

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

Case No: 23CV27630

Myntora Aguilar, Michelle Hester, &)
Nicholas Schindler, Homeless Individuals)
On Hunnell & Clausen Roads, City of Bend,)
On Behalf of Themselves & Other Homeless)
Individuals on Hunnell & Clausen Roads)
& Charles Hemingway, Homeless Advocate,)
All Pro Se)

v.

Eric King, City Manager, City of Bend;)
Melanie Kebler, Mayor, City of Bend; Megan)
Perkins, Mayor Pro Tem & Anthony)
Broadman, Barb Campbell, Ariel Mendez,)
Megan Norris & Mike Riley, City Councilors,)
City of Bend; David Abbas, Director,)
Transportation & Mobility, City of Bend &)
Mike Krantz, Chief of Police, City of Bend)

MOTION FOR EMERGENCY
HEARING SEEKING INJUNCTION,
DECLARATORY JUDGMENT &
WRIT OF MANDAMUS

FILED
CIRCUIT COURT
2023 JUL 12 PM 12:13
DESCHUTES COUNTY
OREGON

INTRODUCTION

The City of Bend has issued Notices to the above-named three homeless individuals and all other homeless individuals on Hunnell and Clausen Roads in the City of Bend that on July 17, 2023 the City will clear out any remaining individuals and all their property from Hunnell and Clausen Roads. Plaintiffs and numerous other disabled and similarly situated individuals have filed Requests for Reasonable Accommodation under the Americans with Disabilities Act or to grant other relief under the City's own regulations. These requests are currently pending before the

City of Bend. Plaintiffs believe Defendants will ignore these requests before conducting a required mandatory interactive process that the City by its own regulations and ordinances is required to conduct, then claim that the requests are moot.

PARTIES

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Plaintiff Myntora Aguilar is a Native American member of the Federation of Warm Springs who has disabilities under the Americans with Disabilities Act who is homeless and who is currently living in her trailer on Clausen Road with her 8-year-old son.

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Michelle Hester is a homeless individual who has disabilities under the Americans with Disabilities Act and is living in her broken-down RV on Hunnell Road.

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Nicholas Schindler is a homeless individual who has disabilities under the Americans with Disabilities Act and is living in his RV with his wife on Clausen Road.

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All three Plaintiffs have filed Requests for Reasonable Accommodation with the City of Bend's Accessibility and Equity Manager, as they were advised to do in the Notices they received from the City of the pending clearing of Hunnell & Clausen Roads should they have need for reasonable accommodation.

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Plaintiff Charles Hemingway is a homeless advocate who has been assisting and providing Services for those living on Hunnell and Clausen Roads for the past several years.

7

Defendant Eric King is the City Manager of the City of Bend who caused the Notices to be issued that these Plaintiffs and others on Hunnell & Clausen Roads received that they will be displaced from their respective living areas on July 17, 2023.

8

Defendant Melanie Kebler is the Mayor of the City of Bend, Megan Perkins is the Mayor Pro Tem of the City of Bend and Defendant Anthony Broadman, Defendant Barb Campbell, Defendant Ariel Mendez, Defendant Megan Norris and Defendant Mike Riley, are all members respectively of the City Council of the City of Bend.

9

Defendants Kebler, Perkins, Broadman, Campbell, Mendez, Norris and Riley have collectively acquiesced to Defendant King's issuance of the clearance Notice that will displace Defendants and have the authority to direct Defendant King that the camp clearances not be conducted until all Requests for Reasonable Accommodation and other Relief have been acted upon.

10

Defendant David Abbas is Director of the City of Bend's Transportation & Mobility Office and

will be in charge of conducting the camp clearance operation pursuant to the camp clearance Notices.

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Defendant Mike Krantz is Chief of Police of the City of Bend and will have the authority to place under arrest and remove Plaintiffs and other individuals living on Hunnell and Clausen who may be present on July 17, 2023 when the City moves in to enforce the camp clearing Notices.

