

# **Strategies for Addressing Homelessness; Policy Solutions and Enforcement**

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# Agenda

- Part I – Policy Approaches and Solutions to the Homeless Crisis
- Part II – Creation of Affordable Housing
- Part II – Enforcement Issues
  - Homeless Encampments
  - Sleeping in Vehicles

# Homelessness in California

- California has seen an alarming spike in homelessness over the past decade
- On any given night in California, more than 134,000 people experience homelessness—22% of the entire nation's homeless population
- Leading causes of homelessness are lack of affordable housing, poverty, lack of affordable health care, domestic violence, mental illness and addiction

# Homelessness in California

- 25% of the homeless population are chronic homeless
  - Most are dual diagnosis – mental health as well as drug or alcohol addiction
  - Who haven't been receiving services for at least a year
- Local governments are developing comprehensive responses that leverage public safety, health and human services, housing, transportation, code enforcement, and animal control resources to aid those who are experiencing homelessness

# Addressing Homelessness

- Although strategies for preventing and ending homelessness once focused on providing supportive services, municipalities now focus on a “housing first” approach, which focuses on assisting clients to find housing, rather than simply providing supportive services
- By placing people in housing, their lives immediately stabilize to a degree. Then supportive services can serve as a gateway rather than encouraging complacency in homelessness

# Addressing Homelessness

- Through its “Housing First” approach, over 90% of 100 Marin County homeless housed over the past two years have remained housed, have improved health, and are saving community dollars.
  - It costs less than \$30K a year per person to provide ongoing housing and services compared to \$60-\$100K when they were homeless
  - Biggest cost is unreimbursed stays in emergency rooms
- Through a coordinated entry approach, the same assessment tool is applied to every person in need in order to rank them based on vulnerability, and the most vulnerable are then assisted first

# Case Studies

- **Alone we do so little; together we can do so much – Helen Keller**
- **Overarching Goal:** “Through dignity and respect, empowering people at risk or experiencing homelessness toward a hopeful and independent life.”
- **Some examples of various forms of collaboration from:**
  - Marin County
  - Stanislaus County
  - Orange County
  - Santa Cruz County

# Case Studies:

## Marin County / San Rafael / Novato / Sausalito:

- By partnering with Marin County, the City of San Rafael, Homeward Bound, St. Vincent de Paul, Ritter Center, and Buckelew, the most recent tally indicates a reduction of 1/3 (130) in chronic homeless in Marin County. They boldly plan to end chronic homelessness in Marin County by 2022.
- Homeward Bound has also secured a \$1.5M grant from Partnership Health Plan and another \$1.5M from the State's No Place Like Home Program



# Case Studies:

## Marin County / San Rafael / Novato / Sausalito:

- The City of Novato is partnering with the County of Marin to develop a city-owned lot for veterans homeless supportive housing, creating an opportunity to get rid of veterans homelessness in Marin County in 5-8 years.
- The City of Sausalito is partnering with the County of Marin, the Ritter Center, its Chamber of Commerce and various others to transition its homeless anchorouts off the water (where at least one person dies each year) onto slips in marinas at the City's expense in a pilot program designed to provide rapid rehousing wrapped with supportive services
  - Other municipalities are considering similar programs

# Case Studies:

## Stanislaus County / Modesto/ Turlock:

- Through a public private partnership between the County of Stanislaus, the City of Modesto and The Salvation Army, over 300 homeless will be housed in emergency shelter and transitional family housing by the end of 2020
- By partnering with Stanislaus County, the City of Turlock will house homeless veterans
- By partnering with other Cities (Patterson, Oakdale), Stanislaus County will create a total of 821 new beds for its homeless

# Continuum of Care

## Outreach & Engagement



- Outreach & Engagement Center
- CARE Team
- Downtown Streets Team

## Coordinated Entry



- Coordinated Entry
- “One-stop Shop” Access Center
- Satellite Shelters

## Shelter & Housing\*



- Shelter & Housing Inventory
- Emergency Shelter
  - Transitional Housing
  - Rapid Rehousing
  - Permanent Supportive Housing

