base budget by \$3.67 million or 4.4 percent.

Forecast Result

The outlook for the next five years, which incorporates the conditions noted above, as well as dozens of assumptions for both revenues and expenses, provides ongoing evidence of a structural imbalance between the proposed cost of General Fund services and anticipated revenues. With inclusion of the Operations Fee as a new revenue source, the imbalance is lessened but remains.

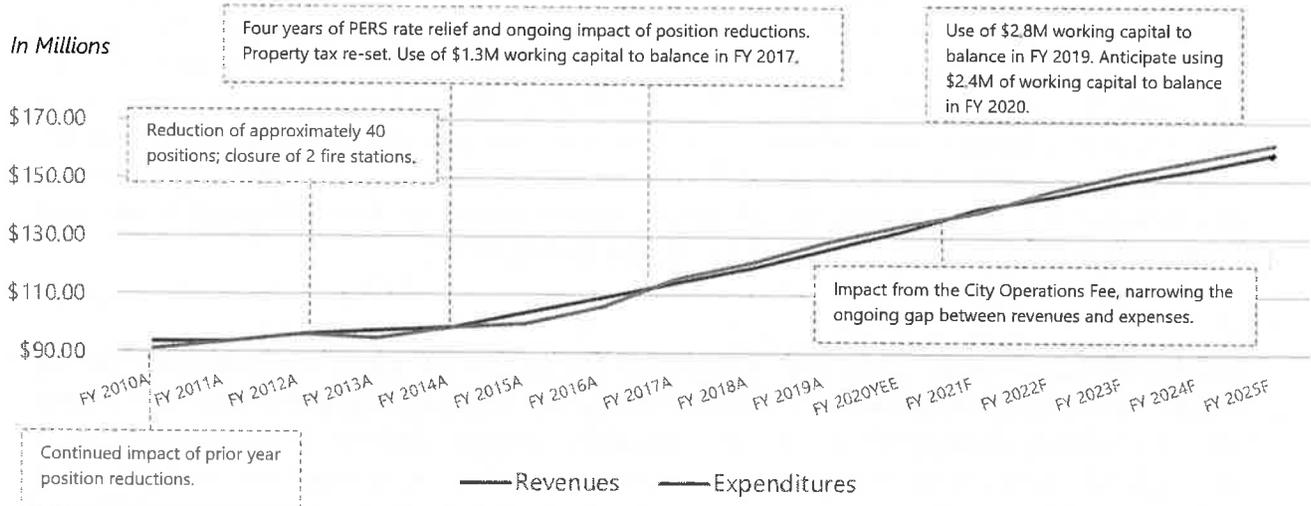
3 1/4 yrs

The fund is predicted to realize increases in almost every revenue type with an aggregate increase of 2.9 percent to 5.8 percent through the forecast period. This projected growth is not sufficient to meet the increasing costs for providing services, which are anticipated to grow by a range of 3.0 percent to 7.1 percent year-over-year. The primary drivers of expense increases for the fund remain those associated with the cost of employees.

*Who get paid
What, the most/least
department?*

The graph below illustrates recent revenue and expenditure history in the General Fund with projections for the current fiscal year and the five-year forecast period. A high-level summary of the five-year forecast with indicators of working capital status appears on the next page.

General Fund Revenue and Expenditure History and Forecast



General Fund Table 1, FY 2021 – FY 2025 Forecast Summary

(Values in Millions, YEE = Year-End Estimate, F = Forecast, WC = Working Capital)

	FY 2020YEE	FY 2021F	FY 2022F	FY 2023F	FY 2024F	FY 2025F
Beginning Working Capital	\$ 22.20	\$ 19.82	\$ 20.82	\$ 19.43	\$ 16.94	\$ 13.68
Revenues	132.24	139.92	144.99	149.75	154.45	159.69
Total Resources	\$ 154.44	\$ 159.74	\$ 165.81	\$ 169.18	\$ 171.39	\$ 173.37
Net Expenditures	\$ 134.62	\$ 138.91	\$ 146.38	\$ 152.25	\$ 157.71	\$ 162.45
Ending Working Capital	\$ 19.82	\$ 20.82	\$ 19.43	\$ 16.94	\$ 13.68	\$ 10.92
Change to WC	\$ (2.38)	\$ 1.00	\$ (1.39)	\$ (2.49)	\$ (3.26)	\$ (2.76)
WC Council Policy at 15% Revenues	\$ 19.84	\$ 20.99	\$ 21.75	\$ 22.46	\$ 23.17	\$ 23.95
Policy Compliance Status of this Forecast	\$0.01	\$0.16	\$2.32	\$5.53	\$9.49	\$13.03

Liability
tax poor!
Police
3

Forecast Result – General Fund Current Service Level Detail

The forecast expenditure base is adjusted for all known and projected service level costs. This includes market adjustments or cost-of-living increases for all represented work units, as well as non-represented staff. These increases are held at 2.5 percent in the forecast for any year not included within a current labor contract. The expenditure base also includes estimated PERS rate escalations for FY 2022 and FY 2024. Health benefits rate increases align with actuarial guidance. Most materials and services category items (professional services, supplies, equipment) have a 2.0 percent inflation during the five-year period. The forecast also includes a 1 percent expense of direct compensation for the State paid family and medical leave program that is expected to begin January 2022.

Despite increases, which align with a five-year (FY 2015 – FY 2019) compounded rate of growth, the forecast demonstrates a level of projected revenues lower than the anticipated gain in service delivery costs. It also displays savings derived from unspent fund contingencies and a level of naturally occurring savings from employee attrition and other unanticipated economies ranging from 3.6 percent in FY 2021 to 3.4 percent in FY 2025. As context, the level of aggregate savings realized in FY 2019 was 4.7 percent and FY 2020 year-end savings are estimated at 3.9 percent.

General Fund Table 2, FY 2021 – FY 2025 Forecast

B.S.

The assumptions in the forecast lead to a diminishing working capital with it falling below the minimum in the City's financial policies by year-end FY 2020. Revenues are expected to be greater than net expenditures in FY 2021 by approximately \$1 million. In the last four years of the forecast, net expenditures exceed revenues by a range of \$1.4 million to \$3.3 million. This imbalance is illustrated in Table 1 on the preceding page and with additional detail in Table 2 below.

Shelke

(Values in Millions, YE = Year-End)

	FY 2020 YE Estimate	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast
Working Capital	\$ 22.20	\$ 19.82	\$ 20.82	\$ 19.43	\$ 16.94	\$ 13.68
Revenues	132.24	139.92	144.99	149.75	154.45	159.69
TOTAL RESOURCES	\$ 154.44	\$ 159.74	\$ 165.81	\$ 169.18	\$ 171.39	\$ 173.37
TOTAL EXPENDITURES	\$ 134.62	\$ 144.17	\$ 151.79	\$ 157.77	\$ 163.35	\$ 168.18
Unspent Contingency		(2.50)	(2.50)	(2.50)	(2.50)	(2.50)
2% Savings		(2.75)	(2.91)	(3.03)	(3.14)	(3.23)
NET EXPENDITURES	\$ 134.62	\$ 138.91	\$ 146.38	\$ 152.25	\$ 157.71	\$ 162.45
ENDING WORKING CAPITAL	\$ 19.82	\$ 20.82	\$ 19.43	\$ 16.94	\$ 13.68	\$ 10.92
Chg to Working Capital	(2.38)	1.00	(1.39)	(2.49)	(3.26)	(2.76)

Operations

General Fund Table 3, FY 2021 – FY 2025 Forecast, Carryovers

The forecast outcome of Table 3 mirrors Table 2 with the addition of an estimate for carryovers in FY 2020. The General Fund always has projects or purchases that are initially budgeted in one fiscal year, but require completion in the subsequent fiscal year. Year-end estimates and forecasts assume those projects or purchases will be completed and the funds expended. However, this assumption can create a disconnect comparing the ending working capital display in the forecast for the current fiscal year (*FY 2020 YE Estimate*, Table 2) with the result of carryover expenses and resources included in the adoption of the new fiscal year budget.

Table 3 adds the impact of carryover expenditures in the *FY 2020 YE Estimate* column. This demonstration reduces net expenditures by \$1.5 million and shifts additional resources to ending working capital¹. While there is an increase to working capital for the next fiscal year, there is also the offsetting increase to total expenditures².

(Values in Millions, YE = Year-End)

	FY 2020 YE Estimate	FY 2021 Forecast	
Working Capital	\$ 22.20	\$ 21.32	1
Revenues	132.24	139.92	
TOTAL RESOURCES	\$ 154.44	\$ 161.24	
TOTAL EXPENDITURES	\$ 134.62	\$ 145.67	2
Unspent Contingency			
2% Savings			
Carryovers	(1.50)		
NET EXPENDITURES	\$ 133.12		1
ENDING WORKING CAPITAL	\$ 21.32		
Chg to Working Capital	(0.88)		

Forecast Result – Revenue Detail

The revenue estimates presented in this document rely on analysis of county property tax records, adjustments in utility rates / costs, local building activity, legislated changes, recent historical trends, and other economic drivers. The forecast uses FY 2020 revenue sources and year-end estimates augmented with assumptions for growth in all revenue categories with the exception of grants, where a base amount is applied, a one-time adjustment to franchise

fees in FY 2021, and interest income as fund balance declines. The range of growth assumptions includes:

- The impact of the full 3 percent statutory increase and 1.04 to 1.35 percent for new growth in property tax revenues. Tax receipts increase year-over-year in the forecast by \$2.9 million to \$3.4 million.
- A franchise fee base increasing by approximately 2 percent for FY 2020 estimates and ongoing aggregate increases ranging from negative 1.5 percent to 1.5 percent despite increased natural gas rates, an anticipated reduction of cable receipts with changes in technology and demand, and a reduction in telecommunications in FY 2021 to reflect changes in federal regulations.
- The cyclical effect of legislative sessions on parking revenue with an approximate 15 percent increase during a full session (FY 2021, FY 2023, FY 2025) and a small decrease for closing the library parking structure during the seismic retrofitting project.
- The impact of an increase by the state to 9-1-1 revenues in FY 2021 and FY 2022, as well as steady 3.5 percent increases to alcohol and marijuana state shared revenues drives an average 4.7 percent increase to this revenue category, which also includes taxes on cigarette sales (declining).
- Addition of the City Operations Fee which is expected to generate between \$7.2 million and \$8.0 million in each year of the forecast.
- A combination of factors influencing fine and penalty revenue including:
 - Parking fines alternating increases / decreases aligned with parking revenue.
 - A steady 2 percent increase each year in court fine revenue on an increased base comparing FY 2019 actual activity with current FY 2020 receipts.

General Fund Table 4, Revenues by Source (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Property Taxes	\$ 74.42	\$ 77.66	\$ 80.83	\$ 84.10	\$ 87.50
Sales Tax	1.16	1.20	1.25	1.29	1.33
Franchise Fees	18.08	18.35	18.62	18.89	19.17
State Shared Revenues	7.01	7.50	7.72	7.96	8.20
Fees for Services / Other Fees	11.41	11.72	12.01	12.35	12.68
Fines, Penalties, and Forfeitures	2.50	2.56	2.58	2.65	2.67
Rents, Permits, Licenses	3.68	3.54	3.76	3.59	3.81
Cost Allocation / Internal Chgs	16.47	17.28	17.88	18.50	19.14
Other Agencies, Grants	2.59	2.59	2.61	2.67	2.75
Transfer from Other Funds	1.72	1.77	1.83	1.88	1.94
Miscellaneous	.88	.82	.67	.58	.51
TOTAL REVENUES	\$ 139.92	\$ 144.99	\$ 149.75	\$ 154.46	\$ 159.69
% Change from Previous Year	5.81%	3.62%	3.29%	3.14%	3.39%

Forecast Result – Expenditure Detail

The base forecast for the General Fund is developed using cost escalation information from labor agreements, health insurance consultant analysis, up-to-date PERS rate information and estimates for future years, vendor contracts, the Consumer Price Index, and other research to inform five years of expense inflation factors. The assumption tables used for expenditures are included in appendix A. The forecast includes a general inflationary increase of 2 percent to expenses in the materials and services category.

General Fund Table 5 summarizes the five-year expenditure forecast by expense category. Increased rates for compensation market adjustments, PERS obligations, and health insurances for current employees prompt increases in personal services. The area of the table with italicized text demonstrates the effect on base expenditures of anticipated savings and unspent contingencies to provide the calculation in the *Total Net Expenditures* row. In the FY 2021 column, the percent change from the previous year (bottom row) is based on the comparison of FY 2020 year-end estimates and the FY 2021 forecast.

General Fund Table 5, Expenditures by Category (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Personal Services	\$ 112.96	\$ 119.93	\$ 125.28	\$ 130.17	\$ 134.31
Materials and Services	26.86	27.63	28.24	28.90	29.57
Capital Outlay	0.35	0.36	0.36	0.37	0.38
Debt Service	0.14	-	-	-	-
Transfers*	0.85	0.87	0.89	0.91	0.92
Contingency	3.00	3.00	3.00	3.00	3.00
TOTAL EXPENDITURES	\$ 144.17	\$ 151.71	\$ 155.77	\$ 163.35	\$ 168.18
<i>Less:</i>					
<i>Unspent Contingency</i>	<i>(2.50)</i>	<i>(2.50)</i>	<i>(2.50)</i>	<i>(2.50)</i>	<i>(2.50)</i>
<i>Anticipated Savings (2%)</i>	<i>(2.75)</i>	<i>(2.91)</i>	<i>(3.03)</i>	<i>(3.14)</i>	<i>(3.23)</i>
TOTAL NET EXPENDITURES	\$ 138.91	\$ 146.38	\$ 152.25	\$ 157.71	\$ 162.45
% Change from Previous Year	3.19%	5.38%	4.01%	3.59%	3.00%

*Transfers include funding for information technology and facilities asset maintenance projects.

Forecast Variability – Working Capital Scenarios

The graph below demonstrates variable results of the FY 2021 – FY 2025 forecast through the display of working capital - the difference between resources and expenditures for each fiscal year. There are three scenarios presented.

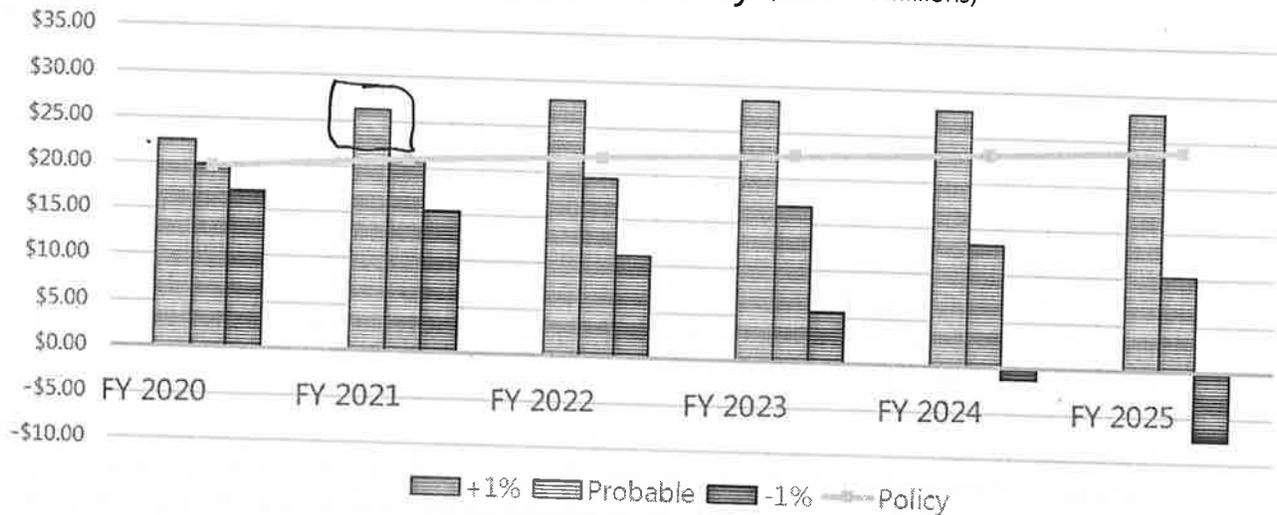
Scenario 1, Probable Scenario. The blue bar at the center of each grouping represents the result reflected in the numeric tables on the preceding pages of this document. The values reflect the forecasted levels of working capital. This result is compared against the gold horizontal line representing the dollar equivalent of City Council policy for General Fund working capital.

?

Scenario 2, Higher Revenue / Lower Expenses. The green bar in each fiscal year grouping represents the forecast result augmented by an additional 1 percent of revenue and an additional 1 percent of expenditure savings. The outcome of these variables does stabilize working capital. Working capital remains in compliance with policy throughout this scenario.

Scenario 3, Lower Revenue / Higher Expenses. The red bar uses the forecast working capital as the base for assuming 1 percent lower revenues and 1 percent higher expense for each fiscal year. The result falls well below City Council policy and working capital goes negative in FY 2024.

Working Capital Forecast Variability (Values in Millions)



General Fund Forecast Risks and Rankings

The forecast acknowledges there are risks associated with the resources needed to sustain the current level of City services, now and into the future. Each identified risk is evaluated on the degree it will impact service delivery. These evaluations of existing and potential resources assist in determining actions to be taken over the five-year period to ensure a balanced budget. The identified risks to the General Fund's resources are summarized below.

Forecast Risk – Revenue

	Ranking	FY 2021 Percent of Total Revenue
Property Tax	MEDIUM	54%
State Shared Revenue	MEDIUM	5%
Franchise Fee Revenue	MEDIUM	13%

*Shooting Range
LEGO Land?*

River Towns

*Top Gold
TYPE
Place*

*Need
New
Sources
of
Rev.*

Amusement Park

*City
Arcade*

*1
Tiki*

*Bar
Along
River*

Property Tax

Over the past several years, Salem experienced a reset in property valuations. The valuation reset prompted significant improvement for tax revenue with lowered compression losses. The forecast includes a varying increase between 3.9 and 4.3 percent in current property tax receipts for all five years. The view in the forecast includes continued development activity, which should result in an increased return on tax revenues. The forecasted growth assumption does not meet the historical growth rates of over 5 percent immediately preceding the recession. The forecast assumes the approximate 4 percent year-over-year increase is an attainable level of growth.

Marion County

Residential properties experienced growth in total Real Market Value (RMV) in FY 2020 of 8.9 percent. Continued growth in RMV maintains an adequate spread between RMV and Assessed Value (AV) to allow the full government rate of \$10.4069 per \$1,000 in AV to be realized. The revenue loss attributable to compression in FY 2019 was \$403,287 and is anticipated to be approximately \$375,299 for FY 2020. While overall nonexempt real property value grew at 10.1 percent in Marion County, AV grew at 4.6 percent for FY 2020.

Polk County

At a current general government tax rate of \$9.5477, West Salem is not experiencing compression, which is indicative of an adequate spread between RMV and AV, thus allowing AV to grow at the 3 percent statutory limit. Overall taxable RMV grew at 10.7 percent in Polk County, with AV growth at 4.4 percent for 2020, representing an increase of 1.8 percent from the prior fiscal year.

Risk Factor Ranking – MEDIUM

While property tax is a consistent revenue source, reforms are still needed to correct the inequities of the overall tax system. The City will remain involved in any effort to communicate the negative impacts of property tax limitation measures and the need for tax reform.

— Add Alternative Medicine, Herbal Supplements

State Shared Revenues

Receipts from three of five shared revenues – liquor tax, alcoholic beverage sales, and marijuana tax – are expected to experience an approximate 3.5 percent annual increase during the forecast period. Shared cigarette tax revenues are expected to decline over the five-year period. The forecast assumes the 9-1-1 tax revenue will experience an increase of 34 percent in FY 2021 and 26 percent in FY 2022 largely due to a State-approved tax increase, then grow at approximately 1.5 percent each year.

*Not
30
I
can help
it!*

Risk Factor Ranking – MEDIUM

State shared revenue sources must be defended against legislation that may divert portions of these revenues to resolving state budget challenges.

*Invest
in
Wind*

Franchise Fee Revenues

Franchise fee revenue for energy utility providers is projected to remain flat for natural gas and increase by 1.25 percent for electricity over the estimated FY 2020 base for both franchise types. Portland General Electric's rate request of about 1.9 percent was approved by the Public Utility Commission, effective January 1, 2020. A two percent increase in franchise revenue is anticipated for Salem Electric due to anticipated growth in the customer base. An average increase of about 2 percent was approved for Northwest Natural Gas effective November 2019, however, historic trends are flat or declining.

The City's water and wastewater franchise fee anticipated growth is based upon projections from the City's internal rate modeling with 2.7 to 3.1 percent rate of growth for years two through five of the forecast. Cable franchise revenue is anticipated to decline for the forecast period due to predicted changes in demand and options for consumers. Refuse hauler franchise fees are projected to grow by 3 to 4 percent in each year of the forecast period due to anticipated cost-of-service increases. No growth is forecast for telecommunications in FY 2021 due to federal regulatory changes and based on current trending, 2 percent increases are forecast beginning in year two.

Risk Factor Ranking – MEDIUM

Growth in this revenue is difficult to predict as it is influenced by the provider's billing rate, customer growth, technological changes, conservation, legislation, and weather. These fees are one of the three primary, external revenue sources in the General Fund. Potential changes need to be monitored and, in the case of legislative challenges, defended.

Transportation Services Fund Summary

The Public Works Department's Transportation Services Fund (Fund 155) supports the operation and maintenance of the City's streets, traffic signals, and sidewalks. The Transportation Services Fund provides the financial structure for the department to respond to City Council goals that address public safety, livability, environmental health, and economic development.

Current Status

~~Adoption of the streetlight fee and formation of the Streetlight Fund~~ (Fund 156), effective in FY 2016, relieved the Transportation Services Fund of about \$1.3 million in streetlight electricity and maintenance expenses. Formation of the Streetlight Fund provided immediate financial relief to the Transportation Services Fund, which had experienced an ongoing imbalance between current revenue and the cost of providing transportation services. In 2017, the Oregon State Legislature passed HB 2017, *Keep Oregon Moving*, providing increases in State Highway Fund revenue for the purpose of making a significant investment in transportation. State Highway Fund revenue, distributed by formula to local jurisdictions, is anticipated to increase over the next five years. As a result of the relief from streetlight expenses and the anticipated increase in State Highway Fund revenue, an annual \$400,000 General Fund contribution to the Transportation Services Fund was eliminated in FY 2019. B.S.

Assuming anticipated State Highway Fund revenue increases are realized, the Transportation Services Fund will be able to sustain basic operations. Existing funding is insufficient to support any significant structural pavement maintenance or reconstruction activity. Beginning in FY 2019, the fund has supported a small annual allocation for safe crossings, transportation opportunity grants, and limited preventive pavement maintenance. In 2019, pavement projects on Orchard Heights NW and Market Street NE represented a \$3.92 million investment and resulted in the use of \$1.80 million of beginning working capital. While these projects represent important investments, this level of pavement maintenance is not sustainable.

Future Outlook

This five-year forecast is an analysis of the Transportation Services Fund based upon current and reasonable economic assumptions. It provides a view of the financial impacts of the City's services, priorities, and policies within the context of national, state, and local economic factors; emerging vehicle technologies; worldwide and regional petroleum supplies and prices; consumer behavior; and growth in primary revenue sources. The forecast includes a variety of assumptions for expenditure activity over five years. The primary drivers increasing expenditures include: wages, Public Employees Retirement System (PERS) rates, health care, energy, and inflation on contracted goods and services. The tables for the expenditure assumptions are included in appendix A.

The primary funding source for Transportation Services is the City's monthly allocation of State Highway Fund revenues, which includes motor vehicle fuel taxes; heavy commercial vehicle weight / mile taxes; and title, licensing, and registration fees.

The Oregon Department of Transportation (ODOT) provides a forecast of State Highway Fund revenue. This Transportation Services Fund forecast is based on the ODOT forecast published in October 2019 which includes anticipated increases as a result of new legislation. The 2019 forecast is more conservative than prior years and accounts for the many factors that impact fuel usage trends including changes in the consumers' fleet (fuel efficient, hybrid, and electric vehicles) and the effect of retail fuel prices on consumption. The most recent ODOT forecast for Salem reflects nearly a 7.0 percent increase from FY 2020 to FY 2021 and assumes conditional increases in January 2020, 2022, and 2024 based on accountability requirements in the legislation. If these requirements are not met, there is a risk that revenue forecasts will be reduced in 2022 or 2024.

Expenditures in the City's forecast are proposed to include minimal asphalt paving using in-house City resources to complete a combination of maintenance overlays as well as mill and inlay repairs. Preventive pavement maintenance, including crack seal and slurry seal treatments, will also be continued on residential and higher traffic volume streets. Available funding is insufficient to support ongoing structural pavement rehabilitation projects beyond this limited in-house maintenance program. Five positions are proposed as conversions from seasonal labor to support the in-house paving program. Costs are partially offset by a reduction in seasonal labor. The forecast also includes the addition of one street maintenance position to support street sweeping activities which are fully reimbursed with stormwater revenue.

In compliance with the Americans with Disabilities Act (ADA), whenever a street surface is altered, all necessary ADA facilities are installed or upgraded. Accessibility improvements represent about 30 percent of the current street overlay program expenditures. The City will continue a sidewalk repair program along ADA prioritized pedestrian routes with the Sidewalk Rehabilitation Team. The Sidewalk Response Team will conduct smaller planned improvements and temporary maintenance, such as sidewalk patching and grinding in response to identified hazards in neighborhoods. The City will also continue important routine maintenance activities such as signs, markings, striping, right-of-way landscape and tree maintenance, snow and ice response, shoulder / alley grading, pedestrian and bicycle safety improvements, and traffic signal operations and maintenance.

The forecast employs a 4 percent savings rate, consistent with recent experience, which supports the assumption that ongoing efforts to reduce costs will have a corresponding impact on the capacity to save. Values in the forecast are represented in millions and have been rounded to the nearest ten thousand.

Forecast Result

Transportation Services Fund Current Service Level Detail

The forecast is based on the service level represented by Transportation Services' FY 2020 budget and maintains the \$1.7 million annual program for sidewalk maintenance and replacement, including the Sidewalk Response Team, during the five years of the forecast. The forecast also maintains \$3.5 million each year for pavement maintenance activities that include trench patching, asphalt and concrete road surface maintenance, and preventive crack seal or slurry seal contracts. Legislated gas tax increases will provide an increase to State Highway Fund revenue - the primary revenue source for the Transportation Services Fund. Routine activities such as signs, markings, striping, right-of-way landscape and tree maintenance, snow and ice response, shoulder / alley grading, pedestrian and bicycle safety improvements, and traffic signal operations and maintenance are supported throughout the forecast period. Available revenue is insufficient to fund an ongoing structural pavement rehabilitation program. Large capital investments in the transportation system will require supplemental funding through future bond measures.

A greater level of pavement maintenance and sidewalk replacement is desired over time. The 2018 Sustainable Services Revenue Task Force recommended City Council explore three revenue generating opportunities. The first two represented revenues to the General Fund. The Operations Fee is set to begin in February 2020, and the payroll tax will be referred to voters in May 2020. The third recommendation, a local option gas tax, remains to be considered and would be referred to voters at some point in the future. If enacted at a rate of \$0.06 per gallon, a local option gas tax is anticipated to provide \$4.8 million in annual resources. A portion of these resources could be directed toward maintaining existing programs at current levels, as costs continue to escalate, and a portion could be directed to capital projects for pavement and sidewalk rehabilitation and replacement. A local option gas tax requires voter approval. A local tax allows all who benefit from the transportation system - residents, workers, and visitors - to contribute to its maintenance.

The City will continue to monitor revenue and expenditures to balance resources with the escalating cost of providing desired services. The City will annually review the fiscal health of the fund and reevaluate program priorities should the current levels of service become unsustainable.

TS Fund Table 1, FY 2021 – FY 2025 Forecast Summary

(Values in Millions, YEE = Year-End Estimate, F = Forecast)

	FY 2020YEE	FY 2021F	FY 2022F	FY 2023F	FY 2024F	FY 2025F
Beginning Working Capital	\$ 3.05	\$ 2.73	\$ 2.94	\$ 2.53	\$ 2.34	\$ 1.86
Revenues	15.14	16.32	16.71	17.18	17.45	18.06
Total Resources	\$ 18.19	\$ 19.05	\$ 19.65	\$ 19.71	\$ 19.79	\$ 19.92
Net Expenditures	\$ 15.46	\$ 16.11	\$ 17.11	\$ 17.37	\$ 17.93	\$ 18.66
Ending Working Capital	\$ 2.73	\$ 2.94	\$ 2.53	\$ 2.34	\$ 1.86	\$ 1.27
<i>Change to Working Capital</i>	<i>\$0.31</i>	<i>\$0.21</i>	<i>\$0.41</i>	<i>\$0.19</i>	<i>\$0.48</i>	<i>\$0.60</i>

Table 2 is the full summary of the Transportation Services Fund forecast, including the components of *Net Expenditures*. Personal services costs in this forecast are based on current labor contracts, and in the later years of the forecast, annual adjustments to salary are 2.5 percent. The forecast also includes a 1 percent expense of direct compensation for the State paid family and medical leave program that is expected to begin January 2022.

TS Fund Table 2, FY 2021 – FY 2025 Forecast Summary

(Values in Millions, YE = Year-End)

	FY 2020 YE Estimate	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast
Working Capital	\$ 3.05	\$ 2.73	\$ 2.94	\$ 2.53	\$ 2.34	\$ 1.86
Revenues	15.14	16.32	16.71	17.18	17.45	18.06
TOTAL RESOURCES	\$ 18.19	\$ 19.05	\$ 19.65	\$ 19.71	\$ 19.79	\$ 19.92
TOTAL EXPENDITURES	\$ 15.46	\$ 17.25	\$ 18.29	\$ 18.56	\$ 19.15	\$ 19.90
Unspent Contingency		(0.50)	(0.50)	(0.50)	(0.50)	(0.50)
4% Savings		(0.64)	(0.67)	(0.69)	(0.72)	(0.74)
NET EXPENDITURES	\$ 15.64	\$ 16.11	\$ 17.11	\$ 17.37	\$ 17.93	\$ 18.66
ENDING WORKING CAPITAL	\$ 2.73	\$ 2.94	\$ 2.53	\$ 2.34	\$ 1.86	\$ 1.27
Chg to Working Capital	(0.31)	0.21	(0.41)	(0.19)	(0.48)	(0.60)

Forecast Result – Revenue Detail

The revenue forecast is developed using conservative growth expectations for Transportation Services' revenue sources. It reflects current revenues, acknowledges the continued anticipated impact of HB 2017, and assumes no new or unrealized revenues. Approximately 80 percent of Transportation Services' resources (excluding beginning working capital) come from State Highway Fund revenue. The statewide motor vehicle fuel tax increased in January 2018 and is currently 34 cents per gallon of retail fuel sold.

With HB 2017, additional increases of 2 cents per gallon are anticipated in 2020, 2022, and 2024 subject to the state meeting accountability and reporting requirements. The State Highway Fund's revenue distribution is approximately 50 percent to the Oregon Department of Transportation, 30 percent to counties, and 20 percent to cities. Cities' allocations are based on population and Salem's portion is 5.72 percent of the total available.

Table 3 summarizes the five-year revenue forecast by revenue source. This table demonstrates all revenues anticipated to be received in the Transportation Services Fund. Approximately 15 percent of State Highway Fund revenues received in the Transportation Services Fund are subsequently transferred to the General Fund to support Parks Operations' maintenance of the City's street trees and landscaping in the public rights-of-way. This transfer is included in the expenditure forecast.

TS Fund Table 3, Revenues by Source (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
State Highway Revenue	\$ 13.17	\$ 13.37	\$ 13.71	\$ 13.87	\$ 14.34
Intra City Billings and Transfers	2.35	2.52	2.63	2.72	2.84
Other Agencies, Grants	0.48	0.49	0.51	0.52	0.54
All Other Sources	0.32	0.33	0.33	0.34	0.35
TOTAL REVENUES	\$ 16.32	\$ 16.71	\$ 17.18	\$ 17.45	\$ 18.06

Forecast Result – Expenditure Detail

The expenditure forecast is developed based on anticipated increases in the cost of labor, materials, and capital. When available, it uses known expenditure information such as labor agreements, vendor contracts, PERS rates, health care cost increases, and inflation factors.

Table 4 summarizes the five-year expenditure forecast by expense category. The forecast assumes \$1.7 million for sidewalk maintenance programs and \$3.5 million for pavement maintenance activities annually. City crews will undertake the majority of this work through utility trench patching, pothole repair, skin patching, focused mill and inlay repair, and overlays. Approximately \$220,000 is planned for annual preventive pavement maintenance contracts. Revenue is insufficient to sustain a pavement rehabilitation and construction program. Expenditure assumption tables are included in appendix A. Projected growth in service delivery costs is anticipated to result in a decline in working capital of nearly \$1.5 million by the end of the forecast period (see Table 2, Ending Working Capital row), even with the elimination of pavement rehabilitation contracts.

