

# *Summary of* **Persecution of the Unhoused:** **Fines and Jail Time** **for Having Nowhere Else To Go** *in* **Eugene, Oregon**

This report summary is an **abbreviated version** of the [full report](#), which was released publicly in February. The full report was endorsed by the Eugene Human Rights Commission at their February meeting. This summary is meant to give the reader a sense of the scope of the report without the complete details. Each section of this summary report includes links to the corresponding sections of the full report.

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## **Purpose of report is to demonstrate**

- ❑ The need to implement **alternatives to enforcing laws** against people for their **unhoused status**.
- ❑ The insurmountable **barriers to housing and employment** created by penalizing unhoused people with **punitive measures**.
- ❑ How expensive it is to maintain the **current system**, and the cost savings for cities **for people to have housing**.

## **Scope of report**

- **Quality of life violations**<sup>1</sup> that most commonly are the basis for **criminal and civil penalties** imposed on the unhoused in Eugene ([prohibited camping](#), [criminal trespass II](#), [violation of park rules](#) and [open container](#)). Except for the fortunate few who are able to access a sanctioned shelter site, unhoused people violate the law wherever they go:
  - **prohibited camping** for resting in **public places**;
  - **criminal trespass II** for resting on **private property**;

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<sup>1</sup> Quality of life offenses, by their nature, disproportionately impact the homeless. People are cited for them *because* they are unhoused.

- **violation of parks rules** for resting anywhere in the thousands of acres of **park land** throughout Eugene; and
- **open container** for **not having a home** in which they can drink.
- **Impoundment of vehicles** that are a household's only form of shelter **disproportionately impacts** individuals and families who are **without stable housing**.
- **Encampment closures and sweeps** often involve a citation and in some cases arrest, causing further disruption in the lives of people who are unhoused because they do not have a legal location to which they can relocate.

### Consequences of Enforcement for Unhoused Status

- Unhoused people are **14 times more likely** to receive citations than housed people.
- Citing and charging people for crimes for having no where to go **contradicts Eugene's own Human Rights Code**, which urges removal of barriers to housing.
- **Debt, jail time, arrest warrants, and move-along orders** keep people in a cycle of homelessness that becomes increasingly difficult to overcome:
  - Unpaid fines are highly **detrimental to a person's credit score**, preventing them from securing housing in competitive markets;
  - Unpaid fines can lead to **license suspension and/or vehicle impoundment**, which can make it impossible to maintain a job;
  - Many violations are **punishable by jail time** and failure to appear at a scheduled hearing can lead to an arrest warrant;
  - An outstanding arrest warrant causes people to live in fear, becoming less likely to seek supportive services, increasing their **risk of being a victim** of crime, and exacerbating their stress; and
  - Serving **time in jail** makes it even more difficult for people to change their situation. A criminal record can be an **obstacle to employment** and securing **housing**.

### Cost to the Community

- **Eugene Police resources** are needed to address **crime that is a real threat to public safety**. As the Court acknowledged in the seminal *Martin v. Boise* case, "[i]t is neither safe nor appropriate to put law enforcement on the front lines . . . when what people who are experiencing homelessness really need is adequate services."
- **Citing and arresting** unhoused people for sleeping or resting is **costly for the entire community**. There are police and public works costs to enforce these laws, court costs to adjudicate and/or impose jail time, general administrative costs by various government agencies, to name a few.

- **Sweeps** also are costly for cities. Encampment closures simply **displace people temporarily** and force people to move to another location that city employees will need to clear.
- Having **police serve as the first responders** to these and other quality of life violations **erodes the trust in police**, making people less likely to seek protection from the police when needed.
- **Citations, court appearances and/or jail time will not serve as a motivator** to help people change their situation when there are no accessible options for shelter.
- The **stress**, including **sleep deprivation** created through the enforcement of these laws and fear of enforcement, contributes to health problems, which is a cost to the entire community due to increased costs on our health care system.
- Studies in cities around the country have shown the **high costs of policing quality of life laws** against the unhoused and the **significant cost savings** by providing people with **housing**.