### Supportive Services / Peer and Community Supports

Behavioral Health / Health / Basic Needs / Employment Training / Peer and Community Support

# Case Studies: Santa Cruz County

- The Homeless Action Partnership (HAP) is the collaboration in Santa Cruz County that acts as the HUD mandated Continuum of Care. The U.S. Department of Housing and Urban Development requires communities that seek funding under the McKinney-Vento Homeless Assistance Act to come together as a community and develop a strategy to prevent and end homelessness in their area.
- The HAP is a collaboration of the five jurisdictions in Santa Cruz County (the County and the Cities of Santa Cruz, Watsonville, Capitola and Scotts Valley) along with homeless housing and services providers. The HAP brings in about \$2.3 Million each year for housing subsidy and supportive services.
- County jurisdictions, through the HAP fund activities that further the goal of addressing homelessness in the community, including funding winter shelter programs in both north and south Santa Cruz County and conducting a biennial homeless census and survey.

# Case Studies:

## Orange County / Santa Ana:

- January 2019 Point in Time count: 3,400 on streets, 1,300 in county homeless shelters
- 3/12/19: Orange County Board of Supervisors Unanimously Adopted Housing Trust Fund Agreement
- Next step: Cities must approve a similar agreement to participate in the Trust
- The Trust is a regional housing body to help fund 2,700 permanent supportive housing units for homeless people for \$930M

# Case Studies:

## Orange County / Santa Ana:

- Meanwhile, the City of Santa Ana declared a homeless shelter crisis in August 2018
- In September, 2018, Santa Ana City Council approved plan to partner with nonprofit Mercy House to create a temporary, interim homeless shelter
- Since “The Link” (which “links” the homeless with housing) began serving Santa Ana’s homeless on 11/15/18, it has received more than 290 referrals and has reduced the number of people sleeping on streets by nearly 200
- City is using its Inclusionary Housing Fund for the shelter’s first year of operation; the second year will draw on SB 2 Building Homes and Jobs Act and a portion of the city’s Emergency Solutions Grant from HUD

# Tools to Avoid Nimbyism and Delay

- Emergency Shelter as of Right: SB 2 requires require local governments as part of their Housing Element to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit
- Intergovernmental Immunity: Cities and counties are mutually exempt from each other's zoning regulations relative to property that one such entity may own within the territory of the other. *Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 783-784; 40 Ops.Cal.Atty.Gen. 243 (1962).

# Tools to Avoid Nimbyism and Delay

- Shelter Crisis Declaration: Govt. Code 8698: suspends certain regulations that could delay the project
- Public Contract Code Section 22050: Expedited public contracting procurement
- Prevailing Wage Exemptions: Labor Code 1720(c)(4): the project is for construction, expansion or rehabilitation of not-for-profit facilities to provide emergency shelter and services for the homeless where more than half the costs are from private sources, excluding real property that is transferred or leased



# Funding Homelessness Strategies: Collaboration with Sierra Club

- Sierra Club helps win campaign for homeless housing in Alameda: In a special election on April 9, 2018, City of Alameda voters reaffirmed a decision by their city council to permit a wellness center for homeless residents of Alameda County.
- The Alameda Wellness Center:
  - Will house 90 homeless seniors
  - Will enable an additional 50 homeless seniors to continue their recovery after they are discharged from Alameda County hospitals
  - Will help adult residents facing homelessness locate appropriate housing and services

# Funding Homelessness Strategies

- Gov. Gavin Newsom wants to double spending on homelessness – to \$1B – in his 2019-20 budget
  - \$650M in grants to local governments and regional homelessness agencies for emergency shelters, rental assistance and permanent construction housing
- Sacramento Mayor Darrell Steinberg: “This unprecedented level of investment recognizes the moral, safety and public health emergency that California cities face because of the thousands of people living on their streets”

# Requiring Homelessness Solutions

- In the first week of January, 2020, Governor Newsom signed an executive order mandating that surplus state land be used for homeless facilities.
- On January 13, 2020, the Council of Regional Homeless Advisors, a task force appointed by Governor Newsom, announced in a long-awaited report that California should pass a constitutional amendment requiring all cities and counties to provide enough housing or shelter to put every homeless person under a roof.