TS Fund Table 4, Expenditures by Category (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Personal Services	\$ 7.02	\$ 7.64	\$ 7.94	\$ 8.33	\$ 8.67
Materials and Services	8.92	9.18	9.33	9.58	9.83
Capital Outlay	0.08	0.31	0.14	0.14	0.14
Transfers	0.73	0.66	0.65	0.60	0.76
Contingency	0.50	0.50	0.50	0.50	0.50
TOTAL EXPENDITURES	\$ 17.25	\$ 18.29	\$ 18.56	\$ 19.15	\$ 19.90
<i>Less:</i>					
<i>Unspent Contingency</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>
<i>Anticipated Savings (4%)</i>	<i>(0.64)</i>	<i>(0.67)</i>	<i>(0.69)</i>	<i>(0.72)</i>	<i>(0.74)</i>
TOTAL NET EXPENDITURES	\$ 16.11	\$ 17.11	\$ 17.37	\$ 17.93	\$ 18.66

Forecast Variability – Working Capital Scenarios (Values in Millions)

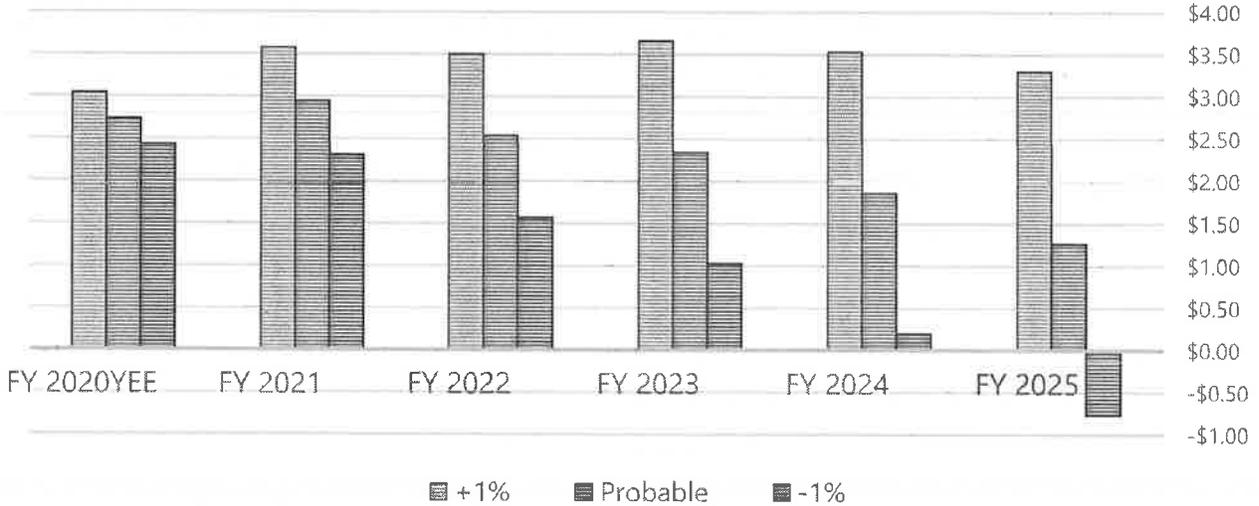
The graph below demonstrates variable results of the FY 2021 – FY 2025 forecast through the display of working capital - the difference between resources and expenditures for each fiscal year. There are three scenarios presented.

Scenario 1, Probable Scenario. The blue bar at the center of each grouping represents the result reflected in the numeric tables on the preceding pages of this document. The values reflect the forecasted levels of working capital.

Scenario 2, Higher Revenue / Lower Expenses. The green bar in each fiscal year grouping represents the forecast result to working capital augmented by an additional 1 percent of revenue growth and an additional 1 percent of expenditure savings. For the Transportation Services Fund, these changes represent increases to working capital of \$324,240 to \$367,220 each year of the forecast.

Scenario 3, Lower Revenue / Higher Expenses. The red bar uses the forecast working capital as the base for assuming 1 percent lower revenues and 1 percent higher expense for each fiscal year. By year-end FY 2024, this demonstration reflects working capital being depleted by 92 percent, a loss of \$2.23 million, as compared to year-end FY 2020.

(values in Millions)



Transportation Services Fund Forecast Risks and Rankings

Transportation Services will be able to sustain the current level of services during the five-year period. Forecast risk is evaluated on the degree it will impact service delivery. The evaluation of existing and potential risk assists in determining actions to be taken over the five-year period to ensure a balanced budget. The most significant risk to Transportation Services' resources is a reduction in State Highway Fund revenue, which is summarized below.

Forecast Risk – Revenue

	Ranking	Percent Total Revenue
State Highway Fund Revenue	MEDIUM	80%

State Highway Fund Revenue

Transportation Services' primary revenue source is the City's allocation of State Highway Fund revenues – a revenue source over which the City has little or no control. Revenues are impacted by worldwide, national, and regional factors including the availability of fuels, prices, transport costs, refinery capacity, vehicle technology, and consumer behavior. The amount and allocation of motor vehicle fuel taxes and Department of Motor Vehicle fees are determined by the state legislature. The ongoing risk to the City is that if actual State Highway Fund revenue received is less than forecasted, a corresponding reduction in City services will be required.

Risk Factor Ranking – MEDIUM

State Highway Fund revenue can be subject to changes in legislation, technology, petroleum supplies, prices, and consumer behavior. As the primary revenue source for the City's transportation services, potential changes need to be monitored and, in the case of legislative challenges, defended.

Utility Fund Summary

The City manages its utility services in a fiscally responsible manner to ensure ongoing day-to-day operations and provide capital funding for infrastructure. The Utility Fund (Fund 310) supports:

- Treatment, storage, and delivery of drinking water to residents, businesses, and industries;
- Collection, conveyance, and treatment of wastewater before it returns to the Willamette River; and
- Collection and conveyance of stormwater runoff from streets, buildings, and other hard surfaces to prevent flooding and protect the environment.

Current Status

The Utility Fund is financially stable despite significant capital needs and planned investments. City Council has consistently adopted prudent rate increases, and staff has worked effectively to manage expenses, allowing the City to operate, maintain, and modernize the Utility's infrastructure.

Salem's Utility is the community's most valuable asset, with an estimated facility value of approximately \$4 billion. Over \$300 million was invested at the turn of the century to modernize and expand the system. The associated debt is expected to be retired in FY 2027. Many of these improvements were related to the Willow Lake Water Pollution Control Facility. As a result of the 2018 water advisory event, the FY 2021 forecast anticipates a \$60 million revenue bond in March 2020 for projects focused on water treatment and supplemental supply. Continued improvements must be made to the Utility at a sustainable pace, balancing rate impacts with the rehabilitation, expansion, resiliency, and modernization needs of the systems.

FY 2020 began with working capital of \$45.5 million, a decrease of \$706,000 from the prior fiscal year.

Future Outlook

The forecast presented this year demonstrates a planned drawdown of working capital from \$45.4 million to \$39.7 million at the end of the forecast period. The drawdown is the result of additional capital investments. Throughout the forecast period, the working capital balance exceeds the requirement of a 120-day operating reserve as identified in Council Policy C-14 (Utility Fund Financial Policy). Maintaining reserves is a best practice to ensure resources are available to meet obligations in the case of an emergency or an economic

downturn. These reserves have allowed the City of Salem to respond effectively to the water advisory while projecting a rate increase consistent with previous financial plans. The reserves also provide financial stability for a revenue stream that can vary as a result of customer demand.

The water, wastewater, and stormwater utility systems must be continually operated, maintained, and periodically replaced. In any year, a new economic development project or unanticipated system failure may require an immediate expenditure of several million dollars in capital investment. In FY 2020, the Utility Fund is issuing revenue bonds and expending working capital for construction of capital assets of the water, wastewater, and stormwater system, including improvements to the water treatment facility, groundwater wells, aquifer storage and recovery system, and a wastewater pump station.

Utility Fund revenues are assumed to grow at an average rate of 2.3 percent throughout the forecast period. This level of growth maintains operations and supports an annual transfer for capital construction of \$18 million to \$20 million during the five-year period as debt obligations (including the anticipated 2020 revenue bond) are reduced from \$18.9 million to \$14.3 million annually.

Assumptions and highlights of this forecast include:

- Over the forecast period, revenue growth adequately maintains operations and allows for an increase in the transfer for capital construction. The final two years of proceeds from the \$16.9 million sale of a portion of Salem's Willamette River water rights to the City of Hillsboro are included in the forecast. As a result, for the next two years Salem utility customers inside the city limits will continue to experience smaller water rate increases than outside-city customers.
- The forecast establishes capacity for capital funding. Capital funding is maintained over the five-year period as debt is retired. The Capital Improvement Plan identifies major capital improvement projects for the community. Overall system consumption increased slightly in FY 2018 after years of declining consumption, and this trend continued with a 1.5 percent increase in system-wide water sales in FY 2019. The forecast assumes average weather and consumption patterns through the five-year period.

Forecast Result

Utility Fund Current Service Level Detail

The Utility Fund forecast provides a view of the financial impact on the City's utilities services, priorities, and policies in relation to projected economic activity through FY 2025. This view is influenced by federal and state economic factors and trends, local business activity and property development, and growth in primary revenue sources. Water, wastewater, and stormwater rate revenues are anticipated to provide approximately 83 percent of the fund's total new revenue in FY 2021. Additionally, the forecast includes a variety of assumptions for expenditure activity over five years. The primary drivers of expense increases include labor agreements, PERS and health care costs, energy costs, and inflationary increases on contracted goods and services. The tables for expenditure assumptions are included in appendix A of this document.

Developing a forecast for water, wastewater, and stormwater utilities requires establishing specific assumptions regarding the customer base, growth, consumption, economic trends, operating needs, and capital requirements. All assumptions have been reviewed based on historical data through FY 2019 and in the context of current economic trends and industry standards. Each assumption about economic variables can have a restrictive or expansive effect on projected cash flow. The goal is to be realistically conservative while not overly restricting financial capacity for operations, maintenance, and capital improvements.

The values in the Utility Fund forecast are expressed in millions of dollars and have been rounded to the nearest ten thousand. The forecast builds out the five years using the FY 2020 Year End (YE) Estimate column as the base year. The base year uses current information to update revenue trends and adjust the expenditure base for any ongoing service level changes. The October 2018 City Council-adopted rate adjustments are reflected for calendar years 2019 and 2020: 3 percent for water, 2.5 percent for wastewater, and 5 percent for stormwater. The remaining years of the forecast assume a 3 percent revenue slope for water and wastewater and 5 percent for stormwater through 2024, with 3 percent in 2025. The fund maintains an adequate level of working capital throughout the forecast period.

Utility Fund Table 1, FY 2021 – FY 2025 Forecast Summary

(Values in Millions, YEE = Year-End Estimate, F = Forecast)

	FY 2020YEE	FY 2021F	FY 2022F	FY 2023F	FY 2024F	FY 2025F
Beginning Working Capital	\$ 45.55	\$ 44.21	\$ 45.41	\$ 43.93	\$ 39.67	\$ 37.69
Revenues	107.86	111.55	114.27	114.52	117.53	120.66
Total Resources	\$ 153.41	\$ 155.76	\$ 159.68	\$ 158.45	\$ 157.20	\$ 158.34
Net Expenditures	\$ 109.20	\$ 110.35	\$ 115.74	\$ 118.78	\$ 119.51	\$ 118.63
Ending Working Capital	\$ 44.21	\$ 45.41	\$ 43.93	\$ 39.67	\$ 37.69	\$ 39.72

<i>Change to Working Capital</i>	 \$(1.33)	 1.20	 \$(1.48)	 \$(4.26)	 \$(1.98)	 \$2.03
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Table 2 on the next page is the full summary of the Utility Fund forecast, including the components of *Net Expenditures*. Personal services costs in this forecast are based on current labor contracts, and in the later years of the forecast, annual adjustments to salary at 2.5 percent. The forecast also includes a 1 percent expense of direct compensation for the State paid family and medical leave program that is expected to begin January 2022.

Utility Fund Table 2, FY 2021 – FY 2025 Forecast Summary

(Values in Millions)

	FY 2020 YE Estimate	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast
Working Capital	\$ 45.55	\$ 44.21	\$ 45.41	\$ 43.93	\$ 39.67	\$ 37.69
Revenues	107.86	111.55	114.27	114.52	117.53	120.66
TOTAL RESOURCES	\$ 153.41	\$ 155.76	\$ 159.68	\$ 158.45	\$ 157.20	\$ 158.34
TOTAL EXPENDITURES	\$ 109.20	\$ 119.64	\$ 125.35	\$ 128.64	\$ 129.60	\$ 128.90
Unspent Contingency		(3.00)	(3.00)	(3.00)	(3.00)	(3.00)
8% Savings		(6.29)	(6.61)	(6.85)	(7.09)	(7.27)
NET EXPENDITURES	\$ 109.20	\$ 110.35	\$ 115.74	\$ 118.78	\$ 119.51	\$ 118.63
ENDING WORKING CAPITAL	\$ 44.21	\$ 45.41	\$ 43.93	\$ 39.67	\$ 37.69	\$ 39.72
Chg to Working Capital	(1.33)	1.20	(1.48)	(4.26)	(1.98)	2.03

Forecast Result – Revenue Detail

The revenue forecast is developed using conservative growth expectations for the Utility Fund. Approximately 83 percent of Utility Fund resources (excluding beginning working capital) come from one external source – rate revenue. New rates are adopted by City Council every two years. In October 2018, City Council adopted a 3 percent revenue slope for water, 2.5 percent for wastewater, and 5 percent for stormwater effective January 1, 2020. The remaining years of the forecast assume a 3 percent revenue slope for water and wastewater and 5 percent for stormwater through FY 2024 followed by 3 percent in FY 2025. Table 3 summarizes the five-year revenue forecast by revenue source.

Utility Fund Table 3, Revenues by Source (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Water, Wastewater, Stormwater Rates	\$ 92.45	\$ 95.22	\$ 97.91	\$ 100.53	\$ 103.22
Franchise Fees	3.81	3.93	4.04	4.15	4.26
Other Fees	2.85	2.93	3.01	3.09	3.17
Permitted Development	1.36	1.41	1.45	1.49	1.54
Internal Charges	6.56	6.75	6.95	7.16	7.38
All Other Sources	4.51	4.03	1.16	1.11	1.09
TOTAL REVENUES	\$ 111.55	\$ 114.27	\$ 114.52	\$ 117.53	\$ 120.66

Forecast Result – Expenditure Detail

The expenditure forecast is developed based on anticipated increases in the costs of labor, materials, capital, and generally agrees with assumptions used across all City funds. When available, it uses known expenditure information such as labor agreements, vendor contracts, the most recent information for PERS rates and health care cost increases, and inflation factors. Future costs associated with higher PERS obligations for current employees are included. Table 4 summarizes the five-year expenditure forecast by category. Nine new positions are included in the forecast: four water treatment operators and an instrument technician to support the new ozone water treatment facility; and, one Geographic Information System (GIS) analyst and one GIS technician in FY 2021 and a second GIS analyst and GIS technician beginning in FY 2023 to provide increased technical and infrastructure data support for water, wastewater, stormwater, streets, parks, and streetlights.

Transfers are anticipated annually from the Utility Fund to the Capital Improvements Fund for utility construction projects. The transfers are projected to remain steady at between \$18 million and \$20 million in each of the five years of the forecast. The transfers represent less than a 0.5 percent annual investment in the utility's infrastructure, but when combined with the annual debt service, the investment is maintained throughout the forecast period at \$30 to \$34 million each year. The City's goal is continual increases in the annual capital construction transfers, as debt is retired, until the transfers equal \$40 million – or 1 percent – of the asset's \$4 billion value. This goal will allow the City to address new capital improvements and replace aging infrastructure, and assumes that, on average, infrastructure lasts 100 years.

Utility Fund Table 4, Expenditures by Category (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Personal Services	\$ 41.09	\$ 43.80	\$ 45.96	\$ 47.93	\$ 49.59
Materials and Services	37.57	38.81	39.72	40.67	41.34
Capital Outlay	1.04	1.04	1.04	1.04	1.04
Debt Service	18.93	18.92	18.91	17.17	14.26
Transfers	18.00	19.78	20.00	19.78	19.67
Contingency	3.00	3.00	3.00	3.00	3.00
TOTAL EXPENDITURES	\$ 119.64	\$ 125.35	\$ 128.64	\$ 129.60	\$ 128.90
<i>Less:</i>					
Unspent Contingency	(3.00)	(3.00)	(3.00)	(3.00)	(3.00)
Anticipated Savings (8%)	(6.29)	(6.61)	(6.85)	(7.09)	(7.27)
TOTAL NET EXPENDITURES	\$ 110.35	\$ 115.74	\$ 118.78	\$ 119.51	\$ 118.63

Forecast Variability – Working Capital Scenarios (Values in Millions)

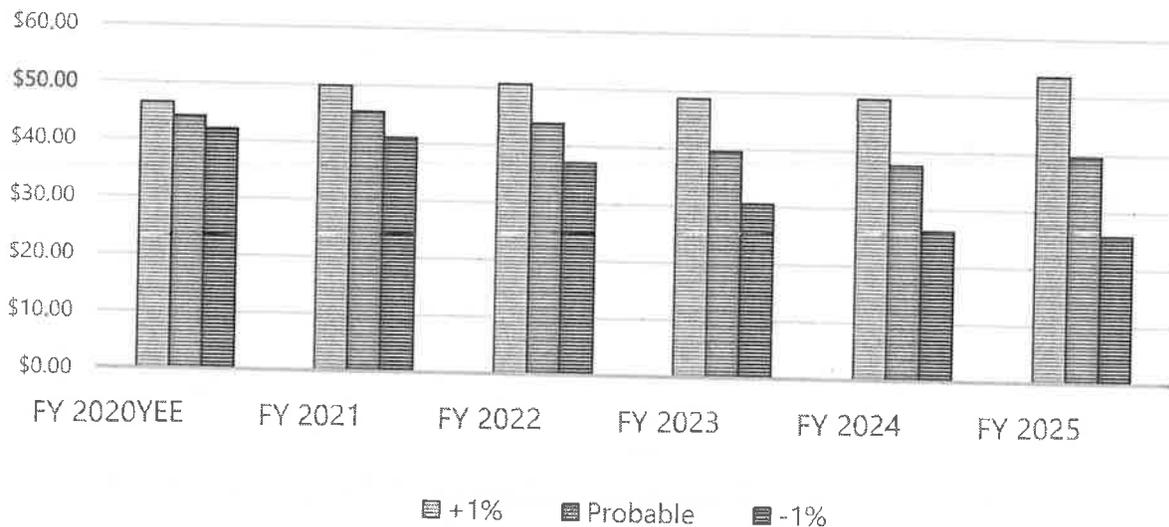
The graph below demonstrates variable results of the FY 2021 – FY 2025 forecast through the display of working capital - the difference between resources and expenditures for each fiscal year. There are three scenarios presented.

Scenario 1, Probable Scenario. The blue bar at the center of each grouping represents the result reflected in the numeric tables on the preceding pages of this document for the Utility Fund. The values reflect the forecasted levels of working capital.

Scenario 2, Higher Revenue / Lower Expenses. The green bar in each fiscal year grouping represents the forecast result augmented by an additional 1 percent of revenue growth and an additional 1 percent of expenditure savings. For the Utility Fund, these changes represent increases to working capital of up to \$13.8 million during the forecast period.

Scenario 3, Lower Revenue / Higher Expenses. The red bar uses the forecast working capital as the base for assuming 1 percent lower revenues and 1 percent higher expenditures for each fiscal year. By year-end FY 2025, this demonstration results in working capital declining by \$18.3 million or 41.5 percent from the estimate for fiscal year-end 2020.

(values in Millions)



Utility Fund Forecast Risks and Rankings

The forecast acknowledges that there are risks associated with sustaining the resources needed to fund current and future City utility services. Each identified risk is evaluated on the degree it will impact service delivery and assists in determining courses of action to be taken over the five-year period.

Forecast Risk – Revenue

	Ranking	Percent Total Revenue
Water, Wastewater, Stormwater Revenue	LOW	83%

Water and Wastewater Rate Revenue

Decreasing water consumption is a national trend, and Salem is not unique in facing this challenge. Most of the costs to provide utility services to customers are fixed. A very small percentage of costs are related to the volume of water produced or wastewater accepted. When consumption declines and revenue is adversely impacted, water utilities must increase rates to maintain operations. After declining for several years, FY 2018 and FY 2019 represented 1.8 and 1.5 percent increases in water consumption respectively. A small conservation adjustment of 0.5 percent is partially off-set by a 0.25 percent growth in accounts.

Risk Factor Ranking – LOW

One method that utility systems utilize to stabilize revenue is to recover more costs through fixed rates rather than volume / consumption. The 2018 Cost of Service Analysis and rate proposal included shifting cost recovery from variable to fixed rates to more appropriately assign costs of operating the system.

WVCC Fund Summary

The City's Willamette Valley Communication Center (WVCC) Fund supports the provision of 9-1-1 call taking and emergency dispatch services to 29 police, fire, and emergency medical service agencies in Marion, Polk, and Lincoln counties.

Current Status

FY 2021 is a continuation of a multi-year strategy to stabilize the WVCC Fund, sufficiently staff operations, and reduce the impact of overtime. As part of this strategy, efforts are ongoing to hire and train staff to meet the current turnover rate. The hiring frequency is expected to remain at 90-day intervals through FY 2021.

Overtime expense was at a record high in FY 2018. The strategy to reduce dependency on overtime is having a positive impact as overtime expense was reduced by nearly 8% in FY 2019 when compared to the previous year. The staff retention rate has remained close to 80% for calendar year 2019. Attracting qualified candidates continues to be a significant challenge, resulting in more resources being focused towards recruitment.

Beginning January 1, 2020, the Oregon Emergency Communications (E911) tax rate will increase from \$0.75 to \$1.00 and will again increase 25 cents to \$1.25 on January 1, 2021.

The five-year forecast plans for a rate increase for member agencies of 5.7 percent in FY 2021, taking advantage of the increased E911 tax received by the member agencies to provide additional funding for the Computer-Aided Dispatch (CAD) system described in the next section. The forecast returns the rate increase to 4.7 percent in FY 2022 with further decreases to 3.9 percent the last three years of the five-year forecast, while maintaining sufficient working capital and reserving \$300 thousand annually for future equipment replacement needs.

Future Outlook

The forecast for the WVCC Fund demonstrates the implementation of the multi-year strategy is showing positive results. Restoration of working capital, which provides the opportunity to plan for equipment reserves, is an outcome achieved in this forecast.

One of the capital needs WVCC is facing in the near future is the replacement of the CAD system. The division is actively researching multiple options for this system, each of which will likely have significant capital costs. Estimated capital expenditures of \$2.4 million for the CAD system replacement is included in the forecast.

The forecast includes a variety of assumptions for expenditure activity over five years. The primary drivers of expense increases are the cost of personnel in this service-oriented fund.

The forecast reflects wage adjustments and other provisions in the current labor contract, estimates for overtime use, as well as escalators for PERS, and health care costs. The tables for the expenditure assumptions are included in the appendix.

One area of risk for WVCC continues to be the possible withdrawal of one of its largest member agencies, the Marion County Sheriff’s Office (MCSO). Currently MCSO has placed this action on hold while evaluating all possible options and associated costs.

Forecast Result

WVCC Fund Current Service Level Detail

The forecast demonstrates a level of projected increase in revenues sufficient to meet the anticipated growth in expenditures and restore working capital to a level of approximately \$1.6 million.

WVCC Fund Table 1, FY 2021 – FY 2025 Forecast Summary

(Values in Millions, YEE = Year-End Estimate, F = Forecast)

	FY 2020YEE	FY 2021F	FY 2022F	FY 2023F	FY 2024F	FY 2025F
Beginning Working Capital	\$2.02	\$1.70	\$1.37	\$1.47	\$1.62	\$1.60
Revenues	11.48	12.18	12.73	13.23	13.74	14.27
Total Resources	\$13.50	\$13.87	\$14.11	\$14.70	\$15.35	\$15.87

Net Expenditures	\$11.80	\$12.50	\$12.64	\$13.08	\$13.76	\$14.21
Ending Working Capital	\$1.70	\$1.37	\$1.47	\$1.62	\$1.60	\$1.66

Change to Working Capital	\$0.33	\$0.32	\$0.10	\$0.15	\$0.02	\$0.06
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Table 2 is the full summary of the WVCC Fund forecast. Personal services costs in this forecast are based on current labor contracts, and in later years of the forecast, annual adjustments to salary at 2.5 percent. Table 2 also displays savings derived from unspent fund contingencies and a level of naturally occurring savings from employee attrition and other unanticipated economies. This level of savings is anticipated at 3.5 percent in FY 2021 declining to 2.0 percent in the later years with the expectation of becoming fully staffed. The forecast also includes a 1 percent expense of direct compensation for the State paid family and medical leave program that is expected to begin January 2022.

WVCCF Table 2, FY 2021 – FY 2025 Forecast Summary

(Values in Millions)

	FY 2020 YE Estimate	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast
Working Capital	\$2.02	\$1.70	\$1.37	\$1.47	\$1.62	\$1.60
Revenues	11.48	12.18	12.73	13.23	13.74	14.27
TOTAL RESOURCES	\$13.50	\$13.87	\$14.11	\$14.70	\$15.35	\$15.87
TOTAL EXPENDITURES	\$11.80	\$13.41	\$13.51	\$13.98	\$14.53	\$15.00
Unspent Contingency		(0.50)	(0.50)	(0.50)	(0.50)	(0.50)
Savings		(0.41)	(0.38)	(0.39)	(0.27)	(0.28)
Savings %		3.5%	3.0%	3.0%	2.0%	2.0%
NET EXPENDITURES	\$11.80	\$12.50	\$12.64	\$13.08	\$13.76	\$14.21
ENDING WORKING CAPITAL	\$1.70	\$1.37	\$1.47	\$1.62	\$1.60	\$1.66
Chg to Working Capital	(0.33)	(0.32)	0.10	0.15	(0.02)	0.06

Forecast Result – Revenue Detail

The primary revenue source for the WCCC Fund is member agency rates. The graphic below demonstrates a multiple-year history of rate increases and projected increases for the forecast period. Other revenue estimates presented in this forecast use current sources augmented with assumptions for growth based on available information and historic trends.

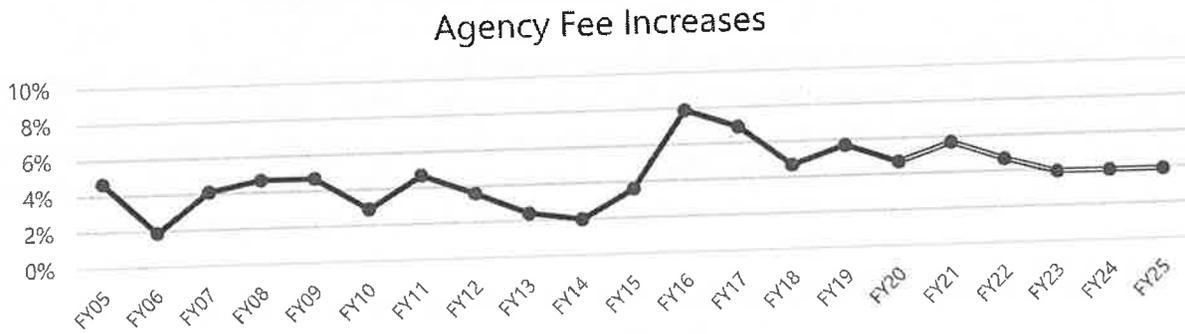


Table 4 displays all fund revenues by source.

WVCCF Table 4, Revenues by Source (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Member Agencies	\$ 6.80	\$ 7.11	\$ 7.39	\$ 7.68	\$ 7.98
Other Fees	0.03	0.02	0.02	0.02	0.02
Internal Charges*	5.28	5.53	5.74	5.97	6.20
All Other Sources	0.07	0.07	0.07	0.07	0.07
TOTAL REVENUES	\$ 12.18	\$ 12.73	\$ 13.23	\$ 13.74	\$ 14.27

*Charges to the Salem Police Department and Salem Fire Department for dispatch services.

Forecast Result – Expenditure Detail

The forecast for the WVCC Fund is developed using a base cost escalation for compensation, health insurance consultant analysis, and up-to-date PERS rate information and estimates for future years. The forecast demonstrates full staffing and a reduction to overtime expense throughout the forecast to a base of \$500,000 annually. The assumption tables used for expenditures are included in the appendix. The forecast includes a general inflationary increase of 3 percent to expenses in the materials and services category.

WVCC Fund Table 5 summarizes the five-year expenditure forecast by expense category. Increased rates for compensation market adjustments, PERS obligations, and health insurances for current employees prompt increases in personal services. The area of the table with italicized text demonstrates the effect on base expenditures of anticipated savings and unspent contingencies to provide the calculation in the "Total Net Expenditures" row.

WVCCF Table 5, Expenditures by Category (Values in Millions)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Personal Services	\$ 9.90	\$ 10.63	\$ 11.11	\$ 11.59	\$ 11.96
Materials and Services	1.88	1.95	2.03	2.11	2.20
Capital Outlay	0.03	0.03	0.03	0.03	0.03
Transfers	1.10	0.40	0.30	0.30	0.30
Contingency	0.50	0.50	0.50	0.50	0.50
TOTAL EXPENDITURES	\$ 13.41	\$ 13.51	\$ 13.98	\$ 14.53	\$ 15.00
<i>Less:</i>					
<i>Unspent Contingency</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>	<i>(0.50)</i>
<i>Anticipated Savings</i>	<i>(0.41)</i>	<i>(0.38)</i>	<i>(0.39)</i>	<i>(0.27)</i>	<i>(0.28)</i>
TOTAL NET EXPENDITURES	\$ 12.50	\$ 12.64	\$ 13.08	\$ 13.76	\$ 14.21

Forecast Variability – Working Capital Scenarios

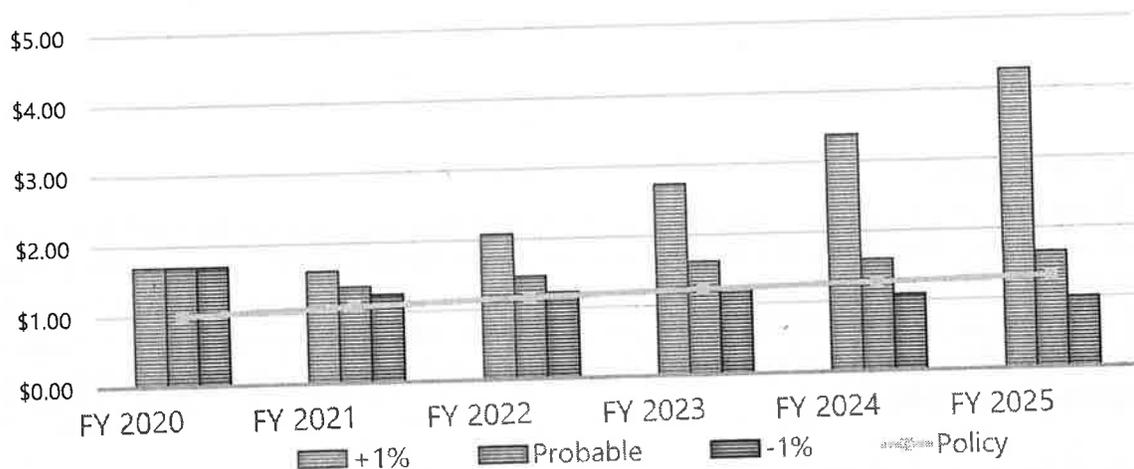
The graph below demonstrates variable results of the FY 2021 – FY 2025 forecast through the display of working capital - the difference between resources and expenditures for each fiscal year. There are three scenarios presented.

Scenario 1, Probable Scenario. The blue bar at the center of each grouping represents the result reflected in the numeric tables on the preceding pages of this document. The values reflect the forecasted levels of working capital. This result is compared against the gold horizontal line representing the dollar equivalent of WVCC Board policy for the WVCC Fund working capital.

Scenario 2, Higher Revenue / Lower Expenses. The green bar in each fiscal year grouping represents the forecast result augmented by an agency rate 1 percent higher in each year of the forecast (6.7 percent in FY21, 5.7 percent in FY22, etc.) and an additional 1 percent of expenditure savings. The outcome of these variables provides approximately \$2.9 million in working capital in excess of policy by FY 2025.

Scenario 3, Maintain Revenue / Higher Expenses. The five-year forecast plans for rate increases to be set at 5.7 percent in FY 2021, reduced to 4.7 percent in FY 2022, and reduced again in FY 2023 to 3.9 percent as sufficient working capital is projected to be achieved and equipment reserves are being established. Therefore, the red bar again uses the forecast result as the base while only assuming 1 percent higher expense for each fiscal year and no change to revenue assumptions. Under this scenario, working capital falls below WVCC Board policy by FY 2024.

