

# **Persecution of the Unhoused:**

## **Fines and Jail Time**

## **for Having Nowhere Else To Go**

*in*

## **Eugene, Oregon**

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## I. EXECUTIVE SUMMARY

### Background

2,165 people were reported as homeless according to the Lane County 2019 Unsheltered Point in Time Count, which is a 32% increase compared to the total number of unhoused in 2018. Most of this increase was in unsheltered homelessness -- 75% of the total 2019 count were individuals experiencing unsheltered homelessness.<sup>1</sup> 1,893 people counted were located in Eugene, which is 87% of the total County PIT Count. It also is important to note that the vast majority of people who are unhoused are from the local community. In other words, only a small percentage of people move somewhere new after becoming unhoused.<sup>2</sup>

As multiple studies demonstrate, the shortage of housing options, which has led to rising rents and an increase in evictions, coupled with stagnant wages, are primary contributors to homelessness.<sup>3</sup> As a United Way report on homelessness in Southern California concluded, the most significant factor leading people to homelessness is the "gap between the availability of affordable housing and work that pays a wage sufficient to enable the economically marginal to access that housing."<sup>4</sup> The mean wage in Lane County is \$12.97 yet the wage needed to afford a two bedroom apartment

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<sup>1</sup> Unsheltered includes people living in "alternative to shelter" programs, such as Opportunity Village, Dusk to Dawn, Rest Stops and Car Camping. Only 25% of these unsheltered individuals were located in one of these shelter options, the rest were without any form of sanctioned shelter. <https://www.eugene-or.gov/DocumentCenter/View/47953/Point-in-Time-Count-2019-Full-Report>.

<sup>2</sup> See, e.g., <https://www.registerguard.com/rg/opinion/36288243-78/myths-get-in-the-way-of-solutions.html.csp>; <http://www.eugeneweekly.com/2017/09/21/housing-first-for-homeless/>; <https://www.registerguard.com/opinion/20191019/guest-view-winter-brings-worry-for-unhoused>

<sup>3</sup> Nationwide, there are only 35 units of housing that are affordable and available per every 100 very low-income households. *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, National Law Center on Homelessness and Poverty, December 2019, at pg 11. <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>. [Hereinafter HNH 2019]. In Lane County the lack of housing is even more severe -- there are only 15 units per 100 renter households at or below 30% AMI. *Lane County Housing Data and Demographics*, Oregon Housing and Community Services, November, 2017. <https://www.oregon.gov/ohcs/DO/shp/profiles/Lane-County-Housing-Profile.pdf>. [Hereinafter Lane County Housing Data 2017]; See also, *Understanding the Issue: Causes of Family Homelessness*, Portland Homeless Family Solutions <http://www.pdxhfs.org/understanding-the-issue-1>; The Corvallis Advocate, *Cyclic Causes of the Homeless Crisis*, September 19, 2019. <https://www.corvallisadvocate.com/2019/cyclic-causes-of-the-homelessness-crisis/>

<sup>4</sup> Orange County Catholic Worker, et al. v. Orange County, et al., Settlement Agreement, July 19, 2019. <https://scng-dash.digitalfirstmedia.com/wp-content/uploads/2019/07/Catholic-Worker-Ramirez-Settlement-with-Orange-County.pdf>

rental is \$17.10.<sup>5</sup> In fact, according to several sources, at least half of the homeless population at any given time is employed part or full time.<sup>6</sup>

## Purpose of report

The purpose of this report is to demonstrate the benefits of implementing alternatives to criminalization of the unhoused in Eugene by highlighting the myriad adverse consequences caused by penalizing people due to their unhoused status. Whether intentional or not, punitive measures against people who are unhoused create additional, often insurmountable barriers for people to access housing and employment. Moreover, maintaining the current system is very expensive, it is far less costly for people to have housing. Therefore, examining and modifying existing laws that criminalize people for being unhoused not only is imperative for the individual to be able to transition from homelessness, it also provides a significant cost savings to the City. This report provides the data and analysis needed for City leadership and local government agencies to make immediate changes to existing laws and policies.

## Scope of report

### Quality of Life Laws

The focus of this report is on the four quality of life laws that most commonly are the basis for the criminal and civil penalties imposed on the unhoused in Eugene: prohibited camping, criminal trespass II, violation of park rules, and open container. Quality of life offenses, by their nature, disproportionately impact the homeless.<sup>7</sup> People are cited for them *because* they are unhoused and have no legal place to go. Unhoused people get prohibited camping violations for resting in public places; they get criminal trespass II violations for resting on private property; they get violation of parks rules for resting anywhere in the thousands of acres of park land throughout Eugene; and they get open container violations for not having a home in which they can drink. These quality of life laws are discussed in detail in Part IV of this report.

### Impoundment of Vehicles

This report also examines the impoundment of vehicles in which people live since this disproportionately impacts individuals and families who are without stable housing. See [Part IV](#) for details about the laws and practices involving vehicle impoundments.

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<sup>5</sup> Lane County Housing Data 2017. See also, United Way of Lane County Alice Report.

<https://static1.squarespace.com/static/5b6a0acf9d5abb96252f10af/t/5bad5917a4222fd80679a1d8/1538087192110/ALICE+Lane+County.pdf>

<sup>6</sup> See, e.g., *Understanding the Issue: Causes of Family Homelessness*, Portland Homeless Family Solutions <http://www.pdxhfs.org/understanding-the-issue-1>; The Corvallis Advocate, Cyclic Causes of the Homeless Crisis, September 19, 2019. <https://www.corvallisadvocate.com/2019/cyclic-causes-of-the-homelessness-crisis/>.

<sup>7</sup> Quality of life laws are those that “discriminatorily target, are selectively enforced against, or disproportionately affect people experiencing homelessness.” Howard, Joshua and David Tran, *At What Cost: The Minimum Cost of Criminalizing Homelessness in Seattle and Spokane* (2015).

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1000&context=hrap>.

## **Encampment Policies**

This report also examines camp closures and sweeps, as these events often involve a citation and in some cases arrest, causing further disruption in the lives of people who do not have legal locations to which they can relocate. Encampment policies are discussed in detail in [Part IV of this report](#).<sup>8</sup>

## **Data Analysis**

We examined [municipal court data](#) for the four quality of life laws mentioned above in order to understand the scope of the problem, including the number of people impacted, the number of citations issued to unhoused individuals in each category, and the amount in unpaid fines owed by unhoused individuals. Please refer to Appendices [A](#) and [B](#) for the detailed analysis of this Municipal Court Data and an explanation of our methodology.

Beyond an analysis of the data, we attempted to assess the [costs to the city](#) and by extension, all citizens of Eugene, to maintain the current system of criminalization.

We also researched the efforts [other jurisdictions](#) have made to decriminalize homelessness and the benefits of doing so. This involved analyzing hundreds of city codes, as well as reviewing recent lawsuits that challenged the constitutionality of [punishing individuals for having nowhere to rest and sleep](#). Based on the cost reductions and other benefits experienced by cities that have made changes to their own laws and practices that disproportionately impact the unhoused, this report provides a series of ordinance and policy recommendations that will improve the quality of life for all citizens of Eugene.

## **Consequences of the Criminalization of Homelessness**

Housing is a human right, yet millions of Americans are forced into homelessness because they are unable to access housing. In Lane County there are only 15 housing units for every 100 people whose income is below 30% of the area median income (AMI). Debt, jail time, arrest warrants, and move-along orders put housing out of reach, violating a person's human and civil rights. Citing people who are homeless and have nowhere else to go violates people's constitutional rights to equal protection under the law given that the selective enforcement of quality of life laws disproportionately impacts people who are homeless, a significant percentage of whom are disabled and/or seniors. In fact, national data indicates that the fastest growing group of people who are becoming homeless are seniors on fixed incomes, many of whom are women and/or have a disability.<sup>9</sup> In Lane County, for instance, more than half of the 3,700 unhoused people who receive a

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<sup>8</sup> There are several other local ordinances that disproportionately impact the unhoused that are not covered in this report due to the relatively smaller number of violations issued pursuant to these other ordinances. For a complete list of ordinances see Appendix C. In addition, several county and state agencies have laws and policies that disproportionately impact the unhoused, such as Lane County, Lane Transit District (LTD), Bureau of Land Management (BLM), and Oregon Department of Transportation (ODOT). While their policies and practices fall outside the scope of this report other than EPD's enforcement of these agencies' prohibited camping rules, they should be examined as well. There are numerous documented instances where enforcement practices by these agencies violate the rights of the unhoused.

<sup>9</sup> See, e.g., "The growing risk of senior homelessness," Register Guard, Opinion, February 11, 2020.

meal at the Eugene Mission or participate in Dusk-to-Dawn are people with disabilities.<sup>10</sup> In addition, people of color also are overrepresented in the homeless population across the country,<sup>11</sup> which is consistent with the overrepresentation of racial minorities reported in the Lane County PIT.<sup>12</sup> Studies show that people of color and others who are marginalized are more likely to be the targets of laws that criminalize homelessness.<sup>13</sup>

Criminalizing people for unavoidable, life-sustaining human behaviors also contradicts Eugene's own Human Rights Code, which urges removal of barriers to housing.<sup>14</sup> Moreover, preventing people from sleeping is contradictory to the stated purpose of Eugene's Human Rights Code as it demonstrates a lack of value for people's dignity and worth.<sup>15</sup> Sleep is essential, not only to basic survival, but also to transitioning to a more stable situation.

### **For The Individual**

Despite the lack of affordable housing supply and stagnated wages, despite the dramatic increase in unsheltered individuals in Lane County, and despite the limited number of places where one is permitted to shelter, Eugene continues to punish people for sleeping or resting outside. A revolving door of defendants in Municipal Court, and repeated citations and arrests that result from having no legal place to go, creates yet another significant obstacle to securing housing and employment.

All of the violations discussed in this report involve a fine, ranging from \$200 to as high as \$1,000. People who are unhoused do not have the ability to pay a fine, even one for \$200 and, therefore, they continue to accumulate debt, exacerbating their situation and trapping them in a cycle of homelessness that becomes increasingly difficult to overcome. Unpaid fines are highly detrimental to a person's credit score, and often prevent people from being able to secure housing. In certain circumstances unpaid fines lead to a driver's license suspension and/or vehicle impoundment, which can make it nearly impossible to maintain a job and certainly more difficult to find employment. Court debt not only creates a barrier to securing housing and employment, having debt that cannot be paid also can have a devastating psychological impact on people.

With the exception of prohibited camping, all the other quality of life violations addressed in this report are punishable by not only a fine, but also by the possibility of jail time. If a person fails to appear at a scheduled hearing for a violation that is a jailable offense, a warrant for their arrest may be issued. Individuals living in fear of arrest often are less likely to seek supportive services and more likely to locate in areas that make access to services more challenging, increasing their risk of being a victim of crime and compounding stress. Following Denver's passage of an anti-camping

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<sup>10</sup> POVERTY AND HOMELESSNESS BOARD Shelter & Supportive Housing Development Committee Minutes, November 18, 2019, based on information in the Homeless Management Information System (HMIS) regarding service contacts.

<sup>11</sup> HNH 2019, pg 32.

<sup>12</sup> <https://www.eugene-or.gov/DocumentCenter/View/47953/Point-in-Time-Count-2019-Full-Report>.

<sup>13</sup> HNH, pg 15.

<sup>14</sup> Eugene Code 4.613. The Purpose section states in part, "... that the City's intent is for all people to have "equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing and public accommodations be removed."

<sup>15</sup> EC 4.613.

ban, for instance, a survey among several hundred homeless people indicated that over 60% moved to more hidden locations and many respondents reported being victims of crime as a result.<sup>16</sup>

The possibility of jail time is even more devastating to a person's well-being and ability to improve their situation. Serving days in jail is itself an impediment to maintaining employment. A criminal record -- even an arrest with no conviction -- can be a serious obstacle in gaining employment and securing housing. Many employers refuse to hire someone with a criminal conviction and landlords often refuse to rent to someone with a criminal history.<sup>17</sup> Even in situations where people are part of a formal program where they receive intensive services to transition from homelessness, landlords still reject applicants for a wide range of criminal histories. These individuals also have additional hurdles to overcome to access housing given low credit scores. Low credit scores and/or criminal histories can be crippling for people who are not in a program.

