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4	IN THE CIRCUIT COURT OF T	HE STATE OF OREGON	
5	IN THE COUNTY OF	MULTNOMAH	
6 7 8 9 10 11 12 13	BUILDING OWNERS AND MANAGERS ASSOCIATION OF OREGON, CARTLANDIA, CENTRAL EASTSIDE INDUSTRIAL COUNCIL, CLEAN & SAFE DISTRICT, OVERLOOK NEIGHBORHOOD ASSOCIATION, PEARL DISTRICT NEIGHBORHOOD ASSOCIATION AND PORTLAND BUSINESS ALLIANCE, Plaintiffs, V. PORTLAND MAYOR CHARLES ANDREW HALES AND THE CITY OF PORTLAND, Defendants.	Case No. COMPLAINT NO MONETARY RELIEF SOUGHT FEE AUTHORITY: ORS 21.160(1)(d) JURY TRIAL REQUESTED NOT SUBJECT TO MANDATORY ARBITRATION	
15	,		
16	For its Complaint against the Portla	nd Mayor Charles Andrew Hales and the	
17	City of Portland ("Defendants"), Plaintiffs Building Owners and Managers Association of		
18	Oregon, Cartlandia, Central Eastside Industrial Council, Clean & Safe District, Overlook		
19	Neighborhood Association, Pearl District Neighborhood	rhood Association, and Portland Business	
20	Alliance ("Plaintiffs") allege as follows:		
21	<u>INTRODUC'</u>	<u>TION</u>	
22	1.		
23		als, businesses, neighborhood associations,	
24			
25	unlawful action by Mayor Charles Andrew Hales (the "Mayor") and through him, the City of		
26	Portland, Oregon ("Portland" or the "City"), declaring it the policy of the Mayor to permit		

1	homeless people to (1) camp on sidewalks throughout the City, in groups of as many as six
2	people, with tarpaulins and sleeping bags; (2) set up tents on City right-of-way and remnant
3	spaces, in groups of as many as six people, from 9 pm to 7 am; and (3) set up "organized"
4	encampments permitted by the City (the "Mayor's Camping Policy"). Although the Mayor
5	purported to base his Camping Policy on a shortage of affordable housing in the City, the
6	policy is an irrational response that does nothing to create affordable housing and runs
7	contrary to the recommendations of civic groups on how to alleviate the City's housing
8	affordability issues. Further, the Mayor's Camping Policy is fundamentally a legislative
9	action, but was accomplished not by a vote of the City Council, but instead by the Mayor's
10	unilateral edict. The Mayor does not have the authority to command by fiat, and his
11	Camping Policy violates State law limiting the number of camps that Oregon cities are
12	permitted to authorize under ORS 446.265 and City Ordinances restricting the use of tents
13	for residential occupancy. Plaintiffs seek an injunction and declaration that the Mayor's
14	Camping Policy is unlawful and unenforceable.
15	THE PARTIES
16	2.
17	Plaintiff Building Owners and Managers Association of Oregon ("BOMA") is
18	the leading commercial real estate membership organization, representing over 40 million
19	square feet of commercial real estate in Oregon. BOMA advocates for commercial real
20	estate on a broad range of issues at Portland City Hall and the city halls of other Oregon
21	cities, at the State capitol, and before Congress. BOMA brings this suit in a representative
22	capacity on behalf of its members.
23	3.
24	Plaintiff Overlook Neighborhood Association is one of 95 neighborhood

26

associations in Portland, and is made up of volunteers who live, work, or own property in

1	close-in North Portland, with boundaries of North Ainsworth Street to the north, Interstate-5
2	to the east, North Russell Street to the south and the Willamette River to the west.
3	4.
4	Plaintiff Pearl District Neighborhood Association is one of 95 neighborhood
5	associations in Portland, and is made up of volunteers who live, work, or own property in the
6	Pearl District in Northwest Portland.
7	5.
8	Plaintiff Cartlandia is the largest pod of food carts in the City with more than
9	30 carts located on Southeast 82nd Avenue.
10	6.
11	Plaintiff Central Eastside Industrial Council ("CEIC") is a non-profit,
12	volunteer organization, responsible for representing businesses and property owners residing
13	in the Central Eastside Industrial District ("CEID") in Portland. The CEID is a 681-acre
14	district encompassing property south of I-84 to Powell Street and the Willamette River to
15	Southeast 12th Avenue that contains 1,122 businesses and over 17,000 employees. The
16	CEIC is a doer and planner organization for the betterment of Portland and the City's
17	economy and neighborhoods.
18	7.
19	Plaintiff Clean & Safe District encompasses a 213-block area of downtown
20	and is one of the oldest, largest and most successful business improvement districts in the
21	nation. Originally founded in 1988 as an informal group of downtown property owners and
22	managers, the district was later formalized in the Portland City Code in 1991, and its last
23	renewal was in 2011 for a ten-year period. Clean & Safe District provides cleaning, security
24	and community justice services; market research, retail advocacy, marketing and
25	communications services; and information and assistance to downtown visitors, residents and
26	workers.

on behalf of its members.