### Key Findings: [Data Analysis](#)

*(based on an analysis of Municipal Court data between Jan. 1, 2018, to May 31, 2019):*

- Over **one quarter of Municipal Court's docket** is devoted to four quality-of-life offenses: prohibited camping, criminal trespass II, violation of park rules, and open container.
- On average, **83% of all quality- of-life citations and arrests** went to unhoused people:
  - **100%** of all prohibited camping citations,
  - **88%** of all violation of park rules,
  - **80%** of all criminal trespass II,
  - **80%** of all open container.
- An average of **3.4 Criminal Trespass II violations** were issued to unhoused people each day (1,759 total).
- Over **60% (133)** of the unhoused who appeared on the June 2019 Municipal Court docket **owed more than \$1,000; 48 owed more than \$5,000.**

### Key Findings: [Costs](#)

#### Other Cities:

- Studies in other cities have shown that the **cost of policing laws against the homeless** is staggeringly high. For example:
  - **\$50 million per year in Los Angeles** to police quality of life laws and **\$20 million in San Francisco**
  - **\$30 million in Los Angeles** in connection with **sweeps alone**

- Studies show **annual savings** of several thousands of dollars per person, and as high as \$20,000 by **providing housing and support services** compared to the costs of people living without housing<sup>2</sup>

#### Local Costs:

- Given that approximately one quarter of all violations heard in Municipal Court are for quality-of-life violations, it is reasonable to conclude that over **\$1 million** of the \$5.1 million **Municipal Court** budget goes toward the costs to **adjudicate** these violations, the vast majority involve the unhoused.
- **Public Works** spent more than **\$140,000** cleaning up homeless encampments.
- The **Eugene Police Department** responded to almost **500 complaints** regarding **prohibited camping alone**. While fewer than one-third of these responses led to citations, each call is money spent policing people for being homeless.
- **EPD is called and issues citations** in approximately **50% of all camp cleanups**, which adds additional personnel costs for each EPD visit.
- It is estimated that **Public Works and Municipal Court** alone spend more than **\$2 million** to enforce these quality of life laws, which does not include the likely largest cost of enforcement and adjudication – EPD resources.

#### Key Findings: Other Cities

- More than 20 of the cities examined for this report have made changes to their laws and policies involving homelessness. *For example:*

##### Camping/Impoundments:

- At least **7 cities** prohibit resting or camping **only during daytime hours**.
- At least **5 cities** **limit places where camping**, including vehicle camping, **is prohibited** at all times.
- **Multiple cities** require a **warning first** before issuing a citation for sleeping or resting.
- **Dozens of cities** **allow** some form of **vehicle habitation**, often with certain areas prohibited.
- Some cities have instituted **nominal fines** (below \$100) and/or allow **community service** as an alternative to paying a fine for quality of life violations, such as prohibited camping, and vehicles used for habitation that are parked in prohibited areas.<sup>3</sup>
- At least **7 cities** require police or other first responder to **assist an individual** in finding available, appropriate shelter **before a citation can be issued**.

##### Encampments

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<sup>2</sup> HNH 2019, pg 72, *citing*, “Ending Chronic Homelessness Saves Taxpayers Money,” National Alliance to End Homelessness, February 17, 2017. [www.endhomelessness.org](http://www.endhomelessness.org).

<sup>3</sup> A few examples of cities that have codified nominal fines and/or community service include Charleston, SC, Wichita, KS, and Seattle.

- Several cities have **at least a [72-hour notice period](#)** prior to closing an encampment.
- At least [5 cities](#) have established **clearer guidelines** for handling **personal property** belonging to homeless people and have **revised the definition** of personal property.
- At least [5 cities](#) have **outreach workers** or a team comprised of outreach workers and specially trained police officers as **first responders** to encampments.
- [12 lawsuits](#) around the country have resulted in injunctions against enforcement of camping bans and other laws and/or modifications to enforcement protocols
- Some cities have **redirected enforcement expenses** involving quality of life laws **to services and housing** for the unhoused.

## Recommendations for Ordinance and Policy Changes

Below are proposed changes that provide an alternative and more cost-effective approach to Eugene’s current enforcement framework in connection with the four quality of life violations discussed in this report ([prohibited camping](#), [criminal trespass II](#), [violation of park rules](#), and [open container](#)). These recommendations are organized by the agency responsible for approving such a change: (i) City Council; (ii) Eugene Police Department; (iii) City Manager; and (iv) Municipal Court. Within each category the highest priority, most pressing recommendations are listed first followed by additional recommendations that warrant serious consideration. For each recommendation it is noted whether it involves a policy change pursuant to a resolution or requires an amendment to an existing ordinance.

