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Senate Committee on Judiciary and Ballot Measure 110 Implementation Testimony in Support of HB 3115 May 4, 2021

Chair Prozanski, Vice-Chair Thatcher and Members of the Committee:

My name is Becky Straus. I am a Staff Attorney with the Oregon Law Center. The Oregon Law Center (OLC) is a statewide non-profit law firm whose mission is to achieve justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. Thank you for the opportunity to testify in support of HB 3115, which is the product of a workgroup between OLC and local jurisdictions to provide a statutory framework for reasonable ordinances regulating sleeping and camping on public property. Thank you to Speaker Kotek for her leadership on this issue.

One of the most important issues in the lives of OLC's clients across the state is the challenge to find and maintain safe, stable, affordable housing. Housing is about much more than a roof over one's head; it is about opportunity, stability and health. Without stable housing, it is difficult or impossible for families to hold down a job, keep children in school, access neighborhood amenities and stay healthy.

Housing instability and homelessness can take many forms. The majority of our client community is rent burdened – one emergency away from homelessness – or is experiencing homelessness, living either doubled-up or in shelter, or living outside without adequate shelter. HB 3115 is an important bill that will help to mitigate the struggles for the many of our clients who have no other option but to sleep and try to survive living outside.

Rates of homelessness pose great challenges for Oregon

Statewide, Oregon's population is growing¹ and yet housing production lags behind.² The cost of housing is high while incomes and vacancy rates remain low. Decades of federal divestment in affordable housing infrastructure and resources foretold the sharp increase³ in recent years in the number of Oregonians experiencing homelessness, including an increase in the number of school children without the stability of home.⁴ Families living just on the brink of homelessness do so

¹ Certified Population Estimates (July 1, 2019), Portland State University Population Research Center.

https://www.pdx.edu/prc/sites/www.pdx.edu.prc/files/Certified%20Population%20Estimates_%2012_15_2019.pdf

² Oregon Statewide Housing Plan 2018

³ Oregon Homelessness Point in Time Count 2019

⁴ Oregon Department of Education Homeless Student Data. <https://www.oregon.gov/ode/schoolsanddistricts/>

with extreme rent burdens. One in four renters in our state is paying more than 50 percent of their income on rent. For households with extremely low incomes, that number jumps to three out of four households paying more than 50 percent of their income on rent. When tenants pay more than half their income towards rent, they do not have enough money left over to support themselves and their families.

In recent years, this body had made historic investments in funding the solutions that we know will work: permanent housing, rent assistance and wrap-around services. But these solutions are not yet to scale and we still have more to do. Released in August 2019, the Oregon Statewide Shelter Study reported that Oregon has among the highest rates of individuals experiencing homelessness and that Oregon is one of four states in which more than half of people experiencing homelessness are living unsheltered.⁵

Law enforcement should not be on the front lines of addressing homelessness

Jurisdictions across the state have enacted laws that prohibit activities necessarily connected to people's homelessness: camping, sleeping, and lying down, for example. Enactment of these laws frustrates the goal of promoting safety for people living unsheltered. As a policy matter, we see from the experience of our clients that enforcement of these laws against people who have no alternative does nothing to improve their housing situation and in fact erects additional barriers to doing so.

As a fiscal matter, as well, we know this conclusion to be true. A 2014 study out of Central Florida reported that the region was spending about triple on policing non-violent infractions by people experiencing homelessness as it would cost to get each such person a house and a caseworker.⁶ A 2017 RAND Corporation analysis of the Housing for Health program in LA County concluded that the county saved about 20 percent by putting people with complex mental health issues in supportive housing rather than relying on law enforcement and emergency room visits.⁷ Because of the resulting diversion of scarce resources from the health care system, the American Medical Association adopted a policy in 2019 to "help ensure that homeless individuals are not criminalized for carrying out life-sustaining activities, such as eating, sitting, or sleeping, in public spaces when no alternative private space is available."⁸

Case law is the foundation but not the exact roadmap for HB 3115

Federal courts agree that "criminalization"⁹ is not the right approach. In the *Martin v. City of Boise*¹⁰ case, the 9th Circuit ruled that homeless persons cannot be punished for sleeping outside

grants/esea/mckinney-vento/pages/default.aspx?utm_medium=email&utm_source=govdelivery