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Plaintiff Portland Business Alliance (the "PBA") is the Portland area's

Chamber of Commerce and is the voice of business in the region. As the voice of business,

the PBA advocates for issues that support commerce, community health, and the region's

overall prosperity. With more than 1,850 member companies, representing 375,000 business

people in Multnomah, Washington and Clackamas counties in Oregon and Clark County in

Washington, the PBA is the region's leading business organization and advocates for its

members at all levels of government. The PBA brings this suit in its representative capacity

9.

8.

Defendant the City of Portland is the largest city in Oregon, with a population in its metropolitan statistical area of approximately 2,348,247 people. It is estimated that 1,880 people in Portland have no access to safe shelter or housing in which to sleep. Between 2013 and 2015, when the last point-in-time count of homeless populations was conducted in Multnomah County, homelessness had not increased. Portland has experienced ongoing homelessness for many years. Homelessness is not a temporary situation; as some homeless individuals and families are housed, others become newly homeless. There is no reasonable prospect that all homelessness will end in the foreseeable future.

10.

Defendant Charles Andrew Hales is the Mayor of Portland. Under Portland's governing structure, the Mayor does not have direct responsibility for housing. Nor does the Mayor have the power to execute legislative functions by himself. Instead, legislative actions require a vote by a majority of Portland's five-member City Council.

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Portland, like many cities across the country, has experienced a homeless problem for decades. In December 2004, Portland developed Home Again, a 10-year plan to end homelessness in Portland and Multnomah County. Since that time, the numbers of homeless have not decreased. Though other larger cities have larger numbers of people experiencing homelessness, Portland ranks fifth highest of major cities for homeless per capita, and Portland has the third highest rate of unsheltered chronically homeless. The city and county conduct point-in-time counts of the homeless population every two years. In 2015, compared to 2013, the number of homeless remained relatively constant. However, there was a 24 percent increase in the number of unsheltered families with children, the number of adult women experiencing homelessness grew by 15 percent, the number of unsheltered African Americans grew 48 percent, and unsheltered chronically homeless grew 15 percent. Comparatively, since 2007, the numbers of homeless and chronically homeless are down 11 percent and 30 percent, respectively, on a national basis. Portland, however, has the second lowest number of emergency beds as a percent compared to other major cities. The number of emergency beds nationwide rose over the past decade. Conversely, the Portland area lost year-round shelter beds, going from 720 at the start of the 2008 recession to just 478 at the start of 2015.

12.

There is no single cause for homelessness in Portland, nor is there a single cure. It is the most vulnerable among us who find themselves in this dire condition. Homeless communities and individuals have a range of backgrounds. Certain vulnerable youths, for various reasons such as having suffered child abuse or from drug use, are struggling to find a place in society and have become homeless. Sadly, veterans are also a significant part of the homeless community because of difficulties reintegrating into society,

13.
homeless.
does not put affected individuals into safe housing or save one vulnerable soul from being
necessary, the Mayor's Camping Policy is not one of them. The Mayor's Camping Policy
important responsibility to help Portland's homeless individuals. Whatever measures may be
this is less so in Portland than in many other cities. The Mayor and the entire City have an
additional groups impacted by homelessness, although available information indicates that
mental hospitals. Senior citizens on fixed incomes and single-parent families are two
especially after federal efforts decades ago to remove patients from institutionalization in
mental health crises also make up a proportion of those experiencing homelessness,
barrier to employment and a corresponding barrier to finding housing. Those experiencing
have challenges establishing a home. Some have transitioned out of prison, which creates a
transitioned out of substance abuse treatment programs and other residential programs and
although recent actions and federal support have reduced this population. Others have

On or about October 7, 2015, the Portland City Council voted to amend Title 15 of the Emergency Code to authorize the Council to declare a housing emergency under specified circumstances, as follows: "When circumstances create an immediate need to provide adequate, safe, and habitable shelter to persons experiencing homelessness, the Council may declare a housing emergency exists. A housing emergency is a health and safety emergency under Portland City Code Subsection 33.296.030.G, and mass shelters are allowed as temporary activities for the duration of the emergency subject to the standards in Subsection 33.296.040." (Emphasis added.) On or about October 7, 2015, the City Council declared such a housing emergency in Portland.

