

April 2023 #23-5

## Summary:

For years, Portland and Multnomah County have taken a “one step forward, two steps back” approach to homelessness. The region needs more temporary shelter for the unhoused, and local jurisdictions need the means to encourage people to use it.

Word Count: 700

***“Even the most creative attempts to abide by Martin and HB 3115 will go nowhere without sufficient shelter space... Put simply, the unsheltered homeless population needs places to go.”***

## Oregon Needs More Temporary Shelter and the Means to Encourage People to Use It

By Eric Fruits, Ph.D.

Elected officials across the state are scrambling to do something to reduce homelessness in Oregon. In March, the Oregon Legislature [fast-tracked](#) \$200 million in spending to address housing and homelessness. The City of Portland is [fumbling](#) around to find space for sanctioned homeless camp sites. Multnomah County is [considering](#) buying a 241-room hotel to house the unsheltered.

Each of these programs faces the same overarching challenge: What if no one wants the shelter being offered?

The obvious answer would be for government to do what it does best—introduce a dose of coercion. The message must be clear: First, sleeping or camping on sidewalks, in doorways, in parks, or along roadsides is not acceptable. Second, the region must have sufficient shelter space or sanctioned camping sites to support anyone who needs it. Third, there must be consequences for people who don’t abide by localities’ time, place, and manner restrictions on camping.

Unfortunately, the obvious answer has been hit by two torpedoes.

In 2019, the 9<sup>th</sup> Circuit Court of Appeals held in [Martin v. Boise](#) that the government cannot criminalize certain conduct (such as lying, sitting, or sleeping on the streets) that is unavoidable as a result of homelessness. Punishing such conduct effectively would criminalize a person’s status as a homeless individual and violate the 8<sup>th</sup> Amendment of the U.S. Constitution prohibiting excessive fines, bail, or cruel and unusual punishments.

In the wake of the *Martin* decision, then-Speaker of the House Tina Kotek sponsored [HB 3115](#), passed in the 2021 legislative session. Under HB 3115, any city or county ordinance regulating the acts of sitting, lying, sleeping, or keeping warm and dry outside on public property must be “objectively reasonable.” More importantly, Kotek’s bill allows anyone experiencing homelessness to file suit to challenge the objective reasonableness of local ordinances. HB 3115 goes into effect on July 1 this year.

That means even straightforward restrictions, such as no camping in public parks, could be challenged as not being objectively reasonable. A go-getter attorney surely could find a plaintiff to file a case challenging such an ordinance. A lucky attorney would get a sympathetic judge who thinks such a restriction is not reasonable.



This is why local governments must be careful in crafting their camping ordinances. For example, camping on sidewalks and the associated debris make these rights-of-way impassable for many disabled people. Under the federal Americans with Disabilities Act (ADA), local governments have an obligation to make public facilities—including sidewalks—accessible to people with disabilities. Because federal law almost always trumps state law, a city could claim that a ban on sidewalk camping was objectively reasonable.

Indeed, a lawsuit currently underway against the City of Portland alleges that the city is violating the ADA by allowing tents, tarps, and associated debris on the city's sidewalks. Multnomah County also could face some liability because of its policy of distributing tens of thousands of free tents to homeless individuals, many of which end up cluttering the region's sidewalks.

Even the most creative attempts to abide by *Martin* and HB 3115 will go nowhere without sufficient shelter space and sanctioned camping sites. Put simply, the unsheltered homeless population needs places to go. However, those places don't have to be the expensive apartments being built with Portland and Metro's affordable housing bonds. They simply must be better options than being outdoors.

Opponents of shelter and sanctioned campsites complain the organizations operating these facilities don't have a good track record of placing people in permanent housing. This misses the point. That's not their job. Their job is to operate clean and safe places for people to stay. It's up to other parts of the nonprofit industrial complex to provide wraparound services and find permanent housing. It's a massive complex, and every organization has its own role to play.

Ever since the late Mayor Bud Clark's 12-point plan to address homelessness—and Portland and Multnomah County's 10-year plan to end homelessness (enacted in 2005)—the region has taken a “one step forward, two steps back” approach to homelessness. We need more than year after year of mad scrambles. The region needs more temporary shelter, and local jurisdictions need the means to aggressively encourage people to use it.

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