

CITY OF MOSIER

small enough to make a difference

CITY COUNCIL MEETING
Wednesday January 20, 2021 6:30 P.M.
Mosier Senior Center at 500 Second Ave

AGENDA

I	6:30 pm	Call to Order/Roll Call – Mayor Burns	
II	6:32	Agenda corrections or additions	
III	6:35 pm	Business from the Audience - This is for Mosier residents and anyone else to express concerns, needs, or opportunities. Please keep your comments succinct and under two minutes. You may bring in written materials for Committee and Staff to review. The Facilitator can assign the issue to a future Committee meeting, or to an appropriate Committee or staff member. Please realize that we cannot always offer a response immediately but will give the matter due consideration. We encourage the participation of all stakeholders in our community.	5 mins
IV	6:40 pm	Approval of: 12/16/20 - City Council Meeting Minutes	5 mins
V		BUSINESS	
1.	6:45 pm	Introduction to TSP Ordinance Changes – Katie Skakel, City Planner	30 mins
2.	7:15 pm	Hood River / Mosier Utility Billing - John Grim, City Engineer	15 mins
3.	7:40 pm	Martin vs. Boise, 9th Circuit Ruling on Homeless – City Manager	10 mins
4.	7:50 pm	Audit Progress – Jayme Bennett	10 mins
5.	8:00 pm	Announcements	10 mins
VI.	8:10 pm	ADJOURN	

CITY COUNCIL MEETING

December 16, 2020 at 6:30 P.M.

Please join the meeting from your computer, tablet or smartphone.

<https://www.gotomeet.me/CityCouncil1>

You can also dial in using your phone.

United States (Toll Free): 1 866 899 4679

United States: +1 (646) 749-3117

Access Code: 718-957-813

MINUTES

6:30 Mayor Burns: call to order

Attendance:

Council: Arlene Burns, Peny Wallace, Lacy Gries, Ron Wright, Witt Anderson, Acasia Berry, Charlie Cannon

Staff: Colleen Coleman City Manager, Laura Westmeyer City Attorney, John Grim City Engineer, Katie Skakel City Planner, Jayme Bennett City Recorder

Community/Other: Scott Hage Wasco County Commissioner, Emily Stranz Mosier residents, Greg Valitchka, Kari Greer Pacific Power, Norma Simpson City of Mosier

Agenda corrections or additions:

Move: City Council Meeting to 6:00 (not 6:30) for winter (given the video conference/work from home dynamic). Discussion: Laura Westmeyer: The code does specify time, but it is different than what you have been doing already, so we do a public notice on new time going forward. New time will be published in the Mosier Valley News and posted locally.

No opposition, no vote needed.

Business from the audience:

Emily Stranz:

Colleen and I have been working to put the Rock Creek Park site visit together, we are looking at the first week of January. Yakama Nation Hydrologists, and a fish biologist from Oregon Department of Fish and Wildlife, as well as the Water Shed Pete Felt, Department of Environmental Equality and the Department of State Land.

Mayor Burns: If we can try, in this endeavor not to close the road, that would be ideal.

CITY OF MOSIER

small enough to make a difference

Intent of first meeting is to understand habitat fish presence, best practices and gain an understanding of the objectives.

Colleen would like for the City to eventually find a permanent fix for drainage and passage on the road. ODFW recommended not to use small gravel which is typical for roads like this, according UPRR representative Mark Ochsner. We will be seeking best maintenance practices for the access road.

Scott Hege: We have CARES money for businesses 730k, MCEDD has been running the process. We aren't going to run out of the money as fast as the State of Oregon has, but we want to make sure Mosier has a fair shot at it. Today at our commission meeting, we agreed to Reimburse the Health District to waive fees for all restaurants for licenses and OLCC permitting. As of this morning they had 130 applications. Only 300k requested so far, so please get the word out to the Mosier community.

Colleen will talk to the Taco Truck etc.

