

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JAMES DUNCAN, KAREN
ENGELHARDT, CASEY OEDER, PETER
SALZMANN, GAVIN WISE, and all others
similarly situated,

Plaintiffs,

v.

CITY OF PORTLAND,

Defendant.

Case No.

**COMPLAINT – ORS 195.530, Oregon
Constitution, Article 1, Section 16**

**Filing Fee Code: Injunctive Relief
Only, Filing Fee \$281**

NOT SUBJECT TO MANDATORY
ARBITRATION

INTRODUCTION

1.

The City of Portland (the “City”) is in the midst of a catastrophic affordable housing crisis. As a result, thousands of Portlanders have been pushed out of the housing market and forced to live outside. On the street, the victims of our failed housing and shelter policy face daily challenges to their survival including how to stay physically safe, cool, warm and dry, how to stay connected with social services and medical providers, how and where to sleep, and how to find food. In the midst of this humanitarian crisis, the City has enacted an ordinance that

1 criminalizes unhoused Portlanders, PCC 14A.50.020 *et seq.* (the “Ordinance”). The Ordinance
2 subjects the approximately 10,000 Portlanders living outside every night to 30 days in jail for
3 violating a law that is impossible to understand or comply with. The Ordinance is objectively
4 unreasonable, cruel, and incomprehensible, and the penalties are grossly out of proportion to the
5 “offense” of surviving outside. Plaintiffs bring this suit to have the Ordinance declared unlawful
6 and to enjoin enforcement of the Ordinance under ORS 195.530 and Article I, section 16, of the
7 Oregon Constitution.

8 JURISDICTION

9 2.

10 This court has jurisdiction because this action is brought under ORS 195.530 and the
11 Oregon Constitution. This Court has the power to issue the declaration requested by plaintiffs
12 pursuant to ORS Chapter 28 and ORS 195.530(4).

13 VENUE

14 3.

15 Venue is appropriate because plaintiffs and members of the proposed class reside in
16 Multnomah County and the cause of the suit arose in Multnomah County.

17 PARTIES

18 4.

19 Plaintiffs and the proposed class are involuntarily homeless Portlanders subject to being
20 moved along, swept, arrested, prosecuted, fined and imprisoned under the Ordinance.

21 5.

22 Plaintiff James Duncan

23 Plaintiff James Duncan is involuntarily homeless and living outside in the City. He will
24 suffer irreparable harm if the Ordinance is enforced against him.

25 6.

26 Mr. Duncan is forty years old and has been involuntarily homeless in Portland for most of

1 the past four years. He collects bottles and cans so that he can buy food and medicine.

2 7.

3 He has multiple disabilities including intractable frontal lobe epilepsy, degenerative disc
4 disease, anxiety and PTSD from being beaten up several times over the years. He has a strict
5 regime of medicine that he must maintain to manage his epilepsy and to stay alive.

6 8.

7 He is afraid to sleep at night because he has been robbed and beaten several times while
8 sleeping at night or while unconscious from seizures. He spends a lot of time on the MAX, but
9 he is not allowed to sleep on the MAX and there is no service between midnight and 4:00 a.m.
10 He does not know where he could sleep under the Ordinance, he is afraid that since he carries his
11 belongings with him (including blankets and tarps) that he is always “camping.” Also, he is
12 afraid to sleep at night, the only time he is allowed to under the Ordinance.

13 9.

14 Because of his severe anxiety and PTSD, he cannot function in congregate shelters in
15 close proximity to a lot of strangers. If he goes to jail, he will not be able to function, does not
16 think he could make it through even one day, and is afraid that he will lose his medication and
17 will die.

18 10.

19 **Plaintiff Karen Engelhardt**

20 Plaintiff Karen Engelhardt is involuntarily homeless and living outside in the City. She
21 will suffer irreparable harm if the Ordinance is enforced against her.

22 11.

23 Ms. Engelhardt is forty-six years old and has been involuntarily homeless in Portland for
24 the past ten years.

25 12.

26 Ms. Engelhardt works as an artist, selling her ink drawings on the streets of Northwest

1 Portland. She must keep her possessions with her because she has no place to store them and is
2 afraid that they will be stolen.