# Requiring Homelessness Solutions

- The task force said such forceful action is necessary because “homelessness is a crisis of epic and increasing magnitude.”
- The plan is a step back from a proposal suggested over the summer that the state adopt a so-called “right to shelter” and require people to take it.

# Funding Homelessness Strategies

- **HEAP: Homeless Emergency Aid Program:**  
Last year's state budget provided more than \$700 M to help local governments and entities combat homelessness including \$200 million to address and prevent homelessness.
  - \$250M to Continuums of Care
  - \$100M to each CoC based purely on their 2017 PIT
  - \$150M based on PIT count to large cities with more than 330K residents
- Each year, local governments must navigate the requirements for existing and new programs all within a matter of months. Decision makers will need to determine how to fold these new funding opportunities into local efforts that are already underway.

# Examples of Funding Constraints

- Timing
  - 50% of HEAP funds must be contractually obligated by 1/1/20; and
  - 100% of HEAP funds must be expended by 6/30/21
- Eligibility
  - Counties / Cities must declare a shelter crisis
  - HEAP funds may not be used in cities that do not declare a shelter crisis

# Other Funding Sources for Homelessness Strategies

- Public Private Partnership (i.e., County / City / The Salvation Army / The United Way / Turning Point / Homeward Bound)
- Private donations
- Other grant monies (i.e., Assemblymember Adam Gray)
- Loan from Tobacco Securitization Fund
- Bonds

# Affordable Housing Alternatives

- Beyond traditional market-rate and deed-restricted homes, there are alternative housing models that can help address home supply and affordability in California, including:
  - manufactured housing,
  - community land trusts,
  - micro-units,
  - tiny homes,
  - single resident occupancy (SRO) dwellings,
  - co-housing,
  - multigenerational housing,
  - liveboards,
  - accessory dwelling units (also referred to as second units, in-law units, or granny flats), and
  - Junior accessory dwelling units (no larger than 500 square feet)



# Shortage of Affordable Housing

- In California, we currently have the lowest home ownership rates since the 1940's
- If you look at top 30 most expensive rental markets in America, California is home to 21 of them
- Various legislators are attempting to address this challenging issue in vastly different ways
- You may be aware that there were 15 housing bills proposed last year.
- Perhaps the most well known was SB 827, which was opposed by many people in part because it took a one size fits all approach
  - Would have required cities to allow denser and taller apartment and condo buildings near major public transit stops
  - What works for SF or LA will never work for other communities
  - Bill died in committee

# What is Affordable Housing?

- According to the federal government, housing is “affordable” if it costs no more than 30% of the monthly household income for rent and utilities. Most affordable housing developments are built for families and individuals with incomes of 60% or less than the area median income (AMI).

# What is Affordable in California?

- In California, 36% of homeowners and 48% of renters spend more than one third of their household income on housing. For the 32% of working renters who spend over half their income on housing, they must choose between other necessities such as food, clothing, transportation, and medical care.
- In Orange County, low income means a salary between \$38,300 and \$61,328; very low income means a salary between \$22,980 and \$38,300.
- In order to afford the fair market rent for a 2-bedroom apartment (an average of \$1,354 per month) – without paying more than 30% of income on housing – a household must earn \$4,514 monthly or \$54,168 annually. That's the equivalent of 3.3 minimum wage jobs.