Motion to approve 12/02/2021 minutes:

1st Lacy Gries

2nd Peny Wallace

All in, no opposition, no corrections

6:43 motion passes

I. Pacific Power Electric Charging Station Grant:

II. EV charging station sited over where the trail temporary parking is currently. The grant allows us not to exceed 215K. We reduced our original estimate from \$220K to \$200K. The result is for solar power bike charging and just the fast chargers, eliminating the slow chargers. The selection committee selected Mosier. We received a contract from Pacific Power with a confirmation of scope of work and up to 215k (*asked for 199k). Level 2 chargers are what are being asked to implement. The grant scope was diminished to level 3 - we will get in touch with Esther Pullido and negotiate it tomorrow, then update the contract. The project completion is due June 2022 - funding award repaid to Pacific Power within 60 days of completion date if the project doesn't issue usage data and or if Pacific Power loses their franchise fee agreement within 10 years.

Third party company will provide the data. The other caveat is that Pacific Power is asking for the last 25% of the grant (53k) to be secured funds by the City of Mosier prior to completion.

Pacific Power will give us 75% of the 215k but the last 25% we pay for until they inspect and approve it to make sure the contract provisions are met.

CITY OF MOSIER

small enough to make a difference

Pacific Power is asking for an education and outreach plan as well. Kari Greer (PP) will be the person we work with for press release, and they would like to have a celebration, publicity and permanent recognition (sign on site and Oregon Clean Fuels Program). They will include our project on their website. Show a small community participating in working hard etc.

Waiver of jury trial (indemnification piece) – brought to Council to ensure you are all in agreement in releasing your right to a jury trial if anything comes up.

Questions: Laura Westmeyer City Attorney: Please explain this to City Council?

Laura Westmeyer: The third party indemnification is PP can't be reached if something happens at the charging station - ie: we gave Mosier the money for this project - we can't be sued if something happens on the property.

Charlie: They want to avoid liability?

Laura: Yes, this is typical for donations like this.

Mayor Burns clarifies: this really serves the I-84 corridor and our local businesses.

Witt Anderson: Colleen, you and I had an email exchange: In the original calculation it was assumed based on a certain amount of KW hours that PP would bring the service at no cost. Did you confirm with PP that they will bring the service with no entry fee. Also, is it dependent on how many KW hours we would sell within a year or a month etc. to avoid overhead?

Colleen Coleman: We proposed they would provide the service and the cost would be 26k - so it is inclusive of the 215k grant.

Acasia Berry: Do we own the stations? When they need updates or repairs, are we responsible for advancement in technology requirements?

Colleen Coleman: I think so, but there will be rate payer funds from the stations for this. The Assure warranty and maintenance program will be paid first, but we would gain or offset over time. We can use those funds for upgrades, or pursue further grants if it is successful. **Electrical engineer update: After pmt for the Assure maintenance program and power, the City's revenue is estimated at \$4,000, with usage at 78,624 kWh.**

Travel Oregon and many other networks will assist in mapping and marketing the location for the vehicles traveling.

Acacia Berry: I am assuming the design is integrated in the community center - where is this in relation to the community center?

Colleen Coleman: it isn't immediately there, we could look at other locations, but right now, it is sited at the temporary trail parking, because we have the existing grading there.

CITY OF MOSIER

small enough to make a difference

Mayor Burns: On one side we have the plaza and on the other side the apron for fire engines to turn around, so it is adjacent, more or less.

Acacia Berry: I am sure all of the above has been thought about, I was just checking in. Also, are we closing the door on a PUD here (referencing the 10-year franchise fee agreement and NWCPUD)? We aren't bringing in the PUD in Wasco county etc as it has come up a few times in the past few years. Are there any concerns there?

Witt Anderson: Yes, good point, but if we were ever to have that opportunity to go to NWCPUD - the cost of the infrastructure purchase makes it a potential non-starter given the resources of Mosier at present.

Ron Wright: In the future, Mosier will generate revenue from it, but in the interim, the maintenance company.... Are they going to assume the losses, assuming there may be losses?

Colleen Coleman: There is one company for maintenance and another for data collections. They take a % of how much user payment is made, and we get what's left, if any. In the beginning it will be a wash regarding staff time etc.

Ron Wright: My concern is that our fixed costs that will not be initially covered by the revenue generated will not be covered by the revenue.

Ron Wright: To clarify - if no one uses it, no one makes money, but it also doesn't cost us anything.

Colleen Coleman and Mayor Burns agree.

Mayor Burns: Anyone want to make a motion?