3 13.

4 Ms. Engelhardt is on several lists for housing, including the Home Forward voucher
5 waitlist. She does not know if the places where she currently sleeps are prohibited under the
6 Ordinance because they are too close to some type of childcare facility, a permitted construction
7 site or other prohibited areas. She does not know how she could learn this information on any
8 given night.

9 14.

10 Ms. Engelhardt's personal items include a wool blanket that she uses to stay warm at
11 night. She is afraid that she will be arrested, fined and sent to jail because she has "remained in"
12 a "campsite" under the Ordinance's definition all day, every day whenever she stops moving, sits
13 or lies down with her belongings. If the Ordinance is enforced against her, she could lose her
14 place on the voucher waitlist.

15 15.

16 **Plaintiff Casey Oeder**

17 Casey Oeder is currently involuntarily homeless and living outside in the City. He will
18 suffer irreparable harm if the Ordinance is enforced against him.

19 16.

20 Mr. Oeder is fifty-two years old and has been involuntarily homeless in the City for the
21 past two years. He sleeps outside very close to where he works at Hygiene4All and the Ground
22 Score bottle drop in Southeast Portland. That is also where he receives mail.

23 17.

24 Mr. Oeder does not have access to a phone, email, or the internet. He does not know if
25 the place he is currently sleeping is prohibited under the Ordinance. He does not know if the
26 place that he sleeps is within 250 feet of the many prohibited areas, and he has no way of

1 measuring that length or of knowing from where to measure.

2 18.

3 Mr. Oeder has been on the waitlist to get into shelter for many months. If he is forced to
4 move away from his work and his mailing address, or if he is taken to jail for violating the
5 Ordinance, he will lose his spot in line for getting shelter.

6 19.

7 **Plaintiff Peter Salzmann**

8 Peter Salzmann is involuntarily homeless and living outside in the City. He will suffer
9 irreparable harm if the Ordinance is enforced against him.

10 20.

11 Mr. Salzmann is sixty-six years old and has been involuntarily homeless in Portland for
12 the past ten years.

13 21.

14 Mr. Salzmann works as a Street Roots newspaper vendor. He has recently been able to
15 get identification papers and social security benefits and is finally on the list to get a housing
16 voucher so that he can move inside. He does not use email, internet or a phone and needs to
17 check in regularly at the Street Roots office to get his mail and access other services.

18 22.

19 Mr. Salzmann does not know if the places he sleeps are prohibited or not because, like all
20 plaintiffs, he has no way of measuring whether he is within 250 feet of the various places that he
21 is not allowed to camp or sleep under the Ordinance. And, even if he did, he has no way of
22 knowing where the property lines of many of these sites are.

23 23.

24 Mr. Salzmann risks losing his job, his income, and his ability to stay on the voucher list
25 and move inside if the Ordinance is enforced against him. He is afraid that he will have to spend
26 his time hiding from the police or, worse, in jail.

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24.

Plaintiff Gavin Wise

Gavin Wise is currently involuntarily homeless and living outside in the City. He will suffer irreparable harm if the Ordinance is enforced against him.

25.

Mr. Wise is forty-seven years old and has been involuntarily homeless in Portland for the past nine years. He is a musician but does not currently have an instrument to play. He has had five guitars stolen since he has been living outside. He is actively looking for housing and is on the Home Forward housing voucher waitlist. If the Ordinance is enforced against him, it is likely that he would lose his place on the voucher waiting list.

26.

Mr. Wise sleeps in doorways in Northwest Portland with just a blanket to cover him. He does not know if the places that he sleeps are prohibited under the new Ordinance because they are within 250 feet of the many prohibited areas, and he has no way of measuring that length or of knowing where he would measure from.

27.

Mr. Wise keeps his belongings with him throughout the day and night so that they do not get stolen. Since he has a blanket and other items that could be deemed “sleeping matter,” he could be ticketed, fined and taken to jail under the Ordinance at any time. He has no way to safely store his belongings from 8:00 a.m. to 8:00 p.m. every day.

28.

Defendant City of Portland is a municipality incorporated in the State of Oregon.

CLASS ALLEGATIONS

29.