JURISDICTION AND VENUE

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Jurisdiction is proper in the Circuit Court for the County of Deschutes because this case involves a civil action arising under Oregon law. The Court has authority to grant a Declaratory Judgment under ORS 28.020 and a Writ of Mandamus under ORS 34.120 and is the appropriate Court, therefore, for issuing an Emergency Preliminary Injunction in this matter.

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Venue is proper in the Circuit Court for the County of Deschutes because all Plaintiffs are residents of Deschutes County and all Defendants are elected or appointed officials of the City of Bend and perform their official duties within the County of Deschutes.

STANDING

14

Plaintiff's lives are being directly affected by Defendant's actions and pending actions.

Defendant's actions imminently threaten the physical and mental health and well-being of these

Bend residents. Plaintiffs Aguilar, Hester and Schindler live on Hunnell and Clausen, as do

others who live on Hunnell and Clausen who also have filed reasonable accommodation

requests. Several have terminal illnesses or other medical conditions that will be exacerbated

and may result in hospitalization and/or early death if Defendants proceed on July 17, 2023

without according reasonable accommodation to these named Plaintiffs and the other Hunnell/

Clausen residents who have submitted reasonable accommodation requests to the City as well..

Plaintiff Hemingway resides in Deschutes County and is daily, at this stage, on Hunnell/ Clausen

and has direct knowledge and has seen the imminent threat that the Defendant's actions are

having on the physical and mental health and well-being of these Bend residents.

FACTUAL BACKGROUND

15

The City of Bend has knowingly acknowledged and permitted the presence of unhoused persons

living on Hunnell and Clausen Roads since at least 2016 according to press reports. Jon

Glaubitz, a 73-year-old retired individual who is homeless on Hunnell in his RV and who has

submitted a request for reasonable accommodation based on his disabilities, states in his request

for reasonable accommodation that he has submitted to the City that he has resided on Hunnell for 8 years.

Since on or about sometime in 2019 the City extended further recognition and acquiescence to the presence of homeless campers and homeless persons living there in RVs and trailers by beginning to provide portable toilets and 30-foot trash containers along Hunnell Road for residents living there. The City has also over the years provided residents a hook-up to water with a water spigot during summer months. Additionally, the City during extremely hot times, has provided a covered sprinkler system for residents to cool off. The City has provided yellow trash bags so residents could pack up their own trash to assist in keeping their areas tidy.

In the Fall of 2022 the City of Bend Police Department conducted a review of a large swath of area that included Hunnell and Clausen Roads. The area included from the terminus of Clausen Road on the North to the location of Trader Joe’s on the South. The review zeroed in on the Hunnell/Clausen residents. Defendant Krantz recommended to Defendant King that the Hunnell/Clausen area campsites be declared unsafe and that the camps there be “eventually removed.” The report was submitted December 2, 2022 but not acted upon by Defendant King. There was no emergency declared.

18

In February 2023 the City of Bend announced that it would be closing Hunnell and Clausen and moving out residents by March 16, 2023, not because it was unsafe or constituted a community health, safety and livability issue based on Defendant Krantz's December 2022 report. Instead the City announced that the closing was required because the County Road Department had advised the city that closure was needed based on upcoming highway construction work in the area. The City began working with local homeless service providers on plans for the closure.

19

However, in an early March meeting the County Road Department advised the County Commissioners and Defendant King that the Road Department no longer needed Hunnell and Clausen closed for the road construction work.

20

On March 1, 2023 the City enacted a Camping Code which established time, place and manner restrictions for persons camping or living in RVs on city rights of way. The City acknowledged in beginning its enforcement of the Camping Code the years-long special status of the Hunnell/Clausen and the residents living there. The City deferred enforcement of the time restrictions in the Camping Code for Hunnell/Clausen residents except in individual cases where residents repeatedly failed to abide by the place and manner restrictions.

