

PACKET CONTENTS:

- Martin vs. Boise (how we got to HB 3115)
- House Bill 3115
- Definition of ORS 131.705 (contained in HB 3115)
- Current Molalla Municipal Code, Chapter 9, Unlawful Camping (no longer permissible due to HB 3115)
- DRAFT Public Camping Ordinance – reviewed by City Attorney
- CIS Real-Time Risk: How HB 3115 Impacts Oregon Cities and Counties (City Insurance Company that protects us from liability)

Martin v. Boise

Martin v. Boise (full case name *Robert Martin, Lawrence Lee Smith, Robert Anderson, Janet F. Bell, Pamela S. Hawkes, and Basil E. Humphrey v. City of Boise* (<https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>)) was a 2018 decision by the U.S. Court of Appeals for the Ninth Circuit in response to a 2009 lawsuit by six homeless plaintiffs against the city of Boise, Idaho regarding the city's anti-camping ordinance.^[1] The ruling held that cities cannot enforce anti-camping ordinances if they do not have enough homeless shelter beds available for their homeless population.^{[2][3]} It did not necessarily mean a city cannot enforce *any* restrictions on camping on public property.

The decision was based on the Eighth Amendment to the U.S. Constitution's prohibition on cruel and unusual punishment.

In 2019, the U.S. Supreme Court declined to hear an appeal of the case, leaving the precedent intact in the nine Western states under the jurisdiction of the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington).^{[3][4]}

History

In 2009, after a local homeless shelter in Boise closed, six individuals were cited for violations of a city ordinance that makes it illegal to sleep on public property. One of those individuals, Robert Martin, along with the others, represented by Howard Belodoff, filed a lawsuit challenging the constitutionality of an ordinance that punishes someone for sleeping outside when they have nowhere else to go.^[1]

In 2021, the city settled the lawsuit by agreeing to spend \$1.3 million for additional shelter spaces, \$435,000 for the plaintiffs' attorneys fees, and agreed to amend ordinances on public sleeping as well as to train their police not to arrest individuals or issue citations when there is no shelter space available. Persons who are offered appropriate available shelter space, but refuse to go could still be cited, under the settlement.^[5]

Current interpretation

Martin v. Boise



Court	<u>United States Court of Appeals for the Ninth Circuit</u>
Full case name	<i>Robert Martin, Lawrence Lee Smith, Robert Anderson, Janet F. Bell, Pamela S. Hawkes, and Basil E. Humphrey v. City of Boise</i>
Decided	September 14, 2018
Court membership	
Judge(s) sitting	<u>Marsha S. Berzon</u> , <u>Paul J. Watford</u> , and <u>John B. Owens</u>
Case opinions	
Decision by	<u>Marsha S. Berzon</u>
Concur/dissent	<u>John B. Owens</u>

The ruling leaves undecided the issue of whether it is legal to set limits on *which* public properties and during what hours camping or sleeping can be prohibited; the city of Sacramento, for example, allows sleeping on the City Hall grounds at night but not during the day, and this arrangement is not explicitly banned by the ruling.^[6]