1 Plaintiffs bring this action on behalf of themselves, and all others similarly situated under
2 Rule 32 of the Oregon Rules of Civil Procedure. They seek to represent the following class: all
3 involuntarily homeless people living within the City of Portland.

4
5 30.

6 The Class is so numerous that joinder of its members is impracticable. The latest Point-
7 In-Time Count indicates that the class size is, at a minimum, in the thousands.

8 31.

9 The relief sought is common to all members of the proposed class, and common
10 questions of law and fact exist as to all members of the class. Plaintiffs seek identical
11 prospective relief from enforcement of the Ordinance. There is a well-defined community of
12 interest in the questions of law and fact affecting the class as a whole. The questions of law and
13 fact common to the class predominate over any questions affecting solely individual members of
14 the action and include whether the Ordinance is “objectively reasonable as to time, place, and
15 manner with regards to persons experiencing homelessness” under ORS 195.530, and whether
16 the penalties and punishments in the Ordinance violate Article I, section 16, of the Oregon
17 Constitution.

18
19 32.

20 Plaintiffs’ claims are typical of the class. Plaintiffs and the proposed class are all
21 involuntarily homeless and living in the city, subject to the immediate enforcement of the
22 Ordinance. The Ordinance is objectively unreasonable as to all members of the proposed class.

23
24 33.

25 Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have
26 retained counsel competent and experienced in class action litigation.

1
2 34.

3 A class action is the appropriate and superior method for the fair and efficient
4 adjudication of this controversy. Prosecuting separate actions would create the risk of
5 inconsistent or varying adjudications, establishing incompatible standards of conduct for the
6 plaintiffs and the City. Allowing this lawsuit to proceed as a class action will permit the class of
7 similarly situated persons to prosecute their common claims in a single forum simultaneously
8 and efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would entail.
10

11 35.

12 The relief sought in this case does not include money damages and would take the form
13 of injunctive relief and corresponding declaratory relief with respect to the class as a whole.
14

15 36.

16 To the extent that any member of the class could afford individual litigation, it would be
17 unduly burdensome to the judicial system. Concentrating this litigation in one forum will
18 promote judicial economy, consistency, and parity among the claims of individual members of
19 the class. Plaintiffs know of no difficulty which would be encountered in the management of
20 this litigation that would preclude its maintenance as a class action.
21

22 **FACTUAL ALLEGATIONS**

23 37.

24 **Portland's Affordable Housing Crisis**

25 Portland is in the throes of an historically severe affordable housing crisis. The City
26 recently estimated that a *minimum* of 23,000 additional housing units are necessary to house all

1 of Portland's low- and moderate-income households. Half of all Portland renters are cost
2 burdened, paying over thirty percent of their income in rent. One in four pays over half their
3 income in rent. Meanwhile, evictions have equaled or surpassed their pre-pandemic rates since
4 COVID-related renter protections expired in October 2022. Tenants in the Portland metro area
5 must earn on average \$35.37 an hour to afford a two-bedroom rental.
6

7 38.

8 All of these factors have pushed thousands of Portlanders out of the housing market,
9 forcing them to live outside. In early 2023, 6,297 people were identified in a Point-in-Time
10 Count (PIT Count) as experiencing homelessness in Multnomah County on a single winter night.
11 PIT Counts are well-documented to significantly undercount the actual number of unhoused
12 people in any community, because of the difficulties (weather, staffing, people hiding) in
13 accurately and completely counting people living outside. Studies have estimated that the actual
14 number of homeless individuals in a community is often two to ten times greater than the PIT
15 Count. A conservative estimate of the number of homeless people in the City of Portland is in
16 excess of 10,000 individuals.
17

18 39.

19 The City's shelter system is not nearly adequate to provide even rudimentary shelter to
20 the City's unhoused residents. Multnomah County data show 2,000 shelter beds countywide, but
21 some of the beds do not meet the United States Department of Housing and Urban Development
22 (HUD) definition of shelter because they are just sanctioned campsites that fail to meet
23 habitability standards. Only one of the "mass camps" proposed by the City has opened; it
24 consists of a parking lot with 140 sleeping pods for people to sleep in each night and will provide
25 only rudimentary shelter for a very small fraction of Portlanders living outside. Further, many
26

1 people with disabilities including mobility impairments, anxiety, or PTSD, cannot function in an
2 environment where police round them up and send them to mass camps under threat of arrest and
3 jail.

