
Housing Committee

HB 1380

Brief Description: Allowing objectively reasonable regulation of the utilization of public property.

Sponsors: Representatives Gregerson, Peterson, Parshley, Simmons, Alvarado, Pollet, Macri, Hill and Ormsby.

Brief Summary of Bill

- Requires that any city or town, code city, or county laws that regulate the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public be objectively reasonable as to time, place, and manner.
- Creates a private cause of action for injunctive or declaratory relief to challenge the objective reasonableness of such a law.

Hearing Date: 1/21/25

Staff: Audrey Vasek (786-7383).

Background:

Recent United States (US) Supreme Court and Ninth Circuit Court of Appeals decisions have considered the constitutionality of local government regulations related to sitting, sleeping, or lying outside on public property.

Martin v. City of Boise.

In 2018 the US Ninth Circuit Court of Appeals (Ninth Circuit) issued the *Martin v. City of Boise* (*Martin*) opinion holding that the Eighth Amendment of the US Constitution prohibited the imposition of criminal penalties against homeless individuals for sitting, sleeping, or lying

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

outside on public property when no alternative shelter was available to them. The Eighth Amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

In 2019 the U.S. Supreme Court denied a petition by the City of Boise to review *Martin*, leaving in place the Ninth Circuit ruling. Under *Martin*, some local governments faced injunctions prohibiting them from enforcing their anti-sitting, sleeping, lying, or camping ordinances against homeless individuals when the number of homeless individuals in the jurisdiction exceeded the number of practically available shelter beds.

City of Grants Pass v. Johnson.

In 2024 the US Supreme Court issued the *City of Grants Pass v. Johnson* opinion, overruling *Martin*. The municipal code of the City of Grants Pass in southern Oregon contained several provisions that prohibited sleeping on the streets or camping in parks. After homeless individuals living in Grants Pass sued the city, a district court entered a *Martin* injunction prohibiting Grants Pass from enforcing its laws against homeless individuals in the city.

The district court concluded that the city's enforcement of its anti-camping and anti-sleeping ordinances violated the Eighth Amendment to the extent that these laws prohibited homeless individuals from taking necessary minimal measures to keep themselves warm and dry while sleeping when there were no alternative forms of shelter available. The Ninth Circuit affirmed the district court's decision, but the US Supreme Court reversed, holding that the enforcement of generally applicable laws regulating camping on public property does not constitute cruel and unusual punishment as prohibited by the Eighth Amendment.

Summary of Bill:

Any city or town, code 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. "Keeping warm and dry" is defined as using measures necessary for an individual to survive outdoors, given the environmental conditions, but does not include using any measure that involves fire or flame.

It is an affirmative defense to a charge of violating such a law that the law is not objectively reasonable. Objective reasonableness must be determined based on the totality of the circumstances. In determining objective reasonableness, special consideration must be given to the impact of the law on persons experiencing homelessness.

A person may bring a lawsuit for injunctive or declaratory relief to challenge the objective reasonableness of a law that regulates the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public. The lawsuit must be brought in the superior court of the county where the local government that enacted the law is located.

The court may award reasonable attorneys' fees to a prevailing plaintiff if the plaintiff:

- was not seeking to vindicate an interest unique to the plaintiff; and
- at least 90 days before the lawsuit was filed, the plaintiff provided written notice to the local government of the plaintiff's intent to bring the lawsuit, including actual notice of the basis upon which the plaintiff intends to challenge the law.

Nothing in the bill creates a private right of action for monetary damages for any person.

The bill applies retroactively to all causes of action brought on or after the effective date of the bill, and to all city or town, code city, or county laws existing on or after the effective date of the bill, regardless of when the cause of action arose or when the laws were enacted. In all other respects, the bill applies prospectively.

Appropriation: None.

Fiscal Note: Requested on January 17, 2025.

Effective Date: The bill contains an emergency clause and takes effect immediately.