

The city continues to chase its own tail on sit-lie

BY BRENDAN PHILLIPS
CONTRIBUTING COLUMNIST

Since 2006, the Civic Action Group (CAG), working with Sisters Of The Road, Street Roots and numerous allies in the community, have sought the repeal of the most recent version of the Sidewalk Obstruction Ordinance, known as the sit-lie. As a group of homeless and formally homeless individuals, CAG worked to highlight how enforcement of the ordinance was inhumane and immoral because it unfairly punished people experiencing homelessness. Our position was simple: How can you make the very act of being homeless with no place to go a crime? We believe this ordinance was divisive and ineffective. It has strained the bonds of community by pitting business against social interests. We believe that the City of Portland is better than that.

Imagine our surprise when we learned that a Circuit Court judge ruled that the City had exceeded its authority in enacting this ordinance and ruled it to be unconstitutional. This is the second time this has happened. In 2004, Judge Marilyn E. Litzenger ruled that the sit-lie ordinance was unconstitutionally broad and vague. Now, in 2009, Multnomah County Circuit Court Judge Stephen K. Bushong has ruled that the city has exceeded its authority by creating an ordinance that criminalizes a behavior (sitting and lying on the street) that the state deems to be non-criminal. He also ruled that the city already has a law it can use to protect public safety, namely, disorderly conduct. The only problem is: the burden of proof is much greater for disorderly conduct. Cause for celebration right? Well, no, not really. Within two days, police Chief Rosie Sizer released a memo laying out the department's response to the ruling: We won't enforce sit-lie because the judge said that the sit-lie is already enforceable under the state statute for disorderly conduct (ORS 166.025). She then listed vague guidelines on how officers can identify disorderly conduct:

- Whether the subject had engaged in similar obstructive conduct;
- Whether the subject had been previously warned of the risk of public inconvenience that the conduct entails;

- A detailed description of the subject's location on the sidewalk; and
- Any eyewitnesses that observed the subject engaged in the obstructive conduct.

No clarification. No discussion of the language of the disorderly conduct statute, just, simply, "Sit-lie is now disorderly conduct." Under these guidelines it would appear that officer need only show:

- That they sat or had lain on the sidewalk before;
- They had received a warning under the previous sit-lie ordinance (remember, unconstitutional);
- That all the officer has to prove is that "they were sitting on the sidewalk at (location), I told them to move, then I saw them sitting on the sidewalk down the street";
- And that the officer needs only ask a few witnesses if they had seen the individual sitting on the sidewalk.
- Presto! Disorderly conduct.

CAG believes that this memo, released just two days after the judge's decision, may misinterpret the ruling and undercuts the many years countless groups have worked to see this issue resolved. This is not the right way for the City to handle losing the constitutional legitimacy of this ordinance. The guidelines listed in this memo do not reflect the intentions of the legislature when it enacted the disorderly conduct statute. This interpretation does not help officers with meeting the burden of proving intent of engaging in obstructive or disorderly behavior. Chief Sizer's interpretation of the statute is not supported by case law and court decisions that clearly define the terms "intentionally," "recklessly," and "obstruction." Chief Sizer's guidelines draw no meaningful distinction between the sit-lie ordinance and the disorderly conduct statute.

Why must we wade, yet again, into possibly unconstitutional waters, infringe on the rights of people experiencing homelessness, and waste city and community resources and time fighting over ordinances that get tossed out of court? It is time for the sit-lie to be removed from the books and for a new dialogue to begin that

balances the needs of the homeless with the needs of business in a way that uses existing laws and ordinances to ensure public safety without trampling on people's rights.

We are calling on the community to:

■ Call or write our mayor and city commissioners asking for the immediate removal of the sit-lie ordinance from the books, a more thorough review of the ruling, and a more detailed analysis of the disorderly conduct statute.

■ Attend the community dialogue meetings regarding the sit-lie organized by Commissioners Fish and Fritz, 10 a.m.-noon Saturday, July 18 (Kaiser Town Hall, 3704 N. Interstate) and 7-9 p.m. July 21 (First Unitarian Church, 1011 SW 12th Ave.). At

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press time, it is still unclear what the commissioners hope to gain from these meetings, especially in lieu of the most recent court ruling. We call on the commissioners to identify the objectives of these meetings.

■ For those of you wanting to show more support, CAG will be holding a rally 7-9 p.m. July 21 outside the First Unitarian Church between. Come and meet the Civic Action Group and get more information regarding the evenings meeting.

This column was prepared with the members of the Civic Action Group, the organizing body of Sisters Of The Road. As part of the organization's Systemic Change Program, CAG is committed to identifying and implementing immediate and long-term solutions to problems faced by people experiencing homelessness both in Portland and nationwide.

To view Portland Police Chief Rosie Sizer's memo on enforcing the disorderly conduct statute, go to the Street Roots blog, www.streetroots.wordpress.com



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