21

In March 2023 city officials, including Defendant King, advised that it did not appear Hunnell

and Clausen would be closed until a suitable site could be found where Hunnell and Clausen residents could be relocated to. To the general public and to the residents on Hunnell/Clausen it appeared to be the City policy that Hunnell/Clausen would remain open until the City found another location where residents could move to. That was in place until suddenly, without warning, the City announced on June 20, 2023 that Hunnell/Clausen would be closed.

22

Plaintiffs find it curious that Defendant King and Defendants City Council made public the announcement at the City Council meeting on June 21, 2023 on the eve of the City Council's summer recess, timing it so that the displacement of Hunnell/Clausen's residents would take place on July 17th with no City Council meeting taking place until July 19th, two days after Hunnell/Clausen had been cleared and providing no opportunity for public input before the clearing occurred.

23

In late March and early May 2023, based on passage of the Camping Code and given the past historical status of Hunnell and Clausen as a site where the City acknowledged unhoused people could live and be provided services by the City, residents of Hunnell and Clausen requested that Defendants King and Defendants on the City Council designate Hunnell/Clausen as a special zone or district where residents could manage themselves. Residents submitted petitions requesting establishment of such a zone. Local citizens submitted petitions in support of the request by Hunnell/Clausen residents. No action was ever taken by these Defendants, despite

repeated requests at subsequent city council meetings by the residents themselves, service providers and public citizens.

24

On June 20, 2023, with no notice to the residents of Hunnell/Clausen and no formal public announcement by Defendants King and Defendants City Council to the general public, an email was sent by a city official to local homeless service providers. The email stated that the city was convening a meeting with service providers to discuss the closing Hunnell/Clausen on July 17, 2023. The email states as follows:

“In late 2022, the City assessed and determined that the area of North Hunnell Road (between Cooley Road and a dead-end cul-de-sac to the north) has created a threat to public health, safety and the environment. The City of Bend will be closing Hunnell, Clausen and Loco roads to camping on July 17, 2023. City staff will notice campers, per the Camping Code, in advance of the closure and will provide campers with additional information beginning on Friday, June 23, 2023. You are invited to a meeting next Tuesday June 27, 2023.”

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Notably, there was no prior public declaration of an emergency by Defendant King, as Defendant King had done in every prior mass camp closure.

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By the time of the City Council meeting on the evening of June 21, 2023 no public announcement of the Hunnell/Clausen closing had yet been made. Plaintiffs all signed up to speak at the public comments section to ask the City Manager and Council to delay the closure.

27

Plaintiff Hemingway pointed out to the City Council that the City was relying on a review that had been conducted 8 months prior and was badly out of date and also contained inaccurate information. Plaintiff Hemingway advised the Council that it would be prudent to postpone the announced closure to conduct an updated review, given that the review was badly out of date and especially since after the Camping Code took effect March 1, 2023 the individual areas on Hunnell/Clausen had been cleaned up and the population on Hunnell/Clausen had dropped substantially from what it had been when the review was initiated in October 2022.

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Instead after Plaintiffs had made their statements, Defendant King read a prepared statement announcing the closure and stated that no new review need be conducted because he had been advised by the Chief of Police that from July 1, 2020 to June 20, 2023 there had been 2,517 service calls to the Hunnell/Clausen area. Defendant King told the Council that based on those figures no updated study need be done and the Council moved on to other business.

29

On July 3 the tent or RV of every resident on Hunnell/Clausen was tagged with a 1-page announcement that residents had until July 17, 2023 to relocate and if they had not done so, beginning on that day the City was start action to clear out all camps and tow away all RVs, trailers, cars, motorcycles, etc. that remained on Hunnell or Clausen Roads.

LEGAL BACKGROUND

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Plaintiffs are proceeding *pro se* without the benefit of Oregon legal counsel or being able to research Oregon law and procedure, but a few general principles of law appear evident.