4
5 40.

6 Many people forced into homelessness have disabling conditions, including mental and
7 physical disabilities, substance abuse disorders, and chronic health conditions. According to the
8 most recent PIT Count, 80 percent of people experiencing homelessness in
9 Portland/Gresham/Multnomah County in 2022 had a disability.

10 41.

11 **The New State Law**

12 As homelessness increased around the state, the Oregon legislature passed ORS 195.530
13 to mandate that any city or county that “regulates the acts of sitting, lying, sleeping or keeping
14 warm and dry outdoors on public property that is open to the public must be objectively
15 reasonable as to time, place and manner with regards to persons experiencing homelessness.”
16 ORS 195.530(2). The statute also mandated that “reasonableness shall be determined based on
17 the totality of the circumstances, including, but not limited to, the impact of the law on persons
18 experiencing homelessness. ORS 195.530(5). The legislature passed the law in 2021 but it did
19 not become operative until July 1, 2023, giving municipalities that chose to regulate the above
20 unavoidable human acts of survival two years to come up a with an “objectively reasonable”
21 plan with regard to “the impact of the law on persons experiencing homelessness.”

22 42.

23 **The Ordinance**

24 The City did not seek input from unhoused Portlanders or their service providers, nor
25 even discuss with them plans for the Ordinance during the two years that it had to develop an
26 “objectively reasonable” regulation. The City gathered no information as to what would be

objectively reasonable “with regards to persons experiencing homelessness.”

43.

Instead, without warning or consultation, in the midst of this humanitarian crisis, the City enacted the Ordinance -- a sweeping, cruel, incomprehensible and plainly unreasonable law that criminalizes homeless Portlanders. While it is being called, by the City, a “daytime camping ban,” the reality is that it is also a “nighttime camping ban.” The Ordinance effectively bans universal, unavoidable human survival conduct like lying down, sleeping, and staying warm and dry, twenty-four hours a day on most or all public land in the City. The Ordinance’s enforcement will cause irreparable harm to Portland’s thousands of unhoused residents as they attempt to comply with the law under threat of arrest and jail time.

44.

The Ordinance reads in its entirety:

14A.50.020 Camping Prohibited on Public Property and Public Rights-of-Way.

A. As used in this Section:

1. "To camp" means to set up, or to remain in or at a campsite.
2. "Campsite" means any place where any tent, lean-to, shack, or other structure, any vehicle or part thereof, or any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained for the purpose of establishing or maintaining a temporary place to live.
3. “Involuntarily homeless” means having no means to acquire one’s own shelter and not otherwise having access to shelter or other alternative options for housing.

B. It is unlawful for any person to camp in or upon any public property or public right-of-way, unless otherwise specifically authorized by this Code or by declaration by the Mayor in emergency circumstances.

C. Subsection 14A.50.020 B. does not apply to a person who is involuntarily homeless provided that such person complies with the following restrictions on the time, place, and manner with respect to their campsite.

1. Time regulations. An involuntarily homeless person may camp between the

1 hours of 8 p.m. and 8 a.m. After 8 a.m., an involuntarily homeless person must
2 dismantle the campsite and remove all personal property from the campsite until 8
3 p.m.

4 2. Place regulations. An involuntarily homeless person may not camp in the
5 following places at any time:

6 a. On a Pedestrian Plaza regulated under Chapter 17.43 of Portland Code.

7 b. Upon public docks regulated under Portland City Code Section 19.16.290.

8 c. In the pedestrian use zone, which is the area of the sidewalk corridor on City
9 sidewalks intended for pedestrian travel or access to public transit, as defined in
10 Subsection 14A.50.030 A.3.

11 d. In a Park regulated under Chapter 20.12 of Portland Code.

12 e. Within 250 feet from a preschool, kindergarten, elementary or secondary
13 school, or a childcare center licensed, certified or authorized under ORS
14 329A.250 through 329A.460, ORS 418.205 to 418.970; OAR 419-410-0010 to
15 OAR 419-490-0170.