While this report focuses on legal violations, it is important also to consider the toll on the individual and added societal cost from the mere threat of a citation -- being told to move along. Although move-along orders could be considered more compassionate than issuing a citation or making an arrest, they force people into more remote, less secure settings, and undermine a person's ability to secure employment and even get proper sleep. Lack of sleep, in turn, can cause health problems for the individual, which lead to health care costs borne by the community at large.

A woman in her 50's who has lived her entire life in Eugene and became homeless within the past two years because she was unable to pay her rent after losing a job, talked about the challenges in obtaining employment because she is forced to move her campsite every few days. As she explained, she could not be a dependable worker since she would have to miss work often to move her belongings and relocate. She feels like Eugene as a community has let her down -- she was an employed, tax-paying contributor for her entire adult life and now that she is unhoused, she is beaten down further and not given any support so she can save money and get back into housing.

### **For The Community**

Continuing to issue citations that people cannot pay is costly for the entire community. As mentioned in ["Key Findings"](#) in Part II of this report, and discussed in greater detail in [Part V regarding costs](#), the financial costs to a city to impose citations and arrest people who are unhoused are tremendous. Policing the homeless for their mere status of being unhoused overcrowds our court system and our jails, and diverts much needed resources away from addressing crime that is a real threat to public safety.

As the Department of Justice wrote in its brief in the *Martin v. City of Boise* case, "[i]t is neither safe nor appropriate to put law enforcement on the front lines to resolve mental health, substance abuse and housing crisis when what people who are experiencing homelessness really need is adequate

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<sup>16</sup> HNH 2019, pg 11.

<sup>17</sup> While HUD has guidelines that limit the circumstances under which criminal history can be a basis for denial of a housing application, in reality the practice continues. See, *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, HUD, April 4, 2016 [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

services.”<sup>18</sup> As a community, it is costly and ineffective to rely on police officers to be the first responders in dealing with homelessness. Modifying our laws will not only reduce costs, it will allow our law enforcement agents to focus on public safety, which is their core responsibility and what they are trained to do. In addition, being the first responders and enforcing quality of life laws against people who have nowhere else to go fosters mistrust of the police, making it less likely that people will seek protection from police when needed. Finally, to the extent laws are intended to deter “illegal behavior”, quality of life laws enforced against people for trying to survive do not serve as motivation to avoid or modify behavior. People have no other choice but to commit these violations given that there are no accessible options to change their situation.

Sweeps also are costly for cities. Sweeps simply displace people temporarily, and in most instances force people to move to another location that then will need to be cleared, incurring more costs and often putting people in a more vulnerable situation. As the U.S. Interagency Council on Homelessness (USICH) has confirmed, forcibly dispersing encampments can make it more difficult for people to transition to housing and access services.<sup>19</sup> The USICH 2015 report sets forth a list of strategies for cities to follow to establish temporary encampments with effective outreach and engagement with service providers, and suggests only closing camps if alternative housing and shelter is available.<sup>20</sup> The recommendations in that report are counter to the conduct in Eugene in which campsites are disbanded after a mere 24 hour notice, without contact with a trained outreach worker and without being given an accessible alternative shelter option. In addition, encampment sweeps present a public health issue as a camp closure means people are forced to dispose of their waste elsewhere. Sweeps also often result in people losing their only form of shelter and some, if not all of their possessions, resulting in increased stress and sleep deprivation. Sleep deprivation itself leads to serious mental and physical health issues, which is a cost to the entire community.

Even the medical field has taken a position against the criminalization of homelessness, recognizing the harm to the individual and high costs to the system. In 2019 the American Medical Association passed a resolution, which in part stated that it, “opposes laws and policies that criminalize individuals experiencing homelessness for carrying out life-sustaining activities conducted in public spaces that would otherwise be considered non-criminal activity.”<sup>21</sup> In 2017 the American Public Health Association issued a statement similar to the AMA resolution, stating that laws that target

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<sup>18</sup> F.3d 584 (9<sup>th</sup> Cir. 2019), page 920.

<sup>19</sup> *Quick Guide: Ending Homelessness for People Living in Encampments 2*, U.S. Interagency Council on Homelessness, (2015). [https://www.usich.gov/resources/uploads/asset\\_library/Ending\\_Homelessness\\_for\\_People\\_Living\\_in\\_Encampments\\_Aug2015.Pdf](https://www.usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.Pdf).

<sup>20</sup> Id.

<sup>21</sup> HNH 2019 page 73, citing, *Report of the Board of Trustees: Opposition to Measures that Criminalize Homelessness* (Resolution 410-A-18), AM. MED. ASS’N (2019), <https://www.ama-assn.org/system/files/2019-04/a19-bot28.pdf>.

activities associated with homelessness are both ineffective and costly to enforce, and “serve as a barrier to income and housing stability.”<sup>22</sup>

## Lack of Shelter Options

According to the 2019 PIT, only 25% of the unsheltered individuals are in some form of alternative shelter program. This means among the 1,633 people who are unsheltered, 1,222 are in violation of a law wherever they choose to rest or sleep. There literally is no square inch in Eugene where these individuals are legally allowed to exist.

As the 9th Circuit in the *Boise* case wrote, a person is involuntarily homeless when, "there is a greater number of homeless individuals in [a jurisdiction] than beds available [in shelters]."<sup>23</sup> While Eugene has created shelter options in response to community advocacy, and certainly is better than many other cities around the country with respect to the range of temporary shelter options available, only a limited number of the unhoused can be served because the demand for these spaces exceeds total supply. Shelter spaces in every program are reported to be at capacity and have wait lists. For instance, Dusk to Dawn, which houses up to 200 unhoused individuals, filled by October and had 30 individuals on the waitlist as early as October 1st.<sup>24</sup> In addition, based on a report provided to the City by St. Vincent de Paul (SVdP), as of Nov 5th there were 80 people in legal car camping sites, with a waiting list of 150 people.<sup>25</sup> In general, it takes 90 days to get off the waitlist and find a legal place to park one's vehicle. Therefore, for all practical purposes most people do not have a legal place to go, which is particularly problematic during the rainy cold months where the risk of hypothermia significantly increases. Moreover, even when shelter beds are available, they often are not truly accessible. Multiple barriers prevent someone from entering mass shelter, such as the separation of family members, mental and physical disabilities that cannot be accommodated or that prevent someone from handling large group settings, noticeable alcohol or drug related impairment, fear if undocumented, and gender non-conforming, to name a few. Lack of secure storage space for possessions can be yet another barrier.

## Prior Decriminalization Efforts

Over the years there have been several significant, city wide attempts to address the problems associated with the criminalization of homelessness, most recently in 2011-12 and again in 2015-16. Despite these efforts, existing laws and policies have not been reviewed and changed, and people continue to suffer civil and criminal penalties for being unhoused. In fact, quite the contrary has happened in recent years – additional laws and administrative orders have been passed that add to the web of violations that entrap homeless people, increasing the barriers and unintended

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<sup>22</sup> HNH pg 73, citing *Housing and Homelessness as a Public Health Issue*, AM. PUB. HEALTH ASS'N (2017), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-andhomelessness-as-a-public-health-issue>

<sup>23</sup> Martin v. City of Boise, 920 F.3d 584,617 (2019).

<sup>24</sup> Terry McDonald, “Winter brings worry for the unhoused,” Register Guard, Opinion, October 19<sup>th</sup>, 2019. <https://www.registerguard.com/opinion/20191019/guest-view-winter-brings-worry-for-unhoused>

<sup>25</sup> Email exchange with Regan Watjus, Policy Analyst, City Manager’s Office, November 15, 2019.

consequences that keep people unhoused.<sup>26</sup> Unlike prior efforts, this report provides the data and analysis for the City leadership to use to make changes to existing laws and policies.

In 2012, in response to Occupy Eugene, former Mayor Piercy formed a task force charged with creating a series of innovative solutions to address issues involving homelessness. One of the core recommendations identified for immediate action was for the City to conduct a comprehensive review and propose revisions to ordinances and policies that criminalize life-sustaining activities and/or create barriers to housing or shelter.<sup>27</sup> Despite this strong recommendation, a review was not conducted nor were any changes to laws and policies made. Our understanding is that action was not taken on any of the recommendations that the task force made.

In 2015, following a joint meeting at which the Human Rights Commission made "asks" of the City Council, the City Manager invited a group of local, state, regional and even national experts on homelessness to identify barriers to securing housing and jobs by the unhoused in Eugene. The two predominant barriers identified by these experts were the enforcement of laws against homeless people when there are inadequate alternatives and the lack of affordable housing in general. While City Council and the City Manager reviewed the input received from these experts, it did not result in a review of or changes to existing laws. The one "action item" that came out of this joint meeting was a resolution that City Council passed in 2016 promoting a housing first model.<sup>28</sup>

## Conclusion

For all the reasons highlighted in this Executive Summary, the practice of issuing citations, making arrests, closing encampments and impounding vehicles must change until there are lawful places for all people to sleep, not just the fortunate ones who make it into one of Eugene's existing temporary shelter options. As the City and County embark on a resource and time intensive effort to develop adequate shelter and housing that is accessible to all its citizens, changing laws, policies and practices that disproportionately impact the homeless is critical to this effort. Without this decriminalization component as an interim measure, full implementation of the Lane County Shelter Feasibility Study (TAC Report) cannot be realized. People need legal safe places to engage in daily life sustaining activities while the City and County work to make the investment necessary to increase housing options. As our Chief of Police has stated on several occasions, we cannot police

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<sup>26</sup> It is important to note that the City has made some effort to mitigate the barriers created by imposing penalties on people for being unhoused through the initiation of Community Court. Municipal Court also has the discretion to offer options to people who appear for their hearings. While we could not access data to understand the extent to which this is common practice among the unhoused, Municipal Court employees shared with us some of the alternatives offered to defendants: payment agreements taking into consideration the person's income, vehicle compliance programs that offer dismissal if the item is fixed, community service or road crew in lieu of fines, and debt recalled from collections.

<sup>27</sup> Opportunity Eugene: A Community Task Force on Homelessness Final Report and Recommendations, 2012 pg 3, 6. <https://www.eugene-or.gov/DocumentCenter/View/4272/Opportunity-Eugene-Final-Report?bidId=>

<sup>28</sup> Eugene Council Resolution No. 5153, A Resolution Declaring the City of Eugene's Commitment to the Housing First Model as a Key Strategy to Addressing the Housing and Homelessness Crisis, May 9, 2016.:[https://www.eugene-or.gov/DocumentCenter/View/31648/Res-No-5153\\_Housing-First?bidId=](https://www.eugene-or.gov/DocumentCenter/View/31648/Res-No-5153_Housing-First?bidId=)

our way out of this problem. This report provides a foundation from which alternatives to decriminalization can be initiated.

This report begins with our key findings and recommendations of specific ordinance and policy changes, followed by: (i) a more detailed discussion of each violation, (ii) the costs of penalizing the unhoused, (iii) decriminalization efforts in other cities, (iv) outcomes of relevant court cases in other jurisdictions; and (v) data analysis summaries.

## II. KEY FINDINGS

We examined multiple data sources to gain an understanding of how the four quality of life laws, along with impoundments and sweeps, impact the unhoused population in Eugene.<sup>29</sup> Our analysis included data from Municipal Court, Eugene Police Department, and Public Works.<sup>30</sup>

### Data analysis

We had a two-pronged analysis with the Municipal Court Data. We first reviewed every single docket entry for the month of June and used that information to determine the number of unhoused individuals and the quality of life violations most frequently given to the unhoused. Based on this information, we then examined the four main quality of life violations that appeared on the Municipal Court docket from January 1, 2018 to May 31<sup>st</sup>, 2019 (prohibited camping, criminal trespass II, violations of park rules and open container). Please see Appendix B for the detailed analysis of this Municipal Court data.

#### **4 Quality Of Life Citations:**

- Unhoused people are 14 times more likely to receive the four quality of life citations than housed people.
- Over a quarter of Municipal Court's docket (thus costs) is devoted to these 4 quality of life offenses.
- On average 83% of all quality of life citations and arrests went to unhoused people during the 17 month period evaluated.