Lacy Gries moves to make a motion to accept the conditions of the PP electric mobility grant and approves the manager to sign and implement grant.

2nd: Anasia Berry

All in favor, no opposition

Motion passes 7:14

Charlie Cannon's screen is frozen- assumption he is not voting

II. Well No. 4 Easement Agreement

John Grim: 951 Mosier Creek Road: Same property we have our current well on. Owned by the Clarkson's. Laura and I put together an easement agreement for this new well site. Agreement is structured in a way that the city does its due diligence before we buy the easement. Two big steps in this easement process:

CITY OF MOSIER

small enough to make a difference

1. Temporary construction easement - gives us authority to work on the land - right to do construction work and have access to the property. \$5,000.00
2. Making sure everything about this site is feasible and will result in a successful project before we buy the permanent easement. We have to go through these two steps before we compensate the seller (land use approval process, Oregon water resource approval of water right change, OHA water, USDA funding source will need to approve it, environmental work, water system plan amendment etc.).

If you look at the agreement, you will see quite a few steps. We will go through all of the steps as they happen at council meetings. Staff report says 3/4 acre, but that is a mistake, as it is 1/3 acre.

There is a circle of sanitary control area - another sort of an easement required when the project is done. An area where no one will be allowed to do anything that will harm the water quality or well.

Permanent easement is 35k which is very reasonable - we are basically securing ownership of the land through this easement. USDA is fine with the value, they don't need an appraisal, they are happy with the number, so is John Grim City Engineer. We can approve, reject, or withdrawal. Laura has a couple new motions she wants to talk about.

Laura Westmeyer: Mayor or city council: If you have concerns or questions and want to delay that is fine. What we are asking for tonight is permission on the set prices of the easements and the second is an approval for the temporary construction easement in the next month. The essential terms are in the agenda packet. Approval of temporary and long term agreement.

Peny Wallace: Don't we already have a water easement with them already?

John Grim: Yes, we do have a well, and an easement on that well, also on their property.

Peny Wallace: Are we just enlarging?

John Grim: It is a separate easement, not continuous. We will have 2 easements on their property overall.

Mayor Burns: I trust our staff has done their due diligence on this, and I would like to take less staff time, if everyone feels good about this, I do.

Witt Anderson: I agree - great staff work - to get it this far. I don't need more information. We should approve it. And the conditions going forward.

Ron Wright: the 100-foot circle going outside the easement - who owns that land?

John Grim: The Clarkson's do not own that land. What is going to happen is that we are looking for a 50-100 radius we are going after 50 foot (variance to state standard) - if they decide there

CITY OF MOSIER
small enough to make a difference

is a risk to water quality - we will have to go to adjacent property owner and ask for a declaration of covenant - which is something we would do before we buy the easement.

Ron Wright: Is this outside the flood plain - Grim yes.

Colleen: just to clarify, this is directly across the street from our current well.

Ron Wright moves to approve agreement for convenance of easement interest and authorize City Manager to move forward.

2nd: Peny Wallace

All in, no opposition

7:30 motion passes (Charlie Cannon still having technical difficulty.

Lacy is this your last mtg?

Lacy Gries: Greg V starts the 21st of January, so I wasn't sure if I should be at the first one for January. I have only missed 2 mtgs in 4.5 years, so I am not wanting to miss my last mtg!
Determined to be the councilor with the best attendance record ever!

Laura Westmeyer: Just to clarify the terms of office - Greg should start the first of the year - so Lacy this is your last meeting.

We can swear him in over GO TO MTG with Judge Seymour between now and the next meeting.

7:36 adjourn

CITY OF MOSIER

small enough to make a difference

Staff Report Meeting Date: January 20, 2021

Staff: Katie Skakel, City Planner

Agenda Title: Introduction to proposed revisions to City ordinances and comprehensive plan to reflect Transportation System Plan (TSP). Due to notice requirements for Plan Amendments, the proposed Hearing has been pushed back to later date. Revised hearing is scheduled for February 24, 2021.

Agenda Action: Introduction to process and example of code changes

Policy or Fiscal Impact: none

Staff Recommendation: Review materials and be prepared for discussion at the first evidentiary hearing now scheduled for February 24, 2021. Consider in your daily drives and walks in Mosier the impacts of the TSP on future livability – with an emphasis on safety, multi-user pedestrian friendly street standards and design considerations.