References

1. Dougherty, Conor (2019-12-03). "How Far Can Cities Go to Police the Homeless? Boise Tests the Limit - A decade-old legal fight shapes a mayoral race and offers the Supreme Court a chance to weigh in" (<https://www.nytimes.com/2019/12/03/business/homeless-boise.html>). *The New York Times*.
2. Greenstone, Scott (6 September 2019). "How a federal court ruling on Boise's homeless camping ban has rippled across the West" (<https://www.idahostatesman.com/news/local/community/boise/article235065002.html>). Idaho Statesman. Retrieved 11 April 2021.
3. Smith, Erika (2019-12-16). "Supreme Court decision on homeless case is a blow to cities wanting more policing powers" (<https://www.latimes.com/california/story/2019-12-16/homeless-boise-ruling-case-supreme-court>). *Los Angeles Times*. "The high court declined to hear a landmark case on homelessness, letting stand a ruling that amounts to a broad curb on police powers in nine Western states, including California, to stop people from sleeping on public property if no other shelter is available."
4. Sisson, Patrick (5 April 2019). "Homeless people gain 'de facto right' to sleep on sidewalks through federal court" (<https://archive.curbed.com/2019/4/5/18296772/supreme-court-homeless-la-suit-boise-appeals-court>). *Curbed*. Retrieved 11 April 2021.
5. Harding, Hayley (2021-02-08). "Boise will settle controversial homeless camping lawsuit, change city code" (<https://www.latimes.com/world-nation/story/2021-02-08/boise-will-settle-controversial-homeless-camping-lawsuit-change-city-code>). *Los Angeles Times*.
6. Clift, Theresa; Yoon-Hendricks, Alexandra (2019-12-17). "U.S. Supreme Court won't hear Boise homeless ruling. Here's what it means for Sacramento" (<https://www.sacbee.com/news/local/article238427963.html>). *The Sacramento Bee*. "Some would argue it's very broad and would be difficult for a local county or jurisdiction to balance the needs of homeless residents and other residents," county counsel Lisa Travis said. One way to achieve that balance might be to approve a new policy outlining the specific locations and times of day a homeless person could sleep on public property. The Boise decision does not explicitly ban making these kinds of restrictions. For example, the city of Sacramento allows homeless to sit or sleep on the ground outside City Hall at night, but not during the day."

Retrieved from "https://en.wikipedia.org/w/index.php?title=Martin_v_Boise&oldid=1150397690"

Enrolled
House Bill 3115

Sponsored by Representative KOTEK; Representatives DEXTER, MARSH, MCLAIN, POWER, REYNOLDS, WILDE, Senators DEMBROW, MANNING JR, RILEY

CHAPTER

AN ACT

Relating to the regulation of public property with respect to persons experiencing homelessness; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "City or county law" does not include policies developed pursuant to ORS 203.077 or 203.079.

(b)(A) "Keeping warm and dry" means using measures necessary for an individual to survive outdoors given the environmental conditions.

(B) "Keeping warm and dry" does not include using any measure that involves fire or flame.

(c) "Public property" has the meaning given that term in ORS 131.705.

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

(3) It is an affirmative defense to a charge of violating a city or county law described in subsection (2) of this section that the law is not objectively reasonable.

(4) A person experiencing homelessness may bring suit for injunctive or declaratory relief to challenge the objective reasonableness of a city or county law described in subsection (2) of this section. The action must be brought in the circuit court of the county that enacted the law or of the county in which the city that enacted the law is located.

(5) For purposes of subsections (2) and (3) of this section, reasonableness shall be determined based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

(6) In any suit brought pursuant to subsection (4) of this section, the court, in its discretion, may award reasonable attorney fees to a prevailing plaintiff if the plaintiff:

(a) Was not seeking to vindicate an interest unique to the plaintiff; and

(b) At least 90 days before the action was filed, provided written notice to the governing body of the city or county that enacted the law being challenged of an intent to bring the action and the notice provided the governing body with actual notice of the basis upon which the plaintiff intends to challenge the law.

(7) Nothing in this section creates a private right of action for monetary damages for any person.

SECTION 2. Section 1 of this 2021 Act becomes operative on July 1, 2023.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 15, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

.....
Shemia Fagan, Secretary of State

Preliminary Provisions

ORS 131.705

Definitions for ORS 131

TEXT

ANNOTATIONS

As used in ORS 131.705 (Definitions for ORS 131) to 131.735 (Review of exclusion order), unless the context requires otherwise:

- (1) "Police" means the municipal police and the county sheriff of the political subdivision in which the public property is located, and the Department of State Police.
- (2) "Public official" means the officer or employee who is the administrative head of the board, commission, agency or division or department of this state or any political subdivision therein which has jurisdiction over any public property, or the designate of the officer or employee.
- (3) "Public property" means public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by this state or any political subdivision therein. [Formerly 145.610]

Molalla, Oregon Municipal Code

Title 9 PUBLIC PEACE, MORALS AND WELFARE

Chapter 9.16 OFFENSES AGAINST PUBLIC PEACE AND DECENCY

9.16.020 Unlawful camping.

A. For purposes of this section, the term “camp” means to set up, or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live. The term “campsite” means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

B. It is unlawful for a person to camp in or upon private property without the express written permission of the owner or person lawfully in charge of such property.