14.

On or about February 8, 2016, purportedly pursuant to the housing emergency declared by the City Council, the Mayor issued the Mayor's Camping Policy, a true copy of

Certa

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which is attached as Exhibit 1. The Mayor's Camping Policy provides in pertinent part that people may, from 9:00 pm to 7:00 am, sleep in sleeping bags on any City sidewalk and under tents on rights of way other than sidewalks, so long as they are in groups of no more than six people in any one location, and that "organized camps" may be permitted by the City under certain conditions.

15.

The Mayor's Camping Policy exceeds the scope of the amendment to Title 15 enacted on October 7, 2015, as well as the measures provided in the City Council's emergency declaration of that same date, which amended the zoning code only "to remove obstacles that prevent mass shelters and other short-term housing options from being located in appropriate zones" and which allows only for the provision of "safe, warm, and habitable shelter." The Mayor's Camping Policy is a legislative act, which exceeds the Mayor's authority. If a camping policy on Portland sidewalks and on rights of way other than sidewalks is allowed at all, it can be enacted only by a majority vote of the City Council.

16.

The Mayor's Camping Policy would be unlawful even if it had been enacted by the City Council. ORS 446.265 allows municipalities to establish campgrounds inside an urban growth boundary to be used for providing transitional housing accommodations, but only under limited circumstances. The statute requires that any such temporary campgrounds must provide parking facilities and walkways, which the Mayor's Camping Policy does not provide. Moreover, the statute provides that a municipality may provide for no more than two such transitional campgrounds within its confines. The Mayor's Camping Policy has set up an unlimited number of campgrounds in violation of the statute. Moreover, the Mayor's Camping Policy violates City Code Subsection 14A.50.020, which makes it unlawful for any person to camp in or upon any public property or public right of way under the circumstances present here; Subsection 14A.50.050, which makes it unlawful to set up any kind of

1	temporary fixture on non-park public property or public right-of-way without a permit or
2	other authorization from the City; and Subsection 29.50.050, which makes such use of tents
3	illegal residential occupancy that must be abated.
4	17.
5	Plaintiffs are, and have long been, strong advocates for helping the disadvantaged in
6	the Portland community, but this must be done in a humane way that promotes the health and
7	safety of those experiencing homelessness and of all of Portland's citizens. The Mayor's
8	Camping Policy is not a humane way to solve the problem of finding safe, warm, and
9	habitable shelter for homeless individuals. To the contrary, it is an impractical and irrational
10	shortcut that has no possibility of fixing a serious, long-term challenge. Telling people to
11	sleep on the streets is not humane. In fact, it is the opposite of humane; as recent events have
12	shown, the Mayor's Camping Policy has resulted in violence, unhealthy conditions, and pain
13	and suffering for our most vulnerable residents. Creating campgrounds throughout Portland
14	creates health and safety risks. Perhaps the biggest problem with the Mayor's Camping
15	Policy is that it gives the illusion of providing a solution, while diverting attention and
16	resources from the necessary long-term solutions that would provide safe, warm, and
17	habitable shelter to individuals experiencing homelessness. Portland can and must do better.
18	FIRST CLAIM FOR RELIEF
19	(Declaratory Judgment – Unlawful Legislative Act by the Mayor)
20	18.
21	Plaintiffs incorporate the allegations set forth in paragraphs 1-17 above.
22	19.
23	The Mayor's unilateral action in issuing the Mayor's Camping Policy was
24	taken without community engagement or input and without approval of the City Council.
25	111
26	111

1	20.
2	The Mayor's action suspends or amends the operation of law, which is a
3	legislative action that cannot be done without a formal vote of the City Council. Portland
4	City Code 15.08.025 specifically reserves to the City Council the authority to "[p]rovide
5	temporary or permanent housing by purchase, lease or otherwise" and to "[o]rder such other
6	measures as may be necessary to protect the life, safety and health of persons, property or the
7	environment."
8	21.
9	The Mayor's Camping Policy is an abuse of his power. It is an arbitrary,
10	capricious, and authoritarian act.
11	22.
12	Plaintiffs are entitled to a declaration that the Mayor's Camping Policy is
13	unlawful and without authority, in that it is legislative and beyond the Mayor's power.
14	23.
15	Plaintiffs are entitled to a permanent injunction requiring the Mayor and the
16	City to withdraw the Mayor's Camping Policy.
17	SECOND CLAIM FOR RELIEF
18	(Declaratory Judgment – Violation of ORS 446.265)
19	24.
20	Plaintiffs incorporate the allegations set forth in paragraphs 1-17 above.
21	25.
22	ORS 446.265 governs the establishment by municipalities, including, without
23	limitation, Portland, of campgrounds to provide transitional housing accommodations. That
24	statute provides in pertinent part:
25	
26	///

