

Via email to [cctestimony@portlandoregon.gov](mailto:cctestimony@portlandoregon.gov)

November 3, 2022

Mayor Ted Wheeler  
Commissioner Jo Ann Hardesty  
Commissioner Mingus Mapps  
Commissioner Carmen Rubio  
Commissioner Dan Ryan  
Portland City Hall  
1221 SW 4<sup>th</sup> Avenue  
Portland, OR 972904

RE: Forced Mega-Camps Punish the Unsheltered with Disabilities  
(Testimony on Agenda Item 903/931)

To Mayor Ted Wheeler and the Portland City Council:

I am writing to you today with respect to the proposed resolution to “Create a diversion program for individuals experiencing homelessness.” As managing attorney with Disability Rights Oregon (DRO), I have reviewed the proposed resolution. Since 78.7% of people that are unsheltered in Multnomah County identify as having a disabling condition, we have assessed the proposal carefully for its potential impact on Oregonians with disabilities. We are concerned that the proposed resolution if implemented will be detrimental to unsheltered persons with disabilities.

The City of Portland should be focused on serving the needs of all Portlanders with disabilities, including unsheltered individuals with disabilities. If the Mayor believes that city-sanctioned mega-camps for the unsheltered coupled with punitive sanctions for those who do not move into them is the right way forward, then he is misguided. The pursuit of an anti-camping ordinance that disproportionately impacts unsheltered individuals with disabilities is not only misguided, it is most likely illegal.

City-sanctioned mega-camps are designed to place unsheltered Portlanders out of sight and out of mind, without providing actual shelter. The resolution vaguely refers to “implementing a strategy to address those who decline offers of shelter or relocation to appropriate sites” by “offering people cited for low level offenses opportunities to address pending cases outside of the criminal legal system.” That presupposes that criminal charges should be a primary tool by which to force unsheltered people who “decline” shelter or relocation to comply, because the threat of a criminal record is the mechanism that leads to diversion. However,

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the same obstacles that cause individuals to live on the streets—such as joblessness, physical and cognitive impairments, mental illness, substance use disorders, lack of access to healthcare, domestic violence—are the same obstacles to successfully participating in diversion. If the penalty for a failed diversion is a criminal record, fines, and costs, then the Mayor’s strategy will not address the root causes that lead individuals to live on the street, but only create more barriers.

If the only options are either to relocate to a city-sanctioned mega-camp or to face criminal sanctions under an anti-camping ordinance, it will cause unnecessary and stigmatizing criminal records for unsheltered individuals. A criminal record is yet one more barrier to getting off the street for the unsheltered, as employers disqualify them from jobs and landlords disqualify them from housing. While the proposed resolution is fuzzy on the details, it specifically requests that the Multnomah County District Attorney (MCDA) work in partnership to design and implement a voluntary diversion program. The inclusion of the MCDA is telling, given that there is no reference to partnership with the Metropolitan Public Defender (MPD) or advocacy organizations working on behalf of minorities, the disabled, or other populations disproportionately impacted by the criminalization of homelessness.

To be sure, it is unlikely that any city ordinance that includes criminal sanctions would be lawful. The Ninth Circuit case of Martin v. Boise held that is unconstitutional under the Eighth Amendment as “cruel and unusual punishment” for the state to criminalize conduct that is an “unavoidable consequence of being homeless—namely sitting, lying, or sleeping on the streets.” Because sleeping space is not available for all of the unsheltered, the prohibited conduct becomes “involuntary” and “inseparable” from the status of being homeless. In other words, it is an “unavoidable consequence of being homeless.” As a result, “[S]o long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds in shelters,’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’”<sup>1</sup> If the Mayor believes that city-sanctioned mega-camps for the unsheltered will allow the City of Portland to dance around that legal precedent, think again. These concentrated camps for the unsheltered should not be mistaken for “beds in shelters,” as they are simply public spaces in which the unsheltered are permitted to sleep outdoors.

In addition to potential violations of the Eighth Amendment, the City of Portland should also consider its obligations under Title II of the Americans with Disabilities Act (ADA), as set forth in the U.S. Supreme Court’s Olmstead decision.<sup>2</sup> In 1999, the Olmstead decision affirmed that “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life,” thus qualifying as a form of discrimination prohibited by Title II of the ADA. As a result of Olmstead, governments are obligated to provide that people with disabilities live in the most integrated settings

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<sup>1</sup> Martin v. City of Boise, 920 F3d 584, 617-18 (9th Cir 2019).