# Who is Being Left out of California's Housing Market?

Job Category	Median Income in California
Nursing Assistants	\$27,900
Security Guards	\$24,120
Janitors and Cleaners	\$23,590
Restaurant Cooks	\$23,200
Retail Salespersons	\$22,000
Home Health Aids	\$21,870
Cashiers	\$20,540
Disabled	\$14,771 or less

# Worst 10 California Counties by Shortfall of Homes Affordable and Available to Extremely Low-Income Households

County	Shortfall of Homes Affordable and Available to ELI Households	Affordable and Available Homes per 100 ELI Renters
Los Angeles	376,735	19
San Diego	79,795	18
Orange	70,125	18
Alameda	44,560	27
Santa Clara	39,465	26
San Bernardino	36,375	18
Sacramento	36,040	21
San Francisco	35,855	37
Riverside	31,875	20
Fresno	23,810	20

# Benefits of Affordable Housing

- Opportunity to provide targeted health and social services to help end the cycle of poverty.
- Services for low-income families may include adult education, financial literacy programs, health and wellness programs, child care, and after-school programs.
- Permanent supportive housing for the chronically homeless produces significant savings on the healthcare and public safety systems.

# Feasibility of Affordable Housing

- Affordable housing is built as a result of strong partnerships between governments, housing developers, community leaders, and private financial institutions.
- Generally, a project will be considered financially feasible if:
  - The developer can secure financing for the total costs of acquiring and developing the housing facilities (hard and soft costs)
  - Net operating income from the project will be sufficient to pay the debt service on the project after completion

# California's Legislative Movement Toward More Affordable Housing

- CA Const. Article 34 (1950): “no low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until a majority of the qualified electors of the city, town or county ... approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.”
- Compliance with Article 34 adds \$10-\$80K to cost of low-income housing.



# California's Legislative Movement Toward More Affordable Housing

- State Senator Ben Allen is proposing to add a referendum to 2020 ballot that would repeal Article 34. Effort is supported by LA Mayor Eric Garcetti.
- Assemblymember Cecilia Aguiar-Curry: constitutional amendment to make it easier for local governments to fund new housing: lower voter approval threshold from 2/3 to 55%.
- One bill would add \$500M to state's budget for low-income housing tax credits
- Another bill would add funds to state's Multi-Family Housing Program.
- A couple of bills create more precise definitions and requirements for tracking homelessness.

# California's Legislative Movement Toward More Affordable Housing

- State Senator Scott Weiner is proposing SB 50, the More Housing, Opportunity, Mobility, Equity, and Stability (HOMES) Act: a sequel to SB 827, an incentive package to generate new housing near transit that failed in committee in 2018.
- Among other things, the changes give local leaders two years (until January, 2023) once the bill is signed to create a development blueprint that caters to their region's needs. Sensitive communities would have 5 years (until January, 2026).

# Revised Legislation: SB 50

- Mandates denser development in more affluent job-rich communities, even if they don't have high-intensity commute transit service
- Qualifying projects exempt from local limits on housing density and parking requirements
- Developments in “transit-rich” neighborhoods get added incentives to include affordable units, i.e., waiver of height limits for one additional story
- Waivers of FAR would allow developers to build more housing on a given parcel

# SB 50 Key Provisions

- Allows local municipalities to avoid SB 50's zoning changes if they develop a community plan that affirmatively furthers fair housing, builds more housing near transit, and increases housing capacity.
- Community plans must be approved by the Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR).
- This approach to the creation of affordable housing means local governments still have full authority with the zoning laws that are currently on their books.

# SB 50 Key Provisions

- Allows for creation of fourplexes by right (regardless of jurisdiction population) in residential areas in the following cases:
  - Conversions of existing structures—but no demolition—as follows: 75% of exterior walls must be intact and no more than +15% increase square footage.
- Development of the fourplex project cannot require demolition of:
  - Affordable housing
  - Housing occupied by tenants in the past 7 years
  - Historic structures listed on national, state, or local registers
  - No teardowns of homes allowed unless the home has been vacant or is deemed a substandard structure that was unoccupied for 5 years.
- Fourplex projects must be on an infill site (previously developed for urban uses or 75% surrounded by developed urban parcels). This means almost all unincorporated areas in the state will not be eligible for a fourplex with the exception of Los Angeles County.

