

HOMELESSNESS AND THE LIMITS OF ENFORCEMENT

Finding the Path to Solutions

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Agenda

- Anti-Camping and Sit/Lie Ordinances
- Unofficial Encampments
- Regulated Encampments and Tent Cities
- Safe Parking Programs
- Vehicles Used for Habitation
- Permanent Facilities and the Building Code



Camping Ordinances--*Martin v. Boise*



- *Martin v. Boise* is a federal Ninth Circuit decision in a civil rights action brought by homeless individuals against the City of Boise.
- They claimed that enforcement of public camping ordinances against homeless individuals violates the Eighth Amendment if no shelter space is available. Doing so criminalizes homelessness.
- The Plaintiffs sought damages, declaratory and injunctive relief against Boise and sought to bar further enforcement of Boise's public camping ordinance.
- Despite the litigation, Boise was actively enforcing its public camping ordinances—over 175 citations in Q1 2015.

Martin--The Opening Lines Tell the Story



Martin opens with a quote:

“The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”

— Anatole France, *The Red Lily*

And the court: “We consider whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.”

Martin--Eighth Amendment Analysis



- The “Cruel and Unusual Punishments” clause places substantive limits on what government may criminalize.
- *Robinson v. California*, 370 U.S. 660 (1962) struck down a law that criminalized narcotic addiction.
- *Powell v. Texas*, 392 U.S. 514 (1968) embellished on *Robinson* in a public drunkenness case—criminal penalties may not be inflicted upon a person for being in a position he or she is powerless to change.
- Based on that, “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being.”



Martin—a “Narrow” Holding

“[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

Martin provides guidance on what the ruling *does not* cover:

- A city is not required to provide sufficient shelter for the homeless;
- A city need not allow individuals to sit, lie or sleep on the streets at any time or at any place.

Martin—Limitations on the Holding



Martin elaborated further on the limits of its holding in footnote 8:

- It does not cover individuals who *do* have access to shelter, but choose not to use it.
- An ordinance prohibiting sitting, lying or sleeping outside at certain times and in certain locations may be permissible even when shelter is otherwise unavailable.
- An ordinance may prohibit right of way obstruction or the erection of certain types of structures for shelter.
- The key is whether a city’s ordinances punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human.”

Martin v. City of Boise--What's Next?



- Boise sought a rehearing before the full Ninth Circuit.
- That request was denied on April 1, 2019, but several judges dissented from the denial of the request, asserting that the case was wrongly decided.
- Next stop, U.S. Supreme Court?
- At this point, we do not know if City of Boise will seek review or whether the U.S. Supreme Court would accept review of the case.
- In the meantime, the case applies to Ninth Circuit jurisdictions, including those in Washington state.



Lessons Learned—Ordinances

- Boise enforced camping and disorderly conduct ordinances. Both applied to public property on a city-wide basis.
- Do your ordinances allow homeless individuals to sleep in certain locations? Some cities state that they comply with *Martin* if their regulations do not prohibit camping city-wide.
- If your city takes this approach, how explicit do your regulations need to be about where individuals without shelter may sleep or camp?



Lessons Learned—Enforcement

- Boise, at times, aggressively enforced its ordinances against homeless individuals.
- *Martin* did not strike down Boise's ordinances in their entirety, but only as applied to individuals with no other shelter options.
- If in doubt, cities should consider suspending enforcement of such ordinances pending legal review.
- Many camping ordinances predate the rise of the homeless population in our state. Cities may want to consider whether their ordinances are in keeping with current legislative priorities.



Lessons Learned—Shelter Space

- Cities have the option of establishing a system for tracking shelter space availability.
- In theory, such a system would assist a city in determining when it may enforce a city-wide public camping ordinance.
- In practice, such a system will be logistically difficult. It will require coordination with area agencies and non-profits that provide shelter services.
- A tracking system will require ongoing efforts since the number of shelter beds and the homeless population will fluctuate over time.

Lessons Learned—Shelter Space



Boise's attempt to track shelter space is a cautionary tale:

- There are three shelters in Boise—two of which are church-run.
- There was evidence that the church shelters required participation in religious activity or instruction in order to receive shelter.
- “A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment.”
- All three shelters had duration restrictions for its residents.
- Point in time counts and arrest numbers also demonstrated a lack of available shelter.

Unregulated Encampments--Seizures



- ***Martin* involved criminal penalties for camping or sleeping in public. What about the encampments themselves?**
- **Clearing encampments must meet certain due process requirements. See Lavan v. City of Los Angeles, 693 F.3d 1022 (9th Cir. 2012). The Court found that:**
 - **Unattended property does not necessarily mean it's abandoned;**
 - **A municipality may not summarily remove the property of a homeless person without notice and an opportunity to be heard;**
 - **A municipality may not summarily destroy seized property—it should be maintained in a secure location for a certain period of time—60 days is common in this area.**
 - **Failure to hold property so that it may later be claimed by the owner results in hardship—loss of important documents, medicine, keepsakes, etc.**

Unregulated Encampments--Searches



A recent Washington Court of Appeals case found that tents and shelters on public property are also protected from unreasonable searches under the State Constitution. See [State v. Pippin](#), 200 Wn. App. 826, 403 P.3d 907 (2017).