## City Council Resolutions and Ordinance Changes

### Top Priority Action Items:

- **General (Ordinance):** The quality of life violations listed below are misdemeanors, currently subject to both a fine and possible jail time. **Limit penalties** for these violations to a **civil infraction** (fine only, no jail time), **reduce the maximum fine** amounts to nominal amounts and allow **alternatives to payment** for the violations listed below. This would require additions or changes to “Penalties--Specific” (4.990) of EC Chapter 4:
  - *Car Camping:* Amend [4.990\(8\)](#), willful violation of [4.815](#) for camping in a vehicle parked overnight on a public street to remove the 10 days in jail and reduce the \$500 fine.
  - *Criminal Trespass II (4.807):* Amend 4.990 to remove the 30 days in jail and reduce the \$500 fine.

- *Pedestrians (4.707)*: Amend [4.990\(1\)](#) regarding interfering with pedestrian traffic on sidewalks or blocking entrances to public or private property to remove the 100 days in jail and reduce the \$1,000 fine.
  - *Disorderly Conduct (4.725(d))*: Amend 4.990 regarding Section (d) of Disorderly Conduct, which pertains to obstruction of vehicular or pedestrian traffic on a public way, to remove the 100 days in jail and reduce the \$1,000 fine. Note that E.C. 5130 already prohibits the obstruction of vehicular or pedestrian movement on the streets and obstructing a person’s movement on a sidewalk is covered by EC 4.707. Therefore, 4.725(d) is redundant.
  - *Open Container (4.190(1))*: Add language to 4.990 to limit the penalty to a nominal fine. Currently a violation of this provision falls under “Penalties—General” (4.995), allowing for a fine of up to \$500 and/or up to 100 days in jail.
- **General (Resolution) Expand scope and increase funding for Community Court** to divert *all* unhoused people who are cited for quality of life violations and meet the criteria for diversion from Municipal Court to Community Court.
  - **Prohibited Camping, 4.815 (Resolution)**: Define where camping, including vehicle camping, is prohibited at all times, such as residential areas, within 15 feet of building entrances and the Downtown Activity Zone.
  - **General (Resolution)**: Require non-EPD sworn officers as the first responders when a complaint only involves a quality of life violation and there is no threat to public safety:
    - The responder must assist the individual in finding available, appropriate shelter; and
    - EPD should only be called and a citation should only be issued if the person declines shelter.

#### Additional Action Items to Consider

- **Encampment Policies, ORS 203.077<sup>4</sup> (Resolution)**: Re-evaluate City’s encampment policies and procedures to consider the changes listed below and to ensure compliance with ORS 203.079 (“*Required elements of local government policies on camping by homeless*”):
  - Provide at least 72-hour notice prior to a camp closure;
  - Establish clearer guidelines for handling property and revise the definition of what constitutes property to reduce the incidence of valuable items getting disposed of;
  - An encampment resident can remain on site until shelter or another solution is made available; and

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<sup>4</sup> “Local Governments to develop humane policy for removal of homeless camps from public property”

- o Institute encampment best practices pursuant to the U.S. Interagency Council on Homelessness 2015 guidance document, “Ending Homelessness for People Living in Encampments: Advancing the Dialogue;”<sup>5</sup> and the National Law Center on Homeless & Poverty Encampment Principles and Best Practices.<sup>6</sup>
  
- **Open Container, 4.190 (Ordinance):** Amend [4.190](#) to read that possession of “empty” cans or bottles is not evidence of consumption or possession of alcohol.
- **Prohibited Camping, 4.815 (Resolution):** Limit hours of enforcement to daytime, such as between 7 AM and 10 PM.
- **General (Resolution):** Develop and implement a shelter-in-place permit program to allow for temporary use of public land for the purpose of sleep and rest until there is enough housing and shelter to meet the needs of the population experiencing homelessness in Eugene.
- **Impoundments (Ordinance):** Extend the five-day window within which a person must request a hearing in person at Municipal Court, and provide notice of the procedures to request a hearing *before* the vehicle is impounded for prohibited camping.
  - o Both the time extension and the change in notice procedures can be accomplished by amendments to
    - 5.698 “Hearing to Contest Validity of Impoundment” and
    - Administrative Order No. 56-01-01-F “Amendment of Vehicle Impoundment Notice and Hearing Procedures.”
- **Impoundments (Ordinance):** Vehicles should not be subject to impoundment for \$30 in overdue fines. At a minimum, amend 5.231, “Prohibited Parking -- Immobilization of Prohibited Vehicles Involved,” to increase the threshold amount that triggers an impoundment.