# SB 50 Key Provisions

- Fourplexes cannot be located in:
  - A site within the coastal zone unless the city has a population of 50,000+
  - Prime farmland
  - Wetlands
  - Very High Fire Hazard Severity Zones
  - Hazardous waste site
  - Earthquake fault zone
  - Specified flood zones
  - Lands identified for conservation in a natural community conservation plan
  - Habitat for protected species
  - Land under conservation easement
- Development of the fourplex project must meet all other local regulations (setbacks, lot coverage, floor-area-ratio, height, etc.).

# SB 50 Key Provisions

- For counties under 600,000 within cities of 50,000+, SB 50 contains the following provisions:
- Developer gets waiver from density limits (with minimum of 30 units/acre in urban jurisdictions and 20/units acre in suburban jurisdictions—this is consistent what exists in current law), height limits of zoning on the parcel plus one story, and floor area ratio of 0.6 times the # of stories for projects within half-mile around rail/ferry

# SB 50 Key Provisions

- For example, a city that currently has a three story limit for residential would, under the amended SB 50, within a half mile from the SMART rail line, developers would be able to add one story to the three story height limit.
  - Exemptions: no development with these amended height standards would be permissible in floodplains, Very High Fire Hazard Severity Zones, and all historic districts.
  - This waiver does not grant bonuses around bus stops or in “jobs-rich areas.” In fact, bus stops are no longer in the bill for counties with a population of 600,000 or less.
- Developers will not be required to meet parking minimums within  $\frac{1}{4}$  mile of rail in cities over 100,000, but will be required to provide a minimum of 0.5 parking spaces per unit minimum elsewhere.



# A Housing Bill Will Pass in 2020: The Question is Which One(s)

- If a housing bill is passed by the legislature, Governor Newsom will sign it
- The strategy of “no” will not work
- Local public agencies have to be proactive
- If we are not developing some type of alternative, we will have to live with the consequence of saying no

# Part 2 – Enforcement Issues

- Difficult Code Enforcement Issues, No Easy Solutions
  - Quality of Life Issues Affecting Public Health and Safety
  - Sensitive, Vulnerable Population
  - Constitutional Rights at Stake
  - Potential Liability for Local Agencies and Enforcement Officials

# ***Martin v. City of Boise*: Prohibition Against Sleeping in Public Violates Eighth Amendment**

- The 9th Circuit Court of Appeal issued a unanimous decision September 2018 in *Martin v. City of Boise*, finding that the City of Boise's prohibition against sleeping in public violates the Eighth Amendment's prohibition on cruel and unusual punishment when the homeless individuals have no access to alternative shelter.
- The Court held that the Eighth Amendment prohibits ordinance enforcement if such ordinances criminalize homeless individuals for sleeping outside when they have no access to alternative shelter.
- This decision greatly impacted the enforcement of similar state laws, such as California Penal Code section 647(e) prohibiting illegal lodging, which was at issue in *Orange County Catholic Worker v. Orange County* prior to the settlement of that matter in October, 2019.

# *Martin v. City of Boise*

- Notably, the *Martin* Court reaffirmed the reasoning in an earlier-decided case, *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118, which held that the city's enforcement of local camping ordinances violated the Eighth Amendment by imposing criminal penalties for sitting, sleeping, or lying outside on public property when homeless individuals could not otherwise obtain shelter.
- The *Martin* decision confirms that cities cannot enforce camping/lodging prohibitions if their local homeless population faces inadequate shelter space.
- Based on *Martin*, it appears that the city enforcing the ordinance must have shelter space available within its own jurisdiction; additional shelter space elsewhere, even if nearby, does not augment the options.

# *Martin v. City of Boise*

- The Court also makes clear that its opinion does not apply to “individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.”
- Nor does the decision completely prohibit cities from banning sitting, lying, or sleeping outside at particular times or in particular locations.
- The Court further indicated that prohibitions on the obstruction of public rights-of-way or the erection of structures likely will remain permissible.
- And finally, an ordinance’s valid enforcement will ultimately depend on whether that law criminalizes an individual for not having the means to “live out” the “universal and unavoidable consequences of being human.”
- So the *Martin* decision still gives cities important tools in regulating these particularly problematic areas.