(Values in Millions)



WVCC Fund Forecast Risks and Rankings

Each identified forecast risk is evaluated on the degree it will impact service delivery. These evaluations of existing and potential resources assist in determining actions to be taken over the five-year period to ensure a balanced budget. The most significant risks to WVCC are summarized below.

Forecast Risk – Revenue

	Ranking	Percent Total Revenue
<i>Member Agency Rates</i>	LOW / MEDIUM	99.2%

Member Agency Rates

Annual charges to the 29 WVCC member agencies are compounded by a growth rate (5.7 percent in FY 2021) and distributed based on the agencies' percentage of population and the percentage of emergency call volume (9-1-1 calls received) and dispatch call volume (9-1-1 operator calls to public safety / emergency responders).

Risk Factor Ranking – LOW / MEDIUM

Member agency rate revenues can be subject to changing priorities for the member agency or its city or county government. As the primary revenue source for the City's emergency dispatch services, potential changes are reviewed with a budget committee comprised of agency representatives followed by review from the full complement of member agencies.

Forecast Risk – Expenditures

	Ranking	
<i>Overtime Expense</i>	MEDIUM	4.2% of Total Expense
<i>Salary Expense</i>	MEDIUM	41.8% of Total Expense
<i>CAD System Replacement</i>	MEDIUM	\$2.4 Million (est.)

Overtime Expense

Significant overtime expense is one reason why forecasting was initiated for the WVCC Fund several years ago. The variability of this expense is heavily dependent upon staffing levels and availability of existing staff for shift coverage. The division's vacation calendar is covered using overtime, as is a considerable amount of training. All new hires require six months of training prior to working solo. During this time, trainees are paid and existing staff are paid overtime to provide the training.

Personal Services Expense

Starting in FY 2023 of the forecast, a 2.5 percent annual market adjustment is applied to salary expense. Any amount above 2.5 percent, without an offsetting increase to member

agency rates, will negatively impact ending working capital as demonstrated above in the forecast variability graph.

CAD System Replacement

The forecast presented in this document includes an estimated \$2.4 million capital expenditure to pay for the Computer-Aided Dispatch (CAD) system replacement. Project expenditures are expected to begin during the second half of FY 2020 following the selection process. In order to meet this level of capital expenditure, agency rates are forecasted to be 5.7 percent in FY 2021, taking advantage of the increased E911 tax received by the member agencies. The division is researching multiple options for system replacement, which could result in widely varying short-term and long-term costs. Starting in FY 2023, the forecast includes reserving \$300 thousand annually for future equipment and CAD system replacement needs.

Airport Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 SUMMARY (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 1.19	\$ 0.94	\$ 0.91	\$ 0.27	\$ (0.17)	\$ (0.43)
Revenues	1.21	1.27	1.29	1.31	1.23	1.25
TOTAL RESOURCES	\$ 2.39	\$ 2.21	\$ 2.20	\$ 1.58	\$ 1.05	\$ 0.82
TOTAL EXPENDITURES	\$ 1.45	\$ 2.21	\$ 2.20	\$ 1.79	\$ 1.52	\$ 1.43
Unspent Contingency		(0.88)	(0.24)	-	-	-
5% Savings on M&S		(0.03)	(0.04)	(0.04)	(0.04)	(0.04)
NET EXPENDITURES		\$ 1.29	\$ 1.93	\$ 1.75	\$ 1.48	\$ 1.39
ENDING WORKING CAPITAL	\$ 0.94	\$ 0.91	\$ 0.27	\$ (0.17)	\$ (0.43)	\$ (0.57)

The financial forecast for the Airport Fund provides continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth. The forecast demonstrates a level of projected increase in revenues lower than the anticipated growth in expenditures in the final 3 years of the forecast period. It also displays savings derived from unspent fund contingencies (FY 2021 – FY 2022) and a level of naturally occurring savings through unanticipated economies. This level of savings is anticipated at 5 percent on materials and services.

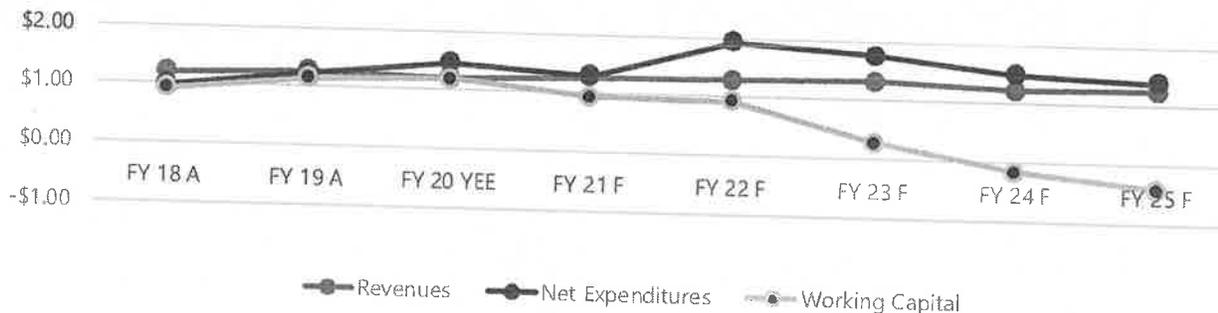
To fund needed improvements to buildings at the Airport, projects costing over \$1.3 million are included in the forecast that are not eligible for Federal Aviation Administration grant funding. The forecast demonstrates depletion of working capital for these projects.

The assumptions in the forecast lead to the decline of beginning working capital. The \$0.94 million estimated at the end of FY 2020 is fully expended by the end of FY 2023.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	High
Land / Building Rent	High
Parking Rent	Medium
Operational Expenses	High
Match for Federal Grants	Low
Building Improvement Project Funding	High

Airport Fund Revenues, Expenditures and Working Capital



Building and Safety Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 Summary (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 9.59	\$ 11.31	\$ 11.79	\$ 12.04	\$ 11.57	\$ 10.84
Revenues	6.88	6.48	5.98	5.48	5.48	5.48
TOTAL RESOURCES	\$ 16.47	\$ 17.79	\$ 17.78	\$ 17.53	\$ 17.05	\$ 16.32
TOTAL EXPENDITURES	\$ 5.46	\$ 6.36	\$ 6.09	\$ 6.32	\$ 6.57	\$ 6.79
Unspent Contingency		(0.30)	(0.30)	(0.30)	(0.30)	(0.30)
3.5% Savings on M&S		(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
NET EXPENDITURES		\$ 6.00	\$ 5.74	\$ 5.96	\$ 6.21	\$ 6.42
ENDING WORKING CAPITAL	\$ 11.01	\$ 11.79	\$ 12.04	\$ 11.57	\$ 10.84	\$ 9.90

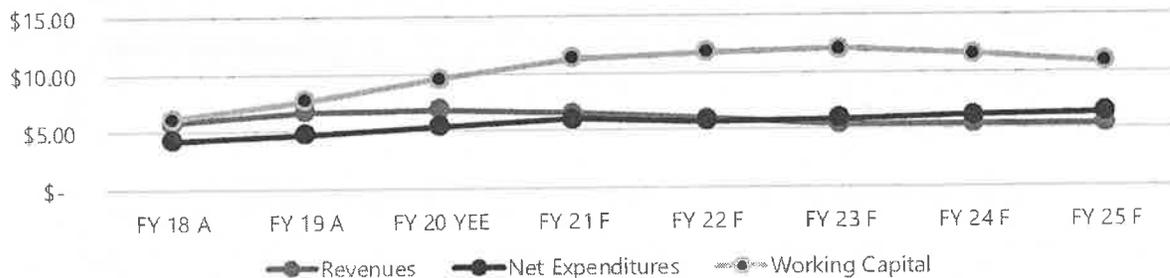
The City's annual financial forecast for the Building and Safety Fund provides for the continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue. In addition, the forecast includes one new position to increase capacity.

The forecast anticipates greater revenues in the near term due to known large projects that are in the planning phase. The last three years of the forecast display a base level of revenue from general permit activity. It also displays savings derived from unspent fund contingencies and a level of naturally occurring savings from other unanticipated economies. This level of savings is anticipated at 3.5 percent of material and services expenses. The forecast demonstrates a reduction of ending working capital over the five-year period. The ending balance is within the fund balance policy for the fund.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	Low
Permit Revenue	Medium
PERS Rates	High
Health Benefits	Medium
Other Labor Factors	High

Building and Safety Fund Revenues, Expenditures and Working Capital



Cultural and Tourism (TOT) Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 SUMMARY (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 0.66	\$ 0.48	\$ 0.39	\$ 0.50	\$ 0.51	\$ 0.34
Revenues	4.15	\$ 4.26	4.38	\$ 4.50	4.62	\$ 4.75
TOTAL RESOURCES	\$ 4.82	\$ 4.74	\$ 4.76	\$ 4.99	\$ 5.13	\$ 5.09
TOTAL EXPENDITURES	\$ 4.34	\$ 4.47	\$ 4.39	\$ 4.61	\$ 4.90	\$ 4.72
Unspent Contingency		\$ (0.12)	(0.12)	\$ (0.12)	(0.12)	\$ (0.12)
NET EXPENDITURES	\$ 4.34	\$ 4.35	4.27	\$ 4.49	4.78	\$ 4.60
ENDING WORKING CAPITAL	\$ 0.48	\$ 0.39	\$ 0.50	\$ 0.51	\$ 0.34	\$ 0.49

The City's annual financial forecast for the Cultural and Tourism (TOT) Fund provides for continuation of current service levels with assumptions for inflationary factors to increase service costs and lowered estimates for revenue growth.

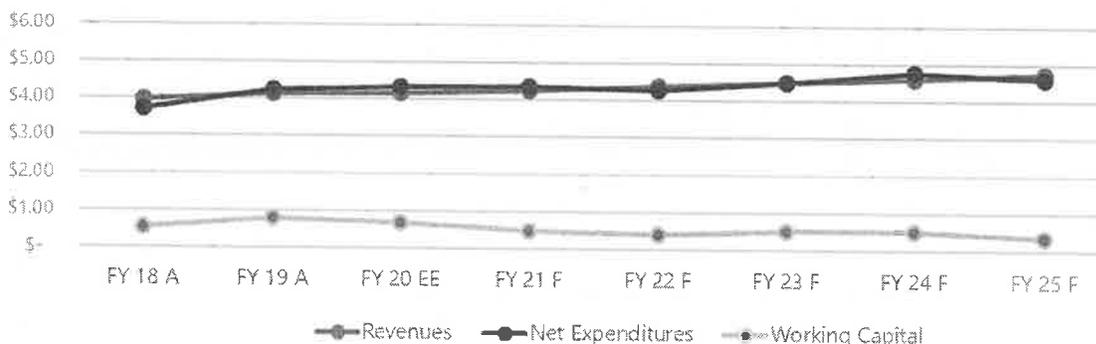
The forecast demonstrates a change to the Fund's main revenue source from the prior year forecast, a decline from 3 percent to 2.75 percent for Transient Occupancy Tax revenues, reflective of the slight economic downturn anticipated by economists over the next few years.

The forecast includes continued investment in Minto-Brown Island Trails and Wallace Marine Park as well as an additional \$60,000 to the Salem Convention Center for marketing.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	Medium
Tax Revenue	High
Parks Transfer	High
Capital Projects (CIP)	Medium
Tourism Promotion Allocation	High

TOT Fund Revenues, Expenditures and Working Capital (in millions)



Document Services, City Services FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 SUMMARY (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 0.48	\$ 0.39	\$ 0.32	\$ 0.26	\$ 0.14	\$ 0.06
Revenues	0.96	1.08	1.11	1.12	1.13	1.15
TOTAL RESOURCES	\$ 1.44	\$ 1.47	\$ 1.43	\$ 1.37	\$ 1.27	\$ 1.21
TOTAL EXPENDITURES	\$ 1.04	\$ 1.16	\$ 1.18	\$ 1.25	\$ 1.22	\$ 1.25
2% Savings on M&S		(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
NET EXPENDITURES		\$ 1.15	\$ 1.17	\$ 1.24	\$ 1.20	\$ 1.24
ENDING WORKING CAPITAL	\$ 0.39	\$ 0.32	\$ 0.26	\$ 0.14	\$ 0.06	\$ (0.03)

The base forecast for the Document Services Division of the City Services Fund reflects current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

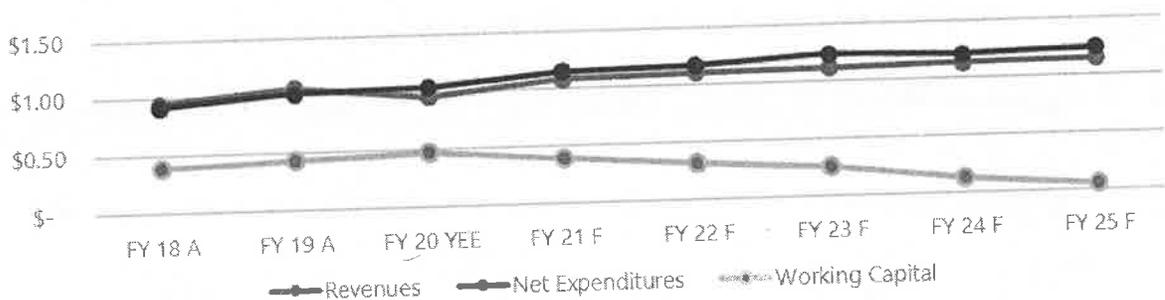
The forecast demonstrates a level of projected increase in revenues that does not keep pace with the anticipated growth in expenditures over the five-year period. It also displays a level of naturally occurring savings from unanticipated economies. This level of savings is anticipated at 2 percent for materials and services.

Document Services is dependent on General Fund support to continue to fund services. Work is ongoing to come up with ideas to enhance services and generate additional, varied revenue to support Document Services into the future.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	High
Internal Charge Revenue	High
Other Labor Factors	High
Copier Replacement Strategy	Medium

Document Services, City Services Fund Revenues, Expenditures and Working Capital



Emergency Services Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 SUMMARY (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 3.46	\$ 3.38	\$ 3.39	\$ 3.33	\$ 3.33	\$ 3.34
Revenues	0.99	0.98	1.01	1.03	1.06	1.08
TOTAL RESOURCES	\$ 4.46	\$ 4.37	\$ 4.39	\$ 4.36	\$ 4.38	\$ 4.42
TOTAL EXPENDITURES	\$ 1.07	\$ 1.05	\$ 1.13	\$ 1.11	\$ 1.11	\$ 1.16
Unspent Contingency		(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
3% Savings on M&S		(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
NET EXPENDITURES	\$ 1.07	\$ 0.98	\$ 1.06	\$ 1.04	\$ 1.04	\$ 1.09
ENDING WORKING CAPITAL	\$ 3.38	\$ 3.39	\$ 3.33	\$ 3.33	\$ 3.34	\$ 3.33

The City's annual financial forecast for the Emergency Services (EMS) Fund provides for the continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

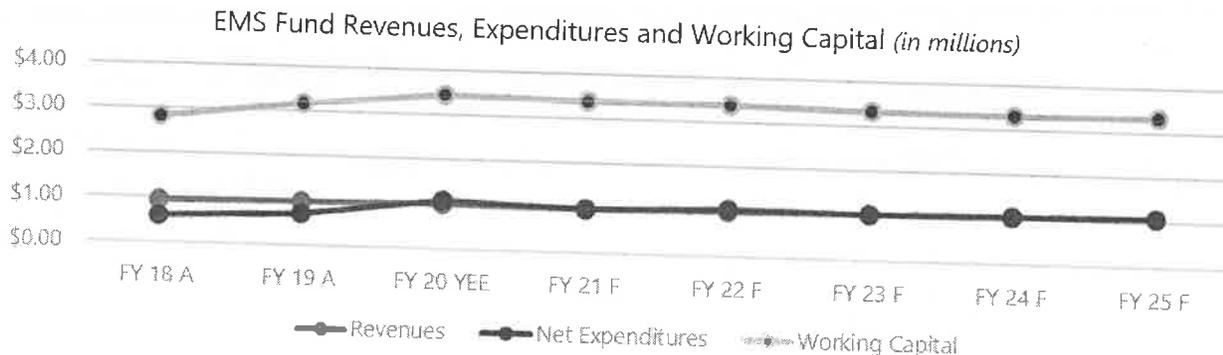
Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

The forecast demonstrates a level of projected increases in revenues that allow the EMS Fund to remain balanced with anticipated growth of ongoing expenditures. It also displays savings derived from unspent fund contingencies and a level of naturally occurring savings from unanticipated economies. This level of savings is anticipated at 3 percent in the materials and services category.

Forecast Risk	Ranking
Working Capital	Low
Ambulance Service Revenue	Low
Medicare / Medicaid Reimbursement	Medium
General Materials / Services	Medium
Capital Equipment Needs	High

The EMS Fund is required to maintain a working capital that provides resources for six months of immediate and uninterrupted ambulance transport services. The fund currently meets the minimum requirement and anticipates maintaining working capital at this level through the forecast.

Future capital equipment needs account for the highest risk factor for the health of the EMS Fund. Expenditures include an annual transfer to the Capital Reserve Fund, which started in FY 2019, to provide funding for required capital equipment purchases. The Fire Department is continually looking for new funding sources as the anticipated annual transfer to the Capital Reserve Fund is insufficient to provide for future equipment needs.



Fleet, City Services Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 Summary (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 2.35	\$ 2.30	\$ 2.37	\$ 2.36	\$ 2.36	\$ 2.30
Revenues	4.08	4.24	4.37	4.55	4.68	4.87
TOTAL RESOURCES	\$ 6.43	\$ 6.55	\$ 6.74	\$ 6.91	\$ 7.04	\$ 7.17
TOTAL EXPENDITURES	\$ 4.12	\$ 4.27	\$ 4.47	\$ 4.65	\$ 4.84	\$ 5.02
Unspent Contingency		-	-	-	-	-
3.5% Savings on M&S		(0.09)	(0.09)	(0.09)	(0.10)	(0.10)
NET EXPENDITURES		\$ 4.18	\$ 4.38	\$ 4.55	\$ 4.74	\$ 4.92
ENDING WORKING CAPITAL	\$ 2.30	\$ 2.37	\$ 2.36	\$ 2.36	\$ 2.30	\$ 2.25

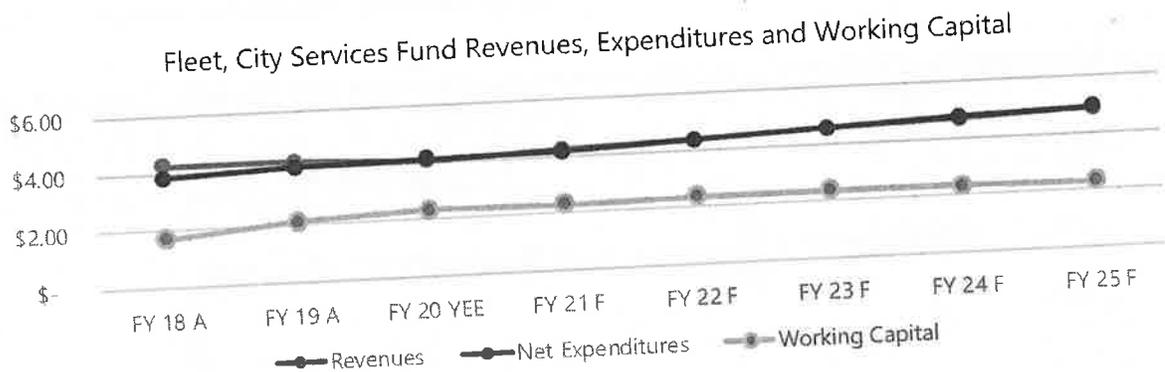
The City's annual financial forecast for Fleet Services in the City Services Fund provides continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

The forecast demonstrates a level of projected increase in revenues slightly higher than the anticipated growth in expenditures. It also displays a level of naturally occurring savings. This level of savings is anticipated at 3.5 percent of material and services expenses.

It is anticipated that the fleet management software will be upgraded or replaced within this five-year forecast. The amount designated for this purpose is included in the FY 2020 costs.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	Medium
Internal Charge Revenue	Medium
PERS Rates	High
Health Benefits	Medium
Other Labor Factors	High



Radio Comm., City Services Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 SUMMARY (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 2.66	\$ 3.58	\$ 4.06	\$ 4.56	\$ 5.02	\$ 5.43
Revenues	1.99	1.97	1.97	1.97	1.98	1.98
TOTAL RESOURCES	\$ 4.65	\$ 5.54	\$ 6.03	\$ 6.53	\$ 7.00	\$ 7.42
TOTAL EXPENDITURES	\$ 1.08	\$ 1.67	\$ 1.65	\$ 1.69	\$ 1.75	\$ 1.80
10% Savings on M&S		(0.11)	(0.10)	(0.11)	(0.11)	(0.11)
70% Savings on Capital		(0.07)	(0.07)	(0.07)	(0.07)	(0.08)
NET EXPENDITURES		\$ 1.49	\$ 1.47	\$ 1.51	\$ 1.56	\$ 1.61
ENDING WORKING CAPITAL	\$ 3.58	\$ 4.06	\$ 4.56	\$ 5.02	\$ 5.43	\$ 5.81

The City's annual financial forecast for Radio Communications provides for the continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

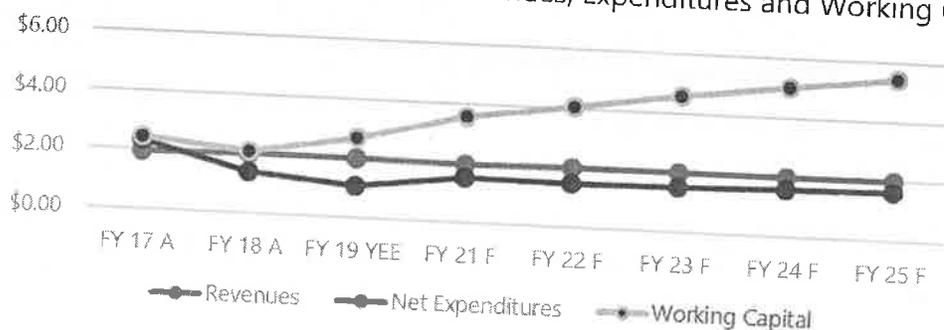
The forecast demonstrates a stable revenue stream with moderate growth in ending working capital as funds are set aside for the future replacement of equipment. It also displays naturally occurring savings through unanticipated economies and a lower ongoing need for equipment maintenance and replacement. This level of savings is anticipated at 10 percent in the materials and services category and 70 percent in capital expenditures.

General Fund departments account for approximately 80 percent of participating agency rate revenue. Most large, long-term expenses for the new radio system are fixed costs beyond the forecast period. The new radio system will be installed and functioning this fiscal year, with training expenses and continued operation of the old system occurring through June 2020. With new equipment and radios, replacement expenses are expected to be relatively low and stable. Planning for future system needs includes developing capital reserve accounts with the participating agencies and planned, structured savings for the next system replacement.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	Low
Agency Rates	Low
Operational Expenses	Low / Medium
Capital Equipment Needs	Low

Radio Communications, City Services Fund Revenues, Expenditures and Working Capital (in millions)



Self Insurance Benefits Fund FY 2021 – FY 2025 Five-Year Forecast

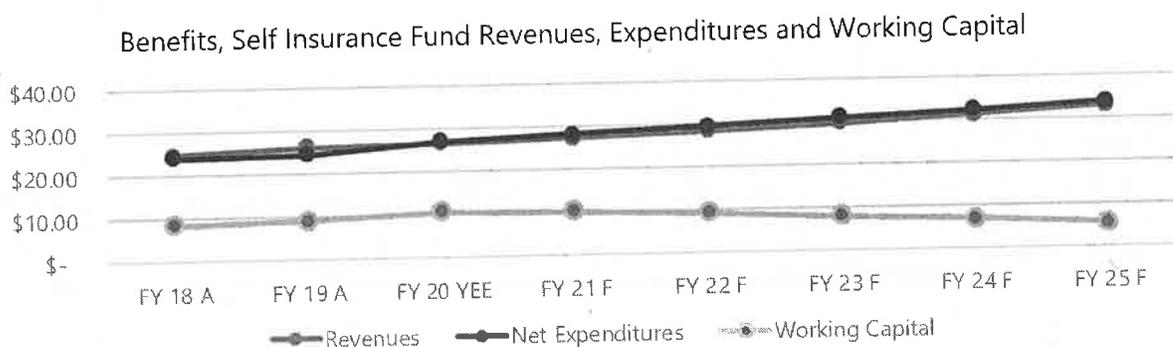
FY 2021 - FY 2025 Summary (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 10.69	\$ 10.19	\$ 9.26	\$ 8.04	\$ 6.82	\$ 5.71
Revenues	26.62	27.35	28.37	29.76	31.30	32.93
TOTAL RESOURCES	\$ 37.31	\$ 37.54	\$ 37.64	\$ 37.79	\$ 38.12	\$ 38.65
TOTAL EXPENDITURES	\$ 27.12	\$ 37.54	\$ 37.64	\$ 37.79	\$ 38.12	\$ 38.65
Unspent Reserve		(9.26)	(8.04)	(6.82)	(5.71)	(4.73)
3.5% Savings on M&S		-	-	-	-	-
NET EXPENDITURES		\$ 28.28	\$ 29.60	\$ 30.97	\$ 32.41	\$ 33.92
ENDING WORKING CAPITAL	\$ 10.19	\$ 9.26	\$ 8.04	\$ 6.82	\$ 5.71	\$ 4.73

The City's annual financial forecast for the Benefits Self Insurance Fund provides continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

The forecast demonstrates a level of projected increase in revenues lower than the anticipated growth in expenditures. Reduced premium rate increases are demonstrated to lower the reserve levels. If claims experience is less than anticipated, it will result in a higher working capital.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Working Capital	Low
Internal Revenue	Medium
Health Care Legislation	High
Changing Demographics	High



Self Insurance Risk Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 Summary (in millions)

	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 9.67	\$ 10.21	\$ 10.51	\$ 10.67	\$ 10.69	\$ 10.57
Revenues	4.13	3.87	3.87	3.87	3.87	3.87
TOTAL RESOURCES	\$ 13.80	\$ 14.09	\$ 14.39	\$ 14.54	\$ 14.57	\$ 14.45
TOTAL EXPENDITURES	\$ 3.59	\$ 14.09	\$ 14.39	\$ 14.54	\$ 14.57	\$ 14.45
Unspent Reserve		(10.41)	(10.56)	(10.58)	(10.46)	(10.21)
3.5% Savings on M&S		(0.10)	(0.10)	(0.11)	(0.11)	(0.11)
NET EXPENDITURES		\$ 3.57	\$ 3.72	\$ 3.85	\$ 3.99	\$ 4.13
ENDING WORKING CAPITAL	\$ 10.21	\$ 10.51	\$ 10.67	\$ 10.69	\$ 10.57	\$ 10.32

The City's annual financial forecast for the Risk Self Insurance Fund provides continuation of current service levels with assumptions for inflationary factors to increase service costs and estimates for revenue growth.

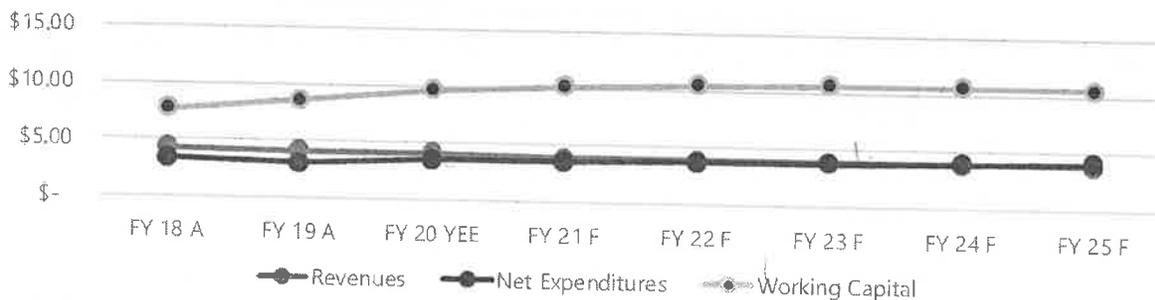
Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

The forecast demonstrates a slight decrease in working capital over the five-year period that is still within actuarial guidelines for the fund balance.

Forecast Risk	Ranking
Working Capital	Medium
Internal Revenue	Low
Liability Claims	High

Claims experience has been more favorable than projected in recent years and is anticipated to remain at that level or improve. This would result in a higher working capital than forecasted and lower internal rates.

Risk, Self Insurance Fund Revenues, Expenditures and Working Capital



Streetlight Fund FY 2021 – FY 2025 Five-Year Forecast

FY 2021 - FY 2025 Summary (in millions)						
	FY 20 YE Est	FY 21 F	FY 22 F	FY 23 F	FY 24 F	FY 25 F
Working Capital	\$ 1.08	\$ 0.95	\$ 1.02	\$ 1.05	\$ 1.05	\$ 1.02
Revenues	1.95	1.95	1.96	1.96	1.96	1.97
TOTAL RESOURCES	\$ 3.03	\$ 2.90	\$ 2.97	\$ 3.01	\$ 3.02	\$ 2.99
TOTAL EXPENDITURES	\$ 2.08	\$ 2.12	\$ 2.16	\$ 2.20	\$ 2.23	\$ 2.27
Unspent Contingency		(0.20)	(0.20)	(0.20)	(0.20)	(0.20)
Estimated Savings		(0.04)	(0.04)	(0.04)	(0.04)	(0.04)
NET EXPENDITURES	\$ 2.08	\$ 1.89	\$ 1.92	\$ 1.96	\$ 2.00	\$ 2.03
ENDING WORKING CAPITAL	\$ 0.95	\$ 1.02	\$ 1.05	\$ 1.05	\$ 1.02	\$ 0.96

Since the 2016 enactment of the Streetlight Fee and formation of the Streetlight Fund:

- All fixtures in the rights-of-way have been converted to light emitting diodes (LEDs).
- Maintenance and electricity costs are supported through the Streetlight Fund.
- New streetlights are being installed in under-served areas based on a prioritized list.
- Since FY 2020, electricity and maintenance are being provided for lighting fixtures in parks, relieving the General Fund of approximately \$100,000 per year in expenses.

The five-year forecast anticipates no increase in rates and a very small increase in accounts. Expenditures in the forecast are consistent with the current year and adjusted for growth.

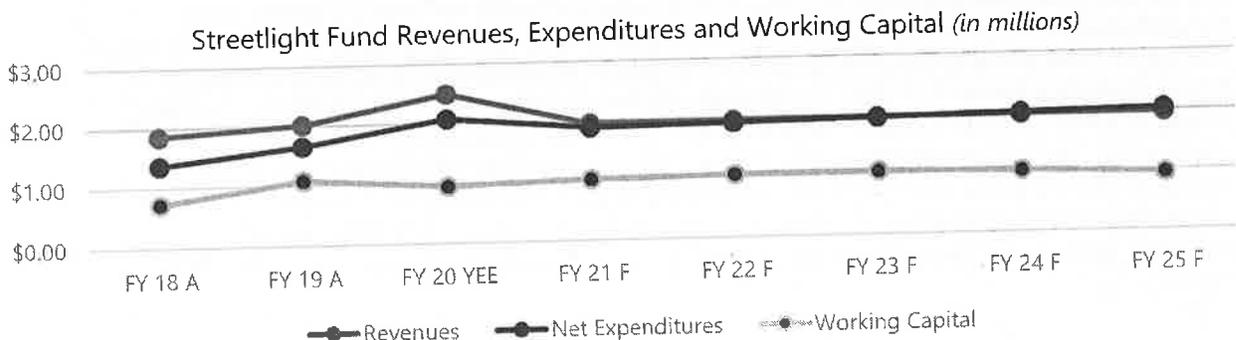
A 2017 interfund loan from the Utility Fund allowed the system re-lamping to be completed within a year resulting in energy cost savings. The loan will be fully repaid in 2027.

Forecast Risk factors are evaluated on the degree of impact to continued service delivery and fund fiscal health.

Forecast Risk	Ranking
Streetlight fee	Low
Electricity savings	Low
Capital improvement transfers	Low

The forecast maintains the following assumptions over the five-year period:

- Transfer to Capital Improvements Fund for replacement and new pole installation projects at \$500,000 per year.
- Continued support for electricity and maintenance expenses for all poles in rights-of-way and parks.



Summary of Findings

National Summary

National economic conditions cooled in 2019 relative to the prior year but the economy remained sufficiently strong to sustain solid job growth. Supported by a series of interest rate cuts by the Federal Reserve, activity should firm this year near the economy's trend pace of growth. The risk of recession continues to look remote.

The economy lost momentum in 2019 as it suffered under the weight of multiple negative forces. First, the fiscal stimulus from earlier tax cuts and spending increases waned; the tax cuts did not provide the persistent boost for investment spending by firms as many had hoped. Second, global economic activity slowed, which weighed on exports. Third, uncertainty over the direction of U.S. trade policy contributed to further slowing of investment activity. And finally, the lagged impact of previous interest rate increases was felt in interest rate sensitive sectors of the economy, particularly housing.