## **Eugene Police Department Policy Changes**

### ***(pursuant to direction from City Manager and/or City Council)***

#### Top Priority Action Items:

- **General:** Establish an alternative complaint and dispatch system for quality of life complaints.
- **General:** Investigating quality of life violations must be complaint driven, not

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<sup>5</sup> Supra, FN 16; USICH, “Caution is Needed When Considering Sanctioned Encampments or Safe Zones,” 2018.

<sup>6</sup> Nat’l Ctr on Homelessness & Poverty, Tent City, USA: The Growth of America’s Homeless Encampments And How Communities are Responding 42-43 (2017). [https://nlchp.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf)

initiated by officer observation.

- o An outreach worker should be contacted to respond unless circumstances necessitate EPD intervention.
- **General:** Written warning must be given before a quality of life citation is issued to someone for sleeping or sitting when there is no threat to public safety.
  - o *Criminal Trespass II:* If no trespass letter is on file, property owner or renter must first request EPD intervention.
- **General:** Until an alternative complaint and dispatch system is established, provide EPD dispatchers who handle complaints about homeless people with information and techniques to help ameliorate callers' concerns and stress-levels.

#### Additional Action Items to Consider

- **Impoundments (Resolution):** Amend Policy 410 to require at least 72 hours warning rather than the current 24 hour notice to give people adequate time to work with a service provider and identify an alternative solution.

### **City Manager Action: Park Rules Amendments**

The action items listed below involve amendments to Administrative Order 57-17-07-F (Park Rules), which the Executive Director of the Public Works Department has the authority to amend pursuant to the authority delegated by Administrative Order No. 21-03-12. In addition, pursuant to 1.072 of the Park Rules, "Waiver", the Executive Director of Public Works may temporarily waive any provisions of the Park Rules.

#### Top Priority Action Items:

- ☑ Require an outreach worker to be the first responder rather than EPD, Public Works or Parks and Open Space when a complaint only involves camping or having an open container in park land and there is no threat to public safety.
  - o The outreach worker must assist the individual in finding available, appropriate shelter and a citation should only be issued if the person declines shelter.
- ☑ Limit penalties for camping and open container to a civil infraction, reduce maximum fine amount and allow alternatives to payment.

#### Additional Action Items to Consider

- ☑ Discontinue issuance of Criminal Trespass in the Second Degree for [parks rules violations](#) where the prohibited activity involves resting or sleeping in a park, and violations of restrictions of use (Park Rules Amendment).



- **Restrictions of Use**<sup>7</sup>: (i) Limit imposition of a restriction of use until after a third or subsequent parks rules violation has been issued; (ii) shorten the period of exclusion from park land (currently can be up to a year of exclusion from all parks and open spaces); (iii) limit exclusion to the park in which current violation occurred, and (iv) consecutive violations must occur within a 60 day time period to be the basis of a restriction of use.
- **Hearing Procedures:** For people given a notice that restricts their future use of parks, allow a request for a hearing to be made in person. Written request should not be the only avenue to contest a Restriction of Use.
  - Allow a person attending a hearing to challenge a restriction of use of parks to be accompanied by another person, such as a lawyer, advocate, friend/family or other companion. (Park Rules Amendment)
  - The exclusion should not go into effect until the appeal process has been exhausted, otherwise the person has been deprived of their right to use any park space throughout Eugene while the outcome of their hearing is pending, which can be as long as eight days from the date of violation to the date the Parks & Open Space Division Director issues a written decision.

### **Municipal Court Policy Changes:**

- **General:** Divert *all* unhoused people who are cited for quality of life violations and meet the criteria for diversion from Municipal Court to Community Court.
- **General:** Limit the circumstances under which the City Prosecutor charges homeless people for committing quality of life laws, and dismiss existing cases, including outstanding warrants, where only a quality of life law is involved.
- **General:** Expand the forms of allowable notice in addition to mail to include text, email and phone calls so more people will have an opportunity to challenge an alleged violation by being informed of their court hearing.

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<sup>7</sup> Whenever a Notice of Violation of Park and Open Space Rules is issued, City personnel have the authority and discretion to also issue a Notice of Restriction of Use, which prohibits use of all parks for a specified period of time. If a person enters park space after having been issued a restriction of use it becomes criminal trespass.