



WORK SESSION

WASHINGTON COUNTY BOARD OF COMMISSIONERS

Session Date: April 04, 2023 **Length of Time Requested:** 60
Department(s): County Counsel, Housing Services
Presented by: Marni Kuyl, Assistant County Administrator
Cortney Duke-Driessen, Deputy County Counsel
Jes Larson, Supportive Housing Services Program Manager

Title of Topic: **Review Draft Ordinance for the REGULATION OF PUBLIC PROPERTY WITH RESPECT TO CAMPS AND CAMPING Chapter 8.46 (Time, Place and Manner)**

ATTACHMENTS:

[Draft Ordinance - March](#)

[Time Place Manner Presentation](#)

PURPOSE & DESIRED OUTCOME:

Staff will present recommendations and seek Board feedback on the draft ordinance for the **REGULATION OF PUBLIC PROPERTY WITH RESPECT TO CAMPS AND CAMPING chapter 8.46** (Time, Place and Manner).

POLICY QUESTIONS FOR THE BOARD TO CONSIDER:

1. Should any element of the draft policy be reconsidered at this time?
2. Is the Board comfortable with staff conducting broader public engagement?
3. Does the Board request the draft ordinance be brought forward for official consideration and public feedback via:
 - a. First Reading
 - b. Second Reading
 - c. Public Hearing

SUMMARY OF TOPIC:

Overview:

The Department of Housing Services, in partnership with County Counsel, is leading the policy development process to prepare the Board of County Commissioners to enact a new County ordinance in compliance with House Bill 3115. HB3115 codifies the *Martin v Boise* case by instructing Oregon jurisdictions to create local statutes defining when, where, and how people experiencing homelessness are allowed to sleep in a location when there is no practical access to shelter. HB3115 provides that these local statutes regulating sitting, lying, sleeping, or keeping warm and dry outdoors on public property must be objectively reasonable as to time, place, and manner with regards to persons experiencing homelessness. This policy requirement is generally known as "Time, Place and Manner" and local ordinances must be compliant by July 1, 2023.

Public lands in Washington County include county owned buildings, parking lots, natural areas and parks, tax foreclosed properties, lands purchased for public projects, and public right of way. Washington County's policy

would only apply to public lands in unincorporated Washington County, as cities will be responsible for passing and enforcing for their own policies.

Developing a Time, Place and Manner Policy

In preparation for the development of new public policy consistent with the requirements of HB3115, staff have researched camping policies from cities within the county, around the State of Oregon, as well as up and down the West Coast. Staff have explored best practices and how aspects of policies have interconnected impacts across the community.

At the January 17th Board work session, staff presented a comprehensive background on Time, Place and Manner policy development. The Board provided feedback and additional direction in preparation for staff to continue drafting the ordinance and further community engagement.

Staff have met as an interdepartmental team to consider the multiple aspects and impacts of the ordinance and to explore options. Staff held meetings with the cities and special districts, a group of Washington County City Managers and other city representatives, encouraging policy alignment and listening to their feedback regarding Time, Place and Manner Policy. Staff have also engaged community stakeholders to gather important points of consideration to inform communications strategy, public engagement and the draft policies.

Draft Ordinance

Staff goals in developing this policy have included:

- Respect and protect the dignity of all persons, including people experiencing homelessness and the surrounding housed community
- Ensure transparency and enforceability
- Responsibly maintain and operate publicly owned and managed property for effective provision of public business and use of public resources, including preserved and restored natural areas
- Maintain and preserve unimpaired access to the public right-of-way and public buildings to ensure:
 - consistency with the Americans with Disability Act
 - emergency ingress, egress and emergency response
 - unimpaired access to private real property

The key elements to the draft for the **REGULATION OF PUBLIC PROPERTY WITH RESPECT TO CAMPS AND CAMPING chapter 8.46** (Time, Place and Manner) will be reviewed by staff.

Next Steps

Staff understand this is a complex issue and there is no one approach that will satisfy all interested parties. In addition, staff expect that there may be lessons learned and improvements needed through implementation or as further court rulings define elements.

As part of official consideration and public feedback, if directed by the Board the next steps could include public engagement with the first reading scheduled in May.