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<sup>29</sup> There were limits to what agencies collect and can produce and, thus, there are gaps in our research. For instance, the City does not require SVdP to submit a report of warning notices they give to people living in vehicles pursuant to Police Policy 410, nor does EPD track the daily reports that EPD provides SVdP in order for SVdP to give the 24-hour warning notices prior to citation and impoundment. Without this information we have no way of determining with reasonable accuracy the number of people living in their vehicles or how frequently a 24-hour warning leads to a vehicle impoundment. This also means we could not confirm whether EPD follows its own stated policy of only taking action in response to a 24 hour notice.

<sup>30</sup> We examined Municipal Court data from January 1st, 2018 through May 31st, 2019 for the four quality of life violations that are covered in this report. We also reviewed data from EPD on notices of restrictions of use for violations of park rules and dispatch calls involving prohibited camping. To understand how sweeps are handled, we examined a random sampling of work orders issued by Public Works involving homeless camps during this seventeen-month time-period. We also spoke with several people in these different departments for clarification regarding the data. In addition, we reviewed the EPD impoundment reports that we were able to obtain for prohibited camping.

- 100% (298) of all prohibited camping citations
  - 88% (657) of all violation of park rules
  - 80% (1,759) of criminal trespass II
  - 80% (419) of open container
- An average of 3.4 Criminal Trespass II violations were issued to unhoused people each day (1,759 total)

#### **Additional Municipal Court Data**

- 222 unhoused individuals appeared on the June docket.
- 70% of these 222 unhoused individuals were cited at least once for Criminal Tresspass II;
  - 40% received a violation of park rules and for many, a restriction of use for parks as well;
  - 27% received one or more prohibited camping citation; and
  - 20% of these 222 were cited for open container.
- As of July 2019, 128 individuals had active Notices of Restrictions of Use for Parks, 87 of whom were banned from ALL park space for an ENTIRE YEAR.
- Virtually all of these notices were accompanied by a citation for violation of parks rules (64 citations) or for criminal trespass II (58 citations).
- 60% (133) of the unhoused on the June docket owe more than \$1,000 in fines to the City, 48 of whom owe more than \$5,000.
- When unpaid fines are turned over to a collections agency Municipal Court adds an additional 25% to the total outstanding amount. The collections agency also adds interest that accrues daily.<sup>31</sup>

#### **Camp Cleanup (“sweeps”) Data**

- 99% of camp sites were in obscure areas of parks or open spaces far away from foot traffic, residential areas or schools.
- In very few instances are work orders for camp cleanups initiated by complaints. This strongly suggests that in almost all instances Public Works employees are initiating these clean-up efforts simply by observing someone who they consider as camping or violating another park rule, without consideration for whether there is a health or safety threat to the camper or others.

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<sup>31</sup> One person shared with us that he was unable to pay an outstanding \$268 fine for a violation of park rules citation. As a result it was turned over to collections and he now owes more than \$800, which is entirely unaffordable based on his salary and amount he pays in monthly rent.

- ☐ Under 5% of work orders showed that belongings left behind were stored, almost all noted cleanup consisting of trash disposal only. As discussed in the Sweeps section in Part IV of this report, this directly contradicts the anecdotal information we have heard from numerous sources that state that people's valuable belongings often are discarded by Public Works.

### **Vehicle Impoundment Data**

- ☐ 17 vehicles each year were impounded in 2017 and 2018 for prohibited camping. These numbers do not include vehicles being used as shelter that were impounded for another violation that disproportionately impacts the unhoused, such as storage of a vehicle on the street, driving with a suspended license or driving uninsured.

### **Costs**

- ☐ Studies in other cities have shown that the cost of policing laws against the homeless is staggeringly high:
  - \$50 million per year in Los Angeles simply policing quality of life laws and \$87 million on law enforcement related to homelessness.<sup>32</sup>
  - \$20 million per year in San Francisco simply policing quality of life laws.<sup>33</sup>
  - \$30 million per year in Los Angeles in connection with sweeps.<sup>34</sup>
- ☐ Multiple studies conducted throughout the country have shown that, on an individual basis, it is cheaper to house people than enforce these laws.<sup>35</sup>
- ☐ In comparison, studies show annual savings of several thousands of dollars per person, and as high as \$20,000 by providing housing and support services.<sup>36</sup>
- ☐ Between January 1, 2018 and May 31, 2019 EPD responded to almost 500 complaints regarding prohibited camping alone. While fewer than one-third of these responses led to citations, each call is money spent policing people for being homeless.
- ☐ Given that approximately one quarter of all violations heard in Municipal Court are for quality of life violations, it is reasonable to conclude that over \$1 million of the \$5.1 million

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<sup>32</sup> HNH 2019 page 71, *citing* Gale Holland, L.A. Spends \$100 Million a Year on Homelessness, City Report Finds, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

<sup>33</sup> Infra, FN 61.

<sup>34</sup> Supra, FN 31.

<sup>35</sup> According to a study by the Vero Institute, for example, the average cost of incarcerating one person for a year is \$47,057. HNH 2019, pg 71.

<sup>36</sup> HNH 2019, pg 72, *citing*, "Ending Chronic Homelessness Saves Taxpayers Money," National Alliance to End Homelessness, February 17, 2017. [www.endhomelessness.org](http://www.endhomelessness.org).

dollar Municipal Court budget goes toward the adjudication and related costs for these violations.

- The annual cost of Eugene's 15 jail beds in Lane County Jail is over 10% of Municipal Court's annual budget.
- During the 17-month period we evaluated, we estimate that Public Works spent more than \$140,000 cleaning up homeless encampments.
- EPD is called and issues citations in approximately 50% of the camp cleanups, which adds additional personnel costs for each EPD visit.
- Between Public Works and Municipal Court alone, the City spends over 2,000,000 annually to enforce these quality of life laws, the vast majority of which are issued to the unhoused. This dollar amount does not include what likely is the largest percentage of total costs incurred involving the enforcement and adjudication of homelessness – EPD resources.

## Decriminalization efforts in other jurisdictions

- Of the cities we researched, 20 have taken measures to decriminalize homelessness by law or by enacting policies that suspend enforcement of certain laws. 15 of these cities are within the 9th Circuit.
  - San Francisco concluded that policing costs were out of control and counterproductive, and in response has redirected a significant portion of its enforcement expenses to services and housing for the homeless.<sup>37</sup>
- 12 lawsuits have been brought by unhoused individuals against municipalities that resulted either in injunctions against enforcement of sleeping or camping prohibitions, or court-ordered modifications to enforcement protocols.
- 4 of the 12 lawsuits also resulted in damages awards to the unhoused plaintiffs.
- 9 cities used declarations of homelessness states of emergency to suspend or amend zoning laws and/or reallocate funds in order to increase available shelter options. See Appendix A for a list of jurisdictions that have enacted such declarations.
- 1 city used its homelessness state of emergency to require that an available low-barrier shelter bed be offered, with transportation to it, before enforcing the camping ban.

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<sup>37</sup> The San Francisco Police Commission passed a resolution calling on City leadership to develop alternatives to a police response that "identif[ies] funding sources, appropriate dispatch protocol, necessary system changes and appropriate service model . . ." "Resolution for Effective Response to Homelessness and Complaints Regarding Presence of Homeless People," January 15, 2020.

<https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission011520-ResolutiononHomelessnessResponseDraft07JAN20.pdf>

### III. RECOMMENDATIONS FOR ORDINANCE AND POLICY CHANGES

Below are proposed ordinance and policy changes that provide an alternative and a more cost-effective approach to Eugene's current criminalization framework. Several recommendations include examples of other cities around the country that have a comparable ordinance or policy in place. All recommendations are of equal importance, whether or not there are noted corresponding ordinances and policies from [other cities](#).

#### Recommendations Applicable to All Quality of Life Violations In This Report:

1. At an absolute minimum, require a documented complaint before EPD is dispatched. Citations should not be issued based on EPD observation alone.<sup>38</sup>
2. When a complaint only involves a quality of life violation and there is no threat to public safety, before a citation may be issued:
  - o Written warning must be given.
  - o Trained outreach worker should be the first responder rather than EPD.
  - o Assist the individual in finding available, appropriate shelter and only issue a citation if the person declines shelter.
3. Establish an alternative complaint and dispatch system for quality of life complaints
4. Expand the forms of notice provided in addition to mail to include text and email so more people will have an opportunity to challenge an alleged violation by being informed of their court hearing.
5. Expand the geographical boundaries of Community Court.
6. Limit the circumstances under which the City Prosecutor can charge homeless people for committing quality of life laws; and dismiss existing cases, including outstanding warrants, where only a quality of life law is involved.
7. Train EPD personnel who respond to complaints about homeless people so they can educate the caller about the low crime rates among people who are unhoused in order to dispel stereotypes.
8. Limit penalties to a civil infraction, reduce maximum fine and offer alternatives to payment.
9. Until there is enough housing and shelter to meet the needs of the population experiencing homelessness, develop and implement a shelter-in-place hardship permit program to allow for temporary use of public land for the purpose of sleep and rest.

#### 4.815 Prohibited Camping

1. Limit hours of enforcement to daytime, such as between 7 AM and 9 PM.
  - o *Berkeley, Houston, Los Angeles, San Francisco, San Jose, Seattle, Tucson and Vancouver prohibit resting only during daytime hours.*

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<sup>38</sup> Eugene Police Policy 410 requires a prior complaint before issuing a citation to vehicle campers. 280 of the 298 prohibited camping citations issued during this 17 month time-period were complaint based, only 18 were based on EPD observation.

2. Limit places where camping is prohibited at all times, such as residential areas, within 15 feet of building entrances, near schools and the Downtown Activity Zone.
  - *Austin, Berkeley, Las Vegas, and Reno prohibit camping or resting only in designated areas.*
3. Require that notice be given before a citation may be issued, unless there is the threat of a severe health or safety concern.
  - *Many cities around the country require a warning first and time to move on prior to issuing a citation involving a sit/lie, camping or sleeping violation. Some examples include Atlanta, Boulder, Cincinnati, Charleston, Columbia (SC), Denver, Houston, Jacksonville, San Jose, Seattle, Tuscon.<sup>39</sup>*
  - *24-hour warnings are already required by EPD Policy 410 when habitation in vehicles is involved, unless there is a "prohibited camping" sign, a health threat or other illegal activity at the site.*
4. Require that a shelter bed be reserved for the individual before issuing a citation.
  - *Boise, Fresno, Glendale, Indianapolis, Orange County, Sacramento, Spokane must offer an available shelter bed before issuing a citation.<sup>40</sup>*
5. Amend [4.815](#), "Prohibited Camping," to exclude from the definition of "campsite" basic bedding such as a blanket or sleeping bag that provide essential protection from the cold and the rain.
6. Amend [4.815](#), "Prohibited Camping," by removing "vehicle" from the list of structures to allow car camping at any time of day as long as it is outside of any designated prohibited areas such as residential areas and the DAZ.
  - *49 out of 74 cities that we examined allow some form of vehicle habitation.*

#### [4.807 Criminal Trespass in the Second Degree](#)

1. When the property is not open to the public, require that notice must be posted or a warning given per the request of the property owner before a citation may be issued.

<sup>39</sup> See, e.g., Cincinnati "No person shall be cited under this section unless the person engages in conduct prohibited by this section after being notified by a law enforcement officer that the person is in violation of the prohibition of this section." [https://library.municode.com/oh/cincinnati/codes/code\\_of\\_ordinances?nodeId=TITVIIGERE\\_CH723STSIUSRE\\_S723-76SILYWIPURI-WPR](https://library.municode.com/oh/cincinnati/codes/code_of_ordinances?nodeId=TITVIIGERE_CH723STSIUSRE_S723-76SILYWIPURI-WPR)

<sup>40</sup> See, e.g., [Sacramento](#), "Persons may only be cited, administratively or criminally, for unlawful camping, pursuant to section 12.52.030, when the citing officer:

- i. Contemporaneously confirms that a shelter bed is available;
- ii. Confirms that there are no limitations to the person's initial and continued use of the bed;
- iii. Offers to transport the person to the location of the available shelter bed and the person rejects the offer; and
- iv. Finds that there is probable cause for the citation."

- *Most trespass laws outside of Oregon have requirements that the violator "knowingly" trespassed. Posted signs meet this knowledge requirement. See, e.g., [Everett, WA](#).*
- 2. Require officers to provide a list of up-to-date resources when responding to a trespass complaint.
- 3. Amend EPD Policy 411 so that Trespass Letters of Consent require an annual renewal, consistent with Lane County's policy.<sup>41</sup>

#### **4.190 Consumption or Possession in Unlicensed Public Places Prohibited**

1. Amend [4.190](#) to read that possession of "empty" cans or bottles is not evidence of consumption or possession of alcohol.
2. Reduce the penalty for a violation of [4.190](#) from a misdemeanor to a civil infraction and reduce the amount of the fine.