C. It is unlawful for any person to camp in or upon any public property or public right-of-way, unless otherwise specifically authorized by this code or by declaration by the City Manager in emergency circumstances.

D. No owner or person in charge of private property shall permit camping on such property unless such activity occurs in accordance with all applicable provisions of the city's development code and the property owner or person in charge has given written permission to the individuals camping on such property. Unless otherwise permitted by Chapter 15.08 of this code, no owner or person in charge of private property may permit another individual to camp on such property for more than 72 hours in any 30-day period. Exceptions may be granted under emergency conditions as declared by the City Manager. (Ord. 2016-04 §1)

Contact:

City Hall: 503-829-6855

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ORDINANCE NUMBER 2023-xx

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOLALLA, OREGON,
REGULATING CAMPING ON PUBLIC PROPERTY AND PROHIBITING CAMPING
IN CERTAIN AREAS; AND DECLARING AN EFFECTIVE DATE**

WHEREAS, The City of Molalla desires to allow individuals and families that are temporarily experiencing the effects of homelessness to camp in relatively safe and sanitary locations while they are actively seeking access to stable and affordable housing; and,

WHEREAS, The City desires to establish codes related to camping in the City to allow for legal camping during reasonable time periods, while protecting sensitive areas of the City that are disproportionately impacted by the negative effects of such activity; and,

WHEREAS, The City desires to discourage camping in areas where such activities fundamentally undermine the public's ability to use that public property for its intended purpose and create unsafe and unsanitary living conditions, which can threaten the general health, welfare and safety of the City and its inhabitants; and,

WHEREAS, The City encourages the active participation of all concerned persons, organizations, businesses and public agencies to work in partnership with the City and the homeless community to address the short- and long-term impacts of homelessness in the community.

NOW, THEREFORE, THE CITY OF MOLALLA ORDAINS AS FOLLOWS:

Section 1. TITLE. This Ordinance shall be known as the Camping on Public Property Ordinance of the City of Molalla.

Section 2. PURPOSE. It is found and declared that:

- A. From time-to-time persons establish campsites on sidewalks, public rights-of-way, under bridges, and so forth;
- B. Such persons, by such actions create unsafe and unsanitary living conditions which pose a threat to the peace, health, and safety of themselves and the community;
- C. Camping, lying, or sleeping on a playground or sports field fundamentally undermines the public's ability to use that public property for its intended purpose;
- D. Camping, lying, or sleeping on rights of way, or in a manner that obstructs sidewalks prevents the public's ability to use that public property for its intended purpose and can in some situations result in imminent threats to life;

- E. These regulations are meant strictly to regulate the use of publicly owned property, and are not intended to regulate activities on private property; and
- F. The enactment of this provision is necessary to protect the peace, health, and safety of the City and its inhabitants.

Section 3. DEFINITIONS. As used in this Ordinance, the following terms and phrases shall have the meaning set forth herein:

"Camp" or "Camping" means to pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

"Campsite" means any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.

"Camp Facilities" include, but are not limited to, tents, bivouacs, huts, other temporary or portable shelters, and vehicles or recreation vehicles as defined by ORS.

"Camp Paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or other sleeping matter, or non-city designated cooking facilities and similar equipment.

"Fire" includes, but is not limited to, open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or other sources of heat.

"Natural area" means any land designated as natural resource area or wetland as identified on the City of Molalla Zoning Map, including all riparian areas associated with Bear Creek, Creamery Creek, and Shorty's Pond.

"Parking Lot" means a developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material." means any real property, land or structure owned, leased or managed by a public agency, including ~~public rights-of-way~~ and utility easements. A public agency includes, but is not limited to the City of Molalla, Clackamas County, and Oregon Department of Transportation.

