



## **HB 3115: Homelessness and Public Space**

*Updated: February 11, 2021*

### **Certain Policies Relating to Public Space Management Need Updating**

- Some local communities have existing laws to manage public space that prohibit camping, sleeping and lying down outside on public property. Local ordinances that regulate these activities are more likely to impact people experiencing homelessness, who have no choice but to try to survive outside.
- Local laws that ban any form of sitting, lying or sleeping on public property frustrate the goal of promoting safety for people living unsheltered and are not effective ways to ensure safe public spaces for other community members. Enforcement of these laws against people who have no alternative erects barriers to accessing services and housing, and is an ineffective use of public resources.

### **Unlimited Bans on Homelessness “Survival Activities” Are Unconstitutional in Oregon**

- In the *Martin v. City of Boise* case, the 9<sup>th</sup> Circuit ruled that homeless persons cannot be punished for sleeping outside 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. For now, this is the law in Oregon and, as a result, some communities are already in the process of updating their ordinances following the court decision.
- HB 3115 builds on these basic principles to bring clarity and guidance for local governments in the management of outdoor public spaces.

### **Bill Provides a Statutory Framework for “Reasonable” Ordinances on Camping, Sleeping, etc.**

- Rather than impose outright bans on activities including sitting, lying, sleeping or keeping warm and dry, cities can comply with current constitutional law by passing reasonable ordinances that take into account the perspective of all stakeholders, including persons experiencing homelessness.
- HB 3115 is a negotiated bill between Oregon Law Center, the League of Oregon Cities and representatives for individual local jurisdictions that provides a framework for cities and counties to develop policies on public space management that reflect the uniqueness of each jurisdiction, as well as the interests of all stakeholders and perspectives.
- The workgroup reached consensus on the principle that penalizing homeless individuals for the unavoidable consequences of homelessness is not in the public interest, as well as shared recognition that local communities lack sufficient resources to address the underlying causes that lead to homelessness.

## **Bill Outline**

### SECTION 1.

- Requires that any local law regulating the act of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” as applied to all stakeholders, including persons experiencing homelessness.
- Local ordinances that are in violation of this law because the limitations are not “reasonable” can be 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. Attorney fees available in limited circumstances, when a 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.

### SECTION 2.

- 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.

### SECTION 3.

- Emergency clause to allow jurisdictions to begin the development of ordinances immediately.