

## Ruth Stellmacher

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**From:** SARAH OWENS <hlowens2@msn.com>  
**Sent:** Saturday, March 20, 2021 8:43 AM  
**To:** CityRecorder  
**Cc:** Salem Homeless Coalition  
**Subject:** Public Comment on Priority bills for 2021 Oregon Legislative Session, March 22 City Council Meeting

To the Salem City Council:

Friday, the Legislative Committee agreed to recommend that the City Council oppose HB 3115 as written. HB 3115 attempts to "codify" U.S. District Court's decision in *Blake v. City of Grants Pass*, which held that local laws regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regard to persons experiencing homelessness.

HB 3115 provides in pertinent part that

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

HB 3115 allows 1) a homeless person 2) to bring a facial or as-applied challenge, and 3) receive attorney fees IF successful and IF the governing body received the required 90-day notice.

HB 3115 is the result of a collaborative process that began last summer and that included representatives from the City of Salem. HB 3115 "represents a working compromise between the Oregon Law Center, League of Oregon Cities, and the Association of Oregon Counties", according to Courtney Knox Bush of the City Manager's Office. Its chief sponsor is Speaker Kotek.

When the Leg Ctee first discussed HB 3115, City staff had two "primary concerns": one, "our timeline is to get enough shelter space up...by 2023 and that timeline is not going to shift", two, "liability." However, after Mayor made clear his opposition, staff came back to the Leg Ctee yesterday with a host of specious objections (set out in fuller detail at the end of this email). Only three merit discussion.

One: that the definition of "public property" is overbroad. HB 3115 states that "public property" has the meaning given that term in ORS 131.705 ("public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by this state or any political subdivision therein." HOWEVER, the bill restricts only those laws that regulate **outdoor public property that is open to the public**. Any further definition of "public property" must be determined by the *local governing body in its ordinance or regulation*.

Two: that the "standing" provision is overbroad. HB 3115 states "a person experiencing homelessness may bring suit." The bill does not allow one who is merely interested as a member of the general public to bring suit, but limits standing to persons currently experiencing homelessness, a fact-based issue that can itself be

challenged in court, as it often is. What the City *truly* objects to is not "standing", but that HB 3115 allows facial challenges and provides attorney fees in limited circumstances.

Three: the facial challenge and attorney fees provisions will promote "endless litigation." In fact, HB 3115 is designed to have the *opposite effect*. HB 3115 requires potential plaintiffs to provide governing bodies a minimum of 90 days' notice of intent to sue, including "actual notice of the basis upon which the plaintiff intends to challenge the law." I know from experience that Salem's City Attorney knows very well how to dismiss a citation or obtain an ordinance amendment when faced with a sound legal challenge. That is how HB 3115 is *supposed* to work. The City of Salem should *want* its laws to conform to the requirements of Blake v. City of Grants Pass and HB 3115 permits *those most affected by laws that do not conform* to demand they do so. The City of Salem should *welcome* that participation, *not* try to smother it.

The HB 3115 work group attempted but was *unable to reach consensus on greater definition* of the sort that the Leg Ctee now claims is needed. That is precisely why the Leg Ctee are now calling for greater definition; they know agreement on such definition isn't feasible. It is also why the Leg Ctee will not be offering any specific amendments.

HB 3115 is intended to, and hopefully *will*, bring local laws into compliance with Blake v. City of Grants Pass, so that local governments *stop interfering with the constitutional protections of their homeless residents*. The City Council *should* be supporting the bill, or at least not opposing it, along with the Oregon Law Center, the League of Oregon Cities, and the Association of Oregon Counties, and many other organizations and individuals.

Sarah Owens  
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from the March 19, 2021 Legislative Committee Meeting

Courtney Knox Bush of the City Manager's Office:

[HB 3115] is really broad in its reach...unclear in its scope and how that might lead to litigation to define some of the terms...the ordinance just has to be on the local government's books it doesn't have to be enforced if it's just present it's grounds for litigation...anyone has standing...public property is really broadly defined...the reasonableness standard potentially could impact things that would be viewed to have a time, place or manner impact that may seemingly be unrelated, so for example we have an ordinance that closes parks at sundown that could be something that could get caught up in this. And so that's really where our concern is.

Councilor Andersen

What I'm interested in [is] the...standing, I mean it sure seems to me like it's the broadest standing I've seen and I'm also interested in the attorney's fees I mean all of those things don't sound like they're good for the City's efficient operation of what it needs to do with the understanding that we are doing what we can for homelessness on the streets and other things.

Assistant City Attorney Marc Weinstein

My analysis and I think it's shared in the legal community is that when you take those issues together with the issues that Courtney mentioned there's a lot of vagueness within this, the scope of this bill, and together with the potential for really expansive standing rights to sue that this could lead to a lot of litigation, costly litigation, as cities attempt to get the clarification that is not in the bill. The things that Courtney mentioned and that it unfortunately even though it's designed in theory to prevent litigation that is cities look to get that clarification that's not in the bill it's gonna actually wind up promoting litigation that's going to be very expensive and have a lot of impacts on the City's ability to manage the City effectively. I don't mean that as in manage the unsheltered population, but just its everyday functioning of the City.

Salem Police Lt Aguilar

[HB 3115] would definitely affect us, especially given...the broad definition of public property...certainly we would need to do some work and really hone down what's really the intent of the bill and then how we would be able to work within it...we would support the bill but definitely with some amendments and some better definitions.

Courtney's sum up of the issues

The attorney fees, the standing, the broad reach, the lack of clarity in the scope as it pertains to what public properties are, and the reasonableness standard...

Marc's additions to Courtney's sum up

The clarity regarding the potentially very broad reach, the definition of public property, what constitutes reasonableness, what constitutes a person experiencing homelessness, and what it means to be a law that regulates the act of sitting, lying, sleeping or keeping warm and dry outdoors on public property...