31

The City of Bend has several provisions related to camping and unhoused persons. First are ordinances Defendant City Councilors have passed. Bend Municipal Code (BMC) 4.05 is the Houselessness Response Policy. BMC 4.20 is entitled “Use of Public Rights of Way and City Property for Camping”. BMC 4.20 includes Time, Place and Manner regulations for camping and also provisions for those living in vehicles on city streets. Implementing these ordinances and fleshing them out Defendant King has issued City of Bend Policy No. 2023-4, “Responding to Camping in Public Rights of Way and On City-Owned Property.”

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Contained within Defendant King’s Policy 2023-4, Sec. III.F is entitled “Tailored Enforcement for Disabilities or Other Reasons”. Sec. III.F.1. states City policy not only for unhoused people with disabilities but also for those unhoused who are caring for minor children or for unhoused people who are working and may need special relief from the Time, Place and Manner provisions based on those circumstances.

33

Sec. III.F.2 states specific City policy for people with disabilities. Para. F.2. acknowledges that

(unhoused) people with a disability may find it necessary to “assert an inability to comply or a need for a modified application” from the Time, Place and Manner provisions in the City’s Camping Code (BMC 4.20).

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In particular, when an individual with a disability requests a modification (reasonable accommodation) Para.2.a. states: “City personnel must engage in an interactive process to review the requested change in application of the provision at issue.” The following sentence states, however, “A modification is not required to be given if it would pose an undue financial or administrative burden on the City or would fundamentally alter the nature of the program, activity or services by the City.”

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Plaintiffs assert that these two sentences create an ambiguity that Plaintiffs argue would permit the City to refuse to consider the Requests for Reasonable Accommodation that these three named Plaintiffs and other residents on Hunnell and Clausen have submitted and proceed on July 17th with clearing out Hunnell and Clausen.

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Plaintiffs contend that before proceeding on July 17 to clear Hunnell and Clausen Defendants are required, based on the City’s own ordinance and regulations, to engage in the specified

interactive process with each individual who has requested a modification/reasonable accommodation.

37

Plaintiffs fear that Defendants will ignore the interactive process requirement and will simply state, based on the second sentence of Para F.2.a. that a modification is not required. Plaintiffs fear that Defendants will proceed to clear out Hunnell and Clausen without considering Plaintiff's request for a delay in enforcement and will then argue that the matter is moot.

38

Plaintiff's position is that Defendant's must honor the City's own requirement for engagement in an interactive process that was written for the protection of people with disabilities and in accordance with the Americans with Disabilities Act before Defendants can act to displace Hunnell/Clausen residents on July 17th.

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Plaintiffs cite to a longstanding Supreme Court tenet that agencies must abide by their own rules and regulations. See *Accardi v. Shaughnessy*, 347 US 260 (1954).

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Further, Plaintiffs argue that the language of the first two sentences of Para. 2.F.a. creates an ambiguity that invokes the rule of *contra proferentem*: The ambiguity is construed against the drafter (the City) if the nondrafter's interpretation is reasonable and the nondrafter has relied

upon that interpretation. See *Turner Const. Co. Inc. v. United States*, 367 F. 3rd 1319, 1321 (Fed. Cir. 2004) and *Metric Constructors v. NASA*, 169 F.3rd 747, 751 (Fed. Cir. 1999).

42

In the situation at hand, the three named Plaintiffs and the residents of Hunnell/Clausen who have also filed requests for reasonable accommodation have reasonably interpreted and relied on Para. F.2.a in seeking to engage the interactive process before the City acts to clear them from Hunnell/Clausen to their extreme detriment.

**CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
INJUNCTIVE RELIEF**

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Plaintiffs repeat and re-allege all previous paragraphs above as if set forth herein.

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Courts have specified legal standards to obtain a Preliminary Injunction, such as is sought here, to wit: (1) A substantial likelihood that the movant eventually will prevail on the merits; (2) that the movant will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest.