"Public rights-of-way" means all City-owned or controlled rights-of-way, whether in fee title or as a hold of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or grated to the City for vehicular, pedestrian, or other means, and any planter strip or landscape area located adjacent to or contained within streets that is part of the public right-of-way.

"Store" or "Storage" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

"Park Areas" means publicly owned grounds operated under the supervision of the City of Molalla whether within or outside of the corporate limits of the City of Molalla providing outdoor passive and active recreation opportunities.

Section 4. PROHIBITED CAMPING. This section's regulations are meant strictly to regulate the use of public property within the City of Molalla and are not intended to regulate activities on private property.

- A. Except as expressly authorized by the City of Molalla Municipal Code, it shall be unlawful for any persons to establish or occupy a campsite at any time on the following Public property:
1. Park Areas within the Downtown District, including Sally Fox Park and/or publicly owned property, as shown in Exhibit A.
 2. On sidewalks in a manner reducing the clear, continuous sidewalk width of less than five feet.
 3. Fires are prohibited in all Parks and/or publicly owned property.
 4. When the Molalla Sheltering Facility is open, all public camping is prohibited. Exceptions include when the Molalla Sheltering Facility is at capacity, or if an individual has been denied access.
 5. Identified wetlands or natural areas.
- B. Except as expressly authorized by the City of Molalla Municipal Code, it shall be unlawful for any person to camp or maintain a campsite on any public property during the hours of 7:00a.m. to 9:00 p.m. Fires are prohibited in all Parks and Publicly owned property.
- C. Except as expressly authorized by the City of Molalla Municipal Code, it shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia, on any public property during the hours of 7:00 a.m. to 9:00 p.m. Fires are prohibited in all Parks and Publicly owned property.
- D. Except as expressly authorized by the City of Molalla Municipal Code, it shall be unlawful to knowingly leave personal property unattended on public property during the hours of 7:00a.m. to 9:00 p.m. Personal property left unattended may be removed and disposed by the City, in accordance with State law, if:
1. The property poses an immediate threat to public health, safety or welfare; or
 2. The property has been posted with a written notice in accordance with State Law.
 3. Any property removed by the City shall be held and disposed of pursuant to State law if not claimed withing 30-days after removal.
 - a. Individuals may claim their property, without a fee, by contacting the Police Department or Parks Department within 30 days.

- b. Items that have no apparent utility or are in unsanitary condition may be immediately discarded.
 - c. Weapons, controlled substances other than prescription medication and items that appear to be either stolen or evidence of a crime shall be retained and disposed of by the Police Department in accordance with applicable legal requirements for the property in question.
- E. Notwithstanding the provisions of this Chapter, the City Manager or designee may temporarily authorize camping or storage of personal property on public property by written order that specifies the period of time and location:
- 1. In the event of emergency circumstances;
 - 2. In conjunction with a special event permit; or
 - 3. Upon finding it to be in the public interest and consistent with City Council goals and policies.

Section 5. PENALTIES AND ENFORCEMENT.

- A. Violation of any provisions in this Ordinance is a Class D violation pursuant to ORS 153.019. Each day that a violation occurs will be considered a separate offense.
- B. In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by this Ordinance or other provisions of this code shall constitute a public nuisance and may be abated in accordance with State law.

Section 6. SEVERABILITY. If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.

Section 7. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days after its adoption by the Molalla City Council.

Signed this XX day of MONTH 2023.

Scott Keyser, Mayor

Date

Christie Teets, CMC, City Recorder



Real-Time Risk



TIMELY NEWS AND TIPS TO HELP REDUCE RISK

October 2021

HOW HB 3115 IMPACTS OREGON CITIES AND COUNTIES

By CIS Deputy Property/Casualty Trust Director Dave Nelson

It is time to review your city and county ordinances on sleeping, camping, or similarly related ordinances. On June 23, 2021, Governor Brown signed HB 3115 into law. HB 3115 requires cities and counties to review and update their ordinances primarily focusing on camping, sitting, sleeping, and staying warm and dry on public properties. Please pay close attention to the time, place, and manner language in the ordinance, which must be “objectively reasonable”. Local governments will have until July 1, 2023, to comply with the new law.