CHAPTER 8.54**REGULATION OF PUBLIC PROPERTY WITH RESPECT TO CAMPS AND CAMPING****Sections:****8.54.010 Policy.****8.54.020 Authority.****8.54.030 Definitions.****8.54.040 Camping Prohibited.****8.54.050 Regulation of Public Property with Respect to Camps or Camping.****8.54.060 Enforcement.****8.54.070 Violation.****8.54.010 Policy.**

To protect the health and safety of community members, including individuals experiencing homelessness in Washington County, to responsibly maintain publicly owned real property and publicly owned assets open to the public for all people of the county, and to increase opportunities to provide outreach to individuals experiencing homelessness to connect those individuals to supportive services including shelter and housing, the board has determined it is necessary to regulate the use of public property for camps and camping with respect to individuals experiencing homelessness. It is the policy of this chapter to regulate camps and the act of camping, on public property open to the public in an objectively reasonable manner with regards to persons experiencing homelessness. This chapter shall be liberally constructed for the accomplishment of this purpose.

8.54.020 Authority.

This ordinance is adopted pursuant to the authority granted by Oregon Revised Statutes (ORS) 195.530.

8.54.030 Definitions.

For the purpose of this chapter, words in the present tense include the future, the singular includes the plural, and the plural includes the singular, the word "shall" is mandatory and not discretionary, and the term "chapter" shall be deemed to include all amendments hereinafter made to this chapter. As used in this chapter, unless the context requires otherwise, the following words and their deviations shall mean:

- A. "Available" means a shelter that has space for a particular person. A shelter is not available to a person if the shelter:
 - 1. Has a maximum stay rule or temporal requirement or deadline the person has exceeded or not met;
 - 2. Has excluded the person from the shelter for any lawful reason;
 - 3. Cannot reasonably accommodate the person's mental health or physical needs;

4. Is unavailable due to the person's family status, age, gender, gender identity, sexual orientation, or other status;
 5. Excluding general rules that prohibit alcohol or drug use in the shelter or on shelter grounds, is unavailable to the person because the shelter has rules about alcohol or drug use that the person does not meet;
 6. May prohibit a minor child to be housed in the same facility with at least one parent or legal guardian;
 7. Requires participation in religious activity or receipt of religious information or religious teaching the person does not wish to participate in or receive; or
 8. Requires a person to leave their pet(s) unattended in order to stay at the shelter. This section does not apply to service animals under the Americans with Disabilities Act.
- B. "Camp" or the act of "camping" means to pitch, erect, create, use or occupy camp materials for the purposes of habitation.
- C. "Camp materials" means, but is not limited to tents, huts, awnings, lean-tos, shacks, or other structures, or parts thereof, tarps or tarpaulin, chairs, cots, beds, sleeping bags, blankets, sleeping or bedding materials, food or food storage items, and/or similar items that are or appear to be used for and aid living and/or sleeping outdoors. "Camp materials" does not include vehicles, automobiles, or recreational vehicles used for shelter and/or sleeping, which are regulated by Chapter 8.16 of this Code.
- D. "County building" means all facilities and their surrounding grounds, owned, leased, rented, contracted, used, managed and controlled by Washington County, including Washington County Parks, for conducting public business.
- E. "County parking lot or parking structure" means a developed or undeveloped area or facility owned, maintained, and/or leased by the County that is designated for parking of vehicles.
- F. "County property" means all real property leased, rented, contracted, used, managed or controlled by Washington County and not otherwise qualifying as a county building, county parking lot or parking structure.
- G. "Public right-of-way" means all interests in real property, subject to the jurisdiction and control of Washington County, used, operated and managed for customary roadway purposes and appurtenant uses and which provides or supports public access for vehicles, pedestrians and other modes of travel between places. "Public right-of-way" includes, but is not limited to, public roads, streets, sidewalks, highways, throughways, alleys, road related structures in the right-of-way including tunnels, culverts, landscape areas or planter strips, and similar structures, and structures that provide for continuity of the right-of-way such as bridges.

- H. "Shelter" means a developed or legally established public or private facility for people experiencing homelessness that does not charge for shelter or services.

8.54.040 CAMPING PROHIBITED.

- A. Camps and camping are prohibited on county property when shelter is available to the person in the camp or camping.
- B. This section does not prohibit sitting, lying or sleeping on or within county buildings, county parking lots or parking structures, or county property in a manner that does not create a camp or constitute camping, so long as such use does not obstruct the public right-of-way or access to county buildings or county parking lots or parking structures for their usual and customary purposes.

8.54.050 REGULATION OF PUBLIC PROPERTY IN RELATION TO CAMPS AND CAMPING.

- A. Persons in camps or camping on county property because they do not have shelter available may use county property for camping subject to the following regulations.

B. Time

Unless otherwise specified, camps and camping, when not prohibited, may occur on county property for no more than five (5) consecutive days.