See *Denver Homeless Out Loud v. Denver*, 514 F. Supp 3rd 1278 (D. Colo.2021).

1. Eventually Prevail on the Merits

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Plaintiffs assert that Defendant’s agents who conduct the enforcement of the Time, Place and Manner provisions on Hunnell/Clausen are well aware of the physical and behavioral issues within the population that reside there. Yet Defendant’s agents, who have interacted closely with residents of Hunnell/Clausen for months or longer and purport to know them well, did nothing to prepare the residents who they know have disabilities prior to the surprise announcement on June 20 that the camps would be cleared there.

46

The merits of each of the Requests for Reasonable Accommodation submitted to the City will be well familiar to the City’s enforcement agents. Plaintiffs seek a delay in the enforcement of the camp clearing notice so that the City’s Accessibility and Equity Manager can work with each resident requesting a reasonable accommodation.

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Rather than have a “one-size-fits-all” camp clearing operation, the merits will show that each resident with a reasonable accommodation request should be dealt with individually, based on their individual circumstances in an interactive process.

At a subsequent hearing on this matter the merits will show that there was no emergency that warrants the Defendant's action to clear Hunnell/Clausen on such short notice without taking account of the many varying disabilities among the population that lives there.

2. That Movant Will Suffer Irreparable Injury Unless the Injunction Issues

Movant Aguilar has no telephone. Her two most valuable and important possessions are her 8-year-old son and the trailer on Clausen in which she makes a home for her son. As a member of the Warm Springs Federation, members of her tribal community visit her at the site of her trailer and provide mentoring and nurturing for her son. Without a phone, being suddenly relocated and displaced, she will have no place to take her son. Her tribal members, because she has no phone, will have no way of contacting her. Movant Aguilar also has frequent engagement with service providers for food, clothing for her son and other necessities. Being displaced will mean she is disconnected from service providers. Residents of Hunnell/Clausen are a close knit community who look out for one another. With the entire community being displaced, Movant Aguilar will lose the help of community members who have assisted with child care and help with meeting other needs.

Movant Hester has a non-working RV that she lives in on Hunnell. When she inherited it the RV was non-working. She has invested considerable time and what money she can come up with to

paint and initiate repairs to her RV to get it working again. A service provider has donated a battery and another service provider and helpful community members have identified problems that need to get fixed to get her RV running again. Efforts are being made to acquire the expensive repair parts she needs. Movant Hester simply needs more time to get the repair parts to get her vehicle fixed. But when there is no emergency that the City has declared, the City's arbitrary initiation of a camp clearing operation will cause Movant Hester to lose all the funds she has expended and all the community donations and work that has been done to get her RV working again and she will wind up on the street with no place for her or her dog and without any of her possessions. In her request for reasonable accommodation filed with the City, in which she asks for more time, for a delay, before Hunnell/Clausen is closed, Movant Hester identifies that she has Complex PTSD from past long-standing trauma, Traumatic Brain Injury from a brutal beating she endured years ago when she was living in Washington State, Bi-Polar, Depression and in the past has had suicidal ideations. Movant Hester states that the actions by Defendants has exasperated these pre-existing conditions and that if she is displaced she fears for her life.

Movant Schindler has a working wife and lives in their RV on Clausen. Movant Shindler's request for reasonable accommodation identifies that he is on disability based on HIV-Positive status, has been diagnosed as Bi-Polar and has physical disabilities from a car accident in 2014 that make it difficult for him to lay down, sit for too long or kneel. Movant Schindler has a

service dog to help him stand up and provide other assistance. Movant Schindler also has an arthritic condition in both hips that causes pain and will lead to hip replacements. Movant Schindler has been able to establish on Clausen a set location where he knows he can get his HIV meds. If Movant Schindler is forced to relocate it will interfere with his ability to timely get his HIV meds. Movant Schindler has spent substantial sums fixing up his RV. It is a classic with antique license plates. He estimates that if he loses his RV not only will he have no places for he and his wife to live, but he will be out more than \$10,000. Movant Schindler states that if he and his wife must relocate from Clausen without time to work out details it may cost his wife her job.