Proposed Motion: None at this time. We will not deliberate on this staff report or proposed changes until PAPA notice is submitted to DLCD.

The purpose of this staff report is to outline proposed transportation policies in the Mosier Comprehensive Plan and implementing ordinance amendments as well as new street standards reflected in the TSP and a revised street cross section for new Subdivisions. These changes relate to the following:

- Mosier Municipal Code, Titles 15 (Zoning) and 16 (Land Divisions), including the following sections:
 - Section 15.03.130 (General Requirements for Parking Lots)
 - Chapter 15.06 (Site Plan Review)
 - Chapter 16.02 (Minimum Improvements and Design Standards for Land Divisions)
- New ordinance to establish a Transportation Utility Fee

In general, the purpose of the proposed amendments and ordinances is to meet the following objectives:

- Ensure consistency with and implement provisions of the Transportation System Plan (TSP).
- Ensure consistency with state transportation planning requirements found in the Oregon Transportation Planning Rule (TPR). Smaller cities (below 10,000) may request an exemption to the TPR. However, in the absence of requesting an exemption, they must comply with TPR requirements for implementation (OAR 660-012-045).
- Provide a means for adequately funding future transportation maintenance activities.

Two types of changes are recommended to the Comprehensive Plan:

1. Replacement of existing goals and policies with new goals and policy statements developed as part of the TSP process.
2. Replacement of background information related to transportation of the Public Facilities chapter of the Comprehensive Plan.

Overview of Process: City Staff must notify DLCD 35 days prior to first evidentiary hearing. In order to do this on January 20, 2021 City Staff submitted (per legal requirements) the Post-acknowledgement plan amendments (PAPAs) to DLCD via email. The PAPA Online is a web-based program that allows local governments to submit required PAPA notices to DLCD electronically.

Mosier Municipal Code changes are summarized below.

1. Definitions, Section 15.02.050

The current definition of Public Facilities will be modified to become Major Public Facilities which will continue to be allowed as conditional uses in most zones. These will be larger or more significant facilities which could have a greater impact on surrounding uses.

A new definition of Minor Public Facilities will be added and will generally include transportation improvements such as repair, maintenance or improvement of existing facilities, water, sewer, storm drainage and other similar improvements typically located within the public right-of-way. These facilities will be permitted outright in all city zones (see below).

2. Allowed minor public facility uses, Section 15.01.060

A new subsection is proposed for this section of the MMC to allow all minor public facilities as outright permitting uses in all zones.

3. Bicycle Parking Requirements, Section 15.03.130(J)

Additional bicycle parking requirements are proposed for multi-family residential development with four or more dwelling units and several types of institutional uses. These changes will ensure that bicycle parking is provided for a wider range of development types and will ensure compliance with the Oregon Transportation Planning Rule (TPR).

4. Pedestrian Accessway Requirement, Section 15.06.040(E)(7)

Proposed changes to this section of the code will require that pedestrian accessways be provided through parking lots where necessary to provide a reasonably direct, safe and convenient pathway for pedestrians, consistent with community objectives and the TPR.

5. Street Design Cross-Sections, Section 16.02.030(A) and (B)

References to existing street design cross-sections currently found in the Downtown and Local Street Network Plan (2002) will be revised to reference the new TSP (2018). Tabular information in the MMC will be updated or replaced with a reference to the TSP.

6. Street Design Cross-Sections, Section 16.02.030(E)

Additional information will be provided about the use of Constrained Cross-Sections, including criteria or circumstances for their application.

7. Street Design – Cul-de-sacs, Section 16.02.100(C)

A new design standard for turn-arounds allowed in areas with topographical constraints will be added.

8. Effects of Development on Local Streets, Section 15.06.040(E)

Additional provisions related to mitigating the effects of development on the transportation system will be added, including provisions related to assessing the rough proportionality of impacts.

9. Bicycle and Multi-Use Pathway Standards, Section 16.02.030(G)

Minor changes to these standards are proposed to ensure that paved pathways are of an adequate width to meet functional needs and accessibility standards.

10. Pre-Application Conferences, Section 15.07.030

A proposed change to this section will indicate that the Oregon Department of Transportation (ODOT) and other transportation service providers will be invited to attend pre-application conferences when the proposed application could affect state highways or other transportation facilities.