#### **4.707 Pedestrians**

1. Amend [4.990\(1\)](#) related to [4.707 "Pedestrians,"](#) to reduce the penalty from a misdemeanor to a civil infraction, and reduce the amount of the fine and offer alternatives to payment.
2. Specify daytime hours of enforcement only, between 7 AM and 10 PM.

#### **4.725 Disorderly Conduct**

1. Repeal all of [4.725\(d\)](#) regarding obstruction of traffic on a public way to avoid redundancy in the code, and so that the minor offense of blocking the sidewalk will not lead to "disorderly conduct" on a person's record.
  - *Obstructing streets and sidewalks is already prohibited by EC 5.130 (a civil infraction), obstructing a vehicle by ORS 814.040 (a civil infraction), and obstructing pedestrians by EC 4.707 (currently a misdemeanor).*

#### **Administrative Order 58-17-07 Parks Rules**

1. Reduce the penalty for a [parks rules violation](#) and/or a violation for a restriction of use from a misdemeanor to a civil infraction, consistent with prohibited camping.
2. Require at least 24 hour notice prior to issuing a citation.
3. Discontinue issuance of Criminal Trespass in the Second Degree for [parks rules violations](#) and violations of restriction of use.
4. Limit imposition of a restriction of use until after a third or subsequent [parks rules violation](#) has been issued, shorten the period of exclusion from park land (currently can be up to a

<sup>41</sup><https://lanecounty.org/government/county-departments/sheriff-s-office/frequently-asked-questions-and-answers/trespass-letter>

- year), limit exclusion to park in which current violation occurred, and consecutive violations must occur within a shorter period of time to be the basis of a restriction of use.
5. For people given a notice that restricts their future use of parks, allow a request for a hearing to be made in person. A written request should not be the only avenue to contest a restriction of use. Allow the person to make the request directly with the City official or EPD officer who issues the notice. A time and location for the hearing should be provided at the same time the request is made.
  6. Allow a person attending a hearing involving a restriction of use of parks to be accompanied by another person, such as a lawyer, advocate, friend/family or other companion.

## Impoundments of Vehicles

1. Amend [4.990\(8\)](#), willful violation of [4.815](#) for car camping, to reduce the penalty from a misdemeanor to a civil infraction, and reduce the amount of the fine and allow alternatives to payments.
2. Amend 5.698 "Hearing to Contest Validity of Impoundment" and Administrative Order No. 56-01-01-F "Amendment of Vehicle Impoundment Notice and Hearing Procedures," to (i) extend the five day window within which a person must request a hearing in person at Municipal Court; and (ii) provide notice of the procedures to request a hearing *before* the vehicle is impounded for prohibited camping consistent with the notice requirement for vehicles that violate E.C. 5.135 – Storage on the Streets.
3. Amend impoundment procedures to require that an outreach worker or outreach team respond when warning notices are issued to help connect the individual to services and possible housing options.
4. Require at least 72 hours warning rather than the current 24 hour notice to give people adequate time to work with a service provider and identify an alternative solution.
5. Amend 5.231, "Prohibited Parking -- Immobilization of Prohibited Vehicles Involved," so vehicles are not subject to impoundment for \$30 in overdue fines. At a minimum, the threshold amount should be increased.
6. Ensure that accurate information is conveyed as to the location where the vehicle will be held. Accurate information, including the full name of the tow yard with complete address and phone number, must be on the notice as well as shared with the parking department immediately in case the vehicle owner calls the number provided on the notice.

## Encampment Protocols

1. Provide at least 72-hour notice prior to a camp closure.
  - *Denver, Indianapolis, Puyallup WA, Seattle. Several cities have notice periods longer than 72 hours and as long as 2 weeks.*
2. Establish clearer guidelines for handling property and revise the definition of what constitutes property to reduce the incidence of valuable items getting disposed of.

- *Charleston WV, Los Angeles, Portland OR, Roseburg, Seattle*
- 3. Per the general recommendations at the beginning of this Part III, outreach workers, rather than EPD or Public Works employees, should be the first responders to an encampment. An alternative option is for a team comprised of outreach workers, along with specially trained EPD officers and/or Public Works employees to make the initial contact and assist residents with alternative shelter options and needed services.
  - *Charleston SC<sup>42</sup>, Charleston WV, Indianapolis, San Francisco, Seattle WA<sup>43</sup>.*
- 4. Transportation to services and shelter must be provided.
  - *Charleston WV, Tampa FL*
- 5. An encampment resident can remain on site until shelter or another solution is made available.
  - *Charleston WV, Indianapolis*
- 6. Establish a grievance process for a camper to challenge the adequacy of alternative shelter provided.
  - *Orange County, Sonoma County*
- 7. Once Public Works has cleaned an encampment deemed a health and safety risk, allow people to move back in if alternative shelter is not available.
  - *Denver*
- 8. Institute encampment best practices pursuant to the U.S. Interagency Council on Homelessness 2015 guidance document, "Ending Homelessness for People Living in Encampments: Advancing the Dialogue;"<sup>44</sup> and the National Law Center on Homeless & Poverty Encampment Principles and Best Practices.<sup>45</sup>

## IV. SPECIFIC LAWS

This Part IV summarizes the relevant laws that are the subject of this report, highlighting the scope and problems with each.

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<sup>42</sup> USICH Ending Homelessness for People Living in Encampments: Lessons Learned from Charleston, SC, August, 2017. [https://www.usich.gov/resources/uploads/asset\\_library/encampment-case-study-charleston.pdf](https://www.usich.gov/resources/uploads/asset_library/encampment-case-study-charleston.pdf).

<sup>43</sup> USICH Ending Homelessness for People Living in Encampments: Lessons Learned from Seattle, WA, August, 2017. [https://www.usich.gov/resources/uploads/asset\\_library/encampment-case-study-seattle.pdf](https://www.usich.gov/resources/uploads/asset_library/encampment-case-study-seattle.pdf).

<sup>44</sup> Supra, FN 16; USICH, "Caution is Needed When Considering Sanctioned Encampments or Safe Zones," 2018.

<sup>45</sup> Nat'l Ctr on Homelessness & Poverty, Tent City, USA: The Growth of America's Homeless Encampments And How Communities are Responding 42-43 (2017). [https://nlchp.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf)

## 4.815 Prohibited Camping

The ordinance that most blatantly punishes the homeless in Eugene is its prohibited camping ban. The statute prohibits setting up or remaining at a campsite on public property, defining “campsite” as any site intended as a temporary residence. The presence of a blanket or other bedding materials, a heater or a fire is sufficient to meet the statute’s definition of a temporary residence. The violation is a civil infraction, punishable by a fine of \$200.

While the ordinance does not explicitly ban sleeping on public property, in essence it does because if the individual has a blanket or sleeping bag to stay warm, he or she is in violation. Furthermore, the ordinance bans using a structure such as a tent or a vehicle as a temporary residence. The presence of bedding materials inside the structure indicates that it is being used as a temporary residence. Therefore, while a housed person may legally sleep in a car, an unhoused person may not if a blanket or their belongings are in the car with them.

Recently, the Ninth Circuit Court of Appeals ruled in *Martin v. Boise* that prosecuting homeless people for sleeping on public property is a violation of their Eighth Amendment rights.<sup>46</sup> The Supreme Court of the United States affirmed this decision in December 2019 as they denied a petition by the City of Boise to review the Ninth Circuit’s ruling. The Court declared that sleeping is an innocent act, a consequence of being human, and sleeping in public is an innocent act, a consequence of being human and homeless. Therefore, to prosecute sleeping in public, when individuals have no other available options, constitutes cruel and unusual punishment. While Eugene is in the Ninth Circuit and is subject to the ruling, Eugene’s leaders have continued to allow the imposition of fines for sleeping on public property on the grounds that the \$200 penalty is not a criminal sanction. This criminal versus civil distinction, however, is not supported by the *Boise* ruling. The court in *Boise* focused on the punishment of people due to their unavoidable status as the violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment, not whether the punishment is criminal. Arguably the use of the word “criminal” by the Court is because the ordinances central to this case were misdemeanors. Moreover, there is established case law that clearly states that the Eighth Amendment’s prohibition on punishing an involuntary act or condition does not apply solely to criminal cases.

The futility of issuing a \$200 fine to an indigent, unhoused person is painfully obvious -- the money will never be collected. That futility, added to the inhumaneness of punishing innocent conduct as well as the possible constitutional violation, has led many other cities to either change their laws or cease enforcement of them. For example, many cities now [allow camping at night](#).

Between January 1, 2018 and May 31, 2019, there were 310 citations issued for Prohibited Camping in Eugene, only 14 of which were not prosecuted. Our data suggests that prohibited camping citations are only issued to unhoused people. Indeed, by its nature, the prohibited camping ordinance targets the homeless, since housed people have no need to sleep on public property. As discussed in the Executive Summary, every temporary shelter option in Eugene is full and has a waitlist, and there are over 1,000 people at any given time who are without any form of shelter.

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<sup>46</sup> Martin v. City of Boise, 920 F.3d (2019).

Therefore, the unhoused have nowhere else to go except public property, so the ordinance creates a nightly hide-and-seek existence for unhoused individuals, yet solves nothing.

One middle-aged unhoused woman shared that since late December she has gone to the Mission every single day in hopes of getting into their shelter services for women. She remains on the wait-list and in the meantime, to try to stay safe and to avoid getting citations, which she knows will make it more difficult for her to get back into housing, she tries her best to locate her tent in tucked away places and moves frequently. Another woman spoke about how she has received several tickets and is so fearful of getting another one that she is always on the move. As a result, she is unable to find any kind of employment.

#### 4.807 Criminal Trespass in the Second Degree

Another ordinance that disproportionately impacts the unhoused is Criminal Trespass in the Second Degree (CTII). In the same way the Prohibited Camping ordinance bans sleeping on public property, CTII prohibits sleeping or remaining on private property. The ordinance criminalizes unlawfully entering or remaining on premises or in a motor vehicle. The crime is a misdemeanor, punishable by a fine of \$500, up to 30 days in jail, or both.<sup>47</sup>

CTII authorizes officers to remove people from private property. The statute does not require a warning from an officer or from the owner when the property is not open to the public. It also does not require that the individual be engaged in any other disturbance or criminal activity; it is simply a person's presence that is criminalized. Therefore, being in an empty parking lot, causing no damage and bothering no one, is a crime. The ordinance disproportionately impacts the homeless since they are the population with no place of their own to sleep or to exist. Between January 1, 2018 and May 31, 2019, 2,518 citations for CTII were issued in Eugene, only 320 of which were not prosecuted. Our data analysis suggests that over [80% of CTII violations are by unhoused individuals, and arrests are made in about 30% of cases.](#)

The CTII ordinance itself does not require a complaint before an arrest is made or a citation is issued. Officers can cite or arrest someone based solely on observation and even if an owner has no problem with the individual's presence on the property. However, according to Eugene Police Policy 411, Eugene Police are not supposed to enforce the ordinance without a prior complaint and the owner's pledge to prosecute and testify against the violator. An actual complaint is not necessary, simply having a Trespass Letter of Consent on file with EPD is sufficient for police to take action.<sup>48</sup> By filing a letter with police, owners also must consent to prosecute all trespassers. It is likely that some property owners who sign letters of consent do not understand that this gives police the unilateral power to cite and move people without the owner's approval and that they may be compelled to cooperate with police anytime the district attorney pursues a prosecution. The Eugene Trespass Letters of Consent remain active indefinitely as there is no renewal requirement.

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<sup>47</sup> The City Prosecutor has the discretion to reduce CTII to an ordinance violation with a lesser penalty.

<sup>48</sup> <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4336>. Trespass Letters of Consent are statements by owners authorizing police to remove people from their property anytime they are found trespassing, without a specific complaint by the owner.