Still, those negative forces failed to push the economy into recession. Recession fears peaked in the middle of 2018 as manufacturing indicators (for example - industrial production and the Institute of Supply Management's monthly survey) worsened and the yield curve briefly inverted with longer-term interest rates falling below short-term rates. Those recession concerns, however, failed to account for the fact that the manufacturing sector of the economy bore the weight of the negative economic shocks and that sector is now a fairly small part of the economy; it is now more difficult for manufacturing-specific shocks to trigger economy-wide recessions. A similar pattern of economic activity occurred in 2015-16 when falling oil prices and a stronger dollar hit the manufacturing sector but left the rest of the economy relatively unscathed.

A yield curve inversion like the brief one in 2018 has often been a long-leading indicator of recession. By itself, and had it been sustained for a longer period of time, it would have led me to raise my odds of recession in 2020. This episode, however, differed from past recessions in that the Federal Reserve (Fed) began cutting interest rates soon after the curve inverted. In the past, the Fed has tended to discount the yield curve as an indicator and instead continued to tighten monetary policy after the curve inverted. In 2019, however, the Fed pivoted toward an easier policy path very quickly, first by dropping earlier expectations for rate hikes in 2018 and then by actually cutting interest rates 0.75 percentage points during the latter half of the year.

In contrast to recessionary periods, last year's pattern of data and policy appear most consistent with the soft-landings the Fed managed during the 1990s when interest rate cuts in 1995 and 1998 effectively prevented the economy from tumbling into recession. Indeed, easier monetary policy this year has already shown positive results. For instance, housing markets, which looked shaky at the end of last year, have rebounded strongly as new construction activity accelerates. In addition, financial market participants have pushed U.S. equity prices to record highs and the yield curve is no longer inverted. Throughout the year, job growth remained solid, unemployment held at 50-year lows, consumer spending growth held at a pace consistent with recent history, and consumer confidence still hovers near cycle highs.

At this point, the stage looks set for a more-favorable economic backdrop in 2020 relative to 2019 as the factors that weighed on activity this year all look set to stabilize or improve. Housing activity is strengthening, global growth and manufacturing activity appear to be stabilizing, and the Fed, which had originally positioned itself to be a drag on economy at the end of 2018, is now running an accommodative monetary policy. Fed officials anticipate moderate growth in 2020 of 2.0%, close to trend growth.

The risk of recession in 2020 looks remote. As noted above, the factors weighing on growth in 2019 look to be moving in the opposite direction in 2020. The Fed expects to hold interest rates steady this year but remains poised to cut interest rates further if needed. With inflation persistently low, the Fed's focus had been on sustaining the expansion and holding the unemployment rate below 4% for as long as possible. If inflation were to rise to a level that the Fed thought destabilizing for the economy, it would react with tighter policy. Given the lags in policy however, even if that were the case it would be more of a risk for 2021 than 2020.

Oregon Summary

The Oregon economy continues to enjoy the benefits of sustained economic expansion. Job growth, however, has slowed relative to earlier in this cycle but this appears to be more related to supply side constraints than a drop in the demand for labor. The long expansion has produced consistently low unemployment rates, reducing remaining slack in the labor market over time. In addition, labor force growth has slowed. This is likely attributable to both a dwindling supply of persons still on the sidelines of the labor market and a slowing pace of immigration. On one hand, households will benefit from tight labor markets in that it will put upward pressure on wages. On the other hand, employers will have an increasingly difficult time hiring workers.

Housing activity regained its footing after stumbling late 2018. Multi-family permits, traditionally a volatile sector, bounced back from some 2018 weakness while single-family permits remain steady at levels still below the peak of past business cycles. Housing sales in most parts of the state have rebounded from weakness in 2018; statewide housing price appreciation has slowed to below 5% (down from over 10%!) as sellers have been unable to push through aggressive price increases to buyers. Unlike during the bubble period of the last decade (with its easy ability to obtain lending and creative mortgage products to extend purchasing power), the pace of home price appreciation will moderate more toward income growth over time.

The University of Oregon Index of Economic Indicators slipped this year, but remains consistent with continued economic expansion in Oregon. The declines are largely related to the weak manufacturing hours worked and the inversion of the yield curve. Like last year, the decline in manufacturing hours is a bit of a mystery that appears more related to changes within the food manufacturing sector rather than an indication of weak demand. Other indicators largely held steady or in some cases improved. Overall, the small decline in the UO index this year does not have the depth or breadth of weakness consistent with a recession. The Oregon Measure of Economic Activity indicates the pace of growth has slowed (as expected given slower job growth) but still exceeds the long run average. Like the national economy, there is only a remote risk of Oregon recession in 2020.

Salem Summary

Job growth in the Salem region was in-line with my expectations for 2019. Note that the exact growth rate measured from December to December can be volatile due to data revisions on

the part of Oregon Department of Employment (job growth in 2018, for example, was less than initially reported). I anticipate a similar pace of job growth in 2020.

Labor market indicators suggest the underlying economy remains quite healthy. Unemployment rates hover near record low levels; low levels of initial unemployment claims, a leading indicator, also remain low and indicate job growth is likely to continue. Like much of the state the region's labor force growth has slowed; if the trend continues, labor supply in the region will be increasingly constrained and may dampen growth.

Housing sales rebounded from a weak patch in late-2018 while residential building permits remain in an uptrend. A spike in activity temporarily drove up the value of residential construction permitted in Salem in the fourth quarter of 2018. Tourism and travel activity continues to bolster the regional economy as evidenced by rising lodging revenues.

According to the Salem measure of economic activity the area's economy remains in the healthy, above-average pace of growth it entered in 2016. Since then, job growth has been generally faster than would have been expected prior to the recession (the expectation is illustrated by the "Simulation" forecast in the Salem MSA Nonfarm Payrolls graph in the appendices). Given that the national and state economies are anticipated to remain in expansion, the most likely outcome for 2020 is that Salem enjoys another year of solid economic activity.

Forecast Summary

To generate forecasts, I began with an unrestricted multiple equation model of Oregon nonfarm payrolls to create a baseline forecast. I simulated the model 1,000 times to create a 90% confidence interval, illustrating the potential outcomes within that interval. I then restricted the model to approximate growth assumptions used by the Oregon Office of Economic Analysis (OEA) to generate the Oregon revenue forecast. Like last year, my expectations for Oregon job growth closely align with those of the state's economist.

I used my forecast of Oregon job growth as the principle driver of the Salem job forecast. I compared this with the forecasted path of job growth as might have been expected prior to the recession (a historical simulation). **Actual percentage changes realized are also sensitive to employment data revisions.** The path of expected job growth was pushed up in last year's forecast but downward revisions to the data brought the expected path of 2020 job growth fairly close to that anticipated in the 2018 version of this report. Overall, the general pattern has been consistent with moderate to fast growth in the post-recession period.

Nonfarm Payroll Growth Forecasts

	OR*	OR (OEA)*	Salem MSA**
2019 (last)	1.9%	2.0%	1.7%
2019 (current)	1.3%	1.3%	1.3%
2020	1.3%	1.5%	1.5%

(OR refer to outcomes using my model loosely conditioned on forecasts of national variables from the Oregon Department of Economic Analysis. OR (OEA) refers to the official state forecast (dated November 2019). * indicates fourth quarter to fourth quarter % change, ** December to December % change.)

Uncertainty/Risks

I believe the risk of recession is remote. Still, recessions are notoriously difficult to predict as the economy could be hit with a random negative shock such as a financial crisis that overwhelms the ability of monetary and fiscal policymakers to react. Also, as noted above, there is a risk that labor supply constraints temper the pace of growth.

In Oregon, there is some uncertainty over the ultimate impact of the recently enacted commercial activities tax. Although the Legislative Revenue Office expects the tax to have a nearly neutral impact on the economy, the business community is skeptical of such claims. Ultimately, it will take at least one tax cycle to begin to understand the impacts to the state economy. My expectation is that if a sector of the economy suffers an unexpected substantial negative impact from the tax, the Legislature will work to adjust the tax to limit that impact. In addition, firms face the possibility of a carbon cap-and-trade policy. While these actual and potential legislative actions could weigh on the Oregon economy, they have yet to make a broad negative impact; the national economic expansion remains the dominant economic factor driving the cycle.

Local Revenue Implications

Like last year, staff's expectations for city revenue growth are consistent with the area's likely path of economic activity this year. The dominant revenue source, property taxes, is a fairly stable revenue stream and the weakness associated with the Great Recession was most likely an outlier. An event of that magnitude is fairly rare. Moreover, the outlook for housing is generally positive; construction activity remains in an upswing. Other revenue sources are not substantially tied to the business cycle. The City is planning to put forward a payroll tax to voters in May 2020 that, if approved, will add a revenue source more closely tied with the business cycle.

The pressures on the expense side of the budget are similar to last year. Costs are tied to the business cycle as the healthy job market places upward pressure on wages in general. Note that recently wage growth for lower-paid workers has risen above that of higher-paid workers. Benefits costs are also expected to rise, although the Legislature adopted some PERS reforms this year. At least one of the reforms, increasing the amortization period to fund the actuarial shortfall, will be unlikely to face legal challenges and will help limit the increase in PERS costs going forward.

Citywide Financial Forecast Risks and Rankings

Risks to Expenditure Forecast

This summary presents risks to the expenditure forecast by evaluating the degree by which each identified risk will impact service delivery. This assessment assists in determining actions to be taken over the five-year period.

PERS Costs and Employer Rate Increases

Through its most recent *Actuarial Valuation Report* for the PERS system (as of December 31, 2018), the PERS Board provided the City with advisory employer contribution rates for July 1, 2021 through June 30, 2023. The rates, which are used in the forecast, appear in Table 1 below. Rates for the two-year periods beginning July 1, 2021 and July 1, 2023 were developed using the following key assumptions:

- The contributions rates are not impacted by the rate collar;
- Includes the impact of the re-amortization of the unfunded liability in SB 1049;
- The employer offset from the employee Individual Account Program (IAP) redirect was not included due to pending litigation;
- The investment returns are at least 5% (PERS Board assumed rate is 7.2%);
- Side account relief rate expected to stabilize at 6.9 percent; and
- OPSRP replacement percentage will continue to increase as Tier 1 and 2 employees retire.

Expenditures Risks, Table 1 PERS Employer Contribution Rates

PERS Type	FY 2016	FY 2018	FY 2020	FY 2022	FY 2024
Tier 1 and 2	15.82%	21.07%	25.49%	29.48%	30.48%
OPSRP General Service	8.62%	11.97%	16.41%	20.42%	21.42%
OPSRP Fire and Police	12.73%	16.74%	21.04%	24.97%	25.97%

See Appendix A for a complete table of PERS related expenses.

Risk Factor Ranking – HIGH

Accelerating PERS rates are a significant factor in year-over-year forecast cost increases, particularly in the General Fund. The Oregon Legislature passed SB 1049 with various components to stabilize PERS employer contribution rates. The portion of SB 1049 that impacts the City of Salem PERS rates most significantly is the re-amortization of the PERS unfunded liability. By re-amortizing over a longer period of time, the impact on rates to pay down the unfunded liability will be less. It is unclear if the Oregon Legislature will undertake any additional PERS reform during upcoming legislative sessions. The City will continue to monitor for any potential changes.

Health Care Costs

The City's rates are developed annually with the assistance of a consultant knowledgeable of the industry. The rate analysis is based on a review of national and statewide health care cost trends, legislated health care reforms, the required cash reserves to meet obligations year-over-year and the City's claims activity from previous years. The rate of increase for health benefits premium costs is assumed to increase over the five-year period with PPO medical premiums escalating by 2.5-6.0 percent. See Appendix A for the detailed assumption table.

Risk Factor Ranking – MEDIUM

Health care costs could be higher or lower depending on a variety of factors, which are difficult to predict, including increased costs in the health care industry, the amount of filed claims, and the mix of enrollees.

Labor Agreements

Approximately 75 percent of the City's workforce is represented by one of five unions—SPEU (police), IAFF (firefighters and battalion chiefs), PCEA (9-1-1 communications), AFSCME (general unit), and SCABU (City attorneys). Wage increases associated with the most recent agreements are incorporated in the forecast. For the years beyond the term of these agreements, an assumed 2.5 percent wage increase is used.

Risk Factor Ranking – HIGH

Negotiations are underway with three labor unions – IAFF, SPEU, SCABU – during the current fiscal year. The risks associated with increased costs from future labor negotiations beyond FY 2020 are difficult to measure at this time.

Inflation

The Bureau of Labor Statistics reported for October 2019 that the Consumer Price Index, Western Region, CPI-U increased 2.8 percent from October 2018. Over the measurement period, the index for all items less food and energy advanced 2.8 percent. For purposes of this forecast, 2.0-3.0 percent inflation factors are used on general goods and services. Inflation factors for internal City services such as motor pool, radio communications, and 9-1-1 call-taking and dispatch are tied to the projected cost of providing the service during the forecast period.

Risk Factor Ranking – MEDIUM

Inflation may become a more significant factor over the forecast period for the goods and services that the City purchases. Energy price fluctuations will be monitored but are not anticipated to be significant risks at this time.

Over the five-year forecast period, risk factors with medium rankings will be monitored and action will be taken should they begin to move to a higher risk status. All high-ranking risks are monitored closely and, when possible, steps will be taken to lower the City's exposure.

Forecast Risk – Expenditures

	Ranking	Percent Total Expenditures
PERS Costs / Employer Rate Increases	HIGH	13.2%
Health Benefit Costs	MEDIUM	10.1%
Labor Agreements / Salary Costs	HIGH	41.2%
Inflation	MEDIUM	Varies

Comparative data for *PERS Employer Rate Increases* include the costs of PERS employer, PERS pickup (6 percent of salary), and the City's assessment for its unfunded PERS liability. *Labor Agreements / Salary Costs* equal salary, overtime, standby, differential, incentives, and seasonal wages. Percentages in the expenditures table are based upon comparison with the total operations budget for the four funds – General, Transportation Services, Utility, and WVCC – in the FY 2021 forecast year. The operations budget includes personal services, materials and services, and capital outlay. Debt service, contingencies, and transfers are not included in this comparison.



Expenditure Assumptions Table

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Wage Projections	%	%	%	%	%
	Increase	Increase	Increase	Increase	Increase
Market adjustment – AFSCME	2.75%	2.50%	2.50%	2.50%	2.50%
Market adjustment – Attorneys (SCABU)**	2.50%	2.50%	2.50%	2.50%	2.50%
Market adjustment – Police (SPEU)**	2.50%	2.50%	2.50%	2.50%	2.50%
Market adjustment – Battalion Chiefs (IAFF)*	2.50%	2.50%	2.50%	2.50%	2.50%
Market adjustment – Fire (IAFF)*	2.50%	2.50%	2.50%	2.50%	2.50%
Market adjustment – Non-represented	2.75%	2.50%	2.50%	2.50%	2.50%
Market adjustment – PCEA (9-1-1)	3.00%	3.00%	2.50%	2.50%	2.50%

Note: *Italicized text represents a rate from a current labor contract.*

*Contracts final year in FY 2019.

**Contracts final year in FY 2020.

Other Personal Services Costs	Annual Percentage Change in Benefits Projections				
Medical (effective Dec 1, each fiscal year) / PPO	2.50%	2.50%	5.00%	6.00%	6.00%
Dental (effective Dec 1, each fiscal year)	0.00%	0.00%	0.00%	0.00%	0.00%
Vision (effective Dec 1, each fiscal year)	0.00%	0.00%	0.00%	0.00%	0.00%
Workers' compensation	-8.74%	0.00%	0.00%	0.00%	0.00%
Life insurance (effective Dec 1, each fiscal year)	0.00%	0.00%	0.00%	0.00%	0.00%
Disability insurance (effective Dec 1, each fiscal year)	0.00%	0.00%	0.00%	0.00%	0.00%
	PERS Rates on Eligible Earnings				
Retirement-Employer – Tier 1 and 2	25.49%	29.48%	29.48%	30.48%	30.48%
Retirement-Employer – OPSRP General	16.41%	20.42%	20.42%	21.42%	21.42%
Retirement-Employer – OPSRP Police and Fire	21.04%	24.97%	24.97%	25.97%	25.97%

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Materials and Services	% Increase	% Increase	% Increase	% Increase	% Increase
General inflation factor	2.00% - 3.00%	2.00% - 3.00%	2.00% - 3.00%	2.00% - 3.00%	2.00% - 3.00%
Gasoline / Diesel	Varies by department, overall 0.00%	2.00 %	2.00 %	2.00 %	2.00 %
Internal charges	4.00% - 6.00%	4.00% - 6.00%	4.00% - 6.00%	4.00% - 6.00%	4.00% - 6.00%
Liability insurance	Varies by department, overall 0.00%	0.00 %	0.00 %	0.00 %	0.00 %
Motor pool (Fleet Services)	Varies by department, overall 4.10%	6.00%	4.00%	6.00%	4.00%
Radio communications	Varies by department, overall -2.00%	0.00%	0.00%	0.00%	0.00%
9-1-1 services*	5.70%	4.70%	3.90%	3.90%	3.90%

*Escalators for 9-1-1 services reflect the rates charged to all member agencies. The City's rate will be slightly higher than those anticipated for the first year of the forecast period for other member agencies. The higher rates reflect the completion of the plan initiated in 2015 to help the Willamette Valley Communication Center (WVCC) Fund maintain financial stability. The plan included a pre-payment of \$250,000 from the City of Salem, which was managed through lowered rates through FY 2020.

General Fund Revenues Assumptions Table

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenue	% Increase				
Current year property tax	4.13 %	4.35 %	4.08 %	4.05 %	4.04 %
Electric franchise	1.25 %	1.25 %	1.25 %	1.25 %	1.25 %
Telecommunications franchise	0.00 %	2.00 %	2.00 %	2.00 %	2.00 %
Natural gas franchise	0.00 %	0.00 %	0.00 %	0.00 %	0.00 %
Refuse (solid waste) franchise	4.00 %	3.00 %	3.00 %	3.00 %	3.00 %
Cable franchise*	-2.00 %	-2.00 %	-2.00 %	-2.00 %	-2.00 %
Fees for service**	60.00 %	2.50 %	2.50 %	2.50 %	2.50 %
Planning, site, dwelling review fees	4.00 %	6.00 %	4.00 %	6.00 %	4.00 %
Other fees	2.00 %	2.00 %	2.00 %	2.00 %	2.00 %
Licenses, permits	1.20 %	1.20 %	1.20 %	1.20 %	1.20 %
Rents (parking, building)***	8.50 %	-7.50 %	8.50 %	-7.50 %	8.50 %
Indirect cost allocation (ICAP)	-1.60 %	4.00 %	3.00 %	3.00 %	3.00 %
Other internal charges	4.00 %	6.00 %	4.00 %	4.00 %	4.00 %
State shared revenue****	7.40 %	7.00 %	3.10 %	3.10 %	3.10 %
Other agencies	3.00 %	3.00 %	3.00 %	3.00 %	3.00 %
Grants	-5.00 %	0.00 %	0.00 %	0.00 %	0.00 %
Fines, penalties	2.20 %	0.00 %	2.20 %	0.00 %	2.20 %

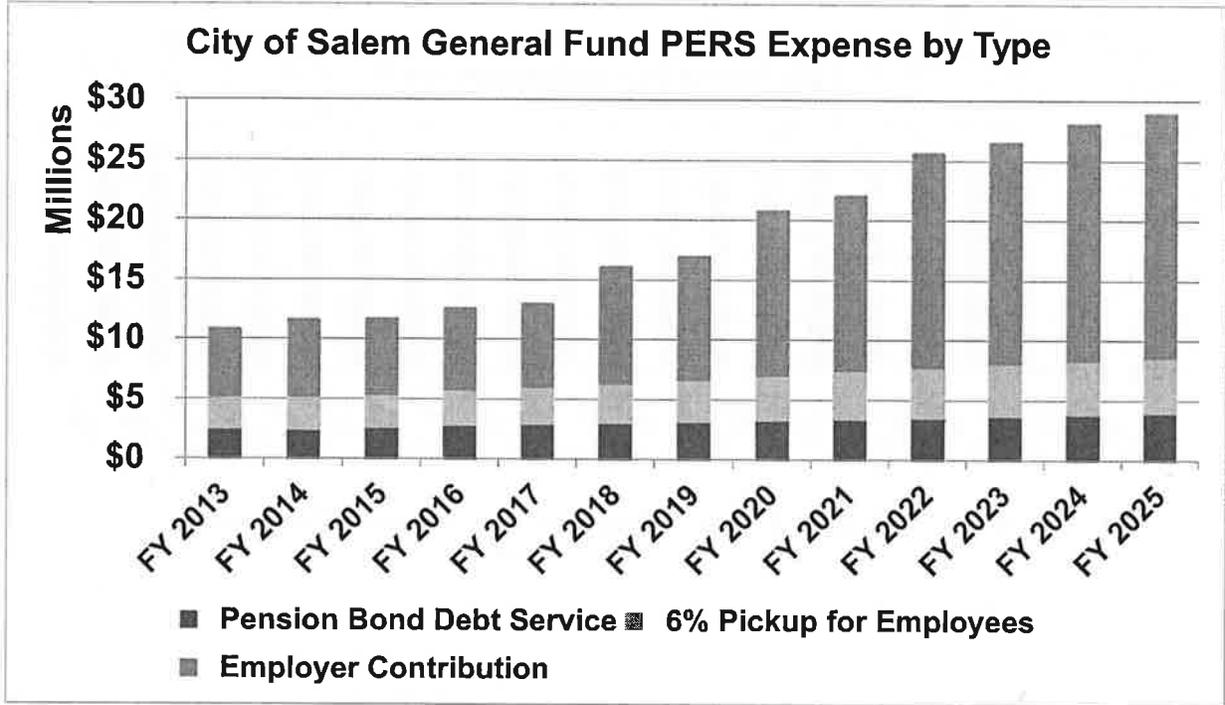
FY 2021 escalators or de-escalators are calculated against the FY 2020 estimates for year-end revenue totals by type.

*Decreasing cable franchise revenues relate to a current trend of customers moving away from traditional cable service towards over-the-top (OTT) content delivery systems.

**The rate of increase for FY 2021 reflects the addition of the new Operations Fee which will only be in place six months of FY 2020 – having started in January 2020 – and a full year during FY 2021. The Operations Fee, which is also the single largest fee, is expected to increase 2.5% annually. All other fees for service are expected to increase on average 3% - 4%.

***The pattern of escalation and de-escalation for rent revenues reflects the impact of biennial full legislative sessions.

****Beginning January 1, 2020, the Oregon Emergency Communications (E911) tax rate will increase from \$0.75 to \$1.00 and will again increase 25 cents to \$1.25 on January 1, 2021.



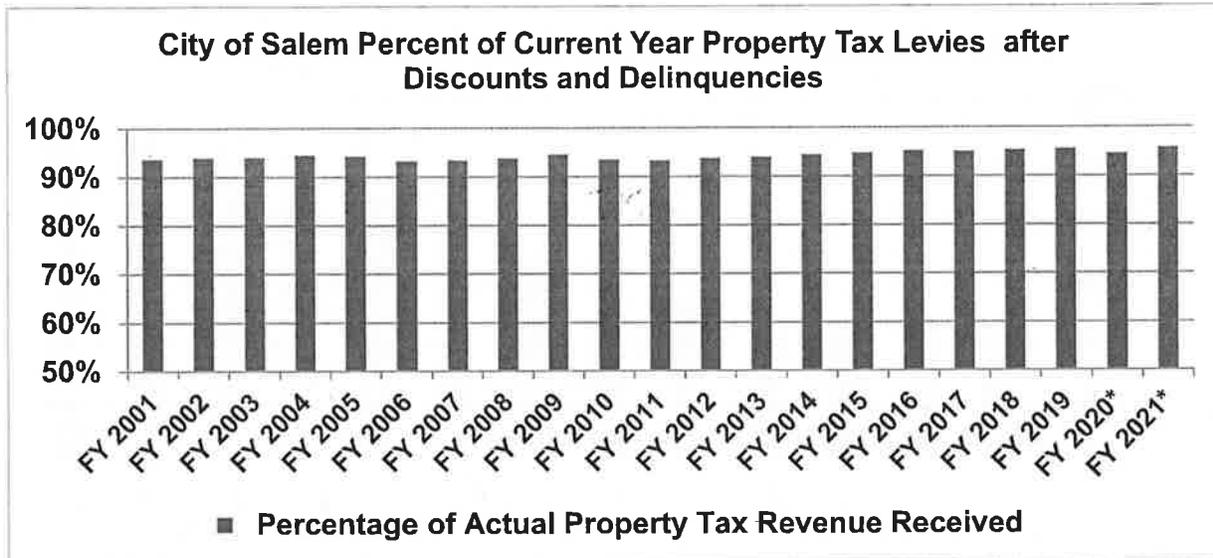
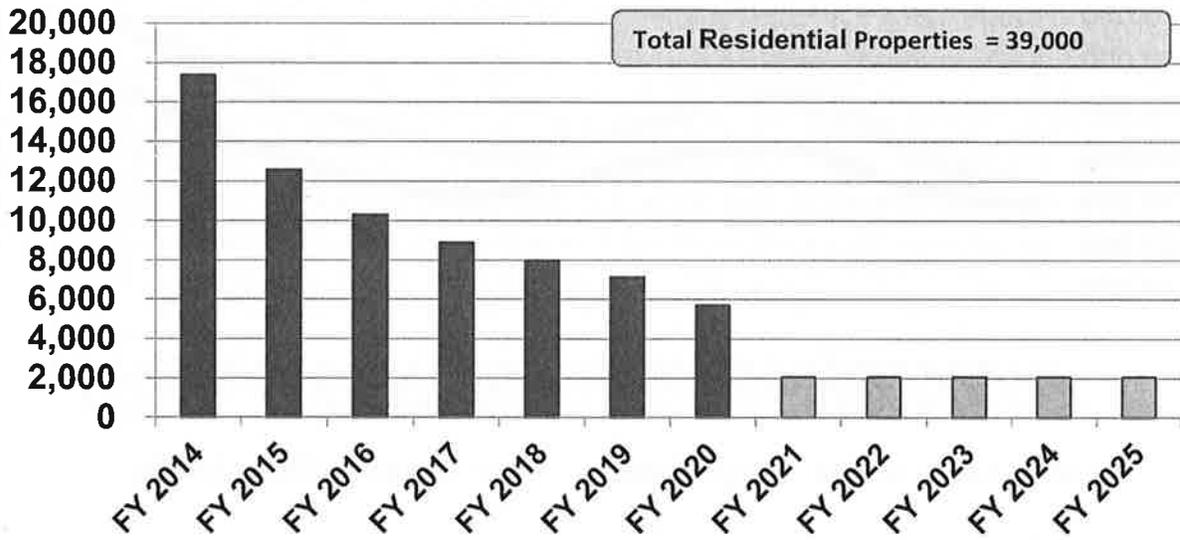


Table 2 - Historic Changes in Property Tax Levies
Since the Passage of Measure 50

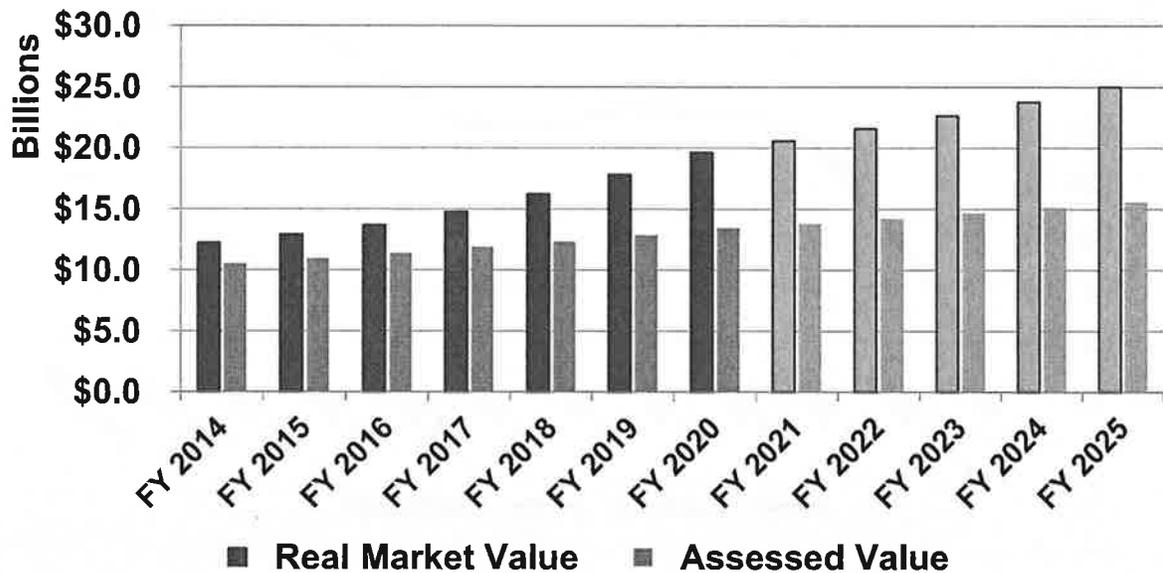
Fiscal Year	Levy	Increase	Actual	Increase
FY 2001	35,000,560	-	32,787,613	-
FY 2002	36,754,990	5.0%	34,517,563	5.3%
FY 2003	38,815,890	5.6%	36,495,536	5.7%
FY 2004	40,564,780	4.5%	38,309,011	5.0%
FY 2005	42,316,782	4.3%	39,880,157	4.1%
FY 2006	44,234,818	4.5%	41,238,540	3.4%
FY 2007	46,747,259	5.7%	43,661,990	5.9%
FY 2008	49,708,758	6.3%	46,619,613	6.8%
FY 2009	51,979,085	4.6%	49,177,277	5.5%
FY 2010	53,837,888	3.6%	50,330,937	2.3%
FY 2011	55,258,868	2.6%	51,547,855	2.4%
FY 2012	56,259,395	1.8%	52,765,171	2.4%
FY 2013	56,224,933	-0.1%	52,860,672	0.2%
FY 2014	57,476,027	2.2%	54,281,270	2.7%
FY 2015	60,123,315	4.6%	56,987,431	5.0%
FY 2016	62,877,738	4.6%	59,874,938	5.1%
FY 2017	65,808,335	4.7%	62,526,467	4.4%
FY 2018	67,942,307	3.2%	64,772,793	3.6%
FY 2019	70,414,872	3.6%	67,345,574	4.0%
FY 2020*	73,648,895	4.6%	69,633,609	3.4%
FY 2021*	75,722,947	2.8%	72,506,673	4.1%