So, what do you need to do to comply with HB 3115? You need to focus on “reasonableness”. Review the policies of your organization as they relate to “sitting, lying, sleeping or keeping warm and dry while being outdoors which are objectively reasonable to time, place and manner with regards to someone facing homelessness”. Furthermore, your policies cannot conflict with ORS 203.077 and 203.079. The actions of government agencies will be viewed on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness.

House Bill 3115 is the regulation of public property with respect to persons experiencing homelessness; and declaring an emergency.

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Real-Time Risk

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There are four actions several cities and counties are taking to address homelessness in their communities, which also help address HB 3115. These four actions are summarized below with a summary of CIS' liability and property coverage for each category.

1. Purchasing or using government owned land to provide those experiencing homelessness a place to set up their camp.

- CIS requires a policy addressing each of the exposures (each camp/facility).
- Preferably, a non-profit or faith-based organization will operate the facility.
- CIS will require additional contributions for this unique risk. (Please contact your agent or CIS Underwriting.)

Liability: CIS' liability coverage would apply as usual for the members' exposures. There is limited coverage for third-party pollution which include viruses. Claims related to zoning and land use are excluded from the CIS coverage.

Property: CIS property coverage covers member-owned buildings or equipment as scheduled. Pollution is excluded unless caused by a covered loss, and then limited to \$25,000.

2. Purchasing or using existing land and installing small shelters to allow individuals or in some cases, couples to move from a tent to a small shelter.

- CIS requires a policy addressing each of the exposures (each location).
- Preferably a non-profit or faith-based organization will operate the facility.

When preparing space for those experiencing homelessness, we encourage having policies to address:

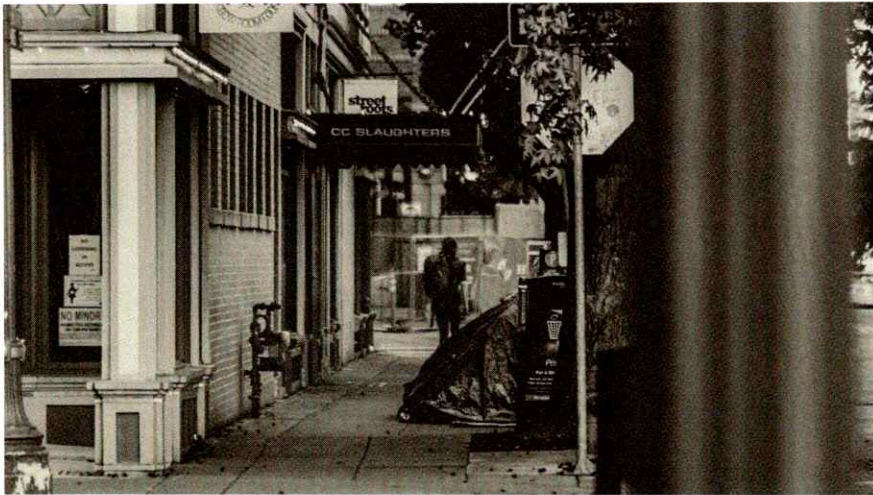
- Non-profit contract and insurance
- Leases for private land
- Abuse protection
- Physical distancing
- Shelter residency eligibility
- Sanitation
- Rodent control
- Cooking/food handling
- Food storage
- Electric, gas, propane heating
- Drugs and alcohol
- Crime/victimization
- Environmental clean-up plan
- Spill response plan
- Individual camp/room clean-up plan
- Damage/theft of personal property plan
- Security plan
- Safety plan
- Medical response plan
- Communication plan
- Natural disaster and adverse weather response plan
- Safety audits/inspections plan
- Incident reporting plan
- Accident investigations
- Zoning and neighborhood conflicts

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Real-Time Risk

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- CIS will require additional contributions for this unique risk. (Contact your agent or CIS Underwriting for your unique risk.)