11. Notice of Hearing, Section 15.07.070(B) and (C)

A proposed change to these sections will ensure that ODOT and other transportation service providers are notified of public hearings for Type III decisions and that the Department of Land Conservation and Development is notified of proposed legislative amendments and associated public hearings 35 days in advance of the hearing, consistent with the TPR and other state requirements.

12. Significant Effect on Transportation Facilities, Section 15.10.020(B)

A proposed change to this section adds language regarding review and analysis of proposed zone changes or Comprehensive Plan amendments that could have a "significant effect" on the transportation system. The new Code language will provide a reference to TPR Section -0060 requirements to prevent the code section from becoming very lengthy and to accommodate future amendments of Section -0060 without necessitating amendment of this code section.

CITY OF MOSIER

small enough to make a difference

Staff Report

Meeting Date: 1/20/21

Staff Reporting: John Grim – City Engineer

Agenda Title: Hood River Meter Reading and Billing Implementation – Status Report

Agenda Action: None

Fiscal Impact: NA

Staff Recommendation: Prepare and send letter of appreciation to the City of Hood River City Council and City Manager with a special shout-out to the Hood River staff involved in this project.

The City is nearly done with the implementation of the meter reading and billing services to be performed by the City of Hood River. Implementation has been a complex and time consuming and has required significant effort by Colleen, Jayme and myself and, in addition, Hood River staff. The status of work items is shown below.

Hood River Meter Reading and Billing Implementation Task List

Updated 1/15/21

	Task	Staff	Status
1.	Develop action plan with assignments and timelines	CC/JG	Done
2.	Work with Laura on fee schedule resolution	JG/LW	Done
3.	Adopt fee schedule at Dec. 2 nd meeting	JG	Done
4.	Execute IGA	CC	Done
5.	Work with Pageworks to notify customers of the transition and provide instructions for paying bills	CC/JB	Done
6.	Work with Pageworks to modify website accordingly	CC	Done
7.	Provide all meter reading hardware, software and data to Hood River	JB/JG	Done
8.	Install and train on Caselle software (In January).	JB	Done
9.	Our last read is scheduled for December 18th. We will need to be up and running with Caselle by January 18th (Hood River's 1st meter read date)	JG/JB	Done
10.	Complete our last billing and send database to Caselle	JB/JG	Done
11.	Conference call with UMS and Caselle for data integration	JB/JG	Done
12.	Input all subsequent payments into interim spreadsheet	JB	Ongoing
13.	Send Hood River Master Meter software links/licenses. Coord. with Master Meter transfer of license	JB	Done

	Task	Staff	Status
14.	Send Hood River water system maps	JG	Done
15.	Provide Hood River with meter reading hardware manuals	JB	Done
16.	Manually read skipped meters and send to Hood River	JG	Done
17.	Assist Hood River with 1 st meter read	JB	1/19/20
18.	City Councilors (2 volunteers) to Guinee pig Xpress Bill Pay	CC/JB	ASAP
19.	Assist Hood River with 1 st billing	JB	Early Feb.

CITY OF MOSIER

small enough to make a difference

Staff Report

Meeting Date: January 20, 2021

Staff: Colleen Coleman, City Manager

Agenda Title: 9th Circuit Federal Ruling on Homeless Camping in Cities (Martin vs. Boise)

Agenda Action: Discussion Only

Policy or Fiscal Impact: Council Discussion

Staff Recommendation: In lieu of enforcement or asking overnight parking/camping offenders to vacate City property, recommend the City work with Wasco County Sheriff's office and The City of The Dalles to find appropriate campsites and/or lodging for those in need—or leave them be.

Proposed Motion: None

In 2018 the United States Court of Appeals at the 9th Circuit filed an opinion that impacts the ability of cities and counties to enact and enforce laws, rules, and restrictions concerning the homeless population. The Martin vs. Boise ruling came from citations for six homeless people found overnight camping in violation of two City of Boise, Idaho ordinances

The 9th Circuit decision held:

“that the Cruel and Unusual Punishments Clause of the Eighth Amendment precluded the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter. The panel held that, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

In December 2020, the Supreme Court refused to hear an appeal for Martin vs. Boise, allowing the Ninth Circuit decision to stand as precedent.