16 f. Within 250 feet from a safe parking site, safe rest village, or sanctioned
17 camping location designated by the Mayor.

18 g. Within 250 feet of lot or parcel containing a construction site governed by a
19 building permit reviewed by the Major Projects Group of the Bureau of
20 Development Services.

21 h. In the public right-of-way along “High Crash Network Streets and
22 Intersections” identified by the Portland Bureau of Transportation.

23 i. Within 250 feet of an Environmental overlay zone, River Natural overlay zone,
24 River Environmental overlay zone, Pleasant Valley Natural Resource overlay
25 zone, or a special flood hazard area.

26 j. Areas posted no-trespassing by City bureaus.

3. Manner regulations. An involuntarily homeless person camping in the public
right-of-way or on public property may not:

a. Obstruct access to private property or businesses adjacent to the public right-of-
way.

b. Start or maintain any fire for the purposes of burning any combustible material

1 in or around the campsite.

2 c. Use a gas heater in or around a campsite.

3 d. Erect, install, place, leave, or set up any type of permanent or temporary fixture
4 or structure of any material(s) in or upon public property or public right-of-way.
5 Items such as tents and similar items used for shelter that are readily portable are
not structures for purposes of this section.

6 e. Dig, excavate, terrace soil, alter the ground or infrastructure, cause
7 environmental damage, or damage vegetations or trees in or around a campsite.

8 f. Place or store personal belongings, or other objects, in a total area
9 encompassing more than ten square feet outside the tent or readily portable
shelter.

10 g. Accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous
11 materials, sewage, drug paraphernalia, improperly disposed of syringes, or other
12 evidence of conspicuous drug use in the public rights-of-way, on City property, or
on any adjacent public or private property.

13 h. Assemble, disassemble, sell, offer to sell, distribute, offer to distribute, or store
14 three or more bicycles or two or more automobiles, a bicycle frame with the gear
15 cables or brake cables cut or an automobile with the battery or one or more tires
removed, two or more bicycles or automobiles with missing parts, or five or more
bicycle or automobile parts.

16 D. Any camp, camp materials, or personal property in violation of any of the
17 standards in this Chapter may be removed or cleaned up by the City or its
18 designated contractors.

19 **14A.50.025 Enforcement.**

20 A. For a first or second violation of Section 14A.50.020, a violator will be given a
21 written warning identifying the provisions of Section 14A.50.020 that were
violated.

22 B. A third or subsequent violation of Section 14A.50.020, after either two prior
23 written warnings, or a prior conviction under this Subsection, within the previous
24 year, is punishable by a fine of not more than \$100 or by imprisonment for a
period not to exceed 30 days, or both.

25 C. The two written warnings and associated violation under this Section must
26 each occur no less than 24 hours apart.

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2 45.

3 **The Unreasonableness of the Ordinance**

4 For plaintiffs and the thousands of other unhoused Portlanders who must follow this law,
5 as well as the law enforcement personnel tasked with enforcing it, the Ordinance is impossible to
6 understand with any clarity. The definition of “campsite” includes, not just a tent or other
7 structure, but also, “any vehicle or part thereof, or any bedding, sleeping bag, or other sleeping
8 matter.” “Other sleeping matter” is an undefined term, but presumably includes any item a
9 person puts over or under themselves to stay warm and dry while sleeping. The definition of “to
10 camp” includes “to remain in or at a campsite.” The term “for the purpose of establishing or
11 maintaining a temporary place to live” is also undefined. For plaintiffs and the thousands of
12 unhoused Portlanders currently living outside within the City and without a permanent place to
13 live, there is no guidance as to when they have this “purpose.” The Ordinance offers no clarity
14 or guidance to law enforcement or unhoused Portlanders as to when a person has “set up or
15 remained at a campsite.”
16

17 46.