Recently, the City of Eugene passed an ordinance giving property owners control over planter strips adjacent to their property.<sup>49</sup> Prior to the passage of this new ordinance, the section of land between the sidewalks and the streets was owned and controlled by the City. Now, this section of the ground is considered private property for purposes of CTII. Therefore, if someone is found sleeping on a grassy area in between the street and sidewalk, he or she will no longer receive a mere citation for the civil infraction of prohibited camping, but may be arrested for the misdemeanor of CTII.

## Park Rules (Administrative Order 57-17-07-F)

**Prohibited Activities:** There are multiple prohibited activities in Eugene parks that disproportionately impact the unhoused, including (i) the use of any temporary structure or enclosure, including sleeping bags, tents, or canopies without permission from the City; (ii) presence in parks between 11 pm and 6 am unless authorized by the City Manager; (iii) unauthorized vehicles after closure (subject to citation and towing); (iv) smoking (banned everywhere within park boundaries); and (v) engaging in an activity that is “disruptive or incompatible with the appropriate use . . . or which interferes with the reasonable use and enjoyment . . . by others,” and this includes “picnic tables or picnic shelters for reasons other than their intended use.” Obviously this last prohibition is incredibly broad and could be used against people even sitting at a picnic table or sitting under a shelter during the rain, especially if they appear to be unhoused. These prohibitions together can be used to essentially exclude unhoused people from the thousands of acres of park space that Eugene has to offer.

**Violations of park rules process:** Violation of park rules is not a complaint-based process, rather, the violation just needs to be observed by authorized City personnel or EPD. City personnel have the authority to issue a Notice of Violation of Park and Open Space Rules (Notice of Violation) upon the first encounter with a person, there is no requirement to issue a verbal or written warning first. In the event the unhoused person is given a verbal request to leave the premises and fails to comply, or if the person already has another Notice of Violation, City personnel have the authority to arrest the person for CTII and contact EPD. Moreover, if someone already has a Notice of Violation, City personnel can issue a Notice of Restriction of Use (Restriction of Use), which excludes a person from all park space for at least one month and up to one year. It just takes a second Notice of Violation, regardless of severity. If a police officer observes a person allegedly violating a park rule, the officer can arrest the person without any warning or he/she can issue a citation for CTII, even if it is the person’s first violation of a park rule.

**Punishment:** The punishment for violating a park rule includes a fine up to \$500 and/or 30 days in jail. Between January 1, 2018 and May 31, 2019, there were 1,150 citations for Notice of Violation in Eugene, 48 involved arrests and 747 of which were prosecuted. Our data analysis suggests that over [88% of all Notice of Violations are issued to unhoused individuals](#). In addition, among the vast majority of Notice of Violation citations that were prosecuted, any instance where a person failed to appear for their scheduled hearing would mean the person would be guilty of a misdemeanor by default and there could be a warrant for the person’s arrest. This is particularly problematic since the initial violation notice simply states that a complaint may be filed in Municipal Court, whether

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<sup>49</sup> Ordinance No. 20618, amending E.C. 7.370, “Sidewalks – Owners to Fill Ground Between Curb and Sidewalk,” June 25, 2019.

the person receives the actual citation with the exact date and time of his/her court hearing is unpredictable. EPD is responsible for serving the defendant, which is virtually impossible when someone is moving from place to place to be safe and avoid citations unless it is given to the person at the time the violation occurs.

*Restriction of Use:* For individuals given a Restriction of Use, the hearing and appeal process lacks procedural due process, making it so onerous it is practically impossible for someone to challenge. First, in order to have a hearing to challenge a Restriction of Use, the person must make a request in writing within 48 hours of receiving the Notice of Restriction of Use at a location specified on the notice. Second, at the hearing the Director can exclude anyone from the hearing unless such other person is presenting testimony. This means the person cannot have a friend or advocate accompany them for support and arguably means an attorney could be excluded. Making a person appear alone can be very intimidating and becomes yet another barrier to seeking a hearing in the first place. Finally, the exclusion takes effect immediately and is not stayed pending a person's appeal. Therefore, even if a person's exclusion is found to be invalid, they have been deprived of their right to use any park space throughout Eugene while the appeal was pending.

Following the hearing, the Director's decision must be delivered or mailed to the person. This presents yet another obvious barrier for people who are unhoused. Many people are difficult to find and mailing is futile. We were unable to obtain records that would reveal how often people request an informal hearing, and how often people challenge the Director's decision and appear in Municipal Court. Based on anecdotal information shared by people who are unhoused and by homeless advocates, it is exceedingly rare for someone to request a hearing and no one had heard of someone challenging the Director's decision in Municipal Court. When the stakes for violating a park rule are so high -- an unaffordable fine of \$500, possible jail time and banishment from all park land for as long as one year<sup>50</sup>, the hearing and appeal process must be more accessible for the unhoused.

*Modification of the rules:* Fortunately, there is hope that these rules can be modified to better protect the well-being of the unhoused and reduce the costs incurred by the City. Under this administrative order the City Manager has the authority to amend any rule and the Executive Director of the Public Works Department has the authority to adopt rules regulating Parks and to temporarily waive any rule.

Without their own space to exist, and with no available shelter space, the unhoused must either exist on public property or private property. Existence itself, for the unhoused, means violating park rules, the CTII ordinance or the prohibited camping ordinance. These three ordinances, working together, essentially punish the homeless for existing anywhere in Eugene.

#### **4.190 Consumption or Possession in Unlicensed Public Places Prohibited**

Another ordinance that disproportionately impacts the unhoused is known as "Open Container." The statute criminalizes both the mere possession of an open alcoholic beverage container in a

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<sup>50</sup> The first restriction excludes the person from all park space for one month, the second for three months and the third for one year.

public place and also the consumption of an alcoholic beverage in a public place. The crime is a misdemeanor, punishable by a fine of \$500, up to 100 days in jail, or both.<sup>51</sup>

The ordinance unfairly targets those who do not have a home in which to socialize and drink. Furthermore, anyone who is collecting or transporting empty cans or bottles in order to redeem their deposits is in violation of the statute. Between January 1, 2018 and May 31, 2019, there were 589 citations for Open Container in Eugene, only 65 of which were not prosecuted. Our data suggests that over 80% of Open Container violations are by unhoused people, and arrests are made in about 13% of cases. The statute punishes the unhoused for behavior that housed people do every day merely because they do not have four walls to hide behind.

#### **4.725(d) Disorderly Conduct—Obstruction**

EC 4.725(d) criminalizes the obstruction of pedestrian or vehicular traffic on a public way either with the intent of causing public annoyance or inconvenience, or recklessly creating the risk of public annoyance or inconvenience. The crime is a misdemeanor, punishable by a fine of \$1,000, up to 100 days in jail, or both.

The ordinance unfairly targets the homeless because they are the population with the greatest need to rest on public sidewalks, since they have no other place to go to rest or put down their belongings. Obstructing streets and sidewalks is already prohibited by EC 5.130 – Obstructing Streets, which is a civil infraction, and obstructing a vehicle is prohibited by ORS 814.040, also a civil infraction. Given such significant legal consequences, it is excessive to issue a disorderly conduct citation to an individual for sitting on a sidewalk simply because the act has the potential to annoy or inconvenience someone else. While this is not one of the quality of life violations that is the focus of this report, it is included because of the severity of the punishment. It arguably constitutes cruel and unusual punishment in violation of the Eighth Amendment, both because of the criminal component and because the fine is “grossly disproportionate to the gravity of the offense,”<sup>52</sup> particularly here where the offense pertains to one’s status rather than conduct.

#### **4.707 Pedestrians**

EC 4.707 criminalizes blocking or interfering with the free flow of pedestrian traffic on sidewalks, as well as blocking pedestrian and vehicular entrances to public or private property, by standing or by placing items in the way. The crime is a misdemeanor, punishable by a fine of \$1,000, up to 100 days in jail, or both.

Just like EC 4.725(d), the ordinance unfairly targets the homeless because they are the population with the greatest need to rest on public sidewalks. The penalties for the violation are shockingly excessive for such innocent conduct and, as such, arguably violate the Eighth Amendment. Furthermore, as discussed in the preceding section, obstruction of streets and sidewalks is already prohibited by EC 5.130, which is a civil infraction.

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<sup>51</sup> The City Prosecutor has the discretion to reduce Open Container to an ordinance violation with a lesser penalty.

<sup>52</sup> United States v. Bajakajian, 524 U.S. 321 (1998) at 324.

## Vehicle Impoundments

There are two principal ways a vehicle that is being used for shelter typically is impounded: (1) willful violation of the prohibited camping ordinance, “EC 4.990(8) Penalties – Willful Violation of Prohibited Camping,” or (2) EC 5.135 Storage of Vehicles on Streets.”

### **4.990(8) Penalties—Willful Violation of Prohibited Camping**

Under EC 4.815, “Prohibited Camping,” when the violation involves camping in a vehicle, and consists of a second or subsequent offense within 30 days, it is a “willful violation.” The crime is a misdemeanor, punishable by a fine of \$500, up to 10 days in jail, or both, as well as the impoundment of the vehicle. Although Eugene offers a car camping program, as explained in the Executive Summary, there are twice as many people on the waitlist as there are spots and it takes months to move off the waitlist to a legal space. Many unhoused people have lost their homes but have not lost their vehicles or all their belongings. Without an available, legal place to park, they are at risk of losing everything every night under this ordinance.

According to EPD Policy 410, EPD only deals with a vehicle camping if a complaint is made and a warning notice is issued. SVdP, as the City’s contract facilitator, receives a daily list of complaints from EPD and is responsible for issuing the initial 24-hour warning notice. If the vehicle is not moved within 24 hours, the person becomes a willful violator and is subject to impoundment as well as arrest. Or, if the vehicle is found to be in violation again within 30 days of a warning notice, the camper becomes a willful violator and is subject to immediate impound with no 24-hour notice. In addition, the car can be impounded without notice and the person can be arrested if a prohibited camping sign exists, whether or not it is easily visible and readable.

Under Policy 410, if a car is impounded, the officer must give a copy of the impound report to the person if they are present, otherwise, the report with pertinent information about the location of the vehicle and how to contest the validity of the impoundment is mailed to the registered owner of the vehicle. There are several problematic aspects to this process, particularly for people whose only shelter option is their vehicle. The accumulation of fees, which include a daily fee of almost \$100 charged by the tow yard, makes recovery of the vehicle impossible for many people after just a few days. Even when someone can come up with enough money, in many instances, the person who owns the vehicle is not the registered owner. Often the seller does not transfer title to the buyer due to the cost and so there is no way for the new owner to receive timely information about the impoundment. Failure to demonstrate proof of ownership also means that the alleged violator is barred from accessing the vehicle at the tow yard.

We have heard many stories of people losing their only identification and proof of purchase because they cannot access their vehicle at the tow yard. People’s medications, life’s most important documents and cherished possessions are also lost when the tow yard will not allow people to access their vehicles. One single mother was prohibited from accessing her family’s needed belongings by the tow yard because she could not afford to pay the fine and accrued tow yard fees. It was only with the financial assistance of a local nonprofit that she was able to recover her vehicle, the only shelter she could provide her two daughters.

Moreover, based on anecdotal information shared with us, people often are not at their vehicle when it is towed and since the notice to contest the validity of the impoundment is only mailed after the vehicle is impounded, people have no way of easily finding out what happened to their vehicle

and often have no idea that they can request a hearing in Municipal Court. There is a short window of time in which someone must appear in Municipal Court to request a hearing, which can be difficult for a person who just lost their only shelter, mode of transportation and all their belongings. Their immediate priority is to secure new shelter and essential items.

One woman whose vehicle was towed for living inside of it was given incorrect information from the parking department, and it took multiple calls over two days to obtain accurate information, including the correct name of the tow yard. By the time she figured out where her vehicle was located it was too late in the day to pay the fine required before being able to recover the vehicle. The situation was worsened by the fact that it was a Friday so two more days elapsed before she could recover her vehicle. Given the \$90 daily storage fee charged by the tow yard, by Monday morning she could no longer afford to pay the accumulated fines. The failure to communicate correct information in a timely way can have devastating consequences for people in this situation.