# *Martin v. City of Boise*

- The City of Boise filed a Petition for a Writ of Certiorari on August 22, 2019
- The question presented by the Writ was: Does the enforcement of generally applicable laws regulating public camping and sleeping constitute “cruel and unusual punishment” prohibited by the Eighth Amendment of the Constitution?
- The Writ argues that:
  - The *Boise* decision vastly expands the sparingly applied” limits imposed by the Eighth Amendment’s Cruel and Unusual Punishment clause.
  - The Court has never before declared a law unenforceable on the ground that the Eighth Amendment exempts from regulation purportedly “involuntary” acts, but actually declined to do so more than 50 years ago.
  - The *Boise* decision creates a conflict among the lower courts, where at least three other circuit courts have rejected the Ninth Circuit’s reasoning.

# *Martin v. City of Boise*

- The Writ identified the ramifications of the *Boise* decision:
  - The *Boise* decision's creation of a de facto constitutional right to live on sidewalks and in parks will cripple the ability of more than 1,600 municipalities in the Ninth Circuit to maintain the health and safety of their communities.
  - Public encampments have spawned crime and violence, incubated disease, and created environmental hazards that threaten the lives and well-being both of those living on the streets and the public at large.
  - The expansive rationale adopted by the Ninth Circuit imperils other laws regulating public health and safety including laws prohibiting public defecation and urination.
  - Encampments provide a captive and concentrated market for drug dealers and gangs who prey on the vulnerable.

# *Martin v. City of Boise*

- On December 16, 2019, the US Supreme Court declined to intervene in the *Martin* case, letting stand the ruling that protects homeless people's right to sleep on the sidewalk or in public parks if no other shelter is available. The Supreme Court did not explain its decision to turn down the appeal — the justices usually do not do so — but they may have thought the dispute was moot.



# *Martin v. City of Boise*

- In examining the appeal, the justices were faced with whether to decide a major question of whether there is a constitutional right to sleep on the sidewalk in a case in which the city was no longer enforcing the ordinances in question.
- Just two weeks earlier, the high court faced a similar dilemma in a gun-rights case from New York City. Gun owners had gone to court to challenge part of a city ordinance that prevented them from carrying their licensed firearms to shooting ranges outside the city or to a second home. A federal appeals court had upheld the law, but the city repealed the disputed ordinance after the Supreme Court agreed to review the case.

# *Martin v. City of Boise*

- The case raised a broad question about whether the 2nd Amendment’s “right to bear arms” protected a right to carry a weapon in public. But during the oral argument on December 2, 2019, Chief Justice John G. Roberts Jr. and several of his colleagues strongly hinted the case should be dismissed because the city was no longer enforcing the disputed ordinance.
- The chief justice may have foreseen the same would be true if the court took up the Boise case. If so, however, this outcome probably says little about how the high court would rule if another case comes along that gives it an opportunity to decide whether the Constitution limits a city’s enforcement of laws regulating its sidewalks and parks.

# *Martin v. City of Boise*

- The outcome was perceived as a significant victory for homeless activists and a setback for city officials in California and other Western states who argued the ruling from the 9th U.S. Circuit Court of Appeals undercut their authority to regulate encampments on the sidewalks.
- Various city officials throughout California expressed disappointment with the court's decision not to hear the case, saying that the lower court ruling had left the law unclear about what local officials could do.

# Homeless Encampments

- Santa Ana Civic Center, November 2017



# HOMELESS ENCAMPMENTS: ISSUES

- Fourth Amendment Issues
- Homeless Individuals' Property
- Enforcement of Local Laws

# Homeless Encampments: Competing Concerns

- May deprive the public of the use of certain city sidewalks, parks, or recreational areas
- May also pose serious public health and safety threats as a result of accumulations of trash, illegal drug use, inadequate sanitation, and the presence of rodents and vermin
- But, also may contain an individual's only belongings, including medicine and personal mementos