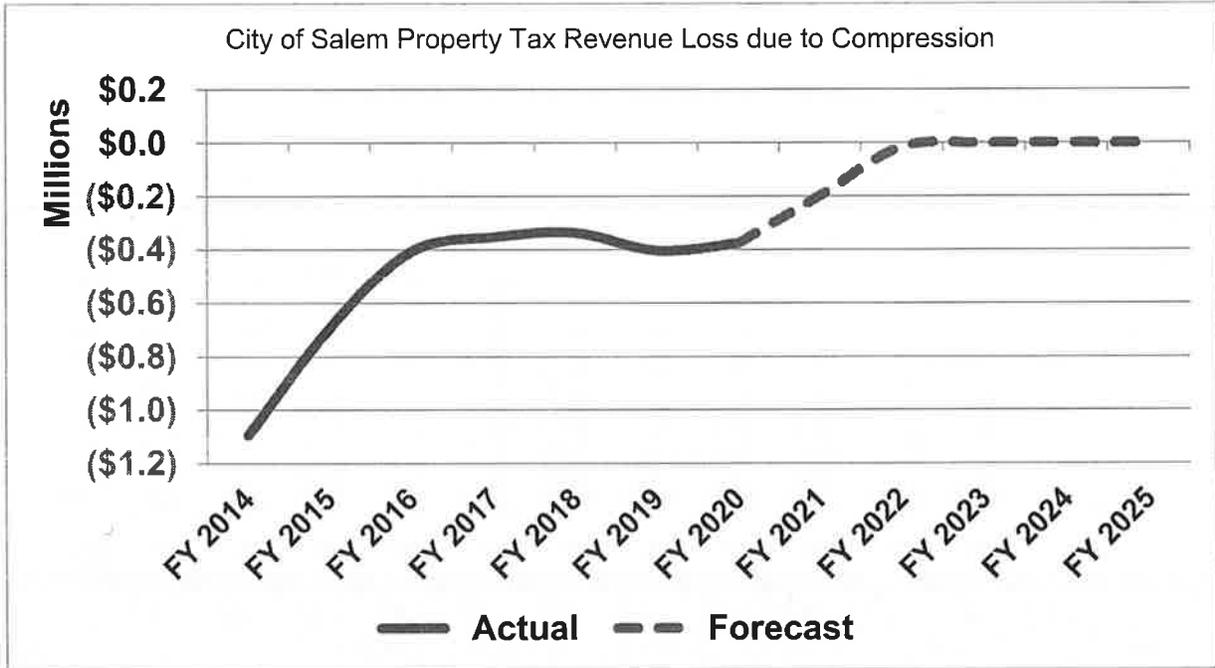
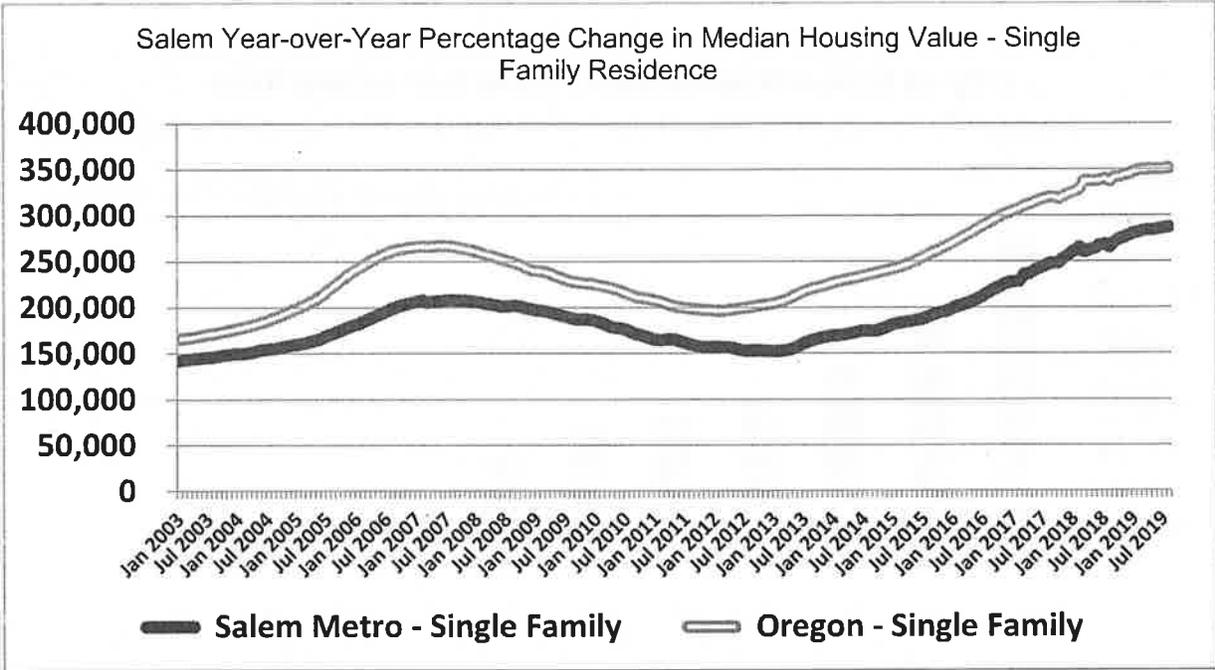
*Projected

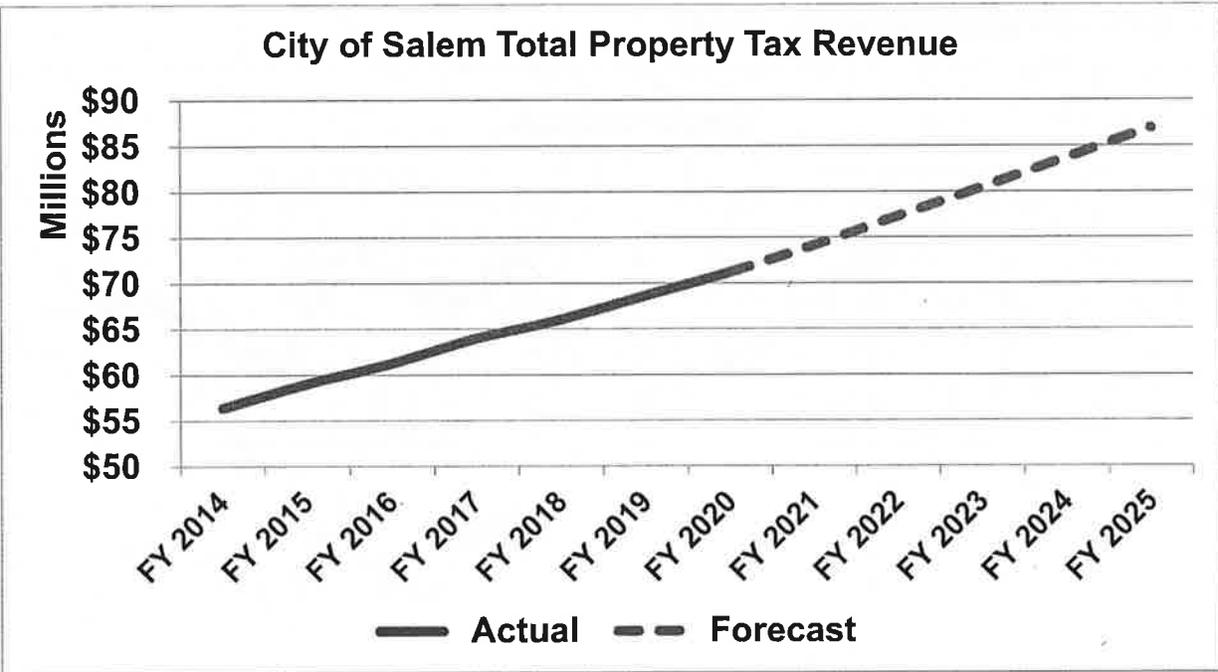
City of Salem Residential Properties where Real Market Value is equal to Assessed Value (Marion County)



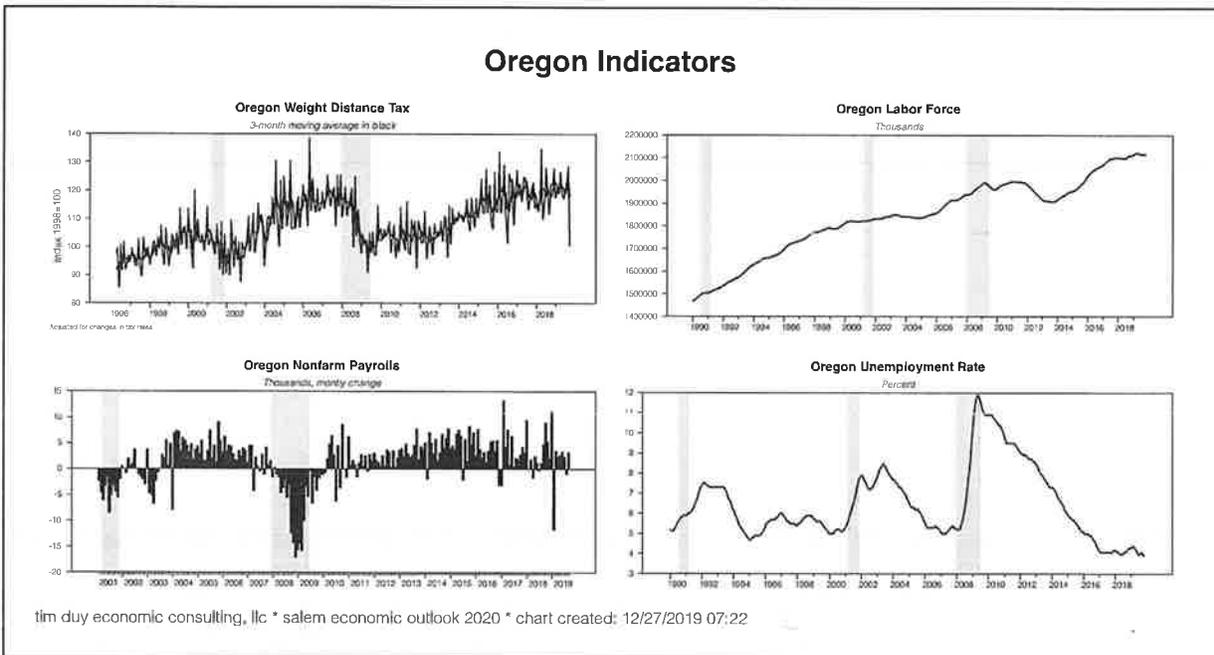
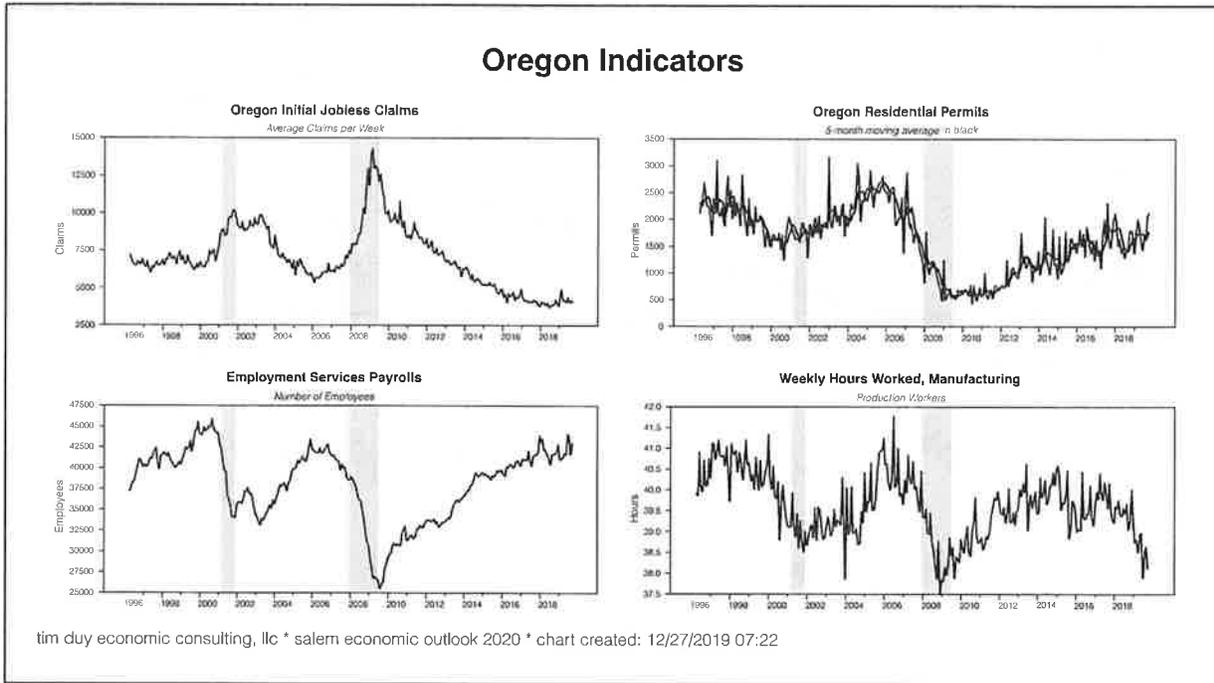
City of Salem Real Market Value vs. Assessed Value



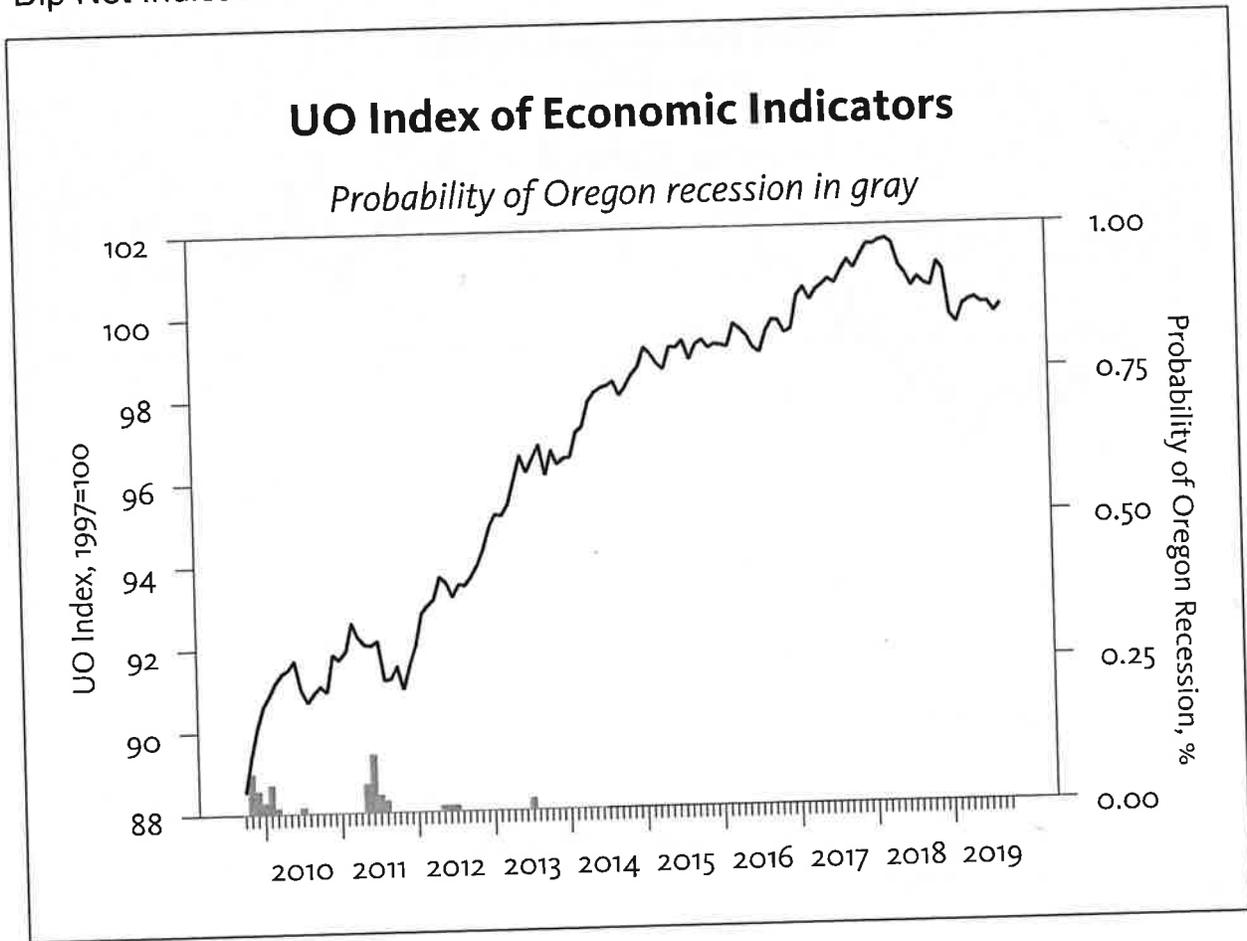




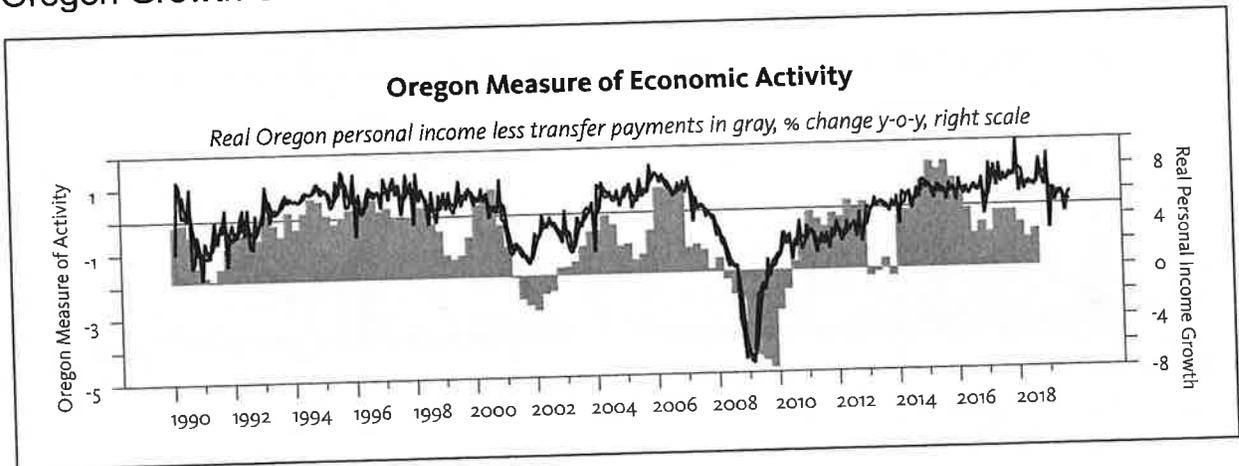
Oregon Indicators Generally Solid



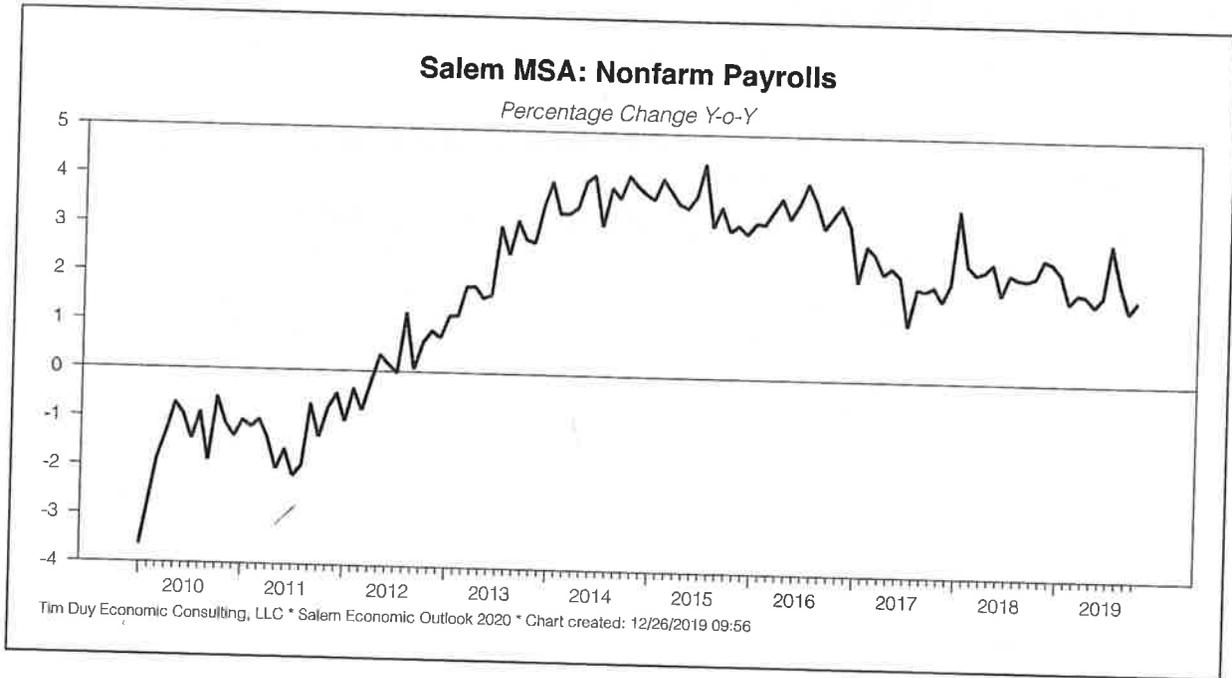
Dip Not Indicative of Recession



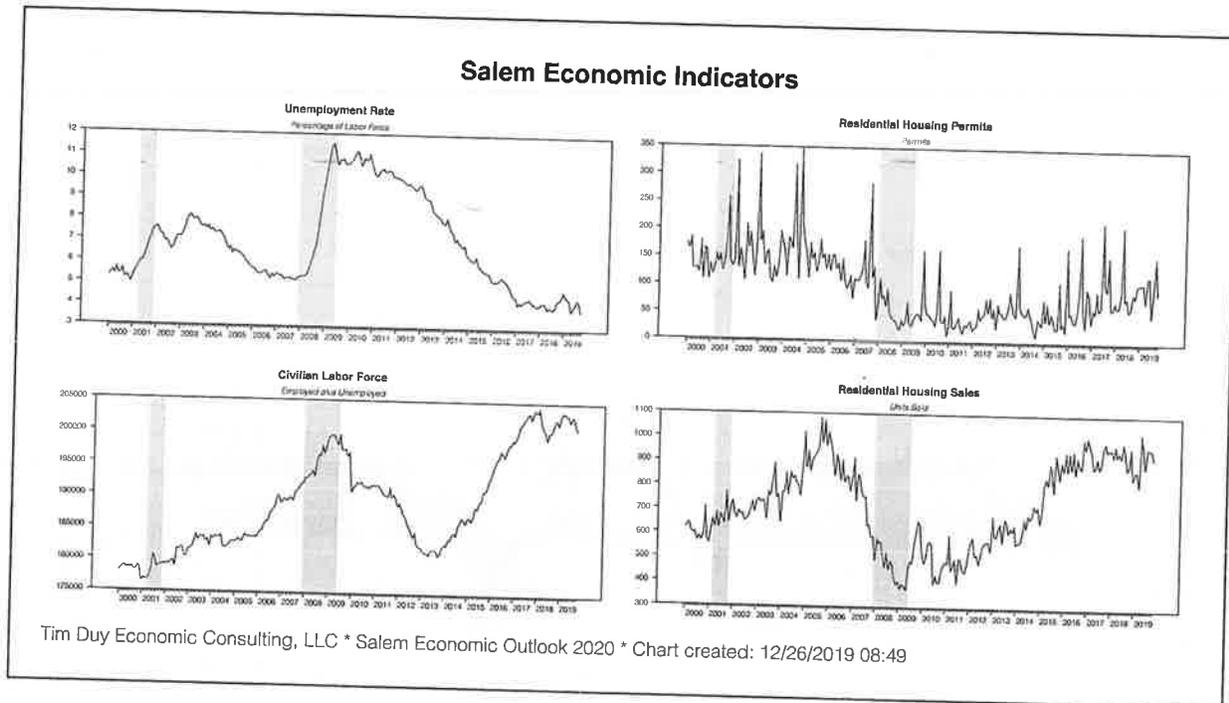
Oregon Growth Slower But Above Average



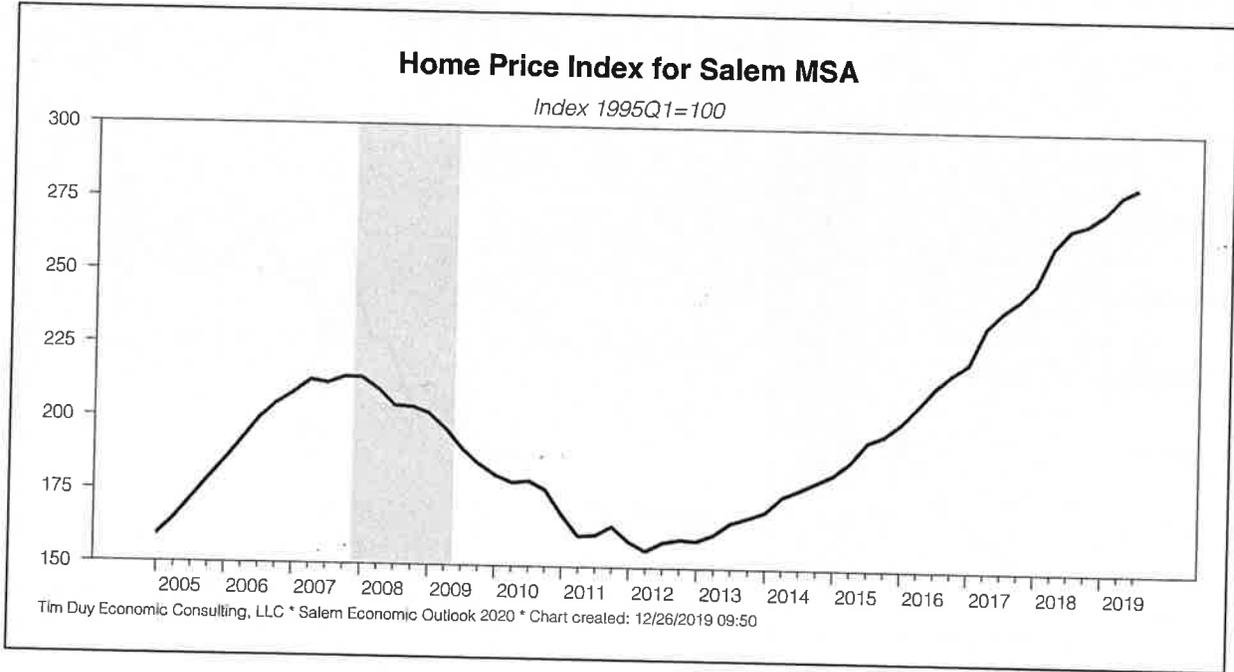
Salem Job Growth Off Its Peak



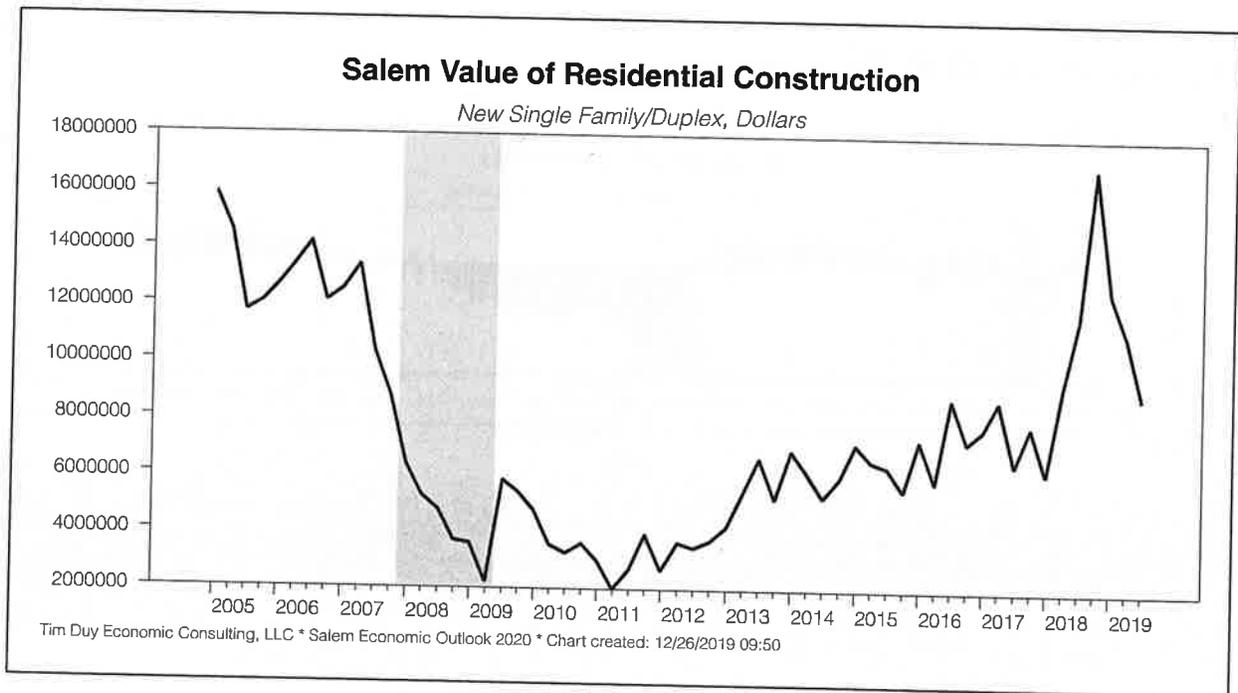
Indicators Generally Solid



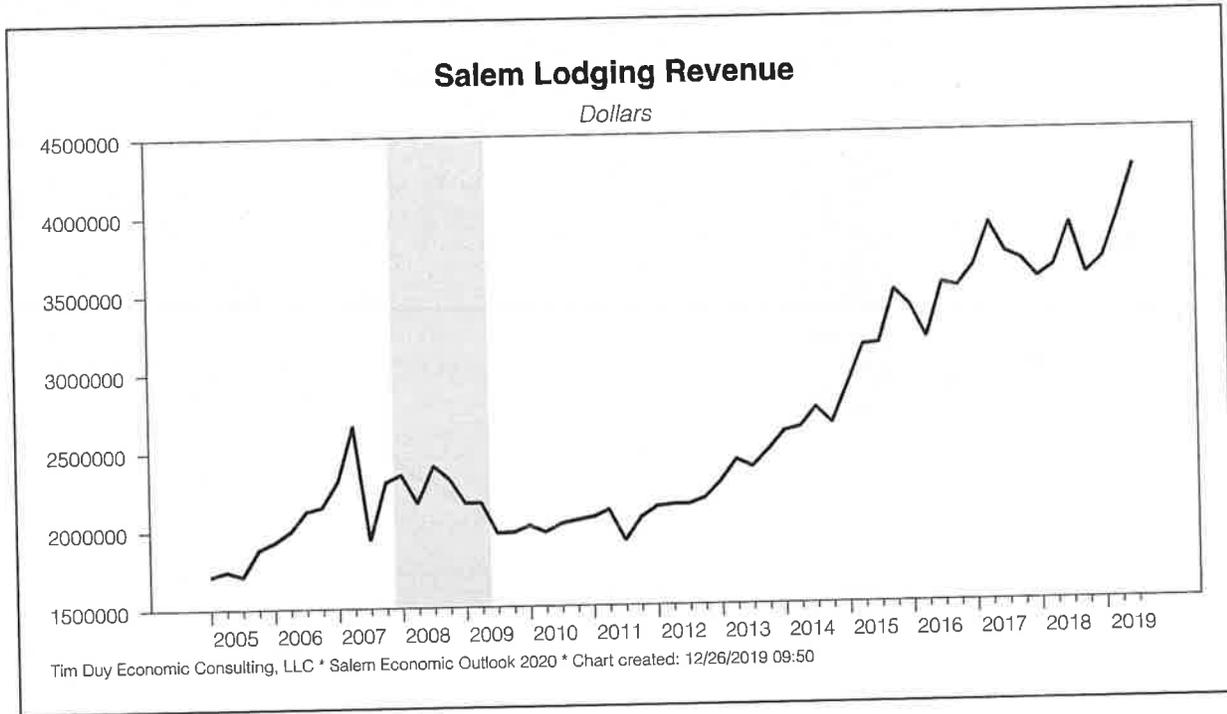
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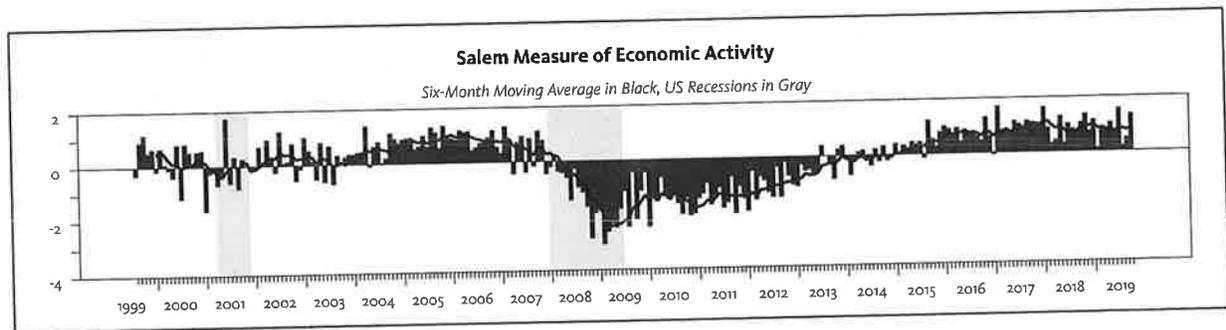
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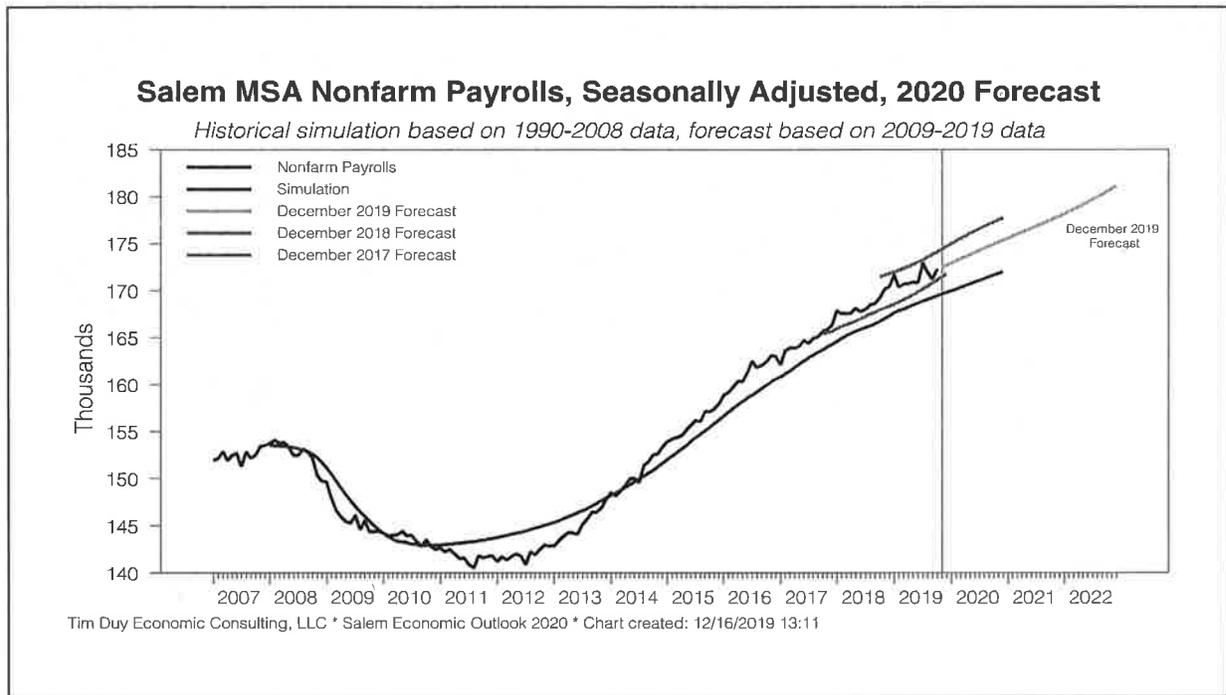
Indicators Generally Solid



After a Dip Early 2018, Back on Track



Regional Job Growth Expected to Continue



→ C Ross Counsel

DEFINITIONS

401.025 Definitions for ORS chapter 401. As used in this chapter:

(1) "Emergency" means a human created or natural event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering or financial loss, including but not limited to:

(a) Fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war; and

(b) A rapid influx of individuals from outside this state, a rapid migration of individuals from one part of this state to another or a rapid displacement of individuals if the influx, migration or displacement results from the type of event or circumstance described in paragraph (a) of this subsection.