18 The Ordinance’s definition of “involuntarily homeless” lacks clarity and is overbroad.
19 The Ordinance allows law enforcement to punish first and ask questions later. There is no
20 requirement that a law enforcement officer make any particular determination about a person
21 being “voluntarily” homeless before enforcing the Ordinance against them, nor does it provide
22 any guidance as to what evidence would support such a determination. This is especially
23 problematic given that the Ordinance prohibits *all* camping anywhere and anytime for
24 individuals that the City deems to be homeless voluntarily. As a practical matter, in a city with
25
26

1 fewer than 2,000 shelter beds and 10,000 unhoused citizens, the presumption should not be that
2 people living outside are doing so voluntarily, yet that is what the Ordinance allows for.

3
4 47.

5 The time restrictions in the Ordinance are not objectively reasonable. Plaintiffs are not
6 able to “dismantle the campsite” or “remove all personal property” from “the campsite” each day
7 by 8:00 a.m., because they could be deemed to be at a “campsite” as defined by the Ordinance
8 any time they stop with their belongings for an unknown length of time. In addition, many
9 unhoused people must sleep during the day because of work, health or safety reasons. There are
10 inadequate facilities for people to store their personal possessions during the day and what
11 facilities do exist are not open during the hours that people would need to store personal property
12 under the Ordinance and are not located near where people live and work. There are no storage
13 facilities in the City of Portland that allow a person to drop off all of their personal possessions
14 before 8:00 a.m. and pick them up after 8:00 p.m. every day as required by the Ordinance. These
15 restrictions are separately unreasonable for the hundreds of Portlanders living in their vehicles
16 since those “campsites” cannot be “dismantled” by 8:00 a.m. every morning.

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18 48.

19 The place restrictions in the Ordinance are not objectively reasonable. The City has
20 provided no useful guidance as to where people can stop moving, sleep, rest, or stay warm and
21 dry at night. The list of places where people cannot sleep or stay warm and dry at night is
22 impossible for anyone, much less a person living outside, often without access to the internet, to
23 understand or comply with. The City’s recently created map of where a person cannot sleep is
24 dangerously misleading. *Portland Camping Restrictions Map*, CITY OF PORTLAND (Sep. 06,
25 2023, 10:53 AM) (“Restrictions Map”),
26

1 <https://experience.arcgis.com/experience/4c37f1c3b4d14f3599c17094a866d60d/page/Page>, in
2 that it fails to include many prohibited camping areas (permitted construction sites, sidewalks, no
3 trespass zones) and implicitly directs people toward private property where they will be arrested
4 for trespass. Plaintiffs do not have the ability to know which sites are, at any given time,
5 prohibited camping sites. Plaintiffs have no way to know, on any particular day, which sites
6 have been granted construction permits by the City or where the “lot or parcel” lines for
7 properties with construction sites on them might be. The City’s website indicates that there are
8 currently 147,097 permits in effect in the City, 1,177 of which are tagged Major Projects Group.
9 None of these sites appear to be on the City’s map and, presumably, the number of “Major
10 Projects” varies over time. There is no useful guidance or other way for unhoused Portlanders to
11 know where the prohibited camping zones are around pedestrian plazas, public docks, pedestrian
12 use zones, preschools, kindergartens, elementary or secondary schools, or childcare centers
13 licensed, certified or authorized under ORS 329A.250 through 329A.460, ORS 418.205 to
14 418.970; OAR 419-410-0010 to OAR 419-490-0170, safe parking sites, safe rest villages,
15 sanctioned camping locations, High Crash Network Streets and Intersections, environmental
16 overlay zones, river natural overlay zones, river environmental overlay zones, or special flood
17 hazard areas. Even if plaintiffs knew where the myriad of areas were, they have no practical
18 ability to measure 250 feet in every direction from the unmarked property lines of these sites.
19 Plaintiffs cannot understand or comply with these restrictions. Plaintiffs will be irreparably
20 harmed if the Ordinance is enforced against them.
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24 49.

25 The warning provision of the Ordinance is unfair and unreasonable since the warnings do
26 not have to be from the same site, thus allowing someone to be arrested and jailed without ever

1 having been warned about sleeping or staying warm and dry in a particular site. The penalties of
2 \$100 fines and 30 days' imprisonment are not objectively reasonable with regards to people
3 experiencing homelessness. Imprisoning people for living outside will further disrupt their lives,
4 making it more difficult for them to obtain work or housing and, thereby increasing
5 homelessness.
6

7 50.