### **5.135 – Storage of Vehicles on Streets**

People living in their vehicles also are cited under another section of the Eugene Code – “5.135: Storage of Vehicles on Streets.” Under this ordinance it is a violation for a vehicle to be parked in the same location for more than 72 hours. To break the continuity of time, the vehicle must be removed from the block before it can be returned. It is not enough to merely move it to a different spot on the same block. While we were unable to obtain the number of vehicles belonging to unhoused people that were impounded pursuant to this section of the Code, we have heard from several people directly who have been cited and vehicles impounded under this code provision. Based on the stories we have heard, a few people did not receive a notice of the right to a hearing to contest the validity of the impoundment before the vehicle was impounded, which is required under state law as well as Eugene’s code. We also are aware of at least one person who moved the vehicle from the block as required by the ordinance but was cited and her vehicle was impounded nonetheless after she returned and parked it elsewhere on the same block.

### **Encampment Cleanups and Closures**

When a homeless individual’s tent or other form of temporary shelter is found in Eugene City Parks and Open Spaces or on other public property, a work order is created by Public Works that lists the actions taken, including issuance of a 24-hour notice, storage of any items, and the cleanup itself. Between January 1, 2018 and May 31, 2019, there were 2,135 work orders created for homeless camps.<sup>53</sup> Each individual tent or shelter is treated as its own campsite, with separate notices issued and separate work orders created for each structure. In other words, when a campsite has more than one tent, a separate 24-hour notice is issued for each tent. Based on our examination of a random sample of 100 of the 2,135 work orders created, we learned the following:

- Only three sites had multiple tents or structures grouped together.<sup>54</sup>

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<sup>53</sup> 2,135 digital copies of work orders for homeless camp cleanups/notices received from Eugene City Public Works Department, August 9, 2019.

<sup>54</sup> This appears to contradict actual practice as we have heard from numerous sources that it is common among those who are unhoused to camp together in small groups.

- Ninety-nine out of the sample 100 work orders involved camp sites found in obscure or hidden areas of parks or open spaces—nowhere near foot traffic, residential areas, schools or playgrounds.
- Only three work orders were complaint-driven, the rest were issued based on observation by a Public Works employee.
- Only four work orders from the sample showed that belongings left behind had been saved and stored after cleanup.<sup>55</sup>
- Almost all of the work orders noted a cleanup consisting of trash disposal only.
- 1,131 citations for Notice of Violations were issued during this time period, 728 of which the Eugene City Prosecutor charged as a crime and prosecuted.<sup>56</sup> Since Parks and Public Works employees do not issue citations,<sup>57</sup> the data suggests that in about half of all cleanups a person is not only forced to leave their camp site, they also are issued a parks violation citation by EPD.

Contrary to the story that these work orders convey, we have heard from numerous people, both unhoused individuals and advocates who work closely with the unhoused, that in practice campers often only are given a few hours following a 24 hour notice or no notice at all to relocate. We also have heard that people's essential belongings, including tents, tarps and sleeping bags, frequently are discarded rather than stored as required pursuant to stated policy. This suggests that at least some of the work orders that note trash disposal only are discarding people's valuable belongings. We learned of a group of people who were forced to move without any notice and when they returned to collect their belongings many items were gone and the remaining ones were mangled beyond use.

One woman talked about the many citations she received and how often she was forced to move due to camp closures/cleanups. As a result, she stayed in an abusive relationship because she was scared and did not know where to go on her own without being forced to leave.

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<sup>55</sup> Two of these four also involved the campers' arrests.

<sup>56</sup> Email from Eugene City Prosecutor, August 8, 2019.

<sup>57</sup> Telephone conversation with a Parks Ambassador, July 1, 2019.

## V. COSTS OF CRIMINALIZATION

The ineffectiveness of criminalization could be easy to overlook if not for its staggering costs; fruitlessly criminalizing homelessness is a tragic waste of money. The millions of dollars that currently fund enforcement in Eugene could be redistributed to less expensive housing and shelters that legitimately and effectively solve Eugene's homelessness. Furthermore, decriminalizing Eugene's laws that disproportionately impacts people who are homeless for their status protects the City against costly lawsuits involving the infringement of the rights of the unhoused.

### **Cost of Enforcement**

Not enforcing quality of life laws against people because of their unhoused status plainly is less costly than enforcing them. There are administrative costs just to process these citations through the various points in the system; costs to run municipal court, which has an overwhelming number of defendants in part due to the number of unhoused cycling through the system; costs to EPD; and costs to our jail system, to name a few. A study by Seattle University estimated that the City of Seattle spends \$2.3 million over five years enforcing only one of its six quality-of-life laws.<sup>58</sup> Another study by University of Denver's Sturm College of Law reported that Denver spent \$742,790 enforcing only 5 quality-of-life laws in 2014.<sup>59</sup> A study on homelessness in Los Angeles reported that the City spends over \$50 million a year just on policing homelessness, which does not include adjudication and incarceration,<sup>60</sup> and \$30 million each year on sweeps.<sup>61</sup> In 2015, San Francisco spent \$20.6 million just on policing the homeless.<sup>62</sup> The City has since redirected its effort to invest more money toward more effective solutions to homelessness, such as housing.<sup>63</sup> Now, San Francisco Police generally only respond to complaints of homeless people sleeping or camping when there is a life-threatening emergency or a crime in progress.<sup>64</sup>

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<sup>58</sup> Howard, Joshua and David Tran, *At What Cost: The Minimum Cost of Criminalizing Homelessness in Seattle and Spokane* (2015). <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1000&context=hrap>. The Seattle data is based on an analysis of the Pedestrian Interference ordinance. It also estimated that Spokane spends \$1.3 million over five years enforcing six of its eight quality-of-life laws. This study defined quality of life laws as those that "discriminatorily target, are selectively enforced against, or disproportionately affect people experiencing homelessness."

<sup>59</sup> Adcock, Rachel A., et al., *Too High A Price: What Criminalizing Homelessness Costs Colorado*, February, 16, 2016. <https://www.law.du.edu/documents/homeless-advocacy-policy-project/2-16-16-Final-Report.pdf>

<sup>60</sup> Santana, Miguel A., *Homelessness and the City of Los Angeles* (2015). <https://www.documentcloud.org/documents/1906452-losangeleshomelessnessreport.html>

<sup>61</sup> Supra, FN 31.

<sup>62</sup> Campbell, Severin, Latoya McDonald and Julian Metcalf, *Homelessness and the Cost of Quality-of-Life laws* (2016). <http://2zwmzbocl625qdrf2qqfok-wpengine.netdna-ssl.com/wp-content/uploads/2016/06/Budget-and-Legislative-Analyst-Report-Quality-of-Life-Infactions-and-Homelessness.052616-1.pdf>. Study covers violations for 35 ordinances.

<sup>63</sup> Johnston, TJ, *The Cost of Criminalizing Homelessness* (2016). <https://www.streetsheet.org/?p=2091>

<sup>64</sup> <https://www.sanfranciscopolice.org/get-service/homelessness>.

At \$33.2 million, the cost of Eugene Police Patrol is the third largest portion of Eugene's 2019 budget.<sup>65</sup> Between January 1, 2018 and May 31, 2019, Eugene Police responded to 474 complaints involving prohibited camping alone, which does not include all of the other quality-of-life laws that are the basis of so many complaints against the unhoused, such as criminal trespass II.<sup>66</sup> Thanks to EPD's generous and diplomatic policing, fewer than one-third of those responses led to citations.<sup>67</sup> Regardless, each of those 474 calls to service is money spent policing homelessness.

Approximately one quarter of violations on the Eugene Municipal Court docket are for quality-of-life citations, the vast majority of which go to the unhoused.<sup>68</sup> Municipal Court's budget this year is \$5.1 million, which translates to an approximate \$1.27 million for quality-of-life citations.<sup>69</sup> Part of the total Municipal Court budget is the cost of Eugene's 15 jail beds in Lane County Jail, at \$644,000 a year.<sup>70</sup> Reducing these costs by modifying laws and policies that unnecessarily punish people for being unhoused would result in a significant cost savings for Eugene and its taxpayers.

The costs to the City, and therefore tax-payers, involving encampment cleanups and closures are not insignificant either. Between January 1, 2018 and May 31, 2019, Public Works employees spent an estimated 2,508 man-hours at an estimated \$141,187 to clean up homeless people's campsites and issue 24-hour warnings of cleanups.<sup>71</sup> As noted in Part IV of this report, given the number of citations for parks violations issued, and the number charged as a crime and prosecuted, the real costs are significantly higher. For instance, there are the EPD man-hours involved in responding to camp sites to issue citations.<sup>72</sup> There also are Municipal Court costs for all the citations that were prosecuted in Municipal Court (Approximately one third of work orders involved a citation and prosecution in Municipal Court.).

A recent analysis of participants in the Frequent User System Engagement (FUSE) Program indicates a 75% decrease in Eugene Municipal Court citations among people in the FUSE program, along with an 82% decrease of arrests and 50% reduction in jail time. Programs such as FUSE and

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<sup>65</sup> <https://www.eugene-or.gov/1619/Budget-Facts-at-a-Glance>.

<sup>66</sup> Report from Eugene Police Department: Calls to Service for E.C. 4.815 Prohibited Camping, January 1, 2018 – May 31, 2019.

<sup>67</sup> Calls to Service report from EPD compared against Eugene Municipal Court list of citations for E.C. 4.815 Prohibited Camping, January 1, 2018 – May 31, 2019.

<sup>68</sup> Analysis of the Eugene Municipal Court docket the week of July 12 – 16, 2019 revealed that 28% were quality-of-life citations.

<sup>69</sup> <https://www.eugene-or.gov/1619/Budget-Facts-at-a-Glance>.

<sup>70</sup> Stone, Cheryl, *Grant Notification: 2016 Community Court Program* (2016). As of August 20, 2019: <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4694>.

<sup>71</sup> The average number of man-hours for a work order for a cleanup (1.175) was determined by averaging the man hours from a random sample of 100 work orders out of the total 2,135 work orders received from the City for the time period. The cost per man hour was calculated by finding the average Public Works employee salary based on the department's FTEs and total 2019 personnel budget <https://www.eugene-or.gov/DocumentCenter/View/42491/FY19-Adopted-Budget?bidId=>.

<sup>72</sup> Telephone conversation with a Parks Ambassador, July 1, 2019.

others elsewhere in the country demonstrate a cost savings when people have access to the services needed to overcome barriers and transition to a more stable situation.

## Cost of Housing

A multitude of studies have proven that providing individuals with permanent supportive housing is cheaper to a municipality than allowing the person to remain on the streets, cycling through shelters, jails and emergency rooms.<sup>73</sup> Based on studies that have broken out the specific costs to cities of enforcing quality-of-life laws, the cost of criminalizing homelessness alone, from policing to adjudicating to incarcerating—excluding the costs of healthcare and other services—is still more expensive than providing permanent supportive housing. For example, a study in Osceola County, Florida reported that the total cost of all of the bookings and jail stays for their 37-person cohort of unhoused frequent offenders in 2013 was \$641,791, or an average of \$17,345 per person.<sup>74</sup> Providing a year of permanent supportive housing in Central Florida, on the other hand, costs an average of \$10,051 per year per individual.<sup>75</sup> This means a potential savings of \$7,000 through housing instead of criminalizing.

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<sup>73</sup> Hunter, Sarah B., Melody Harvey, Brian Briscombe, and Matthew Cefalu, *Evaluation of Housing for Health Permanent Supportive Housing Program, Santa Monica, Calif.*: RAND Corporation, RR-1694-BRC, 2017.

[https://www.rand.org/pubs/research\\_reports/RR1694.html](https://www.rand.org/pubs/research_reports/RR1694.html) (compilation of 17 different studies comparing the costs of homelessness against the costs of providing permanent supportive housing are evaluated and summarized).

<sup>74</sup> Shinn, Gregory A., *The Cost of Long-Term Homelessness in Central Florida: The Current Crisis and the Economic Impact of Providing Sustainable Housing Solutions* (2014). <https://shnnny.org/uploads/Florida-Homelessness-Report-2014.pdf>. The 37-person cohort comprised of the unhoused people who were the county's most frequent offenders of quality-of-life laws.

<sup>75</sup> *Id.*

## VI. DECRIMINALIZATION: PRACTICES IN OTHER CITIES

Based on our research through November 19, 2019, over the last four years fourteen cities have changed their laws to better accommodate homeless rights. These cities have decriminalized homelessness through a range of legislative and administrative actions, such as reducing penalties and eliminating jail sentences, opening up areas to overnight sleeping, allowing car camping in certain locations, lengthening warning notices before sweeps, and reforming protocols for storing people's belongings.<sup>76</sup> In addition, since the *Boise* decision in 2018, an additional six cities have changed their police policies, modifying policies in connection with the enforcement of their sleeping bans. Almost all of the cities that have decriminalized their laws in recent years initiated changes proactively rather than waiting to act in response to a costly lawsuit.