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Movant Hemingway is a volunteer who has spent countless hours over the years interacting with residents of Hunnell/Clausen. Movant Hemingway has worked with the Hunnell/Clausen population to move individual members toward self-sufficiency. Movant Hemingway states that it takes months and years to establish a relationship with those in a chronic homeless situation to move them toward getting out of homelessness. Movant Hemingway states that he fears if the Hunnell/Clausen population is dispersed all that work over many years may well be lost and it will be difficult to go and track down specific individuals to reconnect with them. Movant Hemingway states that he has been vicariously traumatized watching the fear and frustration of the Hunnell/Clausen residents and knowing what the trauma in their prior lives that brought most of them into homelessness and feeling helpless to do anything about it.

53

Beyond the Movants above, the Hunnell/Clausen population itself and individuals within it will suffer irreparable harm. One person who has filed a request for reasonable accommodation is an 82-year-old woman with muscular dystrophy who must use a walker. She has nowhere to move to and on July 17 if her RV is towed she will have lost her home and will have no place to go. She is traumatized at the prospect of what it will look like on the morning of July 17th when city workers come to haul her RV away and leave her standing on the street with her walker and nothing else.

54

Another person requesting reasonable accommodation is a 73-year-old retired worker with a growing tumor on his hip and prostate issues. He has been unable to find an affordable place he can rent on his retirement income. If he loses his RV because he has no place to relocate to it will cost him thousands of dollars and leave him with no place to go.

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Another individual with a reasonable accommodation request is an Army combat veteran who is terminally ill with failing kidneys who requires dialysis 3 times a week. He seeks a delay as an accommodation to get his RV running so he may try to find a place elsewhere. He fears that what the Defendants are putting him through will wind up killing him.

56

Plaintiffs point out that it is Defendant's unilateral action to arbitrarily set a date to move

everyone off Hunnell/Clausen when there is no declared emergency that has created his humanitarian crisis for the disabled homeless and others on Hunnell Clausen. Plaintiffs point out that there is no current evidence of a safety, public health or environmental emergency. This arbitrary and capricious conduct by Defendants, in and of itself, does irreparable harm to the entire population of residents on Hunnell/Clausen, but most especially those with disabilities.

(3) That the Threatened Injury to the Movant Outweighs Whatever Damage the Proposed Injunction May Cause the Opposing Party

57

Plaintiffs assert that the threatened injury and irreparable harm identified above outweighs any damage to Defendants. In fact, Plaintiffs assert that an injunction granting a delay will save the City money. Plaintiffs note that the County Commission has identified a cost of more than \$200,000 for relocating homeless campers from Juniper Ridge. While Defendants have not identified estimated costs, a several day clean-up operation to clear out up to 60 or more homeless individuals is an expensive proposition.

58

Plaintiffs assert that if the City, since there is no emergency, takes the time to work individually with this population instead of kicking everyone out at once, it will be a major cost saver. This is because service providers and the individuals themselves will be making the move so that the City does not have to come in and incur that cost.

Plaintiffs assert that clearing everybody out at once, given the number of people with disabilities, is likely to impose a substantial cost on the hospital system, ambulance services and on law enforcement. Plaintiffs assert that as a group this population has been collectively traumatized by Defendant's sudden move to kick everyone out with no plans for where they could move. Resultingly, there are likely to be substantial costs to the health care and law enforcement systems rather than if the City proceeded methodically with a plan to work with the residents individually.