C. Place

In addition to the prohibition set forth in Section 8.54.040.B, camps and camping are not allowed at any time in the following places:

1. Camps and camping are at all times prohibited at, on or within county buildings, county parking lots and parking structures.
2. Within or on any real property transferred to the County as a result of real property tax foreclosure under ORS 312 or by dedication, donation or bequeathment;
3. Within any tax lot designated or operated by Washington County, Clean Water Services or any agency of the State of Oregon as a riparian corridor, flood plain or drainage area, water quality sensitive area, vegetated corridor, sensitive habitat, or significant natural area;
4. Within 500 feet from any of the following:
 - a. A location approved or operated as a shelter or providing shelter services or services to persons experiencing homelessness under Washington County Code, or HB 4212, HB 2006, or HB 3261;
 - b. Any County shelter providing emergency or temporary shelter;
 - c. Any other location that has a legally established use providing shelter, safe sleeping, safe parking or other services primarily intended for people experiencing homelessness; and

- d. A school, as defined by Section 430-121 of the Washington County Community Development Code (CDC), day care facility as defined in Section 106-48 of the CDC, or a family day care provider as defined in Section 106-78 of the CDC.

D. Manner

1. Camping, when and where allowed by this Ordinance, is subject to the following:
 - a. A camp or camping must be limited to camp materials necessary to protect an individual from the elements. This section is intended to allow a camping individual to sleep and maintain essentials for living but prohibits storage of personal property not essential to living while camping, including but not limited to items such as vehicle tires, lawn mowers, scrap metal, more than one operable bicycle per camper, bicycle components not associated with an individual bicycle, gasoline, generators, lumber, household furniture, more than one propane tank, or other combustible materials.
 - b. A camp or camping must be limited to one structure per individual or household and include camping materials that occupy no more than 144 square feet per camp.
 - c. Individuals who camp or are camping may not accumulate more than 100-gallons of garbage, debris, trash, unsanitary or hazardous materials, items of no apparent utility in an uncontained manner.
 - d. Items presenting a danger to others, including uncontained sharps, uncontained human waste or unauthorized connections or taps to private or public utilities are prohibited.
 - e. Open flames, recreational fires, burning of garbage, and bonfires are prohibited. Contained flames for cooking and other means for keeping warm and dry as permitted by Washington County or any urban or rural fire agency or district in which the camp is located, may be permitted on a case-by-case basis and as necessary to protect individuals from the elements.
 - f. Dumping of gray water (i.e. wastewater from bathwater, sinks and cooking) or black water (sewage) on County property is prohibited.
 - g. Obstruction or attachment of camp materials to public infrastructure or private property structures, including bridges or bridge infrastructure, fire hydrants, utility poles, streetlights, traffic signals, signs, fences, trees, vegetation, vehicles or buildings is prohibited.
 - h. Digging, excavation, terracing of soil, or other alteration of County Property, or damage to vegetation or trees is prohibited.

- A. Enforcement personnel or their designee(s) are responsible for determining whether and to what extent shelters have capacity and the number of available shelter beds. Prior to enforcement of Section 8.54.040.A, enforcement personnel shall determine whether a shelter has available space that can be used by the person at the camp or camping. Enforcement personnel may enforce Section 8.54.050 at all times, unless otherwise provided by this Section.
- B. An enforcement officer, as defined in the administrative enforcement ordinance, may impose a violation of this chapter and the rules and regulations adopted pursuant thereto.
 - 1. An enforcement officer may, as appropriate, use a progressive enforcement process to encourage and compel compliance with this chapter.
 - 2. Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.
 - 3. Nothing in this section is intended to supersede or prevent an enforcement officer's discretion to enforce laws and mitigate hazards as necessary and without progressive enforcement.
- C. The County Administrator, or their designee(s), is authorized to modify or suspend enforcement of any section or element of this chapter in the event of a declared emergency, pursuant to administrative rules or policies, severe weather condition, or for any other reason within the County Administrator's authority.
- D. Notwithstanding Section 8.54.040.A, the County Administrator, or their designee(s), may at their discretion, designate certain county property or a portion of county property, as an area where camps or camping may be allowed on a limited basis, and may set the terms and conditions of any camp or camping that may be allowed.
- E. Nothing in this Chapter is intended to prevent enforcement of any other section of the Washington County Code or the Oregon State law and shall not be the basis for non-enforcement for violations thereof because shelter is not available to the person.

8.54.070 VIOLATION

- A. An enforcement officer may impose a violation of this Chapter as follows:
 - 1. Class D civil infraction in the minimum amount – Washington County Code Chapter 1.12.210;
 - 2. Citation in lieu of arrest for criminal trespass in the second degree -ORS 164.245;
 - 3. Arrest for criminal trespass in the second degree – ORS 164.245.
- B. A citation for a civil infraction in Section 8.54.070.A.1 or citation in lieu of arrest in Section 8.54.070.A.2 may be accompanied by an order of exclusion for sixty (60) days.