### Examples of Recent Code Changes

CITY	DATE	ACTION	ACHIEVEMENT	SOURCE
Austin	2018 June	Passed Resolution	Directs the city manager to review and seek input on ordinances that criminalize homelessness and "create barriers for people who are trying to obtain housing or employment."	<a href="#">View Resolution</a>
Austin	2019 June	Amended Laws	Allows camping in public areas, as well as sitting and lying down in the downtown area, unless it causes a health or safety threat or renders the area impassable.	<a href="#">View Ordinance</a>
Charleston, WV	2017 Jan	City Council Policy	Encampment ordinance enacted provides longer notice, establishes closure procedures and process for cataloguing personal items, requires involvement of outreach workers and transportation to shelter, and allows people to remain on site if no alternative shelter is available.	<a href="#">View Ordinance</a>

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<sup>76</sup> *Id.*

CITY	DATE	ACTION	ACHIEVEMENT	SOURCE
Denver	2017 May	Amended Law	Recognizing that quality of life violations disproportionately impact vulnerable populations, reduced penalties to no fines and a maximum of 60 days of jail time.	<a href="#">View Ordinance</a>
Florence	2018 Sep	Amended Law	Allows camping on public property, but not private.	<a href="#">View Ordinance</a>
Fresno	2018 Oct	Amended Law	Prevents enforcement of the sleeping ban unless a bed at a low-barrier shelter or other facility has been confirmed and offered.	<a href="#">View Ordinance</a>
Glendale AZ	2018 Oct	Amended Law	Prevents imposition of criminal sanctions against people sleeping outdoors on public property when no alternative shelter is available to them.	<a href="#">View Ordinance</a>
Indianapolis	2016 Feb	Amended Law	Requires the city to provide adequate housing alternatives before closing a camp. Requires a 15-day eviction notice. Requires storage of belongings for 60 days.	<a href="#">View Ordinance</a>
Los Angeles	2015 July	Amended Law	Allows tents on sidewalks in designated places between 9 p.m. and 6 a.m.	<a href="#">View Ordinance</a>
Los Angeles	2016 Apr	Amended Law	Extends pre-removal notice involving personal property in public areas up to 72 hours. Post-removal written notice must be posted in an area where personal property was removed. Property to be stored for 90 days.	<a href="#">View Ordinance</a>

CITY	DATE	ACTION	ACHIEVEMENT	SOURCE
Los Angeles	2017 Jan	Amended Law	Allows use of vehicles for dwellings in non-residential areas more than 500 feet from a park, school or daycare. Penalty for violating these restrictions range from a maximum of \$25 for a first violation to a maximum of \$75 for a third or subsequent one.	<a href="#">View Ordinance</a>
Louisville	2018 Feb	Amended Law	Allows camping for a 21-day period. Requires 21-day notice before displacement from camp.	<a href="#">View Ordinance</a>
Portland, OR	2018 Feb	Amended Law	City of Portland and OR Dept. of Transportation intergovernmental agreement to ensure consistent camp clean up practices on all ODOT land and Portland Rights-of-Ways. Establishes 48 hours up to 10-day notice period prior to a camp cleanup.	<a href="#">View Ordinance</a> <a href="#">View Ordinance</a>
Roseburg	2018 Oct	Amended Law	Reduced criminal sanctions for prohibited camping from a misdemeanor to a civil violation and lowered fine to \$250.	<a href="#">View Ordinance</a>
San Diego	2019 Feb	Repealed Law	Designated areas for vehicle habitation permitted.	<a href="#">View Ordinance</a>
Seattle	2017 Apr	Amended Law	Requires at least 72-hour notice before removal of encampment. Prior to removal must offer alternative housing and shelter options. Outreach workers must visit encampment and must be present during actual removal. Requires post-encampment removal notice, including information about storage of personal property. Property must be stored for 70 days.	<a href="#">View Rules</a>

CITY	DATE	ACTION	ACHIEVEMENT	SOURCE
Spokane	2018 Nov	Suspended Ban	Sit/lie ban suspended until low barrier shelter space for 200 additional people beyond those currently sheltered has been made available for 30 consecutive days.	<a href="#">View Ordinance</a>
Vancouver, WA	2015 Sept	Amended Law	Allows camping in public places between the hours of 9:30 p.m. and 6:30 a.m.	<a href="#">View Ordinance</a>

## Examples of Modified Enforcement Practices

CITY	SOURCE
Dallas, Texas (Criminal Trespass only) <sup>77</sup>	<a href="#">View Letter From Prosecutor</a>
Eureka, California	<a href="#">View Police Policy</a>
Moses Lake, Washington	<a href="#">View Police Facebook Post</a>
Portland, Oregon <sup>78</sup>	<a href="#">View Police Policy</a>
Sacramento, California	<a href="#">View Police Policy</a>
San Francisco, California	<a href="#">View Police Policy</a>

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<sup>77</sup> As of April, 2019, District Attorney ordered all misdemeanor criminal trespass cases that do not involve “a residence or physical intrusion into property” be dismissed.

<sup>78</sup> Notice and cleanup policies are a result of the Anderson Agreement, which is the settlement agreement from the Anderson v. City of Portland lawsuit referenced in Part VII of this report.

## VII.4TH & 8TH AMENDMENT LAWSUITS BY THE HOMELESS

The number of successful 4th and 8th Amendment lawsuits brought by homeless individuals against cities and counties has been growing rapidly since 2017. Courts are increasingly willing to admit the unconstitutionality of punishing innocent, involuntary conduct such as sleeping, and are increasingly willing to uphold rights against the illegal seizure of property. Thus, nine cases have resulted in injunctions against cities from enforcing unconstitutional camping or sleeping prohibitions, and three other cases have required changes to cities' camp cleanup protocols. Furthermore, four cases resulted in cash payments for damages from the city or county to the plaintiffs whose rights were infringed. Below is a chart of each case, along with a brief summary of the outcome.

DEFENDANT	DATE	CASE NAME	OUTCOME	SOURCE
Los Angeles	2007 Oct	<i>Jones v. City of Los Angeles</i>	Prohibits enforcement of the sleeping ban between 9 p.m. and 6 a.m. on city sidewalks until 1250 shelter beds are added. Although the condition was met in 2018, the city still is not enforcing the ban.	<a href="#">View Story</a>
Portland	2012 Feb	<i>Anderson v. City of Portland</i>	Settlement monies went to City's homeless program for rent assistance. Advance notice to all campers prior to issuing a citation and removing property, improved notice and storage requirements in connection with encampment cleanups.	<a href="#">View Settlement</a>
Los Angeles	2014 June	<i>Desertrain v. City of Los Angeles</i>	Ninth Circuit struck down the City's vehicle camping prohibition, declaring it vague and the enforcement arbitrary and discriminatory.	<a href="#">View Decision</a>
Charleston, West Virginia	2016 July	<i>Curtright v Jones</i>	\$20,000 fund for individuals who lost belongings when camp was dismantled; at least \$1200 per person in the form of vouchers; establishment of storage facility; funding to a nonprofit to hire additional outreach workers.	<a href="#">View Settlement</a>
Seattle	2017 May	<i>Hooper v. City of Seattle</i>	Active class action suit against Seattle for constitutional violations for seizing and often throwing out belongings without notice and without an opportunity to challenge such seizure or reclaim property.	<a href="#">View Complaint</a>

DEFENDANT	DATE	CASE NAME	OUTCOME	SOURCE
Houston	2017 Aug	<i>Kohr v. City of Houston</i>	Court granted temporary restraining order enjoining enforcement of the City's camping ordinance against unhoused individuals. After the court lifted the order the City continued to instruct officers not to enforce the ban.	<a href="#">View Court Order</a>
Seattle	Mar 2018	<i>Long v. City of Seattle</i>	Court found that fines associated with impoundment of vehicles were excessive and attachment of vehicle violated Washington's Homestead Act.	<a href="#">View Decision</a>
Boise	2018 Sept	<i>Martin v. City of Boise</i>	Prohibits the imposition of penalties for sitting, sleeping, or lying outside on public property when no alternative adequate shelter is available.	<a href="#">View Decision</a>
San Diego	2018 Aug	<i>Bloom v. City of San Diego</i>	Preliminarily enjoined enforcement of the vehicle habitation ordinance, including issuing citations, impounding vehicles, and proceeding with prosecutions of any outstanding citations. The city repealed the vehicle habitation ban in February, 2019, but reinstated it with designated parking areas for human habitation in May, 2019.	<a href="#">View Court Order</a>
Laguna Beach	2018 Nov	<i>Glover v. City of Laguna Beach</i>	Required City to pass resolution to affirm its commitment to end homelessness; grant more authority and responsibility to the City's ADA coordinator and ensure adequate funding for the position; initiate new measures to ensure reasonable accommodations are provided at shelters; and update police policy with regard to interactions with homeless individuals.	<a href="#">View Settlement</a>
Puyallup WA	2019 Jan	<i>Boyle v. City of Puyallup</i>	Granted \$40,400 to plaintiffs. Settlement reached only after Puyallup changed their sweeps policy to require 72-hour notice and 60-day storage of belongings.	<a href="#">View Story</a>

DEFENDANT	DATE	CASE NAME	OUTCOME	SOURCE
Denver	2019 Feb	<i>Lyall v. City of Denver</i>	Requires a 7-day written notice before a camp clean up. Requires that personal property be stored and tracked for 60 days, a provision which already existed in Denver's code but was ignored by law enforcement and public works employees. Extends hours of operation for storage facility. Requires the availability of storage lockers for individual use. Improved protocols for protecting personal property, including 48 hour notice prior to removal from a park. Placement of additional trash receptacles in certain areas. Establish an advisory group comprised of homeless individuals and advocates.	<a href="#">View Settlement</a>
California Department of Transportation	2019 June	<i>Sanchez v. Caltrans</i>	Active class action lawsuit seeking a permanent injunction to stop the practice among department of transportation workers of seizing and destroying property belonging to homeless individuals.	<a href="#">View Court Order</a>
Orange County	2019 July	<i>Orange County Catholic Worker, et al. v. Orange County, et al.</i>	Each person in an encampment must be visited by a county health worker and shelter placement must be offered. Such placement must be in a location convenient for the person and meet each person's medical needs. If shelter is declined, a warning and an opportunity to relocate must be offered. If a citation is issued, the opportunity for diversion to Collaborative Court must be given. Also establishes a grievance process.	<a href="#">View Settlement</a>
Sonoma County	2019 July	<i>Vannucci v. County of Sonoma</i>	Preliminary injunction enjoining the County from enforcing anti-camping laws without first providing reasonable notice and offering adequate shelter. If refused, opportunity to relocate. "Adequate" means shelter must be open days and nights. Establishes requirements for preserving and storing personal belongings. 90-day storage requirement. Also establishes standards of care and grievance protocols.	<a href="#">View Court Order (PDF)</a>

DEFENDANT	DATE	CASE NAME	OUTCOME	SOURCE
Sutter County, Yuba City	2019 July	<i>Jeremiah v. Sutter County</i>	Active lawsuit in settlement negotiations. On April 5th, 2018 the court granted a preliminary injunction pending the completion of the lawsuit that prevents the County from enforcing its camping ordinance.	<a href="#">View Court Order</a>
Grants Pass	2019 Aug	<i>Blake v. Grants Pass</i>	Active lawsuit against the City. Plaintiffs seeking to enjoin the enforcement of the city's anti-sleeping, anti-camping and park exclusion ordinances against unsheltered people until shelter is made available. Plaintiffs were granted class certification.	<a href="#">View Court Order</a>
Roseburg	2019 Aug	<i>Claunch v. City of Roseburg</i>	Settlement Agreement required the City to pay damages and legal fees. Required the City to update its camp cleanup protocol, including implementing safeguard measures to protect property, redefining property to limit what can be thrown away during a clean-up, and requiring clean-up crews to examine the interior of closed containers. Property must be stored for 30 days.	