<sup>2</sup> Olmstead v. L.C., 527 US 581 (1999).

appropriate to meet their needs in community settings rather than more restrictive and isolating environments. City-sanctioned mega-camps bear many of the hallmarks of institutionalization. Instead, the City should be realigning its efforts to end chronic homelessness to comply with the community integration mandate under Title II of the ADA and provide “higher-quality living environments coupled with a strong emphasis on community integration.”<sup>3</sup>

In addition to it probably being unconstitutional to pursue an anti-camping ordinance that includes criminal sanctions—diversion or not—persons experiencing homelessness have the right to challenge the objective reasonableness of any anti-camping ordinance under state law.<sup>4</sup> Without adequate shelter beds, laws regulating sitting, lying, sleeping, or keeping warm are unlikely to be found objectively reasonable. The City of Portland will have to expend substantial public resources in defending itself against such legal challenges.

The idea of city-sanctioned mega-camps is rife with other problems that go beyond the legality of prosecuting campers who decline offers of shelter and who are unlikely to successfully complete traditional diversion programs. The camps that Mayor Wheeler and Commissioner Ryan propose will likely hold 150 to 500 unsheltered individuals. Forcing individuals into camps of that size will significantly increase tension between the homeless community and the police. Increased interactions between the police and homeless individuals with mental illness likely will cause death among unsheltered persons with disabilities. 72% of the 85 people who were shot to death by police from 1975 to 2020 in Portland were affected by mental illness, drugs or alcohol.<sup>5</sup>

As noted above, city-sanctioned mega-camps are not adequate forms of shelter. A City resolution to create camps of that size are unlikely to become sanctuaries with “hygiene, food, and greater access to services.” The individuals in those camps are hardly sheltered at all, providing little to no protection against the elements. The pandemic has also taught us that large congregate living is potentially dangerous from a public health standpoint. Assuming the proposed camps would be coupled with criminal consequences for refusing to relocate to them, the camps will become populated with people who do not really choose to be there. It will concentrate poverty and many of the underlying issues that the city purports to solve.

Pursuing a strategy of mega-camps coupled with an anti-camping ordinance would disproportionately impact unsheltered individuals with disabilities. If such camps lack accessibility features that would make them available to persons with disabilities, which is

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<sup>3</sup> United States Interagency Council on Homelessness, “Fulfilling the Dream: Aligning State Efforts to Implement Olmstead and End Chronic Homelessness,” p 1 (February 2016).

<sup>4</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3115>

<sup>5</sup> Willingham, Leah. [PBS News Hour](https://www.pbs.org/newshour/health/how-some-encounters-between-police-and-people-with-mental-illness-can-turn-tragic), “How Some Encounters between Police and People with Mental Illness Can Turn Tragic,” September 2, 2022 (Available at: <https://www.pbs.org/newshour/health/how-some-encounters-between-police-and-people-with-mental-illness-can-turn-tragic>)

commonly the case, unsheltered with physical disabilities will be disproportionately impacted by any anti-camping ordinance that punishes the failure to relocate into them. Similarly, unsheltered with mental illness may be more resistant to joining these mega-camps and are already disproportionately represented in the homeless population.

The 2019 Point-in-Time data on homelessness makes clear that punishing homeless campers is punishing the disabled. The data shows that 31% of the homeless are considered “chronically homeless” and disabled.<sup>6</sup> “HUD defines someone as chronically homeless (CH) when they have a disabling condition and have been homeless for a year or more[.]”<sup>7</sup> For the homeless population as a whole, 71.9% have one or more disabling conditions.<sup>8</sup> Of the overall population, a large majority are literally homeless, or unsheltered, and of those unsheltered people, 78.7% report one or more disabling conditions. Those conditions may include physical disabilities, intellectual disabilities, mental illnesses, and substance use disorders.<sup>9</sup> Comparing 2019 and 2017 data, the unsheltered population with disabling conditions is increasing dramatically showing a 34.2% increase in just two years’ time.<sup>10</sup> “[T]he picture that emerges is one of an aging homeless population that is becoming increasingly disabled and vulnerable.”<sup>11</sup>

With the right supports, services and treatment, homeless individuals with physical or mental disabilities or substance use disorders can be housed in the community. With access to permanent supportive housing, connection to real housing that is affordable and accessible, the unsheltered would have less need to camp on city streets. To be sure, aspects of the Mayor and Commissioner Ryan’s resolution package call upon the city to invest more into permanent housing solutions. Greater workforce development and vocational rehabilitation directed at low-income individuals with disabilities will give them the means to overcome poverty. Much-needed services such as home and community based services or in-home care will also enable them to maintain independent housing.

