

# Top Legal Challenges For Municipalities

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# Responding to Homeless Encampments in the Ninth Circuit

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# Introduction



# Eighth Amendment

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nor excessive fines imposed, nor  
cruel and unusual punishments  
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# *Martin v. City of Boise*

“[T]he Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter.”

# *Martin v. City of Boise*

**Fn. 8: “Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible.”**

# *Johnson v. City of Grants Pass*

- “[R]udimentary bedding supplies”
  - *i.* NOT structures (e.g., tents), stoves, and fires
- Civil citations
- Classwide relief



# *Johnson v. City of Grants Pass*



# Bans On Sleeping On Public Property



# Clean Up of Homeless Encampments

## *Coalition on Homelessness v. City and County of San Francisco*

- Point in time counts exceeded shelter beds
- Closure of specific encampments in parks
- Offers of shelter made

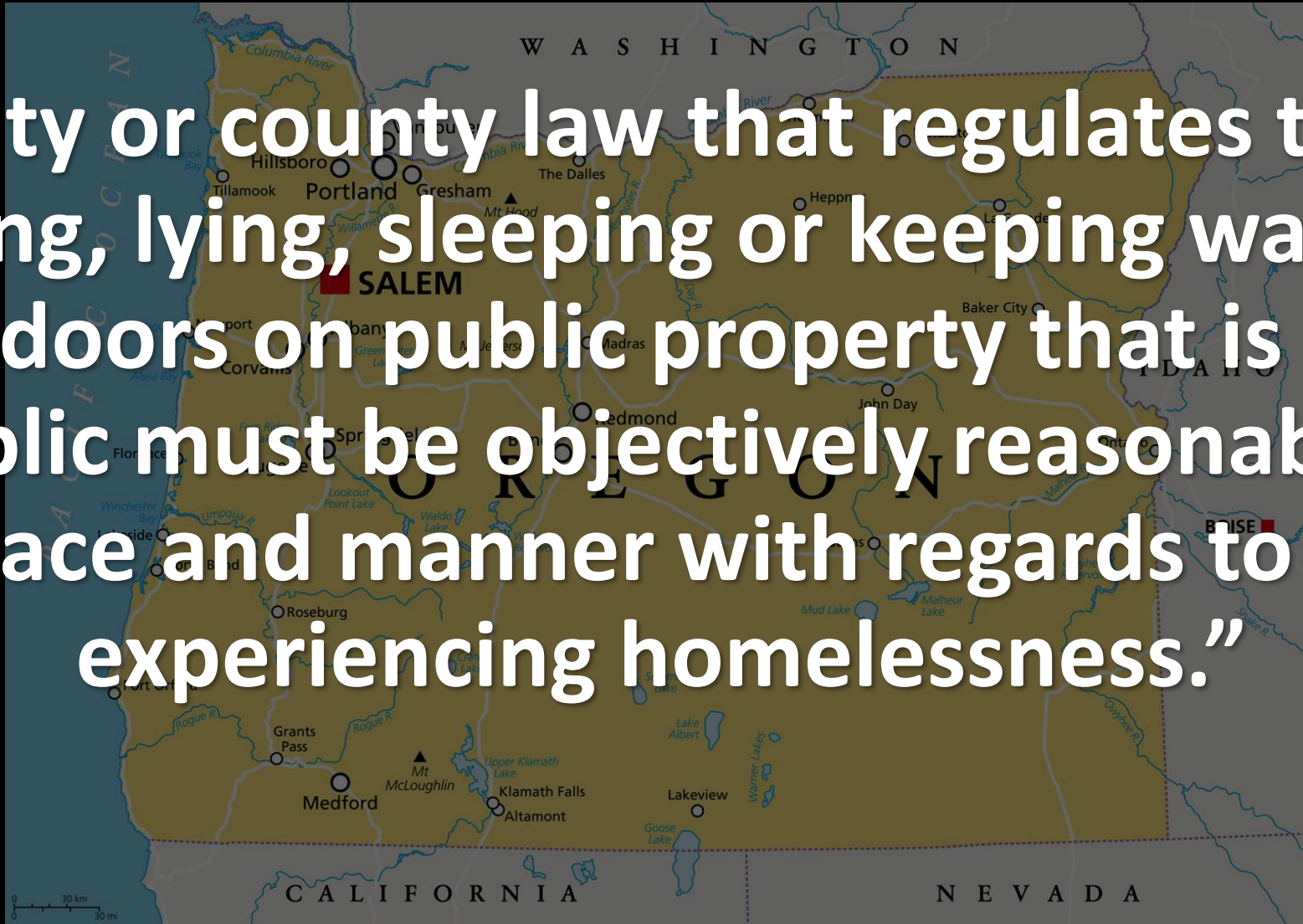
# Time, Place, and Manner Regulations

**Fn. 8: “Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible.”**



# House Bill 3115

**“Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.”**



# Portland

- **Portland City Code 14A.50.020**
- **Camping at night (8:00 p.m. to 8:00 a.m.)**
- **Protects certain sensitive areas (Schools, high-crash roads)**

# Bend

- Bend City Code 4.20.30
- Move to a different block every twenty-four hours



# Legal Challenges – Residents, Businesses And Other Interested Parties

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# HB 2006

- **A. Emergency Shelter Siting Statute (2021)**
- **B. Municipality must approve HB2006 application if, e.g.:**
  - i. Sleeping and restroom facilities included
  - ii. “Will comply” with building codes
  - iii. Adequate transportation to commercial and medical services
  - iv. Will not pose an unreasonable risk to public health or safety
- **C. No Public Process**
  - i. Land Use Laws – Do Not Apply
  - ii. No Public Notice, Comment, etc.
  - iii. No Public Meetings
  - iv. No Appeal to LUBA
- **D. “Temporary” Shelters**

# Sidewalk Litigation

- *Tozer et al. v. City of Portland*, US District Court – Case No. 3:22-cv-1336
- **ADA Class Action Lawsuit – Access to Sidewalks**



# Sidewalk Litigation



# Sidewalk Litigation



# Sidewalk Litigation-\$20M Settlement

- **May 2023 Settlement**
- **Material Terms:**
  - \$20 Million “Impact Reduction Program”
  - Camping Reporting System
    - 311 Operators - Camping Reporting System
    - Online Reporting System
    - Website
  - No Tent Distribution (subject to exceptions)
  - Campsite Removal re Sidewalks (min. 500 / year)
  - Sign Installation (not to camp on sidewalks)
  - Quarterly Reporting
- **Attorney Fee Motion – \$676,000**

# ***Brown v. City of Phoenix (2023)***

- Federal court issued injunction under Martin from enforcing camping ordinances
- Business owners brought a public nuisance action in state court and obtained preliminary injunction in March 2023
- City of Phoenix has appealed



# *Duncan v. City of Portland (2023)*

- **Class action lawsuit on behalf of “all involuntarily homeless people living within the City of Portland”**
- **Two Claims:**
  - Portland’s camping ordinance violates the “objectively reasonable as to time, place, and manner with regard to people experiencing homelessness” requirement of ORS 195.530
  - The penalties for violating Portland’s ordinance violate Article I, section 16, of the Oregon Constitution (“all penalties shall be proportioned to the offense.”)



# Social & Political Strife

- *Multnomah County vs. City of Portland*
- **Costs / Taxes – \$24 BILLION (in California alone)**
- **Crises:**
  - Mental Health
  - Drug Addiction

# Public Records and Meetings Laws Stump the Lawyer

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**Thank you!**