(2) "Emergency service agency" means an organization within a local government that performs essential services for the public's benefit before, during or after an emergency, such as law enforcement, fire control, health, medical and sanitation services, public works and engineering, public information and communications.

(3) "Emergency services" means activities engaged in by state and local government agencies to prepare for an emergency and to prevent, minimize, respond to or recover from an emergency, including but not limited to coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in 50 U.S.C. app. 2252.

(4) "Local government" has the meaning given that term in ORS 174.116.

(5) "Major disaster" means any event defined as a "major disaster" under 42 U.S.C. 5122(2).
[1983 c.586 §2; 1985 c.733 §21; 1987 c.373 §84; 1989 c.361 §8; 1991 c.418 §1; 1991 c.956 §10; 1993 c.187 §1; 1999 c.935 §29; 2005 c.825 §9; 2007 c.97 §10; 2007 c.223 §5; 2007 c.740 §20; 2009 c.718 §17]

DE

FORCIBLE ENTRY AND WRONGFUL DETAINER

105.105 Entry to be lawful and peaceable only. No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.

the court

105.110 Action for forcible entry or wrongful detainer. When a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession of the premises in the circuit court or before any justice of the peace of the county. [Amended by 1985 c.241 §1; 1995 c.658 §68]

105.111 Stay of eviction for state service member. (1) As used in this section, "state service member" means a member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(2) In an action pursuant to ORS 105.110, the court may stay the eviction of the defendant for up to 90 days if:

- (a) The defendant is a state service member;
- (b) The agreed-upon rent does not exceed \$1,200 per month; and
- (c) The premises are occupied chiefly for dwelling purposes by the spouse, children or other dependents of the defendant.

(3) If the defendant requests a stay of the eviction for up to 90 days and the defendant can prove that the ability of the defendant to pay the agreed-upon rent is materially affected by being called into active service, the court may grant the stay of the eviction. [2003 c.387 §7]

Note: 105.111 was added to and made a part of 105.105 to 105.168 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

105.112 Action by tenant to recover personal property; forms. (1) A tenant or former tenant may bring an action to recover personal property taken or retained by a landlord in violation of ORS chapter 90.

(2) An action under this section shall be governed by the provisions of ORS 105.105 to 105.168 except that:

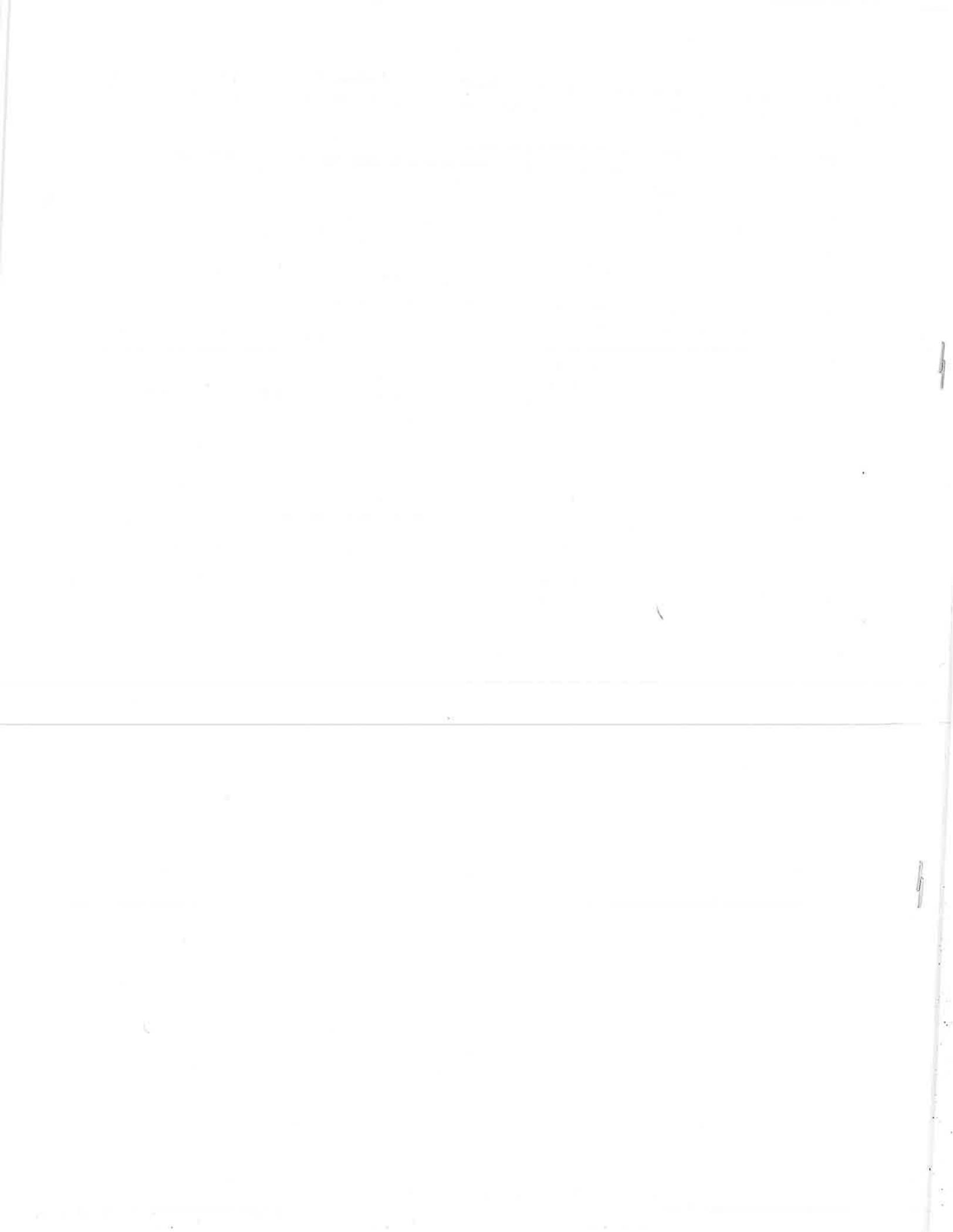
- (a) The complaint shall be in substantially the following form and shall be available from the court clerk:

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),)
 Plaintiff(s),)
)
 vs.) No. ____
)
 (Landlord),)
)
 Defendant(s).)

COMPLAINT FOR RETURN
OF PERSONAL PROPERTY
I

Defendant(s) (is) (are) in possession of the following personal property belonging to the plaintiff(s):



FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROBERT MARTIN; LAWRENCE LEE
SMITH; ROBERT ANDERSON; JANET
F. BELL; PAMELA S. HAWKES; and
BASIL E. HUMPHREY,
Plaintiffs-Appellants,

v.

CITY OF BOISE,
Defendant-Appellee.

No. 15-35845

D.C. No.
1:09-cv-00540-
REB

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the District of Idaho
Ronald E. Bush, Chief Magistrate Judge, Presiding

Argued and Submitted July 13, 2017
Portland, Oregon

Filed April 1, 2019

Before: Marsha S. Berzon, Paul J. Watford,
and John B. Owens, Circuit Judges.

Order;
Concurrence in Order by Judge Berzon;
Dissent to Order by Judge Milan D. Smith, Jr.;
Dissent to Order by Judge Bennett;
Opinion by Judge Berzon;
Partial Concurrence and Partial Dissent by Judge Owens

SUMMARY*

Civil Rights

The panel amended its opinion filed September 4, 2018, and reported at 902 F.3d 1031, denied a petition for panel rehearing, denied a petition for rehearing en banc on behalf of the court, and ordered that no further petitions shall be entertained.

In the amended opinion, the panel affirmed in part and reversed in part the district court's summary judgment in favor of the City of Boise in an action brought by six current or formerly homeless City of Boise residents who alleged that their citations under the City's Camping and Disorderly Conduct Ordinances violated the Eighth Amendment's prohibition on cruel and unusual punishment.

Plaintiffs sought damages for the alleged violations under 42 U.S.C. § 1983. Two plaintiffs also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances. In 2014, after this litigation began, the ordinances were amended to prohibit their enforcement against any homeless person on public property on any night when no shelter had an available overnight space.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel first held that two plaintiffs had standing to pursue prospective relief because they demonstrated a genuine issue of material fact as to whether they faced a credible risk of prosecution on a night when they had been denied access to the City's shelters. The panel noted that although the 2014 amendment precluded the City from enforcing the ordinances when shelters were full, individuals could still be turned away for reasons other than shelter capacity, such as for exceeding the shelter's stay limits, or for failing to take part in a shelter's mandatory religious programs.

The panel held that although the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994), and its progeny precluded most — but not all — of the plaintiffs' requests for retrospective relief, the doctrine had no application to plaintiffs' request for an injunction enjoining prospective enforcement of the ordinances.

Turning to the merits, the panel held that the Cruel and Unusual Punishments Clause of the Eighth Amendment precluded the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter. The panel held that, as 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.

Concurring in part and dissenting in part, Judge Owens disagreed with the majority's opinion that *Heck v. Humphrey* did not bar plaintiffs' claim for declaratory and injunctive relief. Judge Owens stated that a declaration that the city ordinances are unconstitutional and an injunction against their future enforcement would necessarily demonstrate the

invalidity of plaintiffs' prior convictions. Judge Owens otherwise joined the majority in full.

Concurring in the denial of rehearing en banc, Judge Berzon stated that on the merits, the panel's opinion was limited and held only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. Judge Berzon further stated that a photograph featured in Judge M. Smith's dissent from the denial of rehearing en banc, depicting tents on a Los Angeles public sidewalk, was not part of the record, was unrelated, predated the panel's decision and did not serve to illustrate a concrete effect of the panel's holding. Judge Berzon stated that what the pre-*Martin* photograph did demonstrate was that the ordinances criminalizing sleeping in public places were never a viable solution to the homelessness problem.

Dissenting from the denial of rehearing en banc, Judge M. Smith, joined by Judges Callahan, Bea, Ikuta, Bennett and R. Nelson, stated that the panel severely misconstrued three areas of binding Supreme Court precedent, and that the panel's opinion created several splits with other appellate courts. Judge M. Smith further stated that the panel's holding has already begun wreaking havoc on local governments, residents, and businesses throughout the circuit. Judge M. Smith stated that the panel's reasoning will soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination, and that the panel's opinion shackles the hands of public officials trying to redress the serious societal concern of homelessness.

Dissenting from the denial of rehearing en banc, Judge Bennett, joined by Judges Bea, Ikuta, R. Nelson, and joined by Judge M. Smith as to Part II, stated that the panel's decision, which allows pre-conviction Eighth Amendment challenges, is wholly inconsistent with the text and tradition of the Eighth Amendment.

COUNSEL

Michael E. Bern (argued) and Kimberly Leefatt, Latham & Watkins LLP, Washington, D.C.; Howard A. Belodoff, Idaho Legal Aid Services Inc., Boise, Idaho; Eric Tars, National Law Center on Homelessness & Poverty, Washington, D.C.; Plaintiffs-Appellants.

Brady J. Hall (argued), Michael W. Moore, and Steven R. Kraft, Moore Elia Kraft & Hall LLP, Boise, Idaho; Scott B. Muir, Deputy City Attorney; Robert B. Luce, City Attorney; City Attorney's Office, Boise, Idaho; for Defendant-Appellee.

ORDER

The Opinion filed September 4, 2018, and reported at 902 F.3d 1031, is hereby amended. The amended opinion will be filed concurrently with this order.

The panel has unanimously voted to deny the petition for panel rehearing. The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

Future petitions for rehearing or rehearing en banc will not be entertained in this case.

BERZON, Circuit Judge, concurring in the denial of rehearing en banc:

I strongly disfavor this circuit's innovation in en banc procedure—ubiquitous dissents in the denial of rehearing en banc, sometimes accompanied by concurrences in the denial of rehearing en banc. As I have previously explained, dissents in the denial of rehearing en banc, in particular, often engage in a “distorted presentation of the issues in the case, creating the impression of rampant error in the original panel opinion although a majority—often a decisive majority—of the active members of the court . . . perceived no error.” *Def. of Wildlife Ctr. for Biological Diversity v. EPA*, 450 F.3d 394, 402 (9th Cir. 2006) (Berzon, J., concurring in denial of

rehearing en banc); see also Marsha S. Berzon, *Dissent, "Dissentals," and Decision Making*, 100 Calif. L. Rev. 1479 (2012). Often times, the dramatic tone of these dissents leads them to read more like petitions for writ of certiorari on steroids, rather than reasoned judicial opinions.

Despite my distaste for these separate writings, I have, on occasion, written concurrences in the denial of rehearing en banc. On those rare occasions, I have addressed arguments raised for the first time during the en banc process, corrected misrepresentations, or highlighted important facets of the case that had yet to be discussed.

This case serves as one of the few occasions in which I feel compelled to write a brief concurrence. I will not address the dissents' challenges to the *Heck v. Humphrey*, 512 U.S. 477 (1994), and Eighth Amendment rulings of *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), as the opinion sufficiently rebuts those erroneous arguments. I write only to raise two points.

First, the City of Boise did not initially seek en banc reconsideration of the Eighth Amendment holding. When this court solicited the parties' positions as to whether the Eighth Amendment holding merits en banc review, the City's initial submission, before mildly supporting en banc reconsideration, was that the opinion is quite "narrow" and its "interpretation of the [C]onstitution raises little actual conflict with Boise's Ordinances or [their] enforcement." And the City noted that it viewed prosecution of homeless individuals for sleeping outside as a "last resort," not as a principal weapon in reducing homelessness and its impact on the City.

The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. *Martin*, 902 F.3d at 1035. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.

Second, Judge M. Smith’s dissent features an unattributed color photograph of “a Los Angeles public sidewalk.” The photograph depicts several tents lining a street and is presumably designed to demonstrate the purported negative impact of *Martin*. But the photograph fails to fulfill its intended purpose for several reasons.

For starters, the picture is not in the record of this case and is thus inappropriately included in the dissent. It is not the practice of this circuit to include outside-the-record photographs in judicial opinions, especially when such photographs are entirely unrelated to the case. And in this instance, the photograph is entirely unrelated. It depicts a sidewalk in Los Angeles, not a location in the City of Boise, the actual municipality at issue. Nor can the photograph be said to illuminate the impact of *Martin* within this circuit, as it predates our decision and was likely taken in 2017.¹

¹ Although Judge M. Smith does not credit the photograph to any source, an internet search suggests that the original photograph is attributable to Los Angeles County. See *Implementing the Los Angeles County Homelessness Initiative*, L.A. County, <http://homeless.lacounty.gov/implementing-the-los-angeles-county-homeless-initiative/> [https://

But even putting aside the use of a pre-*Martin*, outside-the-record photograph from another municipality, the photograph does not serve to illustrate a concrete effect of *Martin*'s holding. The opinion clearly states that it is not outlawing ordinances "barring the obstruction of public rights of way or the erection of certain structures," such as tents, *id.* at 1048 n.8, and that the holding "in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place," *id.* at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

What the pre-*Martin* photograph *does* demonstrate is that the ordinances criminalizing sleeping in public places were never a viable solution to the homelessness problem. People with no place to live will sleep outside if they have no alternative. Taking them to jail for a few days is both unconstitutional, for the reasons discussed in the opinion, and, in all likelihood, pointless.

The distressing homelessness problem—distressing to the people with nowhere to live as well as to the rest of society—has grown into a crisis for many reasons, among them the cost of housing, the drying up of affordable care for people with mental illness, and the failure to provide adequate treatment for drug addiction. *See, e.g.*, U.S. Interagency Council on Homelessness, *Homelessness in America: Focus on Individual Adults* 5–8 (2018), https://www.usich.gov/resources/?uploads/asset_library/HIA_Individual_Adults.pdf.

web.archive.org/web/20170405225036/homeless.lacounty.gov/implementing-the-los-angeles-county-homeless-initiative/#]; *see also* Los Angeles County (@CountyofLA), Twitter (Nov. 29, 2017, 3:23 PM), <https://twitter.com/CountyofLA/status/936012841533894657>.

The crisis continued to burgeon while ordinances forbidding sleeping in public were on the books and sometimes enforced. There is no reason to believe that it has grown, and is likely to grow larger, because *Martin* held it unconstitutional to criminalize simply sleeping *somewhere* in public if one has nowhere else to do so.

For the foregoing reasons, I concur in the denial of rehearing en banc.

M. SMITH, Circuit Judge, with whom CALLAHAN, BEA, IKUTA, BENNETT, and R. NELSON, Circuit Judges, join, dissenting from the denial of rehearing en banc:

In one misguided ruling, a three-judge panel of our court badly misconstrued not one or two, but three areas of binding Supreme Court precedent, and crafted a holding that has begun wreaking havoc on local governments, residents, and businesses throughout our circuit. Under the panel's decision, local governments are forbidden from enforcing laws restricting public sleeping and camping unless they provide shelter for every homeless individual within their jurisdictions. Moreover, the panel's reasoning will soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination. Perhaps most unfortunately, the panel's opinion shackles the hands of public officials trying to redress the serious societal concern of homelessness.¹

¹ With almost 553,000 people who experienced homelessness nationwide on a single night in January 2018, this issue affects communities across our country. U.S. Dep't of Hous. & Urban Dev.,

I respectfully dissent from our court's refusal to correct this holding by rehearing the case en banc.

I.

The most harmful aspect of the panel's opinion is its misreading of Eighth Amendment precedent. My colleagues cobble together disparate portions of a fragmented Supreme Court opinion to hold that "an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them." *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018). That holding is legally and practically ill-conceived, and conflicts with the reasoning of every other appellate court² that has considered the issue.

A.

The panel struggles to paint its holding as a faithful interpretation of the Supreme Court's fragmented opinion in *Powell v. Texas*, 392 U.S. 514 (1968). It fails.

To understand *Powell*, we must begin with the Court's decision in *Robinson v. California*, 370 U.S. 660 (1962). There, the Court addressed a statute that made it a "criminal

Office of Cmty. Planning & Dev., The 2018 Annual Homeless Assessment Report (AHAR) to Congress 1 (Dec. 2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

² Our court previously adopted the same Eighth Amendment holding as the panel in *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), but that decision was later vacated. 505 F.3d 1006 (9th Cir. 2007).

offense for a person to ‘be addicted to the use of narcotics.’” *Robinson*, 370 U.S. at 660 (quoting Cal. Health & Safety Code § 11721). The statute allowed defendants to be convicted so long as they were drug addicts, regardless of whether they actually used or possessed drugs. *Id.* at 665. The Court struck down the statute under the Eighth Amendment, reasoning that because “narcotic addiction is an illness . . . which may be contracted innocently or involuntarily . . . a state law which imprisons a person thus afflicted as criminal, even though he has never touched any narcotic drug” violates the Eighth Amendment. *Id.* at 667.

A few years later, in *Powell*, the Court addressed the scope of its holding in *Robinson*. *Powell* concerned the constitutionality of a Texas law that criminalized public drunkenness. *Powell*, 392 U.S. at 516. As the panel’s opinion acknowledges, there was no majority in *Powell*. The four Justices in the plurality interpreted the decision in *Robinson* as standing for the limited proposition that the government could not criminalize one’s status. *Id.* at 534. They held that because the Texas statute criminalized conduct rather than alcoholism, the law was constitutional. *Powell*, 392 U.S. at 532.

The four dissenting Justices in *Powell* read *Robinson* more broadly: They believed that “criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change.” *Id.* at 567 (Fortas, J., dissenting). Although the statute in *Powell* differed from that in *Robinson* by covering involuntary conduct, the dissent found the same constitutional defect present in both cases. *Id.* at 567–68.

Justice White concurred in the judgment. He upheld the defendant’s conviction because *Powell* had not made a

showing that he was unable to stay off the streets on the night he was arrested. *Id.* at 552–53 (White, J., concurring in the result). He wrote that it was “unnecessary to pursue at this point the further definition of the circumstances or the state of intoxication which might bar conviction of a chronic alcoholic for being drunk in a public place.” *Id.* at 553.

The panel contends that because Justice White concurred in the judgment alone, the views of the dissenting Justices constitute the holding of *Powell*. *Martin*, 902 F.3d at 1048. That tenuous reasoning—which metamorphosizes the *Powell* dissent into the majority opinion—defies logic.

Because *Powell* was a 4–1–4 decision, the Supreme Court’s decision in *Marks v. United States* guides our analysis. 430 U.S. 188 (1977). There, the Court held that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” *Id.* at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (plurality opinion)) (emphasis added). When *Marks* is applied to *Powell*, the holding is clear: The defendant’s conviction was constitutional because it involved the commission of an act. Nothing more, nothing less.

This is hardly a radical proposition. I am not alone in recognizing that “there is definitely no Supreme Court holding” prohibiting the criminalization of involuntary conduct. *United States v. Moore*, 486 F.2d 1139, 1150 (D.C. Cir. 1973) (en banc). Indeed, in the years since *Powell* was decided, courts—including our own—have routinely upheld state laws that criminalized acts that were allegedly

compelled or involuntary. *See, e.g., United States v. Stenson*, 475 F. App'x 630, 631 (7th Cir. 2012) (holding that it was constitutional for the defendant to be punished for violating the terms of his parole by consuming alcohol because he “was not punished for his status as an alcoholic but for his conduct”); *Joshua v. Adams*, 231 F. App'x 592, 594 (9th Cir. 2007) (“Joshua also contends that the state court ignored his mental illness [schizophrenia], which rendered him unable to control his behavior, and his sentence was actually a penalty for his illness This contention is without merit because, in contrast to *Robinson*, where a statute specifically criminalized addiction, Joshua was convicted of a criminal offense separate and distinct from his ‘status’ as a schizophrenic.”); *United States v. Benefield*, 889 F.2d 1061, 1064 (11th Cir. 1989) (“The considerations that make any incarceration unconstitutional when a statute punishes a defendant for his status are not applicable when the government seeks to punish a person’s actions.”).³

To be sure, *Marks* is controversial. Last term, the Court agreed to consider whether to abandon the rule *Marks* established (but ultimately resolved the case on other grounds and found it “unnecessary to consider . . . the proper application of *Marks*”). *Hughes v. United States*, 138 S. Ct. 1765, 1772 (2018). At oral argument, the Justices criticized the logical subset rule established by *Marks* for elevating the outlier views of concurring Justices to precedential status.⁴

³ That most of these opinions were unpublished only buttresses my point: It is uncontroversial that *Powell* does not prohibit the criminalization of involuntary conduct.

⁴ Transcript of Oral Argument at 14, *Hughes v. United States*, 138 S. Ct. 1765 (2018) (No. 17-155).

The Court also acknowledged that lower courts have inconsistently interpreted the holdings of fractured decisions under *Marks*.⁵

Those criticisms, however, were based on the assumption that *Marks* means what it says and says what it means: Only the views of the Justices concurring in the judgment may be considered in construing the Court's holding. *Marks*, 430 U.S. at 193. The Justices did not even think to consider that *Marks* allows dissenting Justices to create the Court's holding. As a *Marks* scholar has observed, such a method of vote counting "would paradoxically create a precedent that contradicted the judgment in that very case."⁶ And yet the panel's opinion flouts that common sense rule to extract from *Powell* a holding that does not exist.

What the panel really does is engage in a predictive model of precedent. The panel opinion implies that if a case like *Powell* were to arise again, a majority of the Court would hold that the criminalization of involuntary conduct violates the Eighth Amendment. Utilizing such reasoning, the panel borrows the Justices' robes and adopts that holding on their behalf.

But the Court has repeatedly discouraged us from making such predictions when construing precedent. See *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). And, for good reason. Predictions about how

⁵ *Id.* at 49.

⁶ Richard M. Re, *Beyond the Marks Rule*, 132 Harv. L. Rev. (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090620.

Justices will rule rest on unwarranted speculation about what goes on in their minds. Such amateur fortunetelling also precludes us from considering new insights on the issues—difficult as they may be in the case of 4–1–4 decisions like *Powell*—that have arisen since the Court’s fragmented opinion. See *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 135 n.26 (1977) (noting “the wisdom of allowing difficult issues to mature through full consideration by the courts of appeals”).

In short, predictions about how the Justices will rule ought not to create precedent. The panel’s Eighth Amendment holding lacks any support in *Robinson* or *Powell*.

B.

Our panel’s opinion also conflicts with the reasoning underlying the decisions of other appellate courts.

The California Supreme Court, in *Tobe v. City of Santa Ana*, rejected the plaintiffs’ Eighth Amendment challenge to a city ordinance that banned public camping. 892 P.2d 1145 (1995). The court reached that conclusion despite evidence that, on any given night, at least 2,500 homeless persons in the city did not have shelter beds available to them. *Id.* at 1152. The court sensibly reasoned that because *Powell* was a fragmented opinion, it did not create precedent on “the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” *Id.* at 1166 (quoting *Powell*, 392 U.S. at 533). Our panel—bound by the same Supreme Court precedent—invalidates identical California ordinances

previously upheld by the California Supreme Court. Both courts cannot be correct.

The California Supreme Court acknowledged that homelessness is a serious societal problem. It explained, however, that:

Many of those issues are the result of legislative policy decisions. The arguments of many amici curiae regarding the apparently intractable problem of homelessness and the impact of the Santa Ana ordinance on various groups of homeless persons (e.g., teenagers, families with children, and the mentally ill) should be addressed to the Legislature and the Orange County Board of Supervisors, not the judiciary. Neither the criminal justice system nor the judiciary is equipped to resolve chronic social problems, but criminalizing conduct that is a product of those problems is not for that reason constitutionally impermissible.

Id. at 1157 n.12. By creating new constitutional rights out of whole cloth, my well-meaning, but unelected, colleagues improperly inject themselves into the role of public policymaking.⁷

⁷ Justice Black has also observed that solutions for challenging social issues should be left to the policymakers:

I cannot say that the States should be totally barred from one avenue of experimentation, the criminal process, in attempting to find a means to cope with this difficult social problem [I]t seems to me that the

The reasoning of our panel decision also conflicts with precedents of the Fourth and Eleventh Circuits. In *Manning v. Caldwell*, the Fourth Circuit held that a Virginia statute that criminalized the possession of alcohol did not violate the Eighth Amendment when it punished the involuntary actions of homeless alcoholics. 900 F.3d 139, 153 (4th Cir. 2018), *reh'g en banc granted* 741 F. App'x 937 (4th Cir. 2018).⁸ The court rejected the argument that Justice White's opinion in *Powell* "requires this court to hold that Virginia's statutory scheme imposes cruel and unusual punishment because it criminalizes [plaintiffs'] status as homeless alcoholics." *Id.* at 145. The court found that the statute passed constitutional muster because "it is the act of possessing alcohol—not the status of being an alcoholic—that gives rise to criminal sanctions." *Id.* at 147.

Boise's Ordinances at issue in this case are no different: They do not criminalize the status of homelessness, but only the act of camping on public land or occupying public places without permission. *Martin*, 902 F.3d at 1035. The Fourth Circuit correctly recognized that these kinds of laws do not run afoul of *Robinson* and *Powell*.

present use of criminal sanctions might possibly be unwise, but I am by no means convinced that any use of criminal sanctions would inevitably be unwise or, above all, that I am qualified in this area to know what is legislatively wise and what is legislatively unwise.

Powell, 392 U.S. at 539–40 (Black, J., concurring).

⁸ Pursuant to Fourth Circuit Local Rule 35(c), "[g]ranting of rehearing en banc vacates the previous panel judgment and opinion." I mention *Manning*, however, as an illustration of other courts' reasoning on the Eighth Amendment issue.

The Eleventh Circuit has agreed. In *Joel v. City of Orlando*, the court held that a city ordinance prohibiting sleeping on public property was constitutional. 232 F.3d 1353, 1362 (11th Cir. 2000). The court rejected the plaintiffs' Eighth Amendment challenge because the ordinance "targets conduct, and does not provide criminal punishment based on a person's status." *Id.* The court prudently concluded that "[t]he City is constitutionally allowed to regulate where 'camping' occurs." *Id.*

We ought to have adopted the sound reasoning of these other courts. By holding that Boise's enforcement of its Ordinances violates the Eighth Amendment, our panel has needlessly created a split in authority on this straightforward issue.

C.

One would think our panel's legally incorrect decision would at least foster the common good. Nothing could be further from the truth. The panel's decision generates dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.

The panel opinion masquerades its decision as a narrow one by representing that it "in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place." *Martin*, 902 F.3d at 1048 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

That excerpt, however, glosses over the decision's actual holding: "We hold only that . . . as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property." *Id.* Such a holding leaves cities with a Hobson's choice: They must either undertake an overwhelming financial responsibility to provide housing for or count the number of homeless individuals within their jurisdiction every night, or abandon enforcement of a host of laws regulating public health and safety. The Constitution has no such requirement.

* * *

Under the panel's decision, local governments can enforce certain of their public health and safety laws only when homeless individuals have the choice to sleep indoors. That inevitably leads to the question of how local officials ought to know whether that option exists.

The number of homeless individuals within a municipality on any given night is not automatically reported and updated in real time. Instead, volunteers or government employees must painstakingly tally the number of homeless individuals block by block, alley by alley, doorway by doorway. Given the daily fluctuations in the homeless population, the panel's opinion would require this labor-intensive task be done every single day. Yet in massive cities such as Los Angeles, that is simply impossible. Even when thousands of volunteers devote dozens of hours to such "a herculean task," it takes three days to finish counting—and

even then “not everybody really gets counted.”⁹ Lest one think Los Angeles is unique, our circuit is home to many of the largest homeless populations nationwide.¹⁰

If cities do manage to cobble together the resources for such a system, what happens if officials (much less volunteers) miss a homeless individual during their daily count and police issue citations under the false impression that the number of shelter beds exceeds the number of homeless people that night? According to the panel’s opinion, that city has violated the Eighth Amendment, thereby potentially leading to lawsuits for significant monetary damages and other relief.

⁹ Matt Tinoco, *LA Counts Its Homeless, But Counting Everybody Is Virtually Impossible*, LAist (Jan. 22, 2019, 2:08 PM), https://laist.com/2019/01/22/los_angeles_homeless_count_2019_how_volunteer.php. The panel conceded the imprecision of such counts in its opinion. *See Martin*, 902 F.3d at 1036 n.1 (acknowledging that the count of homeless individuals “is not always precise”). But it went on to disregard that fact when tying a city’s ability to enforce its laws to these counts.

¹⁰ The U.S. Department of Housing and Urban Development’s 2018 Annual Homeless Assessment Report to Congress reveals that municipalities within our circuit have among the highest homeless populations in the country. In Los Angeles City and County alone, 49,955 people experienced homelessness in 2018. The number was 12,112 people in Seattle and King County, Washington, and 8,576 people in San Diego City and County, California. *See supra* note 1, at 18, 20. In 2016, Las Vegas had an estimated homeless population of 7,509 individuals, and California’s Santa Clara County had 6,556. Joaquin Palomino, *How Many People Live On Our Streets?*, S.F. Chronicle (June 28, 2016), <https://projects.sfchronicle.com/sf-homeless/numbers>.

And what if local governments (understandably) lack the resources necessary for such a monumental task?¹¹ They have no choice but to stop enforcing laws that prohibit public sleeping and camping.¹² Accordingly, our panel's decision

¹¹ Cities can instead provide sufficient housing for every homeless individual, but the cost would be prohibitively expensive for most local governments. Los Angeles, for example, would need to spend \$403.4 million to house every homeless individual not living in a vehicle. See Los Angeles Homeless Services Authority, Report on Emergency Framework to Homelessness Plan 13 (June 2018), <https://assets.documentcloud.org/documents/4550980/LAHSAs-Sheltering-Report.pdf>. In San Francisco, building new centers to provide a mere 400 additional shelter spaces was estimated to cost between \$10 million and \$20 million, and would require \$20 million to \$30 million to operate each year. See Heather Knight, *A Better Model, A Better Result?*, S.F. Chronicle (June 29, 2016), <https://projects.sfchronicle.com/sf-homeless/shelters>. Perhaps these staggering sums are why the panel went out of its way to state that it “in no way dictate[s] to the City that it must provide sufficient shelter for the homeless.” *Martin*, 902 F.3d at 1048.