1	(1) A municipality may approve the establishment of a
2	campground inside an urban growth boundary to be used for providing transitional housing
3	accommodations. The accommodations shall provide parking facilities and walkways.
4	(2) Campgrounds established for providing transitional housing
5	accommodations shall not be allowed on more than two parcels in a municipality. In
6	approving the use of parcels for a campground, the municipality shall give preference to
7	locations that have access to grocery stores and public transit services.
8	26.
9	The Mayor's Camping Policy violates ORS 446.265 in that the policy
10	provides for an unlimited number of campgrounds, does not provide for the requisite parking
11	facilities and walkways, and does not give the required preference to locations that have
12	access to grocery stores or public transit services.
13	27.
14	Plaintiffs are entitled to a declaration that the Mayor's Camping Policy is an
15	unlawful violation of ORS 446.265.
16	28.
17	Plaintiffs are entitled to a permanent injunction barring the Mayor and the
18	City from enforcing the Mayor's Camping Policy.
19	THIRD CLAIM FOR RELIEF
20	(Declaratory Judgment - Violation of Portland City Code Subsections 14A.50.020,
21	14A.50.050, and 29.50.050)
22	29.
23	Plaintiffs incorporate the allegations set forth in paragraphs 1-17 above.
24	30.
25	Portland City Code Subsection 14A.50.020 provides in pertinent part, "It is

1	unless properly authorized to do so. Portland City Code Subsection 14A.50.050 provides in
2	pertinent part, "It shall be unlawful to set up any type of structure of any material(s)
3	in or upon non-park public property or public right-of -way without a permit or other
4	authorization from the City." Portland City Code Subsection 29.50.050 provides in pertinent
5	part, "When a property has an illegal residential occupancy, including but not limited to
6	occupancy of tents the use shall be abated"
7	31.
8	The Mayor's Camping Policy violates City Code Subsections 14A.50.020,
9	14A.50.050, and 29.50.050 in that it would permit the illegal use of tents and temporary
10	structures for residential occupancy on public property and rights of way for an extended
11	period.
12	32.
13	Plaintiffs are entitled to a declaration that the Mayor's Camping Policy
14	violates Portland City Code Subsections 14A.50.020, 14A.50.050, and 29.50.050.
15	33.
16	Plaintiffs are entitled to a permanent injunction barring the Mayor and the
17	City from enforcing the Mayor's Camping Policy.
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1	WHEREFORE, Plaintiffs pray for judgment from this Court on its cla	ims as
2	follows:	
3	1. Declaring the Mayor's Camping Policy to be ultra vires and be	yond
4	the authority of Mayor Hales.	
5	2. Declaring the Mayor's Camping Policy an unlawful violation	of ORS
6	446.265 and Portland City Code Subsections 14A.50.020, 14A	50.050
7	and 29.50.050.	
8	3. Requiring Mayor Hales and the City of Portland to withdraw t	he
9	Mayor's Camping Policy and permanently enjoining Defendar	nts from
10	reissuing or enforcing the policy.	
11	4. For costs of suit incurred; and	
12	5. For such other and further relief as this Court may deem just, e	equitable
13	and proper.	
14	DATED this 20th day of April, 2016.	
15	TONKON TORP LLP	
16		
17	By <u>s/ Paul Conable</u> Paul Conable, OSB No. 975368	
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22	888 SW Fifth Avenue	
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24	Attorneys for Plaintiffs	
25		
26	080000/02021/7198470√1	

Criteria for City Management of Non-sanctioned Camps on Outdoor City Property

At a time when Council has declared a State of Emergency around housing and homelessness, and with a significant shortage of safe indoor spaces for people to shelter and sleep, the City should have a standard City-wide approach to managing sleeping on City-controlled property that is open to and available for use by the general public.