The City of Mosier Parks Ordinance 11.03.04 prohibits “Camping or overnight parking of recreational vehicles, including trailers, except in a park, and a place within a park, where camping is allowed.”

Currently, the City of Cascade Locks is addressing the situation through non-enforcement of their prohibited overnight parking ordinance. The City of The Dalles and Wasco County are working together to accommodate homeless citizens.

Staff Recommendation: In lieu of enforcement or asking overnight parking/camping offenders to vacate public property, the City work with Wasco County Sheriff's office and The City of The Dalles to find appropriate campsites and/or lodging for those in need. (See attachments)

AGENDA ITEM NO: _____

CASCADE LOCKS STAFF REPORT

Date Prepared: October 20, 2020

For City Council Meeting on: October 26, 2020

TO: Honorable Mayor and City Council

PREPARED BY: Gordon Zimmerman, City Administrator

SUBJECT: Martin v. City of Boise Discussion

SYNOPSIS: This discussion concerns the City issues with RV camping on the street.

In 2018 the United States Court of Appeals for the Ninth Circuit filed an opinion that impacts the ability of cities and counties to enact and enforcement laws, rules, and restrictions concerning the homeless population. The case arises from a case adjudicated in Boise, Idaho, in 2014, when six homeless people were cited by Boise police between 2007 and 2009 for violating one or both of two city ordinances.

“The first, Boise City Code § 9-10-02 (the “Camping Ordinance”), makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defines “camping” as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.” *Id.* The second, Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof.”

The City of Cascade Locks has an ordinance “§ 73.03 Prohibited Parking: No operator shall park and no owner shall allow a vehicle to be parked upon a street for the principal purpose of: . . . (E) sleeping or residing in the vehicle.” Our disorderly conduct ordinance does not address occupying, lodging, or sleeping in a public space.

All of the plaintiffs had been cited and fined for their conduct.

The Ninth Circuit “held that the Cruel and Unusual Punishments Clause of the Eighth Amendment precluded the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter. The panel held that, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

Because the City of Cascade Locks does not have alternative shelter potential for the homeless, we cannot cite anyone for sleeping in their vehicle on City streets. Tow truck operators have told us that they will not tow any vehicle that appears to be someone's home at the request of the City.

I will continue to work with our resident homeless, but I cannot threaten a fine or tow their vehicle because of this Ninth Circuit ruling.

If you would like to read the whole opinion, I can provide you with a copy of the 38-page decision.

CITY COUNCIL OPTIONS: Discussion only.

RECOMMENDED MOTION: Not required.


 HOURLY NEWS
 Jefferson Public Radio
 LIVE Now
 PLAYLIST



DONATE

NATIONAL

Court Ruling Limits What Cities In Western U.S. Can Do To Address Homelessness

December 16, 2019 · 4:24 PM ET

Heard on All Things Considered

KIRK SIEGLER

2-Minute Listen

[PLAYLIST](#)
[Download](#)
[Transcript](#)

The U.S. Supreme Court is leaving in place a lower court ruling that says cities can't ticket the homeless for sleeping on public property until they've found shelter for everyone who needs it.

AUDIE CORNISH, HOST:

The U.S. Supreme Court declined to take up an appeal today. At issue in the case, whether or not cities can ticket or jail homeless people for sleeping in public places when there aren't enough shelter beds available. NPR's Kirk Siegler has more from Boise, Idaho, where the case originated.

KIRK SIEGLER, BYLINE: Today, the Supreme Court denied, without explanation, the city of Boise's petition to appeal what's seen as a sweeping ruling in the federal 9th Circuit from last year. That lower court ruled that Idaho's capital city was in violation of the Constitution's ban on cruel and unusual punishment when police here ticketed the homeless for sleeping in public.

Now, cities in the West, from Idaho to Washington to California, can't enforce such rules against the homeless until they've found shelter for everyone who needs it. And most cities in the region don't have enough shelter beds on any given night, which means if they ticket the homeless now, they're in violation of federal law.

Attorney Theane Evangelis represented Boise in its appeal.

THEANE EVANGELIS: And city's hands are tied now by the 9th Circuit's decision because it effectively creates a constitutional right to camp.