¹² Indeed, in the few short months since the panel's decision, several cities have thrown up their hands and abandoned any attempt to enforce such laws. See, e.g., Cynthia Hubert, *Sacramento County Cleared Homeless Camps All Year. Now It Has Stopped Citing Campers*, Sacramento Bee (Sept. 18, 2019, 4:27 PM), <https://www.sacbee.com/news/local/homeless/article218605025.html> (“Sacramento County park rangers have suddenly stopped issuing citations altogether after a federal court ruling this month.”); Michael Ellis Langley, *Policing Homelessness*, Golden State Newspapers (Feb. 22, 2019), http://www.goldenstatenews.com/tracy_press/news/policing-homelessness/article_5fe6a9ca-3642-11e9-9b25-37610ef2dbae.html (Sheriff Pat Withrow stating that, “[a]s far as camping ordinances and things like that, we're probably holding off on [issuing citations] for a while” in light of *Martin v. City of Boise*); Kelsie Morgan, *Moses Lake Sees Spike in Homeless Activity Following 9th Circuit Court Decision*, KXLY (Oct. 2, 2018, 12:50 PM), <https://www.kxly.com/news/moses-lake-sees-spike-in-homeless-activity-following-9th-circuit-court-decision/801772571> (“Because the City of Moses Lake does not currently have a homeless shelter, city officials can

effectively allows homeless individuals to sleep and live wherever they wish on most public property. Without an absolute confidence that they can house every homeless individual, city officials will be powerless to assist residents lodging valid complaints about the health and safety of their neighborhoods.¹³

As if the panel's actual holding wasn't concerning enough, the logic of the panel's opinion reaches even further in scope. The opinion reasons that because "resisting the need to . . . engage in [] life-sustaining activities is impossible," punishing the homeless for engaging in those actions in public violates the Eighth Amendment. *Martin*, 902 F.3d at 1048. What else is a life-sustaining activity? Surely bodily functions. By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct, the panel's decision will inevitably result in the

no longer penalize people for sleeping in public areas."); Brandon Pho, *Buena Park Residents Express Opposition to Possible Homeless Shelter*, Voice of OC (Feb. 14, 2019), <https://voiceofoc.org/2019/02/buena-park-residents-express-opposition-to-possible-homeless-shelter/> (stating that Judge David Carter of the U.S. District Court for the Central District of California has "warn[ed] Orange County cities to get more shelters online or risk the inability the enforce their anti-camping ordinances"); Nick Welsh, *Court Rules to Protect Sleeping in Public: Santa Barbara City Parks Subject of Ongoing Debate*, Santa Barbara Indep. (Oct. 31, 2018), <http://www.independent.com/news/2018/oct/31/court-rules-protect-sleeping-public/?jqm> ("In the wake of what's known as 'the Boise decision,' Santa Barbara city police found themselves scratching their heads over what they could and could not issue citations for.").

¹³ In 2017, for example, San Francisco received 32,272 complaints about homeless encampments to its 311-line. Kevin Fagan, *The Situation On The Streets*, S.F. Chronicle (June 28, 2018), <https://projects.sfchronicle.com/sf-homeless/2018-state-of-homelessness>.

striking down of laws that prohibit public defecation and urination.¹⁴ The panel’s reasoning also casts doubt on public safety laws restricting drug paraphernalia, for the use of hypodermic needles and the like is no less involuntary for the homeless suffering from the scourge of addiction than is their sleeping in public.

It is a timeless adage that states have a “universally acknowledged power and duty to enact and enforce all such laws . . . as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.” *Knoxville Iron Co. v. Harbison*, 183 U.S. 13, 20 (1901) (internal quotations omitted). I fear that the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws. Halting enforcement of such laws will potentially wreak havoc on our communities.¹⁵ As we have already begun to witness, our neighborhoods will soon feature “[t]ents . . .

¹⁴ See Heater Knight, *It’s No Laughing Matter—SF Forming Poop Patrol to Keep Sidewalks Clean*, S.F. Chronicle (Aug. 14, 2018), <https://www.sfchronicle.com/bayarea/heatherknight/article/It-s-no-laughing-matter-SF-forming-Poop-13153517.php>.

¹⁵ See Anna Gorman and Kaiser Health News, *Medieval Diseases Are Infecting California’s Homeless*, The Atlantic (Mar. 8, 2019), <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosis-medieval-diseases-spreading-homeless/584380/> (describing the recent outbreaks of typhus, Hepatitis A, and shigellosis as “disaster[s] and [a] public-health crisis” and noting that such “diseases spread quickly and widely among people living outside or in shelters”).

equipped with mini refrigerators, cupboards, televisions, and heaters, [that] vie with pedestrian traffic” and “human waste appearing on sidewalks and at local playgrounds.”¹⁶



A Los Angeles Public Sidewalk

II.

The panel’s fanciful merits-determination is accompanied by a no-less-inventive series of procedural rulings. The panel’s opinion also misconstrues two other areas of Supreme Court precedent concerning limits on the parties who can

¹⁶ Scott Johnson and Peter Kiefer, *LA’s Battle for Venice Beach: Homeless Surge Puts Hollywood’s Progressive Ideals to the Test*, *Hollywood Reporter* (Jan. 11, 2019, 6:00 AM), <https://www.hollywoodreporter.com/features/las-homeless-surge-puts-hollywoods-progressive-ideals-test-1174599>.

bring § 1983 challenges for violations of the Eighth Amendment.

A.

The panel erred in holding that Robert Martin and Robert Anderson could obtain prospective relief under *Heck v. Humphrey* and its progeny. 512 U.S. 477 (1994). As recognized by Judge Owens’s dissent, that conclusion cuts against binding precedent on the issue.

The Supreme Court has stated that *Heck* bars § 1983 claims if success on that claim would “necessarily demonstrate the invalidity of [the plaintiff’s] confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005); see also *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (stating that *Heck* applies to claims for declaratory relief). Martin and Anderson’s prospective claims did just that. Those plaintiffs sought a declaration that the Ordinances under which they were convicted are unconstitutional and an injunction against their future enforcement on the grounds of unconstitutionality. It is clear that *Heck* bars these claims because Martin and Anderson necessarily seek to demonstrate the invalidity of their previous convictions.

The panel opinion relies on *Edwards* to argue that *Heck* does not bar plaintiffs’ requested relief, but *Edwards* cannot bear the weight the panel puts on it. In *Edwards*, the plaintiff sought an injunction that would require prison officials to date-stamp witness statements at the time received. 520 U.S. at 643. The Court concluded that requiring prison officials to date-stamp witness statements did not necessarily imply the invalidity of previous determinations that the prisoner was

not entitled to good-time credits, and that *Heck*, therefore, did not bar prospective injunctive relief. *Id.* at 648.

Here, in contrast, a declaration that the Ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs' prior convictions. According to data from the U.S. Department of Housing and Urban Development, the number of homeless individuals in Boise exceeded the number of available shelter beds during each of the years that the plaintiffs were cited.¹⁷ Under the panel's holding that "the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property" "as long as there is no option of sleeping indoors," that data necessarily demonstrates the invalidity of the plaintiffs' prior convictions. *Martin*, 902 F.3d at 1048.

B.

The panel also erred in holding that Robert Martin and Pamela Hawkes, who were cited but not convicted of violating the Ordinances, had standing to sue under the Eighth Amendment. In so doing, the panel created a circuit split with the Fifth Circuit.

The panel relied on *Ingraham v. Wright*, 430 U.S. 651 (1977), to find that a plaintiff "need demonstrate only the

¹⁷ See U.S. Dep't of Hous. & Urban Dev., PIT Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018-PIT-Counts-by-CoC.xlsx>; U.S. Dep't of Hous. & Urban Dev., HIC Data Since 2007, <https://www.hudexchange.info/resources/documents/2007-2018-HIC-Counts-by-CoC.xlsx>. Boise is within Ada County and listed under CoC code ID-500.

initiation of the criminal process against him, not a conviction,” to bring an Eighth Amendment challenge. *Martin*, 902 F.3d at 1045. The panel cites *Ingraham*’s observation that the Cruel and Unusual Punishments Clause circumscribes the criminal process in that “it imposes substantive limits on what can be made criminal and punished as such.” *Id.* at 1046 (citing *Ingraham*, 430 U.S. at 667). This reading of *Ingraham*, however, cherry picks isolated statements from the decision without considering them in their accurate context. The *Ingraham* Court plainly held that “Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.” 430 U.S. at 671 n.40. And, “the State does not acquire the power to punish with which the Eighth Amendment is concerned until *after* it has secured a formal adjudication of guilt.” *Id.* (emphasis added). As the *Ingraham* Court recognized, “[T]he decisions of [the Supreme] Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those *convicted* of crimes.” *Id.* at 664 (emphasis added). Clearly, then, *Ingraham* stands for the proposition that to challenge a criminal statute as violative of the Eighth Amendment, the individual must be convicted of that relevant crime.

The Fifth Circuit recognized this limitation on standing in *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995). There, the court confronted a similar action brought by homeless individuals challenging a sleeping in public ordinance. *Johnson*, 61 F.3d at 443. The court held that the plaintiffs did not have standing to raise an Eighth Amendment challenge to the ordinance because although “numerous tickets ha[d] been issued . . . [there was] no indication that any Appellees ha[d] been convicted” of

violating the sleeping in public ordinance. *Id.* at 445. The Fifth Circuit explained that *Ingraham* clearly required a plaintiff be convicted under a criminal statute before challenging that statute's validity. *Id.* at 444–45 (citing *Robinson*, 370 U.S. at 663; *Ingraham*, 430 U.S. at 667).

By permitting Martin and Hawkes to maintain their Eighth Amendment challenge, the panel's decision created a circuit split with the Fifth Circuit and took our circuit far afield from "[t]he primary purpose of (the Cruel and Unusual Punishments Clause) . . . [which is] the method or kind of punishment imposed for the violation of criminal statutes." *Ingraham*, 430 U.S. at 667 (quoting *Powell*, 392 U.S. at 531–32).

III.

None of us is blind to the undeniable suffering that the homeless endure, and I understand the panel's impulse to help such a vulnerable population. But the Eighth Amendment is not a vehicle through which to critique public policy choices or to hamstring a local government's enforcement of its criminal code. The panel's decision, which effectively strikes down the anti-camping and anti-sleeping Ordinances of Boise and that of countless, if not all, cities within our jurisdiction, has no legitimate basis in current law.

I am deeply concerned about the consequences of our panel's unfortunate opinion, and I regret that we did not vote to reconsider this case en banc. I respectfully dissent.

BENNETT, Circuit Judge, with whom BEA, IKUTA, and R. NELSON, Circuit Judges, join, and with whom M. SMITH, Circuit Judge, joins as to Part II, dissenting from the denial of rehearing en banc:

I fully join Judge M. Smith’s opinion dissenting from the denial of rehearing en banc. I write separately to explain that except in extraordinary circumstances not present in this case, and based on its text, tradition, and original public meaning, the Cruel and Unusual Punishments Clause of the Eighth Amendment does not impose substantive limits on what conduct a state may criminalize.

I recognize that we are, of course, bound by Supreme Court precedent holding that the Eighth Amendment encompasses a limitation “on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977) (citing *Robinson v. California*, 370 U.S. 660 (1962)). However, the *Ingraham* Court specifically “recognized [this] limitation as one to be applied sparingly.” *Id.* As Judge M. Smith’s dissent ably points out, the panel ignored *Ingraham*’s clear direction that Eighth Amendment scrutiny attaches only after a criminal conviction. Because the panel’s decision, which allows pre-conviction Eighth Amendment challenges, is wholly inconsistent with the text and tradition of the Eighth Amendment, I respectfully dissent from our decision not to rehear this case en banc.

I.

The text of the Cruel and Unusual Punishments Clause is virtually identical to Section 10 of the English Declaration of

Rights of 1689,¹ and there is no question that the drafters of the Eighth Amendment were influenced by the prevailing interpretation of Section 10. *See Solem v. Helm*, 463 U.S. 277, 286 (1983) (observing that one of the themes of the founding era “was that Americans had all the rights of English subjects” and the Framers’ “use of the language of the English Bill of Rights is convincing proof that they intended to provide at least the same protection”); *Timbs v. Indiana*, 586 U.S. ____ (2019) (Thomas, J., concurring) (“[T]he text of the Eighth Amendment was ‘based directly on . . . the Virginia Declaration of Rights,’ which ‘adopted verbatim the language of the English Bill of Rights.’” (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 266 (1989))). Thus, “not only is the original meaning of the 1689 Declaration of Rights relevant, but also the circumstances of its enactment, insofar as they display the particular ‘rights of English subjects’ it was designed to vindicate.” *Harmelin v. Michigan*, 501 U.S. 957, 967 (1991) (Scalia, J., concurring).

Justice Scalia’s concurrence in *Harmelin* provides a thorough and well-researched discussion of the original public meaning of the Cruel and Unusual Punishments Clause, including a detailed overview of the history of Section 10 of the English Declaration of Rights. *See id.* at 966–85 (Scalia, J., concurring). Rather than reciting Justice Scalia’s *Harmelin* discussion in its entirety, I provide only a broad description of its historical analysis. Although the issue Justice Scalia confronted in *Harmelin* was whether the

¹ 1 Wm. & Mary, 2d Sess., ch. 2, 3 Stat. at Large 440, 441 (1689) (Section 10 of the English Declaration of Rights) (“excessive Baile ought not to be required, nor excessive Fines imposed; nor cruell and unusuall Punishments inflicted.”).

Framers intended to graft a proportionality requirement on the Eighth Amendment, *see id.* at 976, his opinion's historical exposition is instructive to the issue of what the Eighth Amendment meant when it was written.

The English Declaration of Rights's prohibition on "cruell and unusuall Punishments" is attributed to the arbitrary punishments imposed by the King's Bench following the Monmouth Rebellion in the late 17th century. *Id.* at 967 (Scalia, J., concurring). "Historians have viewed the English provision as a reaction either to the 'Bloody Assize,' the treason trials conducted by Chief Justice Jeffreys in 1685 after the abortive rebellion of the Duke of Monmouth, or to the perjury prosecution of Titus Oates in the same year." *Ingraham*, 430 U.S. at 664 (footnote omitted).

Presiding over a special commission in the wake of the Monmouth Rebellion, Chief Justice Jeffreys imposed "vicious punishments for treason," including "drawing and quartering, burning of women felons, beheading, [and] disemboweling." *Harmelin*, 501 U.S. at 968. In the view of some historians, "the story of The Bloody Assizes . . . helped to place constitutional limitations on the crime of treason and to produce a bar against cruel and unusual Punishments." *Furman v. Georgia*, 408 U.S. 238, 254 (1972) (Douglas, J., concurring).

More recent scholarship suggests that Section 10 of the Declaration of Rights was motivated more by Jeffreys's treatment of Titus Oates, a Protestant cleric and convicted perjurer. In addition to the pillory, the scourge, and life imprisonment, Jeffreys sentenced Oates to be "stript of [his] Canonical Habits." *Harmelin*, 501 U.S. at 970 (Scalia, J., concurring) (quoting Second Trial of Titus Oates, 10 How. St.

Tr. 1227, 1316 (K.B. 1685)). Years after the sentence was carried out, and months after the passage of the Declaration of Rights, the House of Commons passed a bill to annul Oates's sentence. Though the House of Lords never agreed, the Commons issued a report asserting that Oates's sentence was the sort of "cruel and unusual Punishment" that Parliament complained of in the Declaration of Rights. *Harmelin*, 501 U.S. at 972 (citing 10 Journal of the House of Commons 247 (Aug. 2, 1689)). In the view of the Commons and the dissenting Lords, Oates's punishment was "'out of the Judges' Power,' 'contrary to Law and ancient practice,' without 'Precedents' or 'express Law to warrant,' 'unusual,' 'illegal,' or imposed by 'Pretence to a discretionary Power.'" *Id.* at 973 (quoting 1 Journals of the House of Lords 367 (May 31, 1689); 10 Journal of the House of Commons 247 (Aug. 2, 1689)).

Thus, Justice Scalia concluded that the prohibition on "cruell and unusuall punishments" as used in the English Declaration, "was primarily a requirement that judges pronouncing sentence remain within the bounds of common-law tradition." *Harmelin*, 501 U.S. at 974 (Scalia, J., concurring) (citing *Ingraham*, 430 U.S. at 665; 1 J. Chitty, *Criminal Law* 710–12 (5th Am. ed. 1847); Anthony F. Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 Calif. L. Rev. 839, 859 (1969)).

But Justice Scalia was careful not to impute the English meaning of "cruell and unusuall" directly to the Framers of our Bill of Rights: "the ultimate question is not what 'cruell and unusuall punishments' meant in the Declaration of Rights, but what its meaning was to the Americans who adopted the Eighth Amendment." *Id.* at 975. "Wrenched out of its common-law context, and applied to the actions of a

legislature . . . the Clause disables the Legislature from authorizing particular forms or ‘modes’ of punishment—specifically, cruel methods of punishment that are not regularly or customarily employed.” *Id.* at 976.

As support for his conclusion that the Framers of the Bill of Rights intended for the Eighth Amendment to reach only certain punishment methods, Justice Scalia looked to “the state ratifying conventions that prompted the Bill of Rights.” *Id.* at 979. Patrick Henry, speaking at the Virginia Ratifying convention, “decried the absence of a bill of rights,” arguing that “Congress will loose the restriction of not . . . inflicting cruel and unusual punishments. . . . What has distinguished our ancestors?—They would not admit of tortures, or cruel and barbarous punishment.” *Id.* at 980 (quoting 3 J. Elliot, *Debates on the Federal Constitution* 447 (2d ed. 1854)). The Massachusetts Convention likewise heard the objection that, in the absence of a ban on cruel and unusual punishments, “racks and gibbets may be amongst the most mild instruments of [Congress’s] discipline.” *Id.* at 979 (internal quotation marks omitted) (quoting 2 J. Debates on the Federal Constitution, at 111). These historical sources “confirm[] the view that the cruel and unusual punishments clause was directed at prohibiting certain *methods* of punishment.” *Id.* (internal quotation marks omitted) (quoting Granucci, 57 Calif. L. Rev. at 842) (emphasis in *Harmelin*).

In addition, early state court decisions “interpreting state constitutional provisions with identical or more expansive wording (i.e., ‘cruel or unusual’) concluded that these provisions . . . proscribe[d] . . . only certain modes of punishment.” *Id.* at 983; *see also id.* at 982 (“Many other Americans apparently agreed that the Clause only outlawed certain *modes* of punishment.”).

In short, when the Framers drafted and the several states ratified the Eighth Amendment, the original public meaning of the Cruel and Unusual Punishments Clause was “to proscribe . . . methods of punishment.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). There is simply no indication in the history of the Eighth Amendment that the Cruel and Unusual Punishments Clause was intended to reach the substantive authority of Congress to criminalize acts or status, and certainly not before conviction. Incorporation, of course, extended the reach of the Clause to the States, but worked no change in its meaning.

II.

The panel here held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018). In so holding, the panel allows challenges asserting this prohibition to be brought in advance of any conviction. That holding, however, has nothing to do with the punishment that the City of Boise imposes for those offenses, and thus nothing to do with the text and tradition of the Eighth Amendment.

The panel pays only the barest attention to the Supreme Court’s admonition that the application of the Eighth Amendment to substantive criminal law be “sparing[.],” *Martin*, 902 F.3d at 1047 (quoting *Ingraham*, 430 U.S. at 667), and its holding here is dramatic in scope and completely unfaithful to the proper interpretation of the Cruel and Unusual Punishments Clause.

“The primary purpose of (the Cruel and Unusual Punishments Clause) has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes.” *Ingraham*, 430 U.S. at 667 (internal quotation marks omitted) (quoting *Powell v. Texas*, 392 U.S. 514, 531–32 (1968)). It should, therefore, be the “rare case” where a court invokes the Eighth Amendment’s criminalization component. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1146 (9th Cir. 2006) (Rymer, J., dissenting), *vacated*, 505 F.3d 1006 (9th Cir. 2007).² And permitting a pre-conviction challenge to a local ordinance, as the panel does here, is flatly inconsistent with the Cruel and Unusual Punishments Clause’s core constitutional function: regulating the *methods* of punishment that may be inflicted upon one convicted of an offense. *Harmelin*, 501 U.S. at 977, 979 (Scalia, J., concurring). As Judge Rymer, dissenting in *Jones*, observed, “the Eighth Amendment’s ‘protections do not attach until after conviction and sentence.’”³ 444 F.3d at 1147 (Rymer, J., dissenting)

² *Jones*, of course, was vacated and lacks precedential value. 505 F.3d 1006 (9th Cir. 2007). But the panel here resuscitated *Jones*’s errant holding, including, apparently, its application of the Cruel and Unusual Punishments Clause in the absence of a criminal conviction. We should have taken this case en banc to correct this misinterpretation of the Eighth Amendment.

³ We have emphasized the need to proceed cautiously when extending the reach of the Cruel and Unusual Punishments Clause beyond regulation of the methods of punishment that may be inflicted upon conviction for an offense. See *United States v. Ritter*, 752 F.2d 435, 438 (9th Cir. 1985) (repeating *Ingraham*’s direction that “this particular use of the cruel and unusual punishment clause is to be applied sparingly” and noting that *Robinson* represents “the rare type of case in which the clause has been used to limit what may be made criminal”); see also *United States v. Ayala*, 35 F.3d 423, 426 (9th Cir. 1994) (limiting application of *Robinson*

(internal alterations omitted) (quoting *Graham v. Connor*, 490 U.S. 386, 392 n.6 (1989)).⁴

The panel's holding thus permits plaintiffs who have never been convicted of any offense to avail themselves of a constitutional protection that, historically, has been concerned with prohibition of "only certain modes of punishment." *Harmelin*, 501 U.S. at 983; see also *United States v. Quinn*, 123 F.3d 1415, 1425 (11th Cir. 1997) (citing *Harmelin* for the proposition that a "plurality of the Supreme Court . . . has rejected the notion that the Eighth Amendment's protection from cruel and unusual punishment extends to the type of offense for which a sentence is imposed").

Extending the Cruel and Unusual Punishments Clause to encompass pre-conviction challenges to substantive criminal law stretches the Eighth Amendment past its breaking point. I doubt that the drafters of our Bill of Rights, the legislators of the states that ratified it, or the public at the time would ever have imagined that a ban on "cruel and unusual punishments" would permit a plaintiff to challenge a substantive criminal statute or ordinance that he or she had not even been convicted of violating. We should have taken this case en banc to confirm that an Eighth Amendment challenge does not lie in the absence of a punishment following conviction for an offense.

to crimes lacking an actus reus). The panel's holding here throws that caution to the wind.

⁴ Judge Friendly also expressed "considerable doubt that the cruel and unusual punishment clause is properly applicable at all until after conviction and sentence." *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973).

* * *

At common law and at the founding, a prohibition on “cruel and unusual punishments” was simply that: a limit on the types of punishments that government could inflict following a criminal conviction. The panel strayed far from the text and history of the Cruel and Unusual Punishments Clause in imposing the substantive limits it has on the City of Boise, particularly as to plaintiffs who have not yet even been convicted of an offense. We should have reheard this case en banc, and I respectfully dissent.

OPINION

BERZON, Circuit Judge:

“The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”

— Anatole France, *The Red Lily*

We consider whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.

The plaintiffs-appellants are six current or former residents of the City of Boise (“the City”), who are homeless or have recently been homeless. Each plaintiff alleges that, between 2007 and 2009, he or she was cited by Boise police

for violating one or both of two city ordinances. The first, Boise City Code § 9-10-02 (the “Camping Ordinance”), makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defines “camping” as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.” *Id.* The second, Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof.”

All plaintiffs seek retrospective relief for their previous citations under the ordinances. Two of the plaintiffs, Robert Anderson and Robert Martin, allege that they expect to be cited under the ordinances again in the future and seek declaratory and injunctive relief against future prosecution.

In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007), a panel of this court concluded that “so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds [in shelters]” for the homeless, Los Angeles could not enforce a similar ordinance against homeless individuals “for involuntarily sitting, lying, and sleeping in public.” *Jones* is not binding on us, as there was an underlying settlement between the parties and our opinion was vacated as a result. We agree with *Jones*’s reasoning and central conclusion, however, and so hold that an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them. Two of the plaintiffs, we further hold, may be entitled

to retrospective and prospective relief for violation of that Eighth Amendment right.

I. Background

The district court granted summary judgment to the City on all claims. We therefore review the record in the light most favorable to the plaintiffs. *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014).

Boise has a significant and increasing homeless population. According to the Point-in-Time Count (“PIT Count”) conducted by the Idaho Housing and Finance Association, there were 753 homeless individuals in Ada County — the county of which Boise is the seat — in January 2014, 46 of whom were “unsheltered,” or living in places unsuited to human habitation such as parks or sidewalks. In 2016, the last year for which data is available, there were 867 homeless individuals counted in Ada County, 125 of whom were unsheltered.¹ The PIT Count likely underestimates the number of homeless individuals in Ada County. It is “widely recognized that a one-night point in

¹ The United States Department of Housing and Urban Development (“HUD”) requires local homeless assistance and prevention networks to conduct an annual count of homeless individuals on one night each January, known as the PIT Count, as a condition of receiving federal funds. State, local, and federal governmental entities, as well as private service providers, rely on the PIT Count as a “critical source of data” on homelessness in the United States. The parties acknowledge that the PIT Count is not always precise. The City’s Director of Community Partnerships, Diana Lachiondo, testified that the PIT Count is “not always the . . . best resource for numbers,” but also stated that “the point-in-time count is our best snapshot” for counting the number of homeless individuals in a particular region, and that she “cannot give . . . any other number with any kind of confidence.”

time count will undercount the homeless population,” as many homeless individuals may have access to temporary housing on a given night, and as weather conditions may affect the number of available volunteers and the number of homeless people staying at shelters or accessing services on the night of the count.

There are currently three homeless shelters in the City of Boise offering emergency shelter services, all run by private, nonprofit organizations. As far as the record reveals, these three shelters are the only shelters in Ada County.

One shelter — “Sanctuary” — is operated by Interfaith Sanctuary Housing Services, Inc. The shelter is open to men, women, and children of all faiths, and does not impose any religious requirements on its residents. Sanctuary has 96 beds reserved for individual men and women, with several additional beds reserved for families. The shelter uses floor mats when it reaches capacity with beds.

Because of its limited capacity, Sanctuary frequently has to turn away homeless people seeking shelter. In 2010, Sanctuary reached full capacity in the men’s area “at least half of every month,” and the women’s area reached capacity “almost every night of the week.” In 2014, the shelter reported that it was full for men, women, or both on 38% of nights. Sanctuary provides beds first to people who spent the previous night at Sanctuary. At 9:00 pm each night, it allots any remaining beds to those who added their names to the shelter’s waiting list.

The other two shelters in Boise are both operated by the Boise Rescue Mission (“BRM”), a Christian nonprofit organization. One of those shelters, the River of Life Rescue Mission (“River of Life”), is open exclusively to men; the other, the City Light Home for Women and Children (“City Light”), shelters women and children only.

BRM’s facilities provide two primary “programs” for the homeless, the Emergency Services Program and the New Life Discipleship Program.² The Emergency Services Program provides temporary shelter, food, and clothing to anyone in need. Christian religious services are offered to those seeking shelter through the Emergency Services Program. The shelters display messages and iconography on the walls, and the intake form for emergency shelter guests includes a religious message.³

Homeless individuals may check in to either BRM facility between 4:00 and 5:30 pm. Those who arrive at BRM facilities between 5:30 and 8:00 pm may be denied shelter, depending on the reason for their late arrival; generally, anyone arriving after 8:00 pm is denied shelter.

Except in winter, male guests in the Emergency Services Program may stay at River of Life for up to 17 consecutive

² The record suggests that BRM provides some limited additional non-emergency shelter programming which, like the Discipleship Program, has overtly religious components.

³ The intake form states in relevant part that “We are a Gospel Rescue Mission. Gospel means ‘Good News,’ and the Good News is that Jesus saves us from sin past, present, and future. We would like to share the Good News with you. Have you heard of Jesus? . . . Would you like to know more about him?”

nights; women and children in the Emergency Services Program may stay at City Light for up to 30 consecutive nights. After the time limit is reached, homeless individuals who do not join the Discipleship Program may not return to a BRM shelter for at least 30 days.⁴ Participants in the Emergency Services Program must return to the shelter every night during the applicable 17-day or 30-day period; if a resident fails to check in to a BRM shelter each night, that resident is prohibited from staying overnight at that shelter for 30 days. BRM's rules on the length of a person's stay in the Emergency Services Program are suspended during the winter.

The Discipleship Program is an "intensive, Christ-based residential recovery program" of which "[r]eligious study is the very essence." The record does not indicate any limit to how long a member of the Discipleship Program may stay at a BRM shelter.

The River of Life shelter contains 148 beds for emergency use, along with 40 floor mats for overflow; 78 additional beds serve those in non-emergency shelter programs such as the Discipleship Program. The City Light shelter has 110 beds for emergency services, as well as 40 floor mats to handle overflow and 38 beds for women in non-emergency shelter programs. All told, Boise's three homeless shelters contain 354 beds and 92 overflow mats for homeless individuals.

⁴ The parties dispute the extent to which BRM actually enforces the 17- and 30-day limits.

A. The Plaintiffs

Plaintiffs Robert Martin, Robert Anderson, Lawrence Lee Smith, Basil E. Humphrey, Pamela S. Hawkes, and Janet F. Bell are all homeless individuals who have lived in or around Boise since at least 2007. Between 2007 and 2009, each plaintiff was convicted at least once of violating the Camping Ordinance, the Disorderly Conduct Ordinance, or both. With one exception, all plaintiffs were sentenced to time served for all convictions; on two occasions, Hawkes was sentenced to one additional day in jail. During the same period, Hawkes was cited, but not convicted, under the Camping Ordinance, and Martin was cited, but not convicted, under the Disorderly Conduct Ordinance.

Plaintiff Robert Anderson currently lives in Boise; he is homeless and has often relied on Boise's shelters for housing. In the summer of 2007, Anderson stayed at River of Life as part of the Emergency Services Program until he reached the shelter's 17-day limit for male guests. Anderson testified that during his 2007 stay at River of Life, he was required to attend chapel services before he was permitted to eat dinner. At the conclusion of his 17-day stay, Anderson declined to enter the Discipleship Program because of his religious beliefs. As Anderson was barred by the shelter's policies from returning to River of Life for 30 days, he slept outside for the next several weeks. On September 1, 2007, Anderson was cited under the Camping Ordinance. He pled guilty to violating the Camping Ordinance and paid a \$25 fine; he did not appeal his conviction.

Plaintiff Robert Martin is a former resident of Boise who currently lives in Post Falls, Idaho. Martin returns frequently to Boise to visit his minor son. In March of 2009, Martin was

cited under the Camping Ordinance for sleeping outside; he was cited again in 2012 under the same ordinance.

B. Procedural History

The plaintiffs filed this action in the United States District Court for the District of Idaho in October of 2009. All plaintiffs alleged that their previous citations under the Camping Ordinance and the Disorderly Conduct Ordinance violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, and sought damages for those alleged violations under 42 U.S.C. § 1983. *Cf. Jones*, 444 F.3d at 1138. Anderson and Martin also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances under the same statute and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

After this litigation began, the Boise Police Department promulgated a new “Special Order,” effective as of January 1, 2010, that prohibited enforcement of either the Camping Ordinance or the Disorderly Conduct Ordinance against any homeless person on public property on any night when no shelter had “an available overnight space.” City police implemented the Special Order through a two-step procedure known as the “Shelter Protocol.”

Under the Shelter Protocol, if any shelter in Boise reaches capacity on a given night, that shelter will so notify the police at roughly 11:00 pm. Each shelter has discretion to determine whether it is full, and Boise police have no other mechanism or criteria for gauging whether a shelter is full. Since the Shelter Protocol was adopted, Sanctuary has reported that it was full on almost 40% of nights. Although BRM agreed to the Shelter Protocol, its internal policy is never to turn any

person away because of a lack of space, and neither BRM shelter has ever reported that it was full.

If all shelters are full on the same night, police are to refrain from enforcing either ordinance. Presumably because the BRM shelters have not reported full, Boise police continue to issue citations regularly under both ordinances.