- C. An arrest for criminal trespass in Section 8.54.070.A.3 may be accompanied by an order of exclusion for six (6) months.
- D. Nothing in this Section is intended to prescribe any particular or order of violation or penalty. An enforcement officer shall have discretion to impose a violation tailored to the circumstances, consistent with Section 8.54.060.B and as necessary to enforce the purposes of this Chapter and maintain the health and safety of persons experiencing homelessness and maintenance of publicly owned property.

DRAFT



Time, Place and
Manner:
Draft Ordinance
**Board of Commissioners Work
Session**

| April 4, 2023

Department of Housing Services

www.co.washington.or.us



Agenda

- Overview of Time Place Manner
- Policy development process
- Available shelter capacity
- Draft Ordinance
 - Time recommendations
 - Place recommendations
 - Manner recommendations
 - Implementation
- Next steps and Board Action



Board Direction

- Should any element of the draft policy be reconsidered at this time?
- Is the Board comfortable with staff conducting broader public engagement?
- Does the Board request the draft ordinance to be brought for official consideration and public feedback via:
 - First Reading
 - Second Reading, public hearing with the option to adopt



Background: Time Place Manner

Martin v. Boise (2019) - Government cannot criminalize certain conduct, such as lying, sitting, or sleeping on the streets, that is unavoidable as a result of homelessness when alternative shelter is not available

Johnson v. City of Grants Pass (2022) - 9th Circuit Court of Appeals affirmed that “sleeping” in the context of *Martin* includes sleeping with rudimentary forms of protection from the elements, and that *Martin* applies to civil citations where the civil and criminal punishments are closely intertwined

Oregon House Bill 3115 (2021) – Cities and counties that regulate sitting, lying, sleeping, etc. must be objectively reasonable as to time, place, and manner with regards to persons experiencing homelessness

- existing ordinances must be in compliance by July 1, 2023



Background: Ordinance Goals

Regulate public property in relation to those experiencing homelessness in a manner that:

Respects and protects the **dignity of all persons**, including people experiencing homelessness and the surrounding housed community

Ensures **transparency** and **enforceability**

Responsibly maintains and operates publicly owned and managed property for effective provision of public business and use of public resources, including preserved and restored natural areas

Maintains and preserves **unimpaired access** to the public right-of-way and public buildings to ensure:

- consistency with the **Americans with Disability Act**
- emergency ingress, egress and **emergency response**
- unimpaired **access to private real property**

