



# Disability Rights Oregon

TO: Portland City Council  
FROM: Disability Rights Oregon  
DATE: June 7, 2023  
RE: Item 473–Amendments to Camping Ordinance

Mayor Wheeler and members of the City Council,

Thank you for the opportunity to address the City Council on the rights of people with disabilities who are homeless. At Disability Rights Oregon, we have worked for decades to advocate for the rights of people with disabilities. DRO opposes Agenda Item 473, the proposed amendments to the city camping ordinance.

The proposed ordinance would amend the current camping ordinance. Much of its significant amendments are oriented around a newly created term: people who are “involuntarily homeless.” A person deemed “involuntarily homeless” means someone “having no means to acquire one’s own shelter and not otherwise having access to shelter or other alternative options for housing.” Camping in most places would be prohibited for all except those deemed “involuntarily homeless.” Those deemed “involuntarily homeless” would be allowed to camp in some places, but they must “dismantle their campsite” by 8 a.m. every day and remove all personal property from the campsite, as well as abide by numerous complex place and manner restrictions.

## **A. Lack of Reasonable Accommodation in “Involuntarily Homeless” Definition**

First, the definition of “involuntarily homeless” contains no explicit consideration of a person’s disability and the specific availability of housing to that person. Most shelters in Portland are not fully accessible.<sup>1</sup> Some have physical barriers at their entries, like stairs or other obstacles. Others may permit the entry of wheelchairs but may have only low cots or floor mattresses that people using wheelchairs may be unable to shift themselves to. Still other people with disabilities find that shelters will not accept their service animals, provide necessary supports, or otherwise make accommodations necessary for them to live in those shelters. In the absence of full accessibility for shelters, the city may be able to identify some shelter beds that are available, even if inaccessible to many people in homelessness. In *Johnson v. City of Grants Pass*, the inaccessibility of a local shelter to people with certain disabilities was part of the

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<sup>1</sup> See, e.g., Abe Asher, *Unhoused and Unaided*, May 10, 2023, PORTLAND MERCURY (documenting extensive inaccessibility of homeless shelters in Portland area).

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rationale for finding the city's practices unconstitutional. The test of constitutionality of enforcement articulated in *City of Boise* is whether sleeping space is "practically available," not theoretically available. The proposed definition of "involuntarily homeless" in the ordinance contains no clear signal that the unavailability of suitable housing for that person, in light of any disability, should be a factor in that determination.

### **B. Due Process and ADA Concerns Regarding Procedure**

Second, the ordinance does not provide any way to determine in advance whether one is or is not "involuntarily homeless." The only way to test that question would be to expose oneself to multiple warnings, be cited or arrested, and then go to trial on the citation. The ordinance is not in fact clear on how or even if, a citation under the ordinance would be adjudicated, but DRO will assume for the purpose of this testimony that a hearing would be held prior to imposition of the fines or 30-day incarceration sentence.

A person who believes that, by reason of their disability or by reason of the lack of shelter beds, that they have no means to secure shelter for themselves may attempt to comply with the ordinance by camping overnight. If a city employee or agent nevertheless issues two warnings to them for camping overnight, the person will have no avenue to challenge the warnings or to make the case to the city that they are in fact "involuntarily homeless." The only way to discover whether a camper acting in good faith is involuntarily homeless would be to camp overnight a third time, expose oneself to the prospect of confinement, and hope for the best at a hearing. A person guessing wrong about what level of difficulty they must experience in finding shelter to qualify for an involuntarily homeless exception would be thrown in jail. As a general matter, a person seeking an accommodation must be able to discover whether they will be afforded such accommodation, without the immediate consequence of fines or jail where the accommodation is denied.

### **C. Time, Place, and Manner Conditions Are Unreasonable for People with Disabilities**

The provisions of the proposed ordinance require involuntarily homeless people to both tear down their camps every day by 8am and to store their belongings some unstated other place. In the absence of safe, secure places to store one's belongings, that condition may be unreasonable as applied to virtually every homeless person. The Ninth Circuit in *Johnson* stated that Grants Pass's ordinance could not be saved by the possibility that a person could sleep in a park "without the items necessary to facilitate sleeping outdoors." For those "who have no access to private spaces, these acts can only be done in public," as the Ninth Circuit in *Jones* stated. Homeless people with no access to storage in private spaces must presumably rely on public ones for storage as well. The proposed condition of breaking down one's camp every day is particularly unreasonable as applied to people who have disabilities who are homeless. The

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physical effort and challenge of setting up and breaking down a tent every day is much different for a person who uses a wheelchair or who has other mobility challenges.

People with a variety of disabilities may find it difficult or impossible to tear down their campsite by 8 a.m. every day. They may likewise be physically unable to carry their belongings away from the campsite and hold their belongings throughout the day. A person who desires to take the “most rudimentary precautions” against the weather by having a tent or bedding merely pursues a “life-saving imperative,” as described by the Ninth Circuit in *Johnson*. Those materials, if left behind in any manner that facially violates a city ordinance, may be “removed or cleaned up by the City or its designated contractors” under the proposed ordinance. How should a person with disabilities who is unable to remove their belongings and break down their camp every single day indicate to the City that they seek a reasonable accommodation to keep their belongings on public land during the day? In the absence of some defined accommodation process, it seems likely that many people with disabilities will discover their belongings were thrown away before they could request an accommodation.

Other restrictions on where people can camp are likewise unreasonable as applied to people with disabilities. A blind person who is homeless may set up a camp in a place posted no trespassing, too close to a school, or too close to a construction site described in the ordinance, but that person may be totally unaware of whether their site is in a prohibited zone. As long as the city provides only visual signals of those prohibited sites, the city cannot enforce those prohibitions against people with disabilities.

In short, the many time, place, and manner conditions imposed by the proposed ordinance do nothing to consider the unique needs of people with disabilities. The proposed methods of enforcement will give people with disabilities little or no opportunity to request accommodation before their camps and belongings are removed.

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