8 The definitions in the Ordinance are objectively unreasonable. In particular, the
9 definitions of "to camp" and to "remain at a campsite" include a range of necessary conduct,
10 such as possessing any "sleeping matter" or living in a vehicle for safety reasons, making it
11 impossible for plaintiffs to comply with the Ordinance. The definition of "involuntarily
12 homeless" is vague and overbroad and provides no useful guidance to law enforcement as to how
13 they could determine whether or not a person is "voluntarily" living outside.
14

15 **FIRST CLAIM FOR RELIEF**
16 **(ORS 195.530)**

17 51.

18 Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

19 52.

20 Defendants violated ORS 195.530 by enacting the Ordinance, which imposes objectively
21 unreasonable time, place and definitional limitations on plaintiffs' unavoidable life-sustaining
22 activities, such as sleeping and staying warm and dry. The penalties in the Ordinance are also
23 objectively unreasonable with regard to their impact on plaintiffs. Under the totality of the
24 circumstances, the Ordinance as a whole is not objectively reasonable.
25

26 53.

1 Pursuant to ORS 195.530(4), plaintiffs are entitled to declaratory and injunctive relief to
2 enjoin the enforcement of the Ordinance against them and other involuntarily homeless
3 Portlanders.

4 54.

5 Plaintiffs have no adequate remedy at law and are entitled to temporary and permanent
6 injunctive relief prohibiting further enforcement of the Ordinance.
7

8 55.

9 Plaintiffs are entitled to their reasonable attorney fees pursuant to ORS 195.530(6). None
10 of the plaintiffs are seeking to vindicate an interest unique to them and at least 90 days before
11 this action was filed, plaintiffs provided written notice to the City of an intent to bring this action
12 and the notice provided the City with actual notice of the basis upon which the plaintiffs intended
13 to challenge the Ordinance.
14

15 **SECOND CLAIM FOR RELIEF**

16 **Article I, section 16, of the Oregon Constitution/ORS 28.010 *et seq.***
(Cruel and Unusual Punishment; Excessive Fines; Disproportionate Punishment)

17 56.

18 Plaintiffs incorporate by reference the allegations above as if fully set forth herein.
19

20 57.

21 The Ordinance violates Article I, section 16, of the Oregon Constitution because it
22 imposes fines and jail time upon plaintiffs for engaging in conduct that they cannot avoid –
23 sitting, lying down, sleeping, staying safe, warm and dry.

24 58.

25 The Ordinance violates Article I, section 16, of the Oregon Constitution because 30 days'
26 imprisonment as a penalty for engaging in unavoidable acts of survival is cruel and unusual

1 punishment and is wildly disproportionate to the nature of the offense committed. Any monetary
2 fine is excessive when it punishes status or engaging in unavoidable acts of survival.

3
4 59.

5 Plaintiffs bring this claim pursuant to the Oregon Uniform Declaratory Judgments Act,
6 ORS 28.010 *et seq.*, and are entitled to declaratory and injunctive relief to enjoin the City from
7 enforcing these unconstitutional penalties against them. Plaintiffs will serve the Attorney
8 General with this complaint pursuant to ORS 28.110.

9 Plaintiffs are therefore entitled to relief as prayed for below.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for:

12 1. A declaration that the Ordinance violates ORS 195.530 and a preliminary and
13 permanent injunction enforcing that declaration;

14 2. A declaration pursuant to ORS 28.010, *et seq.* that the Ordinance violates Article
15 I, section 16, of the Oregon Constitution and a preliminary and permanent injunction enforcing
16 that declaration;

17 3. An award of reasonable attorney fees under ORS 195.530(6), costs and
18 disbursements incurred herein; and

19 4. Such other and further legal and equitable relief as this Court deems just and
20 proper.
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1
2 **JURY DEMAND**

3 Plaintiffs hereby demand a trial by jury.

4 DATED this 29th day of September 2023.

5
6 OREGON LAW CENTER

7
8 By: /s Edward Johnson

9 **Edward Johnson**, OSB No. 965737

10 Email: ejohnson@oregonlawcenter.org

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