## APPENDIX A

### Declarations of Homelessness States of Emergency

Below are the jurisdictions found that have enacted declarations of emergency in response to homelessness and housing crises since 2015. Of note, all are in the 9th Circuit.<sup>79</sup> Declaring a homelessness state of emergency has allowed some cities to temporarily suspend laws that ban lying, sleeping, and camping in public, in order to temporarily avoid exacerbating the plight of unhoused individuals. Some cities have used their states of emergency to temporarily suspended zoning and building codes in order to repurpose existing facilities into homeless shelters. And some cities have made declarations in order to redistribute funds for the purposes of providing sanitation services to homeless camps, erecting tiny houses, and expanding existing programs that serve homeless populations.

JURISDICTION	DATE	TYPE OF DECLARATION	OVERVIEW
Eugene	10/28/2015	Shelter Crisis	Declares housing and homelessness crisis; requests that the State (a) convene a work group of interagency partners and (b) appropriate additional funds. <sup>80</sup> <a href="#">View Resolution</a>
Portland	10/2/2015	State of Emergency	Amends city code to declare a housing emergency as a health and safety emergency; allows mass shelters as a temporary activity; amends zoning codes to remove obstacles to locating temporary shelters in appropriate zones; establishes a day storage pilot program; seeks state resources for mental health services. <sup>81</sup> <a href="#">View Declaration</a>

<sup>79</sup> The 9th Circuit includes Oregon, Washington, California, Idaho, Montana, Nevada, Arizona, Alaska and Hawaii.

<sup>80</sup> Text is from National Health Care for the Homeless Council's January 2016 report, Homeless States of Emergency: Advocacy Strategies to Advance Permanent Solutions [Hereinafter NHCHC Report] <https://www.nhchc.org/wp-content/uploads/2016/02/homeless-states-of-emergency-advocacy-strategies-to-advance-permanent-solutions.pdf>

<sup>81</sup> Id.

JURISDICTION	DATE	TYPE OF DECLARATION	OVERVIEW
Seattle	11/2/2015	Civil Emergency	Moved \$8 million from general fund into homeless services; expanded shelter beds, day center services, outreach service, and child care for homeless children; authorized some tent encampments; establishes programs to increase services and shelter for homeless youth in Seattle Public Schools. <sup>82</sup>  <a href="#">View Declaration</a>
Tacoma	5/9/17	Public Health Emergency	Provides assistance to people in encampments including hygiene facilities, trash collection, sanitary facilities, temporary shelters, potable drinking water, solid waste disposal, human waste disposal, storage of property, safety, stable shelter, and connection to housing, social, public and mental health services. <sup>83</sup>  <a href="#">View Declaration</a>
Sacramento	11/8/18	Shelter Crisis	Requires that citations for unlawful camping may only be issued upon the officer's confirming that a shelter bed is available, confirming that there are no barriers restricting the individual's access to it, offering to transport the individual to the accessible bed, and receiving a refusal to the offer. Requires that citations for unlawful storage may not be issued for any camping gear when there is insufficient shelter capacity. <sup>84</sup>  <a href="#">View Resolution</a>

<sup>82</sup> Id.

<sup>83</sup> Text is a summary of the original language of the ordinance rather than a summary of activities and outcomes based on the ordinance. These cities passed declarations since the NHCHC Report was published.

<sup>84</sup> Id.

JURISDICTION	DATE	TYPE OF DECLARATION	OVERVIEW
San Jose	12/8/15	Shelter Crisis	<p>Suspends requirements of strict compliance to regulations and opens four City-owned facilities to be used as overnight warming shelters.<sup>85</sup></p> <p><a href="#">View Resolution</a></p>
Santa Rosa	8/9/2016	Shelter Crisis & Homeless Emergency	<p>Resolution 28838 Directs the City Manager to evaluate City facilities so as to determine any potential for their use for emergency shelter, and to identify any state or local regulatory impediments to such use, and to report his findings to the Council within 60 days.</p> <p>Resolution 28839 Directs the City Manager to return to the Council with a proposal to resume the City's Community Homeless Assistance Pilot Program. Directs the Council's subcommittee on homelessness to explore and propose options for short-term measures to address immediate health and safety concerns as well as more comprehensive long-term solutions to homelessness.<sup>86</sup></p> <p><a href="#">View Resolution</a>, <a href="#">View Resolution</a></p>
Oakland	1/5/2016	Shelter Crisis	<p>Opens public buildings for temporary shelter; creates report on steps to establish a tiny-house community; creates a standing order for addressing homeless shelters at future City Council meetings.<sup>87</sup></p> <p><a href="#">View Declaration</a></p>

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<sup>85</sup> Supra, FN 79

<sup>86</sup> Supra, FN 79

<sup>87</sup> Supra, FN 79

JURISDICTION	DATE	TYPE OF DECLARATION	OVERVIEW
Los Angeles	11/17/2015	Shelter Crisis	<p>Initially was motion to declare an SOE, later changed to a shelter crisis; directs City Attorney to present an ordinance to maximize the City's authority to provide temporary shelter; implements a safe parking program, altering zoning and other codes for such; calls on a report on permanent supportive housing in addressing homelessness.<sup>88</sup></p> <p><a href="#">View Declaration</a>, <a href="#">View Declaration</a></p>
	4/17/2018	Shelter Crisis	<p>Allows non-profit organizations and faith-based institutions the right to provide shelter without an onerous and costly process. Authorizes the use of city-owned property and facilities for emergency shelter.<sup>89</sup></p> <p><a href="#">View Declaration</a></p>
	4/17/2018	Ordinance	<p>Establishes rules for using existing hotels and motels as supportive housing and transitional housing for unhoused people.<sup>90</sup></p> <p><a href="#">View Declaration</a></p>
San Diego	8/28/2015	State of Emergency	<p>Declares SOE due to severe shortage of affordable housing, reauthorizes R-296982; calls for affordable housing impact statement on development projects; provides City Council monthly report on housing units approved for development and demolition; calls for development of strategic housing plan.<sup>91</sup></p> <p><a href="#">View Declaration</a></p>

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<sup>88</sup> Supra FN 79

<sup>89</sup> Supra FN 82

<sup>90</sup> Supra FN 82

<sup>91</sup> Supra FN 79

JURISDICTION	DATE	TYPE OF DECLARATION	OVERVIEW
Hawaii	10/16/2015	State of Emergency	<p>Suspends several statues to expedite building of a temporary shelter for families; extends homeless service contracts without requiring a bid process; shifts \$1.3 mil from State's general fund.<sup>92</sup></p> <p><a href="#">View Declaration</a></p>

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<sup>92</sup> Supra FN 79

## APPENDIX B

### Eugene Municipal Court Data Analysis

#### Quality of Life Citations January 1, 2018 – May 31, 2019

Violation	Unhoused	Housed	Total
4.815 Prohibited Camping	298 (100%)	0 (0%)	298
4.190 Open Container	419 (80%)	105 (20%)	524
2.019 Violation of Park Rules	657 (88%)	87 (12%)	747
4.807 Criminal Trespass II	1,759 (80%)	439 (20%)	2,198 <sup>93</sup>
<b>Total</b>	<b>3,133 (83%)</b>	<b>631 (17%)</b>	<b>3,767</b>

#### Data Highlights

- Unhoused people were at least 14 times more likely to receive a citation for a municipal violation in Eugene than housed people.<sup>94</sup>
- 83% of all citations for these four violations went to unhoused people.<sup>95</sup>
- 1,759 Criminal Trespass II citations were issued to unhoused people, an average of 3.4 per day.
- 657 Violation of Park Rules citations were issued to unhoused people.
- 419 Open Container citations were issued to unhoused people.
- 298 Prohibited Camping citations were issued to unhoused people.
  - Officers responded to 474 complaints of prohibited camping, and issued citations approximately 1/3 of the time.<sup>96</sup>
  - Consistent with EPD policy, only 18 citations were not complaint-based, but rather, were issued upon observation by an officer.

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<sup>93</sup> Of note, 783 (35%) Criminal Trespass II violations involved arrests.

<sup>94</sup> 222 unhoused people out of the total 2,165 Lane County PIT count population is 10%. 1180 housed people out of Eugene's remaining population of 166,751 is .7%.

<sup>95</sup> In addition to receiving citations, individuals are often arrested in connection with these violations.

<sup>96</sup> The number of complaint responses by Eugene Police comes from a report generated and provided by EPD listing every complaint for Prohibited Camping that EPD responded to between January 1, 2018 and May 31, 2019.

- On July 28, 2019, there were 128 active Notices of Restriction of Use for Parks.<sup>97</sup>
  - 22 were for 1 month and represent first restrictions.
  - 19 were for 3 months and represent second restrictions.
  - 87 were for 1 year and represent third or beyond restrictions.
  - 64 were issued along with citations for Violation of Parks Rules.
  - 58 were issued along with citations for Criminal Trespass II.

We identified 162 unique individuals as frequent users during this time-period. We have defined frequent users as those who received five or more quality of life citations during this 17-month period.

- Out of the total 3,767 quality of life citations, 1,424 or 38% went to these 162 frequent users, at a rate of over 8:1.
- The remaining 62% or 2,343 quality of life citations went to 1,321 people, at a rate of less than 2:1.
- Of the 1,424 quality of life citations issued to the 162 frequent users,
  - 897 were for Criminal Trespass II,
  - 245 were for Open Container,
  - 151 were for Violations of Parks Rules, and
  - 131 were for Prohibited Camping.

### **Methodology**

We counted the total number of Municipal Court citations issued between January 1, 2018 and May 31, 2019 for each of the four quality of life violations that disproportionately impact the homeless. To calculate the percentage of unhoused people issued citations for the 17-month period, we analyzed the total number of citations issued for each of the four violations and the number issued to unhoused people for the month of March. We used this housed to unhoused ratio to estimate the total number of citations issued to unhoused people for each violation for the entire period of January 1, 2018 – May 31, 2019 (516 days).

The Housed/Unhoused determination was made by viewing each person's record of prior violations. In those instances where housing status was unclear, we counted them as housed to avoid any risk of over counting the number of unhoused, therefore, the total number of unhoused likely is low.

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<sup>97</sup> Report from Eugene Police Department: Active Notices of Restriction of Use as of July 28, 2019.

For every person identified as unhoused, we calculated the total number of quality of life citations received since January 1, 2018. We also calculated the total amount of outstanding fines for each unhoused person, which included the amount owed to the city and the total amount in collections.

### March 2019 Quality of Life Citations

Citations	Unhoused	Housed	TOTALS
4.815 Prohibited Camping	39 (100%)	0 (0%)	<b>39</b>
4.190 Open Container	28 (80%)	7 (20%)	<b>35</b>
2.019 Violation of Park Rules	23 (88%)	3 (12%)	<b>26</b>
4.807 Criminal Trespass II	129 (80%)	31 (20%)	<b>160</b>
<b>TOTALS</b>	<b>219</b>	<b>41</b>	<b>260</b>

## APPENDIX C

### Additional Violations that Disproportionately Impact the Unhoused

The violations below are ones that disproportionately target the unhoused. Section I is a list of violations for which citations were issued and hearings were scheduled in Municipal Court between January 1, 2018 and May 31, 2019, almost all of which are a direct consequence of being unhoused. Section II is a list of additional ordinances that disproportionately impact the unhoused.

#### **Citations Issued to the Unhoused:**

- ✓ Pedestrian Leaving Curb (ORS 814.040).
- ✓ Pedestrian Failure to Cross at Right Angle (EC 5.425).
- ✓ Theft of Services (EC 4.930).
- ✓ Storage on Street (EC 5.135).
- ✓ Dog at Large (EC 4.435).
- ✓ Downtown Activity Zone Prohibited Acts (EC 4.872).
- ✓ Failure to Obey Pedestrian Control Device (ORS 814.020).
- ✓ Use of Marijuana in a Public Place (EC 4.241)
- ✓ Smoking in a Prohibited Area (EC 6.230)
- ✓ Interference with Public Transport (EC 4.977)
- ✓ Dogs – Certain Prohibited Areas (EC 4.427)

#### **Violations as a Direct Result of Being Unhoused:**

- ✓ Prohibited Nudity (4.760)
- ✓ Urinating or Defecating (4.770)
- ✓ Littering (6.805)
- ✓ Obstructing Street (5.130)
- ✓ Obstructing Sidewalk (4.707)
- ✓ Dogs License Requirements (4.395)
- ✓ Noise Disturbance (4.080)