Those are the solutions that must be amplified, and proposed strategies that seek to punish unsheltered with disabilities must be eliminated. City leaders should incorporate the priorities and feedback from those that are unsheltered, who have spoken up to say that they want to see smaller city-sanctioned camps, not mega-camps. Individuals with lived experience are asking for more permanent housing, and they understand the implications

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<sup>6</sup> <https://public.tableau.com/app/profile/oregon.housing.and.community.services/viz/2019Point-in-TimeDashboard/Story1>

<sup>7</sup> City of Portland; Home Forward; A Home for Everyone; Multnomah County; City of Gresham; Conklin, Tiffany Renée; Mulder, Cameron; and Regional Research Institute, Portland State University, “2019 Point-in-Time: Count of Homelessness in Portland/Gresham/Multnomah County, Oregon” (2019). Regional Research Institute: 63. Page 33. (Available at [https://pdxscholar.library.pdx.edu/rri\\_facpubs/63](https://pdxscholar.library.pdx.edu/rri_facpubs/63))

<sup>8</sup> *Id.* at 37.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 39.

<sup>11</sup> *Id.* at 26.

that a ban on camping would hurt people, particularly people with mental illness.<sup>12</sup> Does the City of Portland want to cause more harm to unsheltered individuals, because some city officials have chosen to ignore more sustainable solutions?

Upon announcing the proposed resolution, Commissioner Ryan stated, “Simply put, we can no longer tolerate the intolerable.” Does the Commissioner mean to say that the lack of affordable, accessible permanent housing opportunities is “intolerable,” and the proposed solution should not include punishing people? Or, does the Commissioner mean “the intolerable” are those individuals who are involuntarily homeless, and the proposed solution tells those community members that they’re intolerable? Camping on a sidewalk is not a choice; it is part and parcel of being homeless given the lack of affordable, supportive housing.

It seems to us that some city leaders no longer view the condition of being unsheltered as “intolerable,” but rather that the homeless individuals themselves are “intolerable” and must be punished. In 1881, city leaders of Portland adopted ordinances to prohibit street begging by or the appearance in public of certain persons—namely “crippled, maimed, or deformed person[s].”<sup>13</sup> It sounds like today’s city leaders hope to enact this resolution with the same spirit of those “ugly laws,”<sup>14</sup> punishing people for being unsheltered with a disability. It’s important to remember the danger of implying that an entire sub-population is “intolerable.”

It’s also important not to forget that homeless campers are not criminals. They are simply people—some without jobs, some with disabling conditions, some without proper medical treatment or social services, some who are victims of crime—and all without a place to live. It’s important to remember that people with disabilities are disproportionately represented in Portland’s unsheltered population, because of a shortage of affordable, accessible permanent supportive housing. Forcing people to move off the streets into concentrated camps or face punitive sanctions will not address the underlying reasons for those circumstances and will only cause further harm. That suffering will be disproportionately felt by a greater number of people with disabilities.

### About Disability Rights Oregon

Disability Rights Oregon is a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. Disability Rights Oregon serves as a watchdog as we work to transform systems, policies, and practices to give more people the opportunity to reach their full potential. Since 1977, the organization

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<sup>12</sup> Oregon Public Broadcasting, “Portlanders experiencing homelessness voice opposition to mayor’s proposed camping ban,” November 1, 2022. (Available at <https://www.opb.org/article/2022/11/01/portland-oregon-homelessness-voice-opposition-to-mayor-ted-wheeler-proposed-camping-ban-large-sites/>)

<sup>13</sup> “Offenses against the City.” *Morning Oregonian*, Jan. 6, 1881, p 4.

<sup>14</sup> Schweik, Susan M. *The Ugly Laws: Disability in Public*, p 3 (2010).

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For any concerns or questions contact Matt Serres at 503-243-2081, extension 219.