(4) That the Injunction, If Issued, Would Not Be Adverse to the Public Interest

Plaintiffs note two things: First, there has been substantial public interest generated in having the Defendants delay closing of Hunnell/Clausen. Petitions have been signed by upwards of 300 people to be presented to the City Council asking that the Defendants either delay substantially or cancel altogether moving people off Hunnell/Clausen. Second, with the mass displacement of this large number of people, those displaced are going to be moving into residential neighborhoods, business areas and commercial or industrial areas, potentially flooding these locations. This will generate citizen complaints which in turn will take City assets to address, costing more funds. It will also likely cause some of those displaced to relocate to county or federal lands that in turn will generate extra work for these jurisdictions and have an adverse impact on relations between the City and the County and National Forest Service or Bureau of Land Management.

**SECOND CLAIM FOR RELIEF
DECLARATORY JUDGMENT**

61

Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein, most particularly paragraphs 30-42, which lay out Plaintiff's rational for seeking a Declaratory Judgment.

62

To reiterate, it is critical that this Court issue a Declaratory Judgment that Defendants are bound by the regulations that Defendants wrote and enacted which specify that when a request for reasonable accommodation/modification is made under the Camping Code that Defendants are required to engage in an interactive process with each individual making the request before Defendants can proceed to an undue burden determination.

63

To reiterate, Plaintiffs fear that Defendants will ignore the submitted requests for reasonable accommodation and proceed to start clearing Hunnell/Clausen on July 17th.

64

Plaintiffs assert that to Plaintiff's the language of Defendant's own regulation is clear on its face that an interactive process must be conducted. But should the Court find that Defendant's own regulation is unclear or ambiguous, Plaintiffs urge that this Court, under the doctrine of contra proferentem, issue a Declaratory finding that Defendant's regulation be construed in favor of Plaintiff's and Plaintiff's interpretation.

**THIRD CLAIM FOR RELIEF
WRIT OF MANDAMUS**

1. Conducting a New, Updated Review of the Hunnell/Clausen Area

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Plaintiffs assert that given the age of the Police Department Review from October 2022, issued on Dec. 2, 2022, that found that at some date in the future the City should eventually close Hunnell/Clausen and given the changed circumstances since the City's Camping Code took effect, it is appropriate that a new Review be conducted before the City proceeds further.

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Plaintiffs seek an order from this Court directing that Defendants conduct a new review before Defendants can issue a directive to clear Hunnell/Clausen.

67

Defendant Krantz's Review contained inaccuracies that must be corrected in a new Review. An obvious error to service providers and to Hunnell/Clausen residents is that established campsites line both sides of Loco Road between Hunnell and Clausen (Review, page 1, 2nd full paragraph under North Hunnell Rd-Assessment Information). The South side of Loco between Hunnell and Clausen has a fence that comes up to the sidewalk and has barbed wire atop it. The area is part of a tract owned by Wal-Mart. The North side of Loco between Hunnell and Clausen is owned by highly vigilant property owners who keep out anyone who attempts to set up a campsite.

68

Consequently, for accuracy and transparency Plaintiffs believe a Review team should conduct

the Review. Because the Review addressed environmental and behavioral health issues, Plaintiffs believe the team should be comprised of a police representative, a designee from the Homeless Leadership Coalition, the County Behavioral Health Department and, if possible a member of the Hunnell/Clausen community.

69

Plaintiffs request that the Court issue an order to this effect mandating that a new Review, not unilaterally conducted by a police officer under Defendant Krantz be conducted, done by a review team consisting of police, behavioral health professionals, the service provider community and if possible a person with lived experience from the affected community being reviewed.

2. Implementing Defendant's Provisions for Tailored Enforcement for Disabilities or Other Reasons.

70

Plaintiffs believe it necessary, given a potential by Defendants to ignore the processing of requests for reasonable accommodations/modifications in this and future cases that the Court issue an order mandating that Defendants are to conduct an interactive process procedure in this case specifically and in every subsequent case in which an unhoused person is given a Notice that action will be taken under Time, Place and Manner provisions of the Camping Code and submits a request for reasonable accommodation/modification.