⁵ Oregon Statewide Shelter Study. <https://www.oregon.gov/ohcs/ISD/RA/Oregon-Statewide-Shelter-Study.pdf>

⁶ <https://www.orlandosentinel.com/news/os-xpm-2014-05-21-os-cost-of-homelessness-orlando-20140521-story.html>

⁷ https://www.rand.org/pubs/research_reports/RR1694.html

⁸ <https://www.ama-assn.org/press-center/press-releases/ama-address-health-individuals-experiencing-homelessness>

⁹ <https://nlchp.org/supreme-court-martin-v-boise/>

¹⁰ *Martin v. City of Boise* (920 F.3d 584 (9th Cir. 2019))

on public property in the absence of adequate alternatives, or unless the law imposes “reasonable time, place and manner” restrictions on the regulated activities in public space. Last summer, the U.S. District Court in Medford build on *Boise*, in a case called *Blake v. City of Grants Pass*.¹¹ The *Blake* case clarified that this prohibition on penalties includes civil fines or fees as well as criminal penalties.

HB 3115 is not an exact codification of these cases but instead affirms the principles they stand for by enacting a state-law standard for compliance with anti-criminalization mandates. With the *Blake* case on appeal, the federal case law is arguably still unsettled. Passage of HB 3115 will preserve the important pieces of the cases in state law, written in a way that has been agreed upon by key stakeholders.

Interim workgroup

HB 3115 is the product of an informal workgroup convened by OLC and League of Oregon Cities at the direction of Speaker Kotek. Over multiple meetings in the interim from October through December, OLC and representatives for local jurisdictions met to develop a legislative concept that, in the context of relevant case law, sets a new standard in Oregon for certain local laws regulating public space. It affirms the shared principle that law enforcement is not an effective approach to addressing homelessness and it requires local jurisdictions to have policies on public space management that reflect the uniqueness of each jurisdiction, as well as the interests of all stakeholders and perspectives, including persons experiencing homelessness.

Bill overview

The bill provides both local jurisdictions and their law enforcement officers with guidance and clarity as to the changes contemplated by these landmark cases. Years after the *Boise* opinion was issued, jurisdictions across Oregon still have local ordinances banning camping on public property at all times in all places in the jurisdiction, which is arguably unconstitutional under *Boise*. Some cities claim that they are in compliance with the case law because they selectively enforce their ordinance in line with the *Boise* holding – a position that puts a heavy burden on law enforcement to wrangle with complex constitutional and social issues in the moment. That approach also obscures from the people most impacted what exactly they can and cannot do. In directing that all local ordinances regulating this conduct be *facially* reasonable, HB 3115 will drive robust and transparent public discussions about how local communities should manage public space and enshrine those priorities in code.

HB 3115 does the following:

- Requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness.

¹¹ *Blake v. City of Grants Pass*, No. 1:2018cv01823 - Document 47 (D. Or. 2019)

- Ordinances that are in violation of this law because the limitations are not “reasonable” can be facially challenged by a person experiencing homelessness with a private right of action for declaratory or injunctive relief, or as a defense to enforcement of the ordinance. Monetary damages are not allowed. Prevailing plaintiff attorney fees are available in limited circumstances, when the plaintiff is not seeking to vindicate an interest unique to plaintiff and when plaintiff gives a 90-day notice to the governing body before filing the action.
- Clarifies that policies on campsite clean-ups pursuant to ORS 203.077 et. seq., (posting requirements, storage of personal property, etc.) are not subject to the reasonableness standard in this law.
- Delayed implementation date of July 1, 2023 to allow local governments time to develop new compliant ordinances through robust public process. The LOC and OLC will partner to provide guidance.
- Emergency clause to allow jurisdictions to begin immediately the review and development of ordinances in order to meet the July 2023 compliance deadline.

Conclusion

HB 3115 commits local governments to reviewing their camping (and related) ordinances in a way that recognizes the reality of Oregon’s rising rates of homelessness and the experience of those most impacted by these regulations. The Oregon Law Center looks forward to participating in robust discussions in communities across the state to advocate for local policies that best protect our clients.

This work is a narrow but important point on the spectrum of critical discussions and solutions to addressing housing instability and homelessness. We urge your support.

Thank you for your consideration and please feel free to contact me directly with any questions you may have.