All City employees, residents and those seeking safe sleeping should have a clear expectation of what will and will not be allowed by the City. The City will provide four options for people so that they can sleep safely while they transition into permanent housing options. These four options include:

- New Safe Sleep Guidelines
 - Only sleeping bags and/or tarps on sidewalks (no tents/structures)
 - o Tents, from 9:00pm 7:00am, on rights of way (other than sidewalks) and remnants
 - O No groups bigger than six people in any one location
 - Other guidelines as written below
- Organized, City Sanctioned Camping
 - o Permitted by City
 - Hosted by a City-selected "camp host"
 - Code of Conduct
 - o Restrooms and sanitation provided
- Organized, City Sanctioned Car/RV Camping
 - Permitted by City
 - Hosted by a City-selected "camp host"
 - o Code of Conduct
 - o Restrooms and sanitation provided
 - Church parking lots ok when in partnership with City
- Shelter

Whomever in each bureau currently decides what action should be taken on a campsite will still determine if action should be taken or complaint should be filed with One-Point of contact, and should now use the criteria listed below.

Definitions

City-sanctioned Organized Camp: a group of campers who have entered into a temporary use agreement or permit with the City for a specific City-owned or leased space; have a City-agreed upon Code of Conduct; and will be provided additional supports by the city (i.e. trash pick-up, portable toilets, etc.)

Camp Clean-up: cooperative effort to maintain camp location. Campers are required to bag garbage and place in a visible spot for regular collection, or properly dispose in a dumpster. Contractors

may or may not assist with the process. People and their pets are allowed to remain at the location, or immediately allowed to return to the location, upon being requested to move in order to clean the site.

Permanent Campsite Removal: action taken by a landowner (private or public, including the City of Portland) to restore land to its public use and clean-up the location. This includes, but is not limited to picking up and disposing of debris, garbage, waste and biohazards. The notification and posting protocols will be in accordance with the Anderson Agreement.

Temporary Structure: a structure which requires no nails, screws, or other fastening hardware (i.e. a tent). This does not include City-sanctioned portable housing (i.e. pods)

Blocking a sidewalk: property of any kind on a sidewalk which is not in accordance with existing furnishing zone and high pedestrian use zone policies, including structures or tents.

General guidelines for sleeping on City of Portland property, not including City-sanctioned organized camps

- The property is outdoors and open to the public;
- Generally allowed to have 6 or fewer people sleeping at one location;
- Only sleeping bag and/or tarps are allowed on the sidewalk for sleeping;
- · Temporary structures are allowed, but not on sidewalks;
- Temporary structures, where allowed, can only be used from 9:00 pm 7:00 am and then must be dismantled;
- Not allowed more than one temporary structure per person;
- Sleep areas must create little or no visible garbage or trash;
- Pedestrian, wheel chair, and other forms of conveyance must have clear passage on sidewalks paths, and trails at all times;
- Current rules governing high pedestrian use zones remain in effect;

Activity/Conditions **NOT** allowed, which could result in immediate enforcement:

- Pedestrian, wheel chair, and other forms of conveyance are blocked due to structure(s)/items of camping.
- Structure/items of camping is located on a public street, including parking spaces.
- Structure/items of camping is located on a sidewalk.
- Structure/items of camping is blocking access in/out of parked vehicle.
- Structure/items of camping is blocking access to bicycle rack.

Activity/Conditions **NOT** allowed, which could trigger the authorization for a permanent campsite removal and/or clean up:

• Criminal activity threatening to other campers or community members (i.e. chop shops, assaultive behavior, open air drug-use/sells, etc.)

- o If the criminal activity can be stopped by removing an individual from the camp, and the rest of the camp occupants are cooperating with police to help stop the criminal activity, then the camp may not need to be permanently removed
- Camp or structure (temporary or permanent) that is located on the sidewalk
- Camp or structure (temporary or permanent) that is located on a public street, including within parking spaces
- Semi-permanent structures (Unless part of a City-sanctioned organized camp or otherwise sanctioned by the City)
- Significantly altering or degrading the environment and/or significant debris and/or visible waste (particularly if it impacts sensitive land including habitat, flood plain, etc.)
- Camping on ODOT property that is posted with "NO CAMPING" signs
- Camp size is too large (generally over 6 people)
- Articulable public health concern

How to request permanent removal and/or clean-up of a camp:

• All requests will be sent to the City of Portland's One Point of Contact administrator for review.

Property that is privately owned or owned by a public entity other than the City of Portland:

- Property that is privately owned or owned by a public entity other than the City of Portland is not affected by these guidelines.
- Private property and non-City of Portland public property owners will receive the same assistance from City of Portland Public Safety Bureaus as they did prior to the implementation of these guidelines.