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City Council
1095 Duane Street
Astoria, OR 97103

Dear Councilors:

I appreciate the ways that the City Council has addressed many of my concerns previously expressed. I am writing again to voice my continuing concerns about the changes to the Astoria camping ordinance, 5.900-5.925. To be clear, I understand the health and sanitation issues about those living in the woods as well as the neighbors' concerns about safety and noise. I certainly want those issues remedied. Here is my apprehension:

Falling through the crack

A subcommittee of the Mayor's Homelessness Solutions Task Force (HOST) met to "to develop a strategy for connecting any displaced homeless individuals with the right local resources for them, in case the ordinance change does pass at city council." I think the subcommittee's proposed strategy is a good one. However, it is acknowledged that some individuals (e.g. some of those suffering from mental issues) will not be in a position to take advantage of the available resources. The perhaps "classic" example is veterans suffering from PTSD. These people who "fall through the crack" are my biggest concern.

My focus of attention is with the last sentence of 5.925 which begins: "As used in this ordinance, camping does not include sleeping outdoors by homeless individuals with no access to alternative shelter...." So far, so good. However, the sentence continues "... so long as any tent, shelter and all other personal items such as sleeping bags, tarps and mats are removed from the site within 24 hours of proper notice." Violation of this ordinance is a Class B violation and a Municipal Court Judge may order the camping gear (i.e. the "home") to be seized and eventually sold. This means homeless individuals, including the mentally ill, can be forced to "move on" to another location, potentially every 24 hours. To me this is simply a win-lose solution; a failure to find a strategy for a win-win.

I am not an attorney, but I am interested in how the various courts have interpreted the Eighth Amendment (cruel & unusual punishment) as it applies to being homeless. My understanding is that Astoria considers itself "in the clear" by making unauthorized camping a civil versus criminal act. Both of the cases that "make the news" regarding no-camping (*Martin v. City of Boise* and *Jones v. City of Los Angeles*) were based on criminal violations. However, in the conclusion of the Los Angeles case the Court makes clear "We hold only that, just as the Eighth Amendment prohibits the infliction of criminal punishment on an individual for being a drug addict [citation omitted]; or for involuntary public drunkenness that is an unavoidable consequence of being a chronic alcoholic without a home [citation omitted]; the Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter

in the City of Los Angeles [emphasis added].”¹ Notice that the last phrase says “punishing” as opposed to the prior two situations in the sentence regarding “criminal punishment.” From my perspective, punishment would include being fined \$265 for a civil violation for not “re-moving” to a new location and even frequent “re-moving” itself, as well as potential confiscation of shelter and personal belongings, and the psychological impact of insecurity and potential punishment.

As well as understanding the Constitution as a legal document, from my perspective it is also a vital moral imperative. The Eighth Amendment says simply, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” From what I understand, the Court’s understanding of this has evolved over time. It initially only applied to patently obvious cruel punishment. In more modern times it is now applied to things like sanitary conditions in prisons. The moral imperative has always been there even though moral consciousness has advanced over time. It seems hopeful to me that our evolving consciousness, as reflected in law (e.g. racial injustice, the Americans with Disabilities Act, LGBT Rights), will soon extend to homelessness. Why wait? Why not be leaders?

Unintended Consequences

I have been thinking about at least two potential unintended consequences of the revised code.

First, I really appreciate that Chief Spaulding is concerned for the health and safety of both the campers and his officers. Responding to an incident in the woods is not easy.... However, as quoted in the Daily Astorian, at least one of the campers will move deeper into the woods. Since these camps tend to be communities rather than isolated individuals, I suspect more will use this strategy. Responding to incidents deeper in the woods is not an improvement. Can’t we develop a solution to the problems that makes things better for all? A real win-win?

Next, might this actually increase the number of homeless within the city proper? The proposed code appears to me to allow camping as long as the camper (with “no access to alternative shelter”) moves after receiving 24-hour notice. Maybe this is obvious and has been considered and everyone is okay with more camping within the city proper. In other words, if I am homeless and currently “staying under the radar” by camping in the woods and receive a notice to clear my campsite, I may as well pitch a tent in a city park. When I receive another 24-hour notice I’ll move to the next park and wait for the next 24-hour notice. Doing this would be following the new ordinance as I understand it. Hopefully many of the effected campers will be in a position to take advantage of the wonderful services provided by Clatsop Community Action (CCA) and Helping Hands. But what about the others?

¹ April 14, 2006 Ninth Circuit Court of Appeals in *Jones v. City of Los Angeles*. From my understanding this opinion was dismissed when the parties reached an agreement. However, in August 2016 the Department of Justice (DOJ) filed a statement of interest with the Ninth Appellate Court deciding the Boise case. The DOJ press release says “The statement of interest advocates for the application of the analysis set forth in *Jones v. City of Los Angeles*, a Ninth Circuit decision that was subsequently vacated pursuant to a settlement. In *Jones*, the court considered whether the city of Los Angeles provided sufficient shelter space to accommodate the homeless population. The court found that, on nights when individuals are unable to secure shelter space, enforcement of anti-camping ordinances violated their constitutional rights. The parties in *Bell v. City of Boise* disagree about whether the *Jones* court’s analysis was correct, reflecting the longstanding disagreement among courts analyzing the constitutionality of anti-camping ordinances. The statement of interest was filed to address this currently unsettled area of the law.” And indeed, I believe justices in *Bell v. City of Boise* did use the reasoning in *Jones v. City of Los Angeles*.

Conclusion

I know this is a difficult situation with many complex issues. However, complex issues can be broken down into manageable pieces with tractable solutions that evolve over time. My preferred request is the City Council delay approving this updated ordinance and instead creates a focused group, including representatives from the homeless community and neighbors, with a one-month goal of (1) identifying all of the issues, and (2) developing a proposed strategy with a mindset of win-win. I would hope Astoria Police could immediately address the campers currently causing problems for the neighbors (e.g. if campers are littering, cite them for littering).

If the Council does approve the updated ordinance “as is” it may indeed solve some of the issues, with the agreed upon involvement of CCA and Helping Hands. However, there may be additional pieces to address once we see who falls through the cracks and what unintended consequences may arise.

Going forward, I would like to see the City Council monitor the results of any changes in policy towards the homeless, to ensure that those who come forward for housing do in fact find adequate housing, as well as identify the needs of those who remain unhoused and find ways to meet these needs. I enjoyed the way that the recent HOST meeting included both neighbors and people who are homeless in addition to appointed members of the Taskforce and I hope that these voices continue to be part of the process and solution.

Sincerely,

Richard D. Bowers