In [Pippin](#), the court found that the search of a homeless person's shelter required a search warrant under Article I, Section 7 of the Washington Constitution.

The evidence of drugs found during the warrantless search was therefore suppressed.

Courts recognize that there are so many people living outside, they need the protection commonly associated with fixed residences.

Unregulated Encampments--Searches



The Court explained its ruling (in part) as follows:

The law is meant to apply to the real world, and the realities of homelessness dictate that dwelling places are often transient and precarious. The temporary nature of Pippin's tent does not undermine any privacy interest. [citations omitted] Nor does the flimsy and vulnerable nature of an improvised structure leave it less worthy of privacy protections. For the homeless, those may often be the only refuge for the private in the world as it is.

Regulated Homeless Encampments



- Homeless encampments, such as Tent City 3 and 4, were the subject of extensive litigation 10 to 15 years ago.
- Encampments hosted by religious organizations are subject to statutory and constitutional protection—see City of Woodinville v. Northshore United Church of Christ, 166 Wn.2d 633, 211 P.3d 406 (2009).
- Legislature adopted RCW 35.21.915, (non-code cities), RCW 35A.21.360 (code cities) and RCW 36.01.290 (counties) in 2011. These statutes apply to “temporary encampments,” but the term is not defined.

Regulated Homeless Encampments



- **The legislation allows religious organizations to provide shelter to homeless persons. Helping the homeless is a component of religious ministry.**
- **Local regulations must be necessary to protect public health and safety and must not substantially burden the decisions or actions of a religious organization.**
- **Permit fees must be limited to the actual cost of review and approval of the permit applications for homeless housing encampments.**
- **Many jurisdictions have enacted regulations that outline additional rules and procedures related to temporary homeless encampments—see MRSC’s [Homelessness](#) webpage.**

Regulated Homeless Encampments—Question #1



Since the statute refers to “temporary encampments,” what if a religious organization wants to host a permanent encampment?

- “Temporary Encampment” is not a defined term.
- State and Federal Constitution (free exercise of religion);
- Federal Religious Land Use and Institutionalized Persons Act (RLUIPA)
42 U.S.C. 2000(cc);
- See also Open Door Baptist Church v. Clark Cty., 140 Wn.2d 143, 995 P.2d 33 (2000)(zoning provisions apply to church so long as they do not unduly burden religious free exercise).
- How do rules and codes change when it is a permanent undertaking?
What about the building code? Do multi-family standards apply?

Regulated Homeless Encampments—Question #2



How would the legal standards differ if a non-religious organization, such as a non-profit organization, hosted a temporary encampment?

- **Traditional zoning principals would apply;**
- **Local government would have more latitude to regulate whether and where such a use would take place and what conditions could be imposed.**
- **The question becomes more about policy than law, but from an enforcement standpoint, local government has greater discretion to regulate encampments hosted by a non-religious organization.**



Safe Parking Programs

- Safe parking programs allow individuals living in vehicles to park in off-street parking lots.
- Such programs are often provided by religious organizations as part of their efforts to minister to those in need.
- When a municipality receives a request to establish a safe parking program in its jurisdiction, it raises the question: to what extent should safe parking programs be regulated?
- Municipalities may regulate safe parking programs to protect public health and safety and should ensure that conditions imposed do not substantially interfere with religious exercise.



Living in Vehicles

- **The 2018 Seattle/King County Point-in-Time Count of Persons Experiencing Homelessness found that 3,372 people were living in cars, vans and RVs, which amounts to 46%(!) increase over 2017.**
- **Traditional view—municipalities may prohibit living in vehicles on private property and in right of way.**
- **In rights of way, vehicles used as residences are often subject to impoundment after 72 hours.**
- **If a vehicle used as a residence becomes inoperable, it is likely to be impounded if it is parked in the right of way.**

Living in Vehicles—Homestead Rights



- The use of vehicles for habitation is not a new phenomenon, but has become much more common.
- In March 2018, a King County Superior Court Judge ruled that an individual residing in his vehicle has homestead rights in the vehicle. A good description and analysis of the case can be found here.
- Homestead rights protect a person's residence and essential possessions from judgments and liens. See RCW Chapter 6.13.
- The trial court ruling was from the bench and does not constitute precedent. The City of Seattle appealed and we await a court of appeals decision.
- The court did not rule the impoundment was invalid—rather it invalidated the lien for fines and towing fees with respect to a vehicle that is declared to be a residence.

Permanent Facilities and the Building Code



- By its nature, a temporary use may be exempt from building codes that apply to permanent structures.
- Providing shelter on a permanent basis may require building code compliance in a way that would not apply to a temporary use.
- [RCW 19.27.042](#) allows for a limited exemption for certain types of existing structures.
- Talk to your building official about building code requirements for permanent facilities.

Thank you!



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