SIEGLER: Major West Coast cities like Los Angeles are grappling with growing tent cities and the public health and safety fallouts from them. Many filed briefs in support of Boise's appeal. Evangelis says everyone agrees the solution is more low-income housing and services, but she says this decision makes it virtually impossible for cities to do anything in the interim.

EVANGELIS: And we have an outbreak of diseases and a very dangerous situation for people who are living on the streets and for everyone. And the city needs to have the tools available to deal with growing encampments.

SIEGLER: In a statement, Boise's outgoing mayor, Dave Bieter, said he hopes the city's next administration continues to fight in federal court to get clarification about how to comply with the law. That's seen as unlikely, at least here. The mayor lost in a heated election this month to a more liberal Democrat who had criticized the city for criminalizing homelessness.

Maria Foscarinis heads the National Center on Homelessness & Poverty, which helped represent the Boise homeless who brought the case. She says the court has now affirmed that ticketing or jailing homeless people isn't working.

MARIA FOSCARINIS: The solution is addressing the root of the problem, which is that people can't afford a place to live. People don't have access to the services they need.

SIEGLER: Foscarinis hopes this news will force cities to stop turning to the courts and start finding long-term solutions.

Kirk Siegler, NPR News, Boise.

Copyright © 2019 NPR. All rights reserved. Visit our website terms of use and permissions pages at www.npr.org for further information.

NPR transcripts are created on a rush deadline by Verb8tm, Inc., an NPR contractor, and produced using a proprietary transcription process developed with NPR. This text may not be in its final form and may be updated or revised in the future. Accuracy and availability may vary. The authoritative record of NPR's programming is the audio record.

Support independent journalism today.



NPR is your trusted source for reliable reporting, thoughtful analysis and civic dialogue. We're here, delivering the news, providing context and keeping you updated on what's happening in the world. This is only possible because of donations from people like you. If you valued this story, then take a moment and donate to an NPR station in your community. It will truly make a difference.

DONATE NOW

More Stories From NPR



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

December 29, 2020

PRESS RELEASE (for immediate release)

The State of Oregon has the second-highest level of unsheltered homelessness in the country and leads the nation in its number of unsheltered homeless families. In response to both these alarming statistics and below-freezing winter temperatures in the Columbia River Gorge, the City Council recently enacted Emergency Resolution No. 20-025 and resolved to address the homelessness public health crisis and temporary shelter emergency by permitting temporary shelter for its homeless population at a City-owned site, funded largely with grants from our community partners, through March 31, 2021.

We understand citizen and business frustrations with the challenges of homelessness in our area and have dedicated resources to balancing the wellbeing of our homeless community with the health, safety, welfare, and quality of life for all who call The Dalles home. While the City intends to continue maximizing available resources to help those in our community manage the often unmanageable stress of unsheltered homelessness during these cold months, our resources are limited: not all who require the City's temporary shelter site for survival this winter will find space available, and the primary restriction on availability is mandatory compliance with statewide orders and Centers for Disease Control and Prevention COVID-19 guidance limiting the safe number of beds allowed per shelter.

Accordingly, and until the City can fully address this evolving crisis, you may notice unsanctioned and discrete encampments on public property as the City's homeless population is left with no alternative other than keeping warm in a tent or makeshift shelter. You may also notice the City has not enforced criminal and civil laws prohibiting sleeping or camping on public property—the City's hands are tied, like all cities in the western United States, by new federal laws forbidding the City from enforcing such ordinances against its homeless citizens when the number of homeless individuals is greater than the number of available shelter beds. See Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019); Blake v. City of Grants Pass, 2020 U.S. Dist. LEXIS 129494, 2020 WL 4209227 (D. Or. 2020).

To address this challenge, the City has:

- acquired a grant from the Mid-Columbia Community Action Council to triple our number of shelters as early as next month;
- provided portable toilets at Lewis & Clark Festival Park; and
- offered the Homeless ID Program to assist homeless individuals replace lost or stolen state-identification cards, possession of which is a prerequisite to nearly all employment opportunities.

The City is committed to providing safe shelter to its entire population and is coordinating daily with local partners, property owners, and citizens to ensure our community has the resources we need to protect our most vulnerable this winter.