Liability: CIS' liability coverage would apply as usual for the members' exposures. There is limited coverage for third-party pollution which include viruses. Claims related to zoning and land use are excluded from the CIS coverage.

Property: CIS will not offer property coverage for the shelters. Pollution is excluded unless caused by a covered loss, and then limited to \$25,000.

3. Using government owned facilities such as community centers or senior centers as temporary housing.

- Members may be asked by order or a civil authority to use member-owned facilities for temporary sheltering.

Liability: The CIS Liability Coverage Agreement provides coverage for claims under the Oregon Tort Claims Act and several federal statutes. Coverage is for the named member, employees, elected officials, and volunteers. Claims are covered in accordance with the terms and conditions of the CIS Liability Coverage Agreement.

It is important to note that communicable disease is excluded, but \$100,000 defense coverage is provided. Pollution is also excluded except for \$100,000 limited third-party pollution coverage which may apply.

Property: The CIS Property Coverage Agreement covers most perils associated with members owning and operating a building. CIS does not cover the personal property of facility users.

4. Purchasing buildings, such as old motels/hotels to turn into temporary housing.

- CIS recommends a community or faith-based non-profit lease and operate the facility.

ADDITIONAL RESOURCES

- [Required Homelessness Policy Checklist](#)
- [Homeless Shelter/Operational Checklist](#)
- [House Bill 3115](#)

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Real-Time Risk

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Liability: CIS will provide coverage for long-term shelters for the homeless in facilities owned by the member. If operated by the member, CIS charges an extra contribution for the additional and unique risks associated with providing a homeless shelter. If the member-owned facility is operated by a non-profit or faith-based organization that agrees to provide insurance and indemnification to the member, CIS may reduce the additional contribution.

Property: CIS covers the member-owned scheduled property and equipment. If operated by a non-profit, the contract shall include the clauses found in the insurance section of this document.

Each of these solutions help those that are facing homelessness but can create risk for our members. We strongly encourage these homelessness shelters are ran by a third-party, and not by our member. The third-party will need to have insurance up to at least two-million dollars per occurrence and name the government entity, who is providing the land or building, as an additional insured and agrees to hold the entity harmless and promises indemnification.

Risk Management Considerations

There are several risk management concerns that need to be considered when developing one of the four options above. Many of these risk management tools will be conducted by the third-party operator, however, our member should review the process to ensure practice is meeting policy. Some of these risk management tools are listed below. Please see the CIS Risk Management Resource Library for checklists relating to homelessness.

- Screening of new residents:
 - Who is and is not allowed in the shelter?
 - Does screening include a criminal history check?

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Real-Time Risk

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- Is there a screening for mental health concerns?
- Are mental health services provided to residents of the shelter?
- Does the location allow women, men, families, or pets?
- What is the process for removal of non-compliment residents?
- Medical care:
 - Is there a medical screening process?
 - Is there a vaccine mandate?
 - Is onsite medical provided to residents?
 - Is transportation provided for residents to treatment providers?
- Essentials:
 - Water (three to five gallons per person per day)
 - Food and food preparation sites
 - Heating and cooling
- Onsite sanitation:
 - Toilet facilities. A minimum of one toilet for every 20 persons
 - Handwashing stations
 - Trash collection
 - Rodent control
- Other concerns:
 - Personal Protective Equipment (PPE) for staff serving these new residents
 - Weather concerns for campers
 - Evacuation plans for these new residents in the event of an emergency
 - Security of these locations

If you have questions, please contact your Risk Management Consultant or Underwriting for your unique risk.

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CIS recognizes there is not a one-size-fits all recommendation for how best to handle homelessness in your communities. The topic is both a difficult and complex matter to navigate, often fueling strong opinions. We strive to continue providing up-to-date information on the topic, so that you can make the decisions which matter most to your communities. Our commitment is to stand as a partner providing the resources needed to support your efforts.