71

Plaintiffs request that the Court issue an order mandating that the interactive process procedures take precedence over any finding of Undue Burden. Plaintiffs believe that before any Undue Burden finding can be issued there must first have been an interactive process that resulted subsequently in either granting a reasonable accommodation/modification request or finding that an Undue Burden exists.

72

Plaintiff's note that a Notice is tacked to tents, RVs and trailers when a Time, Place or Manner violation is issued by Defendants to an individual. Plaintiffs note that at the bottom there is a section stating "Accommodation Information for People with Disabilities" advising those with disabilities that they have the right to request a reasonable accommodation/modification. This notice at the bottom of the form implicates the Americans with Disabilities Act. Yet Defendants, when a modification decision is issued by the City's Accessibility & Equity Manager, do not apprise those whose reasonable accommodation/modification is not granted of the ability to contact the Bureau of Labor and Industries (BOLI) to file a complaint if they still believe they are being discriminated against because of their disability.

73

Plaintiff's request that the Court issue an order mandating that persons with disabilities who are found not entitled to reasonable accommodation/modification be apprised in the written decision issued by the City's Accessibility & Equity Manager of their ability to contact BOLI if they still believe they are being discriminated against because of their disability.

representative, a representative from the County Health Department, a representative of the service provider community appointed by the Homeless Leadership Coalition, a representative from the Hunnell/Clausen area with lived experience and the Director of the City of Bend Diversity, Equity & Inclusion Office.

b. That the Court direct that Defendants are to conduct an interactive process procedure pursuant to Policy No. 2023-4, Sec. III, Para. F.2.a. in this case specifically and in every subsequent case in which an unhoused person is given a Notice that action will be taken under Time, Place and Manner provisions of the Camping Code and submits a request for reasonable accommodation/modification.

c. That the Court direct that the interactive process procedures take precedence over any finding of Undue Burden and must be completed before an Undue Burden finding can be issued.

d. That the Court direct that the City is to include a notice in reasonable accommodation/modification decisions, to wit: That persons with disabilities who are found not entitled to reasonable accommodation/modification be apprised in the written decision issued by the City's Accessibility & Equity Manager of their ability to contact BOLI if they still believe they are being discriminated against because of their disability.

4. That the Court award such other relief as the Court deems proper and just.


DATED: ____ July 2023

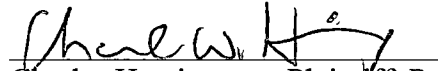
PRAYER FOR RELIEF


WHEREFORE, Plaintiffs request the following relief:

1. Injunctive Relief: That the Court issue a Preliminary Injunction to Defendants:
 - a. That Defendants cease and desist from the planned closure action at Hunnell/Clausen scheduled for July 17, 2023 until further notice from this Court.
 - b. That Defendants apprise any contractors or agents, such as tow companies or Central Oregon Bio-Solutions that they are to take no action on Hunnell/Clausen on July 17, 2023 with regard to the mass closure of Hunnell/Clausen.
 - c. That Defendants issue a new Notice to persons on Hunnell/Clausen living in tents, RVs or trailers that no action will be taken to completely clear Hunnell/Clausen until further notice but that the City may still enforce, on an individual case-by-case basis, Time, Place and Manner provisions in the City's Camping Code.
2. Declaratory Judgment:
 - a. That this Court issue a Declaratory finding that Defendant's Policy No. 2023-4, Sec. III.F.2 is to be construed to require an interactive process to review any request for reasonable accommodation/ modification before an Undue Burden determination may be issued in any individual case.
3. Writ of Mandamus:
 - a. That this Court direct that Defendants are to conduct a new review to determine current information on safety, health and livability in the Hunnell/Clausen area, to be taken in an interdisciplinary approach with a team comprised of a Police Department

Respectfully submitted:


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