In July 2011, the district court granted summary judgment to the City. It held that the plaintiffs' claims for retrospective relief were barred under the *Rooker-Feldman* doctrine and that their claims for prospective relief were mooted by the Special Order and the Shelter Protocol. *Bell v. City of Boise*, 834 F. Supp. 2d 1103 (D. Idaho 2011). On appeal, we reversed and remanded. *Bell v. City of Boise*, 709 F.3d 890, 901 (9th Cir. 2013). We held that the district court erred in dismissing the plaintiffs' claims under the *Rooker-Feldman* doctrine. *Id.* at 897. In so holding, we expressly declined to consider whether the favorable-termination requirement from *Heck v. Humphrey*, 512 U.S. 477 (1994), applied to the plaintiffs' claims for retrospective relief. Instead, we left the issue for the district court on remand. *Bell*, 709 F.3d at 897 n.11.

Bell further held that the plaintiffs' claims for prospective relief were not moot. The City had not met its "heavy burden" of demonstrating that the challenged conduct — enforcement of the two ordinances against homeless individuals with no access to shelter — "could not reasonably be expected to recur." *Id.* at 898, 901 (quoting *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). We emphasized that the Special Order was a statement of administrative policy and so could be amended

or reversed at any time by the Boise Chief of Police. *Id.* at 899–900.

Finally, *Bell* rejected the City’s argument that the plaintiffs lacked standing to seek prospective relief because they were no longer homeless. *Id.* at 901 & n.12. We noted that, on summary judgment, the plaintiffs “need not establish that they in fact have standing, but only that there is a genuine issue of material fact as to the standing elements.” *Id.* (citation omitted).

On remand, the district court again granted summary judgment to the City on the plaintiffs’ § 1983 claims. The court observed that *Heck* requires a § 1983 plaintiff seeking damages for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid” to demonstrate that “the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486–87. According to the district court, “a judgment finding the Ordinances unconstitutional . . . necessarily would imply the invalidity of Plaintiffs’ [previous] convictions under those ordinances,” and the plaintiffs therefore were required to demonstrate that their convictions or sentences had already been invalidated. As none of the plaintiffs had raised an Eighth Amendment challenge as a defense to criminal prosecution, nor had any plaintiff successfully appealed their conviction, the district court held that all of the plaintiffs’ claims for retrospective relief were barred by *Heck*. The district court also rejected as barred by *Heck* the plaintiffs’ claim for prospective injunctive relief under § 1983, reasoning that “a ruling in favor of Plaintiffs on even a

prospective § 1983 claim would demonstrate the invalidity of any confinement stemming from those convictions.”

Finally, the district court determined that, although *Heck* did not bar relief under the Declaratory Judgment Act, Martin and Anderson now lack standing to pursue such relief. The linchpin of this holding was that the Camping Ordinance and the Disorderly Conduct Ordinance were both amended in 2014 to codify the Special Order’s mandate that “[l]aw enforcement officers shall not enforce [the ordinances] when the individual is on public property and there is no available overnight shelter.” Boise City Code §§ 6-01-05, 9-10-02. Because the ordinances, as amended, permitted camping or sleeping in a public place when no shelter space was available, the court held that there was no “credible threat” of future prosecution. “If the Ordinances are not to be enforced when the shelters are full, those Ordinances do not inflict a constitutional injury upon these particular plaintiffs” The court emphasized that the record “suggests there is no known citation of a homeless individual under the Ordinances for camping or sleeping on public property on any night or morning when he or she was unable to secure shelter due to a lack of shelter capacity” and that “there has not been a single night when all three shelters in Boise called in to report they were simultaneously full for men, women or families.”

This appeal followed.

II. Discussion

A. Standing

We first consider whether any of the plaintiffs has standing to pursue prospective relief.⁵ We conclude that there are sufficient opposing facts in the record to create a genuine issue of material fact as to whether Martin and Anderson face a credible threat of prosecution under one or both ordinances in the future at a time when they are unable to stay at any Boise homeless shelter.⁶

“To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013) (citation omitted). “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes — that the injury is *certainly* impending.” *Id.* (citation omitted). A plaintiff need not, however, await an arrest or prosecution to have standing to challenge the constitutionality of a criminal statute. “When the plaintiff has alleged an

⁵ Standing to pursue retrospective relief is not in doubt. The only threshold question affecting the availability of a claim for retrospective relief — a question we address in the next section — is whether such relief is barred by the doctrine established in *Heck*.

⁶ Although the SAC is somewhat ambiguous regarding which of the plaintiffs seeks prospective relief, counsel for the plaintiffs made clear at oral argument that only two of the plaintiffs, Martin and Anderson, seek such relief, and the district court considered the standing question with respect to Martin and Anderson only.

intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (citation and internal quotation marks omitted). To defeat a motion for summary judgment premised on an alleged lack of standing, plaintiffs “ need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements.” *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002).

In dismissing Martin and Anderson’s claims for declaratory relief for lack of standing, the district court emphasized that Boise’s ordinances, as amended in 2014, preclude the City from issuing a citation when there is no available space at a shelter, and there is consequently no risk that either Martin or Anderson will be cited under such circumstances in the future. Viewing the record in the light most favorable to the plaintiffs, we cannot agree.

Although the 2014 amendments preclude the City from enforcing the ordinances when there is no room available at any shelter, the record demonstrates that the City is wholly reliant on the shelters to self-report when they are full. It is undisputed that Sanctuary is full as to men on a substantial percentage of nights, perhaps as high as 50%. The City nevertheless emphasizes that since the adoption of the Shelter Protocol in 2010, the BRM facilities, River of Life and City Light, have never reported that they are full, and BRM states that it will never turn people away due to lack space.

The plaintiffs have pointed to substantial evidence in the record, however, indicating that whether or not the BRM facilities are ever full or turn homeless individuals away *for lack of space*, they *do* refuse to shelter homeless people who exhaust the number of days allotted by the facilities. Specifically, the plaintiffs allege, and the City does not dispute, that it is BRM's policy to limit men to 17 consecutive days in the Emergency Services Program, after which they cannot return to River of Life for 30 days; City Light has a similar 30-day limit for women and children. Anderson testified that BRM has enforced this policy against him in the past, forcing him to sleep outdoors.

The plaintiffs have adduced further evidence indicating that River of Life permits individuals to remain at the shelter after 17 days in the Emergency Services Program only on the condition that they become part of the New Life Discipleship program, which has a mandatory religious focus. For example, there is evidence that participants in the New Life Program are not allowed to spend days at Corpus Christi, a local Catholic program, "because it's . . . a different sect." There are also facts in dispute concerning whether the Emergency Services Program itself has a religious component. Although the City argues strenuously that the Emergency Services Program is secular, Anderson testified to the contrary; he stated that he was once required to attend chapel before being permitted to eat dinner at the River of Life shelter. Both Martin and Anderson have objected to the overall religious atmosphere of the River of Life shelter, including the Christian messaging on the shelter's intake form and the Christian iconography on the shelter walls. A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment. *Inouye v.*

Kemna, 504 F.3d 705, 712–13 (9th Cir. 2007). Yet at the conclusion of a 17-day stay at River of Life, or a 30-day stay at City Light, an individual may be forced to choose between sleeping outside on nights when Sanctuary is full (and risking arrest under the ordinances), or enrolling in BRM programming that is antithetical to his or her religious beliefs.

The 17-day and 30-day limits are not the only BRM policies which functionally limit access to BRM facilities even when space is nominally available. River of Life also turns individuals away if they voluntarily leave the shelter before the 17-day limit and then attempt to return within 30 days. An individual who voluntarily leaves a BRM facility for any reason — perhaps because temporary shelter is available at Sanctuary, or with friends or family, or in a hotel — cannot immediately return to the shelter if circumstances change. Moreover, BRM’s facilities may deny shelter to any individual who arrives after 5:30 pm, and generally will deny shelter to anyone arriving after 8:00 pm. Sanctuary, however, does not assign beds to persons on its waiting list until 9:00 pm. Thus, by the time a homeless individual on the Sanctuary waiting list discovers that the shelter has no room available, it may be too late to seek shelter at either BRM facility.

So, even if we credit the City’s evidence that BRM’s facilities have never been “full,” and that the City has never cited any person under the ordinances who could not obtain shelter “due to a lack of shelter capacity,” there remains a genuine issue of material fact as to whether homeless individuals in Boise run a credible risk of being issued a citation on a night when Sanctuary is full and they have been denied entry to a BRM facility for reasons other than shelter capacity. If so, then as a practical matter, no shelter is

available. We note that despite the Shelter Protocol and the amendments to both ordinances, the City continues regularly to issue citations for violating both ordinances; during the first three months of 2015, the Boise Police Department issued over 175 such citations.

The City argues that Martin faces little risk of prosecution under either ordinance because he has not lived in Boise since 2013. Martin states, however, that he is still homeless and still visits Boise several times a year to visit his minor son, and that he has continued to seek shelter at Sanctuary and River of Life. Although Martin may no longer spend enough time in Boise to risk running afoul of BRM's 17-day limit, he testified that he has unsuccessfully sought shelter at River of Life after being placed on Sanctuary's waiting list, only to discover later in the evening that Sanctuary had no available beds. Should Martin return to Boise to visit his son, there is a reasonable possibility that he might again seek shelter at Sanctuary, only to discover (after BRM has closed for the night) that Sanctuary has no space for him. Anderson, for his part, continues to live in Boise and states that he remains homeless.

We conclude that both Martin and Anderson have demonstrated a genuine issue of material fact regarding whether they face a credible risk of prosecution under the ordinances in the future on a night when they have been denied access to Boise's homeless shelters; both plaintiffs therefore have standing to seek prospective relief.

B. *Heck v. Humphrey*

We turn next to the impact of *Heck v. Humphrey* and its progeny on this case. With regard to retrospective relief, the

plaintiffs maintain that *Heck* should not bar their claims because, with one exception, all of the plaintiffs were sentenced to time served.⁷ It would therefore have been impossible for the plaintiffs to obtain federal habeas relief, as any petition for a writ of habeas corpus must be filed while the petitioner is “in custody pursuant to the judgment of a State court.” See 28 U.S.C. § 2254(a); *Spencer v. Kemna*, 523 U.S. 1, 7, 17–18 (1998). With regard to prospective relief, the plaintiffs emphasize that they seek only equitable protection against *future* enforcement of an allegedly unconstitutional statute, and not to invalidate any prior conviction under the same statute. We hold that although the *Heck* line of cases precludes most — but not all — of the plaintiffs’ requests for retrospective relief, that doctrine has no application to the plaintiffs’ request for an injunction enjoining prospective enforcement of the ordinances.

1. The *Heck* Doctrine

A long line of Supreme Court case law, beginning with *Preiser v. Rodriguez*, 411 U.S. 475 (1973), holds that a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his or her confinement, but must instead seek federal habeas corpus relief or analogous state relief. *Id.* at 477, 500. *Preiser* considered whether a prison inmate could bring a § 1983 action seeking an injunction to remedy an unconstitutional deprivation of good-time conduct credits. Observing that habeas corpus is the traditional instrument to obtain release from unlawful

⁷ Plaintiff Pamela Hawkes was convicted of violating the Camping Ordinance or Disorderly Conduct Ordinance on twelve occasions; although she was usually sentenced to time served, she was twice sentenced to one additional day in jail.

confinement, *Preiser* recognized an implicit exception from § 1983's broad scope for actions that lie "within the core of habeas corpus" — specifically, challenges to the "fact or duration" of confinement. *Id.* at 487, 500. The Supreme Court subsequently held, however, that although *Preiser* barred inmates from obtaining an injunction to restore good-time credits via a § 1983 action, *Preiser* did not "preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations." *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974) (emphasis added).

Heck addressed a § 1983 action brought by an inmate seeking compensatory and punitive damages. The inmate alleged that state and county officials had engaged in unlawful investigations and knowing destruction of exculpatory evidence. *Heck*, 512 U.S. at 479. The Court in *Heck* analogized a § 1983 action of this type, which called into question the validity of an underlying conviction, to a cause of action for malicious prosecution, *id.* at 483–84, and went on to hold that, as with a malicious prosecution claim, a plaintiff in such an action must demonstrate a favorable termination of the criminal proceedings before seeking tort relief, *id.* at 486–87. "[T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.*

Edwards v. Balisok, 520 U.S. 641 (1997) extended *Heck*'s holding to claims for declaratory relief. *Id.* at 648. The plaintiff in *Edwards* alleged that he had been deprived of earned good-time credits without due process of law, because the decisionmaker in disciplinary proceedings had concealed exculpatory evidence. Because the plaintiff's claim for declaratory relief was "based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed," *Edwards* held, it was "not cognizable under § 1983." *Id.* *Edwards* went on to hold, however, that a requested injunction requiring prison officials to date-stamp witness statements was not *Heck*-barred, reasoning that a "prayer for such *prospective* relief will not 'necessarily imply' the invalidity of a previous loss of good-time credits, and so may properly be brought under § 1983." *Id.* (emphasis added).

Most recently, *Wilkinson v. Dotson*, 544 U.S. 74 (2005), stated that *Heck* bars § 1983 suits even when the relief sought is prospective injunctive or declaratory relief, "if success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Id.* at 81-82 (emphasis omitted). But *Wilkinson* held that the plaintiffs in that case *could* seek a prospective injunction compelling the state to comply with constitutional requirements in parole proceedings in the future. The Court observed that the prisoners' claims for future relief, "if successful, will not necessarily imply the invalidity of confinement or shorten its duration." *Id.* at 82.

The Supreme Court did not, in these cases or any other, conclusively determine whether *Heck*'s favorable-termination requirement applies to convicts who have no practical opportunity to challenge their conviction or sentence via a

petition for habeas corpus. See *Muhammad v. Close*, 540 U.S. 749, 752 & n.2 (2004). But in *Spencer*, five Justices suggested that *Heck* may not apply in such circumstances. *Spencer*, 523 U.S. at 3.

The petitioner in *Spencer* had filed a federal habeas petition seeking to invalidate an order revoking his parole. While the habeas petition was pending, the petitioner's term of imprisonment expired, and his habeas petition was consequently dismissed as moot. Justice Souter wrote a concurring opinion in which three other Justices joined, addressing the petitioner's argument that if his habeas petition were mooted by his release, any § 1983 action would be barred under *Heck*, yet he would no longer have access to a federal habeas forum to challenge the validity of his parole revocation. *Id.* at 18–19 (Souter, J., concurring). Justice Souter stated that in his view “*Heck* has no such effect,” and that “a former prisoner, no longer ‘in custody,’ may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy.” *Id.* at 21. Justice Stevens, dissenting, stated that he would have held the habeas petition in *Spencer* not moot, but agreed that “[g]iven the Court’s holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear . . . that he may bring an action under 42 U.S.C. § 1983.” *Id.* at 25 n.8 (Stevens, J., dissenting).

Relying on the concurring and dissenting opinions in *Spencer*, we have held that the “unavailability of a remedy in habeas corpus because of mootness” permitted a plaintiff released from custody to maintain a § 1983 action for damages, “even though success in that action would imply the

invalidity of the disciplinary proceeding that caused revocation of his good-time credits.” *Nonnette v. Small*, 316 F.3d 872, 876 (9th Cir. 2002). But we have limited *Nonnette* in recent years. Most notably, we held in *Lyall v. City of Los Angeles*, 807 F.3d 1178 (9th Cir. 2015), that even where a plaintiff had no practical opportunity to pursue federal habeas relief while detained because of the short duration of his confinement, *Heck* bars a § 1983 action that would imply the invalidity of a prior conviction if the plaintiff could have sought invalidation of the underlying conviction via direct appeal or state post-conviction relief, but did not do so. *Id.* at 1192 & n.12.

2. Retrospective Relief

Here, the majority of the plaintiffs’ claims for *retrospective* relief are governed squarely by *Lyall*. It is undisputed that all the plaintiffs not only failed to challenge their convictions on direct appeal but expressly waived the right to do so as a condition of their guilty pleas. The plaintiffs have made no showing that any of their convictions were invalidated via state post-conviction relief. We therefore hold that all but two of the plaintiffs’ claims for damages are foreclosed under *Lyall*.

Two of the plaintiffs, however, Robert Martin and Pamela Hawkes, also received citations under the ordinances that were dismissed before the state obtained a conviction. Hawkes was cited for violating the Camping Ordinance on July 8, 2007; that violation was dismissed on August 28, 2007. Martin was cited for violating the Disorderly Conduct Ordinance on April 24, 2009; those charges were dismissed on September 9, 2009. The complaint alleges two injuries stemming from these dismissed citations: (1) the continued

inclusion of the citations on plaintiffs' criminal records; and (2) the accumulation of a host of criminal fines and incarceration costs. Plaintiffs seek orders compelling the City to "expunge[] . . . the records of any homeless individuals unlawfully cited or arrested and charged under [the Ordinances]" and "reimburse[] . . . any criminal fines paid . . . [or] costs of incarceration billed."

With respect to these two incidents, the district court erred in finding that the plaintiffs' Eighth Amendment challenge was barred by *Heck*. Where there is no "conviction or sentence" that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application. 512 U.S. at 486–87; see also *Wallace v. Kato*, 549 U.S. 384, 393 (2007).

Relying on *Ingraham v. Wright*, 430 U.S. 651, 664 (1977), the City argues that the Eighth Amendment, and the Cruel and Unusual Punishments Clause in particular, have no application where there has been no conviction. The City's reliance on *Ingraham* is misplaced. As the Supreme Court observed in *Ingraham*, the Cruel and Unusual Punishments Clause not only limits the types of punishment that may be imposed and prohibits the imposition of punishment grossly disproportionate to the severity of the crime, but also "imposes substantive limits on what can be made criminal and punished as such." *Id.* at 667. "This [latter] protection governs the criminal law process as a whole, not only the imposition of punishment postconviction." *Jones*, 444 F.3d at 1128.

Ingraham concerned only whether "impositions outside the criminal process" — in that case, the paddling of schoolchildren — "constituted cruel and unusual

punishment.” 430 U.S. at 667. *Ingraham* did not hold that a plaintiff challenging the state’s power to criminalize a particular status or conduct in the first instance, as the plaintiffs in this case do, must first be convicted. If conviction were a prerequisite for such a challenge, “the state could in effect punish individuals in the preconviction stages of the criminal law enforcement process for being or doing things that under the [Cruel and Unusual Punishments Clause] cannot be subject to the criminal process.” *Jones*, 444 F.3d at 1129. For those rare Eighth Amendment challenges concerning the state’s very power to criminalize particular behavior or status, then, a plaintiff need demonstrate only the initiation of the criminal process against him, not a conviction.

3. Prospective Relief

The district court also erred in concluding that the plaintiffs’ requests for prospective injunctive relief were barred by *Heck*. The district court relied entirely on language in *Wilkinson* stating that “a state prisoner’s § 1983 action is barred (absent prior invalidation) . . . no matter the relief sought (damages or equitable relief) . . . if success in that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*, 544 U.S. at 81–82. The district court concluded from this language in *Wilkinson* that a person convicted under an allegedly unconstitutional statute may never challenge the validity or application of that statute after the initial criminal proceeding is complete, even when the relief sought is prospective only and independent of the prior conviction. The logical extension of the district court’s interpretation is that an individual who does not successfully invalidate a first conviction under an unconstitutional statute will have no opportunity to challenge

that statute prospectively so as to avoid arrest and conviction for violating that same statute in the future.

Neither *Wilkinson* nor any other case in the *Heck* line supports such a result. Rather, *Wolff*, *Edwards*, and *Wilkinson* compel the opposite conclusion.

Wolff held that although *Preiser* barred a § 1983 action seeking restoration of good-time credits absent a successful challenge in federal habeas proceedings, *Preiser* did not “preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid . . . regulations.” *Wolff*, 418 U.S. at 555. Although *Wolff* was decided before *Heck*, the Court subsequently made clear that *Heck* effected no change in the law in this regard, observing in *Edwards* that “[o]rdinarily, a prayer for . . . prospective [injunctive] relief will not ‘necessarily imply’ the invalidity of a *previous* loss of good-time credits, and so may properly be brought under § 1983.” *Edwards*, 520 U.S. at 648 (emphasis added). Importantly, the Court held in *Edwards* that although the plaintiff could not, consistently with *Heck*, seek a declaratory judgment stating that the procedures employed by state officials that deprived him of good-time credits were unconstitutional, he *could* seek an injunction barring such allegedly unconstitutional procedures in the future. *Id.* Finally, the Court noted in *Wilkinson* that the *Heck* line of cases “has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies *when they seek to invalidate the duration of their confinement.*” *Wilkinson*, 544 U.S. at 81 (emphasis added), alluding to an existing confinement, not one yet to come.

The *Heck* doctrine, in other words, serves to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge. In context, it is clear that *Wilkinson's* holding that the *Heck* doctrine bars a § 1983 action “no matter the relief sought (damages or equitable relief) . . . if success in that action would necessarily demonstrate the invalidity of confinement or its duration” applies to equitable relief concerning an existing confinement, not to suits seeking to preclude an unconstitutional confinement in the future, arising from incidents occurring after any prior conviction and stemming from a possible later prosecution and conviction. *Id.* at 81–82 (emphasis added). As *Wilkinson* held, “claims for *future* relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration)” are distant from the “core” of habeas corpus with which the *Heck* line of cases is concerned, and are not precluded by the *Heck* doctrine. *Id.* at 82.

In sum, we hold that the majority of the plaintiffs’ claims for retrospective relief are barred by *Heck*, but both Martin and Hawkes stated claims for damages to which *Heck* has no application. We further hold that *Heck* has no application to the plaintiffs’ requests for prospective injunctive relief.

C. The Eighth Amendment

At last, we turn to the merits — does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter? We hold that it does, for essentially the same reasons articulated in the now-vacated *Jones* opinion.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause "circumscribes the criminal process in three ways." *Ingraham*, 430 U.S. at 667. First, it limits the type of punishment the government may impose; second, it proscribes punishment "grossly disproportionate" to the severity of the crime; and third, it places substantive limits on what the government may criminalize. *Id.* It is the third limitation that is pertinent here.

"Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." *Robinson v. California*, 370 U.S. 660, 667 (1962). Cases construing substantive limits as to what the government may criminalize are rare, however, and for good reason — the Cruel and Unusual Punishments Clause's third limitation is "one to be applied sparingly." *Ingraham*, 430 U.S. at 667.

Robinson, the seminal case in this branch of Eighth Amendment jurisprudence, held a California statute that "ma[de] the 'status' of narcotic addiction a criminal offense" invalid under the Cruel and Unusual Punishments Clause. 370 U.S. at 666. The California law at issue in *Robinson* was "not one which punishe[d] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration"; it punished addiction itself. *Id.* Recognizing narcotics addiction as an illness or disease — "apparently an illness which may be contracted innocently or involuntarily" — and observing that a "law which made a criminal offense of . . . a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment," *Robinson* held

the challenged statute a violation of the Eighth Amendment. *Id.* at 666–67.

As *Jones* observed, *Robinson* did not explain at length the principles underpinning its holding. See *Jones*, 444 F.3d at 1133. In *Powell v. Texas*, 392 U.S. 514 (1968), however, the Court elaborated on the principle first articulated in *Robinson*.

Powell concerned the constitutionality of a Texas law making public drunkenness a criminal offense. Justice Marshall, writing for a plurality of the Court, distinguished the Texas statute from the law at issue in *Robinson* on the ground that the Texas statute made criminal not alcoholism but *conduct* — appearing in public while intoxicated. “[A]ppellant was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant’s behavior in the privacy of his own home.” *Id.* at 532 (plurality opinion).

The *Powell* plurality opinion went on to interpret *Robinson* as precluding only the criminalization of “status,” not of “involuntary” conduct. “The entire thrust of *Robinson*’s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’” *Id.* at 533.

Four Justices dissented from the Court's holding in *Powell*; Justice White concurred in the result alone. Notably, Justice White noted that many chronic alcoholics are also homeless, and that for those individuals, public drunkenness may be unavoidable as a practical matter. "For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking. . . . For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment — the act of getting drunk." *Id.* at 551 (White, J., concurring in the judgment).

The four dissenting Justices adopted a position consistent with that taken by Justice White: that under *Robinson*, "criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change," and that the defendant, "once intoxicated, . . . could not prevent himself from appearing in public places." *Id.* at 567 (Fortas, J., dissenting). Thus, five Justices gleaned from *Robinson* the principle that "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." *Jones*, 444 F.3d at 1135; *see also United States v. Roberston*, 875 F.3d 1281, 1291 (9th Cir. 2017).

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones*

reasoned, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” *Jones*, 444 F.3d at 1136. Moreover, any “conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.” *Id.* As a result, just as the state may not criminalize the state of being “homeless in public places,” the state may not “criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” *Id.* at 1137.

Our holding is a narrow one. Like the *Jones* panel, “we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.” *Id.* at 1138. We hold only that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in public.” *Id.* That is, as 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.⁸

⁸ 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. See *Jones*, 444 F.3d at 1123. So, too, might an ordinance barring the obstruction of public rights of way or the erection

We are not alone in reaching this conclusion. As one court has observed, “resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. . . . As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); *see also Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (holding that a “sleeping in public ordinance as applied against the homeless is unconstitutional”), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995).⁹

Here, the two ordinances criminalize the simple act of sleeping outside on public property, whether bare or with a

of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. *Id.* at 1136.

⁹ In *Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000), the Eleventh Circuit upheld an anti-camping ordinance similar to Boise’s against an Eighth Amendment challenge. In *Joel*, however, the defendants presented unrefuted evidence that the homeless shelters in the City of Orlando had never reached capacity and that the plaintiffs had always enjoyed access to shelter space. *Id.* Those unrefuted facts were critical to the court’s holding. *Id.* As discussed below, the plaintiffs here have demonstrated a genuine issue of material fact concerning whether they have been denied access to shelter in the past or expect to be so denied in the future. *Joel* therefore does not provide persuasive guidance for this case.

blanket or other basic bedding. The Disorderly Conduct Ordinance, on its face, criminalizes “[o]ccupying, lodging, or sleeping in *any* building, structure or place, whether public or private” without permission. Boise City Code § 6-01-05. Its scope is just as sweeping as the Los Angeles ordinance at issue in *Jones*, which mandated that “[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way.” 444 F.3d at 1123.

The Camping Ordinance criminalizes using “any of the streets, sidewalks, parks or public places as a camping place at any time.” Boise City Code § 9-10-02. The ordinance defines “camping” broadly:

The term “camp” or “camping” shall mean the use of public property as a temporary or permanent place of dwelling, lodging, or residence, or as a living accommodation at anytime between sunset and sunrise, or as a sojourn. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire in an unauthorized area, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).

Id. It appears from the record that the Camping Ordinance is frequently enforced against homeless individuals with some elementary bedding, whether or not any of the other listed

indicia of “camping” — the erection of temporary structures, the activity of cooking or making fire, or the storage of personal property — are present. For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.” The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements. We conclude that a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.

III. Conclusion

For the foregoing reasons, we **AFFIRM** the judgment of the district court as to the plaintiffs’ requests for retrospective relief, except as such claims relate to Hawkes’s July 2007 citation under the Camping Ordinance and Martin’s April 2009 citation under the Disorderly Conduct Ordinance. We **REVERSE** and **REMAND** with respect to the plaintiffs’ requests for prospective relief, both declaratory and injunctive, and to the plaintiffs’ claims for retrospective relief insofar as they relate to Hawkes’ July 2007 citation or Martin’s April 2009 citation.¹⁰

¹⁰ Costs shall be awarded to the plaintiffs.

OWENS, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994), bars the plaintiffs' 42 U.S.C. § 1983 claims for damages that are based on convictions that have not been challenged on direct appeal or invalidated in state post-conviction relief. See *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1192 n.12 (9th Cir. 2015).

I also agree that *Heck* and its progeny have no application where there is no "conviction or sentence" that would be undermined by granting a plaintiff's request for relief under § 1983. *Heck*, 512 U.S. at 486–87; see also *Wallace v. Kato*, 549 U.S. 384, 393 (2007). I therefore concur in the majority's conclusion that *Heck* does not bar plaintiffs Robert Martin and Pamela Hawkes from seeking retrospective relief for the two instances in which they received citations, but not convictions. I also concur in the majority's Eighth Amendment analysis as to those two claims for retrospective relief.

Where I part ways with the majority is in my understanding of *Heck*'s application to the plaintiffs' claims for declaratory and injunctive relief. In *Wilkinson v. Dotson*, 544 U.S. 74 (2005), the Supreme Court explained where the *Heck* doctrine stands today:

[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action

would necessarily demonstrate the invalidity of confinement or its duration.

Id. at 81–82. Here, the majority acknowledges this language in *Wilkinson*, but concludes that *Heck*'s bar on any type of relief that “would necessarily demonstrate the invalidity of confinement” does not preclude the prospective claims at issue. The majority reasons that the purpose of *Heck* is “to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge,” and so concludes that the plaintiffs’ prospective claims may proceed. I respectfully disagree.

A declaration that the city ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs’ prior convictions. Indeed, any time an individual challenges the constitutionality of a substantive criminal statute under which he has been convicted, he asks for a judgment that would necessarily demonstrate the invalidity of his conviction. And though neither the Supreme Court nor this court has squarely addressed *Heck*'s application to § 1983 claims challenging the constitutionality of a substantive criminal statute, I believe *Edwards v. Balisok*, 520 U.S. 641 (1997), makes clear that *Heck* prohibits such challenges. In *Edwards*, the Supreme Court explained that although our court had recognized that *Heck* barred § 1983 claims challenging the validity of a prisoner’s confinement “as a substantive matter,” it improperly distinguished as not *Heck*-barred *all* claims alleging only procedural violations. 520 U.S. at 645. In holding that *Heck* also barred those procedural claims that would necessarily imply the invalidity of a conviction, the Court did not question our conclusion that claims challenging a conviction “as a substantive matter” are barred by *Heck*.

Id.; see also *Wilkinson*, 544 U.S. at 82 (holding that the plaintiffs' claims could proceed because the relief requested would only "render invalid the state procedures" and "a favorable judgment [would] not 'necessarily imply the invalidity of [their] conviction[s] or sentence[s]'" (emphasis added) (quoting *Heck*, 512 U.S. at 487)).

Edwards thus leads me to conclude that an individual who was convicted under a criminal statute, but who did not challenge the constitutionality of the statute at the time of his conviction through direct appeal or post-conviction relief, cannot do so in the first instance by seeking declaratory or injunctive relief under § 1983. See *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005) (assuming that a §1983 claim challenging "the constitutionality of the ordinance under which [the petitioner was convicted]" would be *Heck*-barred). I therefore would hold that *Heck* bars the plaintiffs' claims for declaratory and injunctive relief.

We are not the first court to struggle applying *Heck* to "real life examples," nor will we be the last. See, e.g., *Spencer v. Kemna*, 523 U.S. 1, 21 (1998) (Ginsburg, J., concurring) (alterations and internal quotation marks omitted) (explaining that her thoughts on *Heck* had changed since she joined the majority opinion in that case). If the slate were blank, I would agree that the majority's holding as to prospective relief makes good sense. But because I read *Heck* and its progeny differently, I dissent as to that section of the majority's opinion. I otherwise join the majority in full.

PROVISIONS

Definitions. As used in this chapter, unless the context otherwise requires:

“Accessory building or structure” means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, porches, piers and pilings, that is:

- (a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or
- (b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a

tenant of a manufactured dwelling or floating home.

(2) “Action” includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(3) “Applicant screening charge” means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) “Building and housing codes” includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(5) “Carbon monoxide alarm” has the meaning given that term in ORS 105.836.

(6) “Carbon monoxide source” has the meaning given that term in ORS 105.836.

(7) “Conduct” means the commission of an act or the failure to act.

(8) “DBH” means the diameter at breast height, which is measured as the width of a standing tree at four and one-half feet above the ground on the uphill side.

(9) “Dealer” means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(10) “Domestic violence” means:

- (a) Abuse between family or household members, as those terms are defined in ORS 107.705; or
- (b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.

(11) “Drug and alcohol free housing” means a dwelling unit described in ORS 90.243.

(12) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. “Dwelling unit” regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(13) “Essential service” means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.850:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.850:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(b) For purposes of ORS 90.505 to 90.850, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(c) Does not mean a guest or temporary occupant.

(48) "Transient lodging" means a room or a suite of rooms.

(49) "Transient occupancy" means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

(50) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

(51) "Victim" means:

(a) The person against whom an incident related to domestic violence, sexual assault or stalking is perpetrated; or

(b) The parent or guardian of a minor household member against whom an incident related to domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the perpetrator.

(52) "Week-to-week tenancy" means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295. [Formerly 91.705; 1991 c.844 §3; 1993 c.369 §1; 1995 c.324 §1; 1995 c.559 §1; 1997 c.577 §1; 1999 c.676 §§7,7a; 2001 c.596 §27; 2003 c.378 §8; 2005 c.22 §57; 2005 c.41 §1; 2005 c.619 §15; 2007 c.508 §7; 2007 c.906 §6; 2009 c.431 §7; 2009 c.816 §16; 2011 c.42 §11; 2013 c.294 §14; 2013 c.443 §1; 2014 c.89 §12; 2019 c.1 §6; 2019 c.422 §28; 2019 c.625 §49]