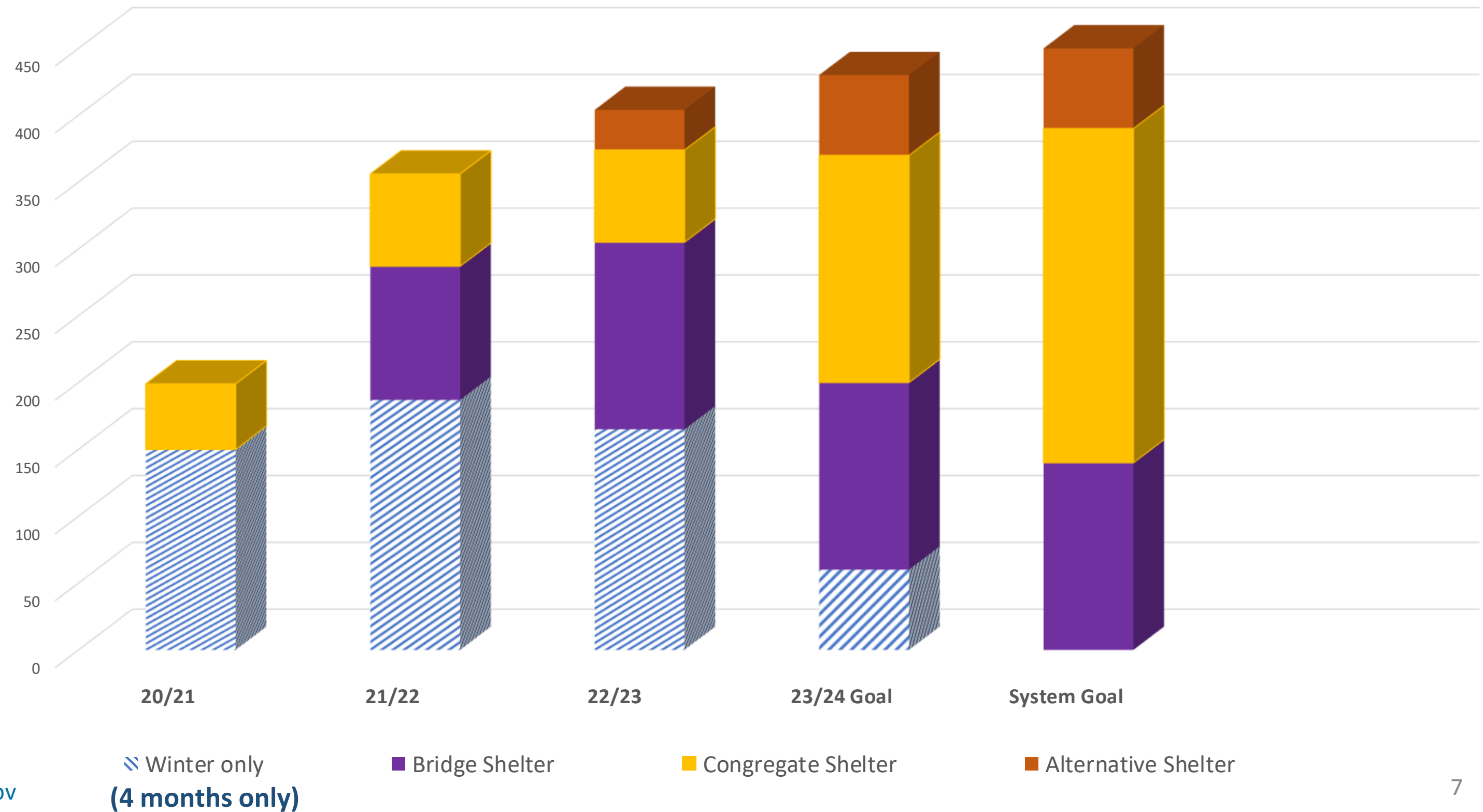
→ Policy Development

Policy Development Timeline:

- Board presentation January 10th
- City and Special District Engagement
- Stakeholder conversations
- Interdepartmental staff workgroup



Accessing Shelter Today



→ Accessing Shelter Today

Improved Shelter Access

- Coordinated System of Shelter Access
- Every shelter includes E-beds
- More shelter options



Dora moved into her apartment in November 2021 with the help of Greater Good Northwest

→ Draft Ordinance

Overview:

Camping is **prohibited** on public property **when shelter is available**

- Shelter must be reasonably accessible

Camping **regulated by time, place and/or manner** when a shelter is not available

→ Draft Ordinance

Regulates camping with length of time when shelter is unavailable:

- Limits camping, when not prohibited, to five calendar days in any location or manner



Draft Ordinance

Regulates camping in these places when shelter is unavailable:

Public places **Prohibited:**

- on or within county buildings, county parking lots
- tax foreclosure properties
- within 500 ft of designated shelters, locations providing services to houseless individuals, schools, day care facilities and family day care providers
- within any tax lot designated or operated by Clean Water Services or any agency of the State of Oregon as a riparian corridor, flood plain, or drainage area, a water quality sensitive area, vegetated corridor, sensitive habitat or significant natural resource area

Public places **Regulated:**

- the public right-of-way
- all other public property

→ Draft Ordinance

Regulates camping by these manners when shelter is unavailable:

- Prohibits non-essentials, allow only essentials for living outside
- Restricts size of individual camps
- Prohibits actions that may cause health and safety risks: waste, non-cooking use of fire, grey water, digging, criminal activity
- Additional regulations for camping in the public right-of-way to protect safety of traveling public and individuals using the right-of-way to camp

→ Draft Ordinance

Enforcement:

- Progressive enforcement encouraged:
 - Engagement → Warnings → Violation
- Violations may include:
 - Civil infraction at minimum amount
 - Citation or arrest for criminal trespassing, second degree
- Ordinance allows suspension of enforcement when necessary
 - Emergency, severe weather, etc.



Policy Development Timeline:





Community Engagement framework

- Focus is to inform and consult on implementation of your Board's direction
- Two to three geographic listening sessions in unincorporated Washington County areas that are most impacted by unsheltered homelessness
- A survey that is shared through the Community Participation Organizations, Community-Based Organizations and other stakeholders

→ Policy Development

Draft ordinance can continue to be amended based on Board input

Next Steps: April- June

- Public feedback and listening sessions
- First Reading
- Second reading fist public hearing with option to adopt
- Communication and implementation



Board Direction

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- Is the Board comfortable with staff conducting broader public engagement?
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