



Law Office of Thaddeus Betz, LLC

February 28, 2023

**SENT VIA EMAIL**

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**Re: Camping Code Implementation Liability**

Dear Bend City Council, Manager King, and Attorney Winters:

The Bend Equity Project, the ACLU of Oregon, and the Law Office of Thaddeus Betz write to urge the City of Bend and its agencies to pause enforcement of Title 4 of the Bend City Code (“the Anti-Camping Code”), rethink the impending March 16 sweep of Hunnell and Clausen Roads (“Hunnell Sweep”), and consider its constitutional and new statutory legal obligations.

For the past several years, BEP has provided meals, transportation, sanitation services, and life-saving essential products to our neighbors living outside on Hunnell Road. At times, BEP has had to commit additional resources to relocating their houseless neighbors from an encampment that has been cleared by government agencies and/or their contractor agents. In these circumstances, BEP has documented disruption to people’s stability, destruction of critical pieces of people’s property that are necessary for survival, and a complete disregard for the impact that sweeps have on the most vulnerable Bend residents.



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A new law in Oregon<sup>1</sup>—ORS 195.530—requires Bend to consider that disregarded impact in passing regulations of “sitting, lying, sleeping, or keeping warm and dry outdoors on public property.” The Anti-Camping Code is such a law, and ORS 195.530 permits lawsuits against Bend laws that are not “objectively reasonable,” a standard that explicitly requires consideration of “the impact of the law on persons experiencing homelessness.”

As we all know, there are more people without houses than there are shelter beds available in Bend. This is well documented and not disputed. And under the new code it remains unclear at best, and certain at worst, that there will now not be enough physical outdoor space in the City on which sleeping will be permitted for people experiencing homelessness. The Anti-Camping Code is all but an outright ban effectuated by a complex system of mapping, moving requirements, and a maze of intersecting restrictions. For example, someone experiencing homelessness must move every 24 hours, must refrain from accumulating property, can only camp out of sight of another group, any group must remain under a safe threshold of people, and any camp must be at least 600 feet away from another. This is anything but reasonable, especially for people who will be subject to punishment under it. **We urge Bend to halt the implementation of the Anti-Camping Code, repeal it, and take considerable time to understand and account for the impact any new regulation would have on people living outside with nowhere to go.**

In addition to inviting statutory liability, **the Anti-Camping Code also invites constitutional liability as cruel and unusual punishment and an excessive fine, both proscribed by the Eighth Amendment to the United States Constitution.**

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<sup>1</sup> While ORS 195.530 does not become operative until July of this year, the City should be on notice that its actions under the current code at any time may still provide strong evidence of unreasonableness come July.



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As described above, the new code may very well be a *de facto* ban given the unavailability of shelter beds, the extremely limited amount of physical space, and the numerous other restrictions on people sleeping outside. As the Ninth Circuit made quite clear in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), people cannot be punished for sleeping outside when there is nowhere else for them to go. However, the Anti-Camping Code still contemplates the forcible removal of individuals and arrest for appurtenant criminal charges. *See, e.g.*, 4.20.040 D.5. The Ninth Circuit has applied its central *Martin* principle to similar schemes that couple civil sanctions with potential for arrest. *See Johnson v. Grants Pass*, 50 F.4th 787, 807 (2022) (explaining that *Martin* “cannot be so easily evaded” by relying first on civil citations for enforcement).

While the *Johnson* court did not reach the excessive fines issue, Bend should be wary not to offend it. The Eighth Amendment’s protection against excessive fines remains “a crucial bulwark against government abuse.” *Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020). As a C violation, some of Bend’s most poverty-stricken residents face fines of up to \$200 every time they may try to survive in a public place not sanctioned in the Anti-Camping Code’s maze of regulations. As the District of Oregon correctly decided in *Blake v. Grants Pass*, 2020 WL 4209227 at \*11 (July 22, 2020), “any fine is excessive if it is imposed on the basis of status and not conduct.” Camping outside when there is insufficient shelter is inseparable from the experience of being homeless; **Bend cannot punish or fine its way out of this reality.**

Finally, we urge caution about Bend’s potential liability in managing the personal property of those subject to campsite removals. BEP has observed gross mismanagement of personal property typically resulting in destruction that can have severe impacts on the lives of unhoused people. Bend has a constitutional obligation to avoid unreasonable searches and seizures of property, as well to afford people with procedural due process when depriving them of their property. It is not clear to us that there are sufficient procedural protections for people who may have property taken from them. **Bend should ensure they and their partners are fully prepared to carefully manage people’s property and that there are ample opportunities for property recovery.**

Indeed, in both *Lavan v. City of Los Angeles*, 693 F.3d 1022 (2012), and *Garcia v. County of Los Angeles*, 11 F.4th 1113 (2021), the 9<sup>th</sup> Circuit protected the property interests of houseless individuals. In *Lavan*, the defendant-city was barred from



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destroying or seizing property after a general notice was provided that property could be seized at any time. In *Garcia*, the defendant-city was barred from enforcing its “bulky items” ban which permitted the city to seize items that were larger than sixty gallons. The city, in its newly enacted camping ordinance, commits many of the same violations in *Lavan* and *Garcia*. In particular, the generalized “notice” the city prescribes fails to advance a process where a camper can contest a property seizure. This, as *Garcia* recites, is no process at all.

We are grateful that Bend leaders continue to point to the personal safety of people experiencing homelessness as reason for its efforts. We understand that Deschutes County had a meeting yesterday at which Chris Doty indicated that those conducting construction nearby to Hunnell Road do not have a need for the camp to be cleared. As this safety threat has subsided, Bend has ample time to consider the law and the values espoused by Title 4: human dignity, respect, and wellness.

**People who are experiencing homelessness have not had meaningful opportunities to engage with Bend in its decision-making even though they will be the most severely impacted.** Council meetings, online channels of communication, and many means of accessing government are not accessible for people experiencing homelessness. Medical conditions, lack of transportation, inaccessibility of information, are just a few of the many barriers that typical public engagement processes do not accommodate.

We also urge you to listen to guidance from experts at the United States Interagency Council on Homelessness, the federal agency whose mission is to prevent and address homelessness. In a recent publication, they cautioned:

Criminalizing homelessness is becoming more common. While laws that criminalize homelessness have long been in existence, recent years have witnessed many states and communities across the United States enacting laws that fine and arrest people for doing activities in public that are otherwise legal in the setting of a home: sleeping, sitting, eating, drinking.

These policies are ineffective, expensive, and actually worsen the tragedy of homelessness. There is a better way to respond to this crisis.

Jeff Olivet, “Collaborate, Don’t Criminalize: How Communities Can Effectively and Humanely Address Homelessness,” USICH (Oct. 26, 2022), <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>.



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Given Bend's statutory obligation to understand and account for the impacts on these members of the community – and given that criminalization approaches tend to entrench rather than solve homelessness– **we urge the City to pause and rethink its approach and to listen to and work *along with* people experiencing homelessness.**

Sincerely,

*Eric Garrity*, Member  
Bend Equity Project

*Kelly Simon*, Legal Director  
ACLU of Oregon

*Thaddeus Betz*, Principal  
Law Offices of Thaddeus Betz