# Homeless Encampments: Fourth Amendment Issues

- The Fourth Amendment prohibits **unreasonable** searches and seizures by government agents without a warrant
- The prohibition against unreasonable searches applies when there is a reasonable expectation of privacy in the place to be searched
- The prohibition against unreasonable seizures applies when there is some meaningful interference with an individual's possessory interests in that property

# Homeless Encampments: Fourth Amendment Issues

- Searches – does the individual have the right to be at that location?
- There is a reasonable expectation of privacy in a tent at a public campground; cannot be searched without a warrant or exigent circumstances. (*United States v. Sandoval* (9th Cir. 2000) 200 F.3d 659.)
- There is no reasonable expectation of privacy in a cardboard box shelter on a public sidewalk; can be searched without a warrant. (*People v. Thomas* (1995) 38 Cal.App.4th 1331, 1333-1335.)
- See also *Amezquita v. Hernandez-Colon* (1st Cir. 1975) 518 F.2d 8, 11-12 [squatters' community on public property]



# Homeless Encampments: Fourth Amendment Issues

- Seizures – when does the confiscation of homeless property violate the Fourth Amendment?
- The test is reasonableness. Example: it may be reasonable to seize property that is blocking a public right-of-way, but unreasonable to destroy that property without due process (notice and an opportunity to be heard). (See *Lavan v. City of Los Angeles* (9<sup>th</sup> Cir. 2012) 693 F.3d 1022)

# Homeless Encampments: Handling Homeless Individuals' Property

- Notice. Give as much notice as feasible that (1) the homeless individual's property needs to be removed from public property and (2) the City will remove and store the property itself if the homeless individual does not comply.
- In situations, where police discover a homeless encampment or homeless property, 24 hours should be sufficient notice to remove the items from public property so long as there is no threat to public health or safety. The amount of notice should be based on the circumstances of the situation.

# Homeless Encampments: Handling Homeless Individuals' Property

- With regard to scheduled sweeps of homeless encampments, the City should post several written notices on or near the area that is being scheduled for clean-up, at least 72 hours in advance of the clean-up.
- In addition, distribute notices to local homeless shelters and businesses near the clean-up area for posting.

# Homeless Encampments: Handling Homeless Individuals' Property

- Notices of homeless encampment cleanups should include the following information (*Kincaid v. City of Fresno* (E.D. Cal., Dec. 8, 2006, 106CV-1445 OWW SMS) 2006 WL 3542732, \*38):
  - A statement of the nature and purpose of the clean-up
  - The legal authority for the clean-up (i.e., cite to Hemet Municipal Code 53-8 (anti-camping ordinance)),
  - The specific location(s) where the clean-up will occur,
  - The date and time of the posted notice, as well as the date and time of the scheduled clean-up

# Homeless Encampments: Handling Homeless Individuals' Property

- Content of Advanced Notice, Continued:
  - A notice that items left in the clean-up area on the date/time of the scheduled clean-up will be impounded by the City,
  - The address where individuals may claim personal belongings that are collected by the City, and a statement indicating the date upon which the belongings will be deemed finally abandoned and destroyed (\*date must be at least 90 days after the date of the clean-up),
  - Brief description of the process for reclaiming lost belongings (i.e., owner will be required to describe lost items to prove ownership)
  - List local facilities and shelters where homeless individuals may relocate for temporary shelter,
  - Phone number that individuals may call for more information

# Homeless Encampments: Handling Homeless Individuals' Property

- If there is a reasonable belief that certain items are actually abandoned (such as trash or discarded debris) or are a threat to public health and safety (such as bodily waste receptacles, drug paraphernalia, narcotics, alcohol, weapons, or heavily soiled mattresses), the items may be seized and destroyed right away.
- The city may also seize and collect evidence of a crime or other obvious illegal contraband.
- All other items should be collected and stored for a reasonable period of time before any destruction. Many agencies use the 90-day period in Civil Code section 2080.2.

# Homeless Encampments on Private Property

- Property owners are typically responsible for nuisance conditions on their own property, but many property owners or nearby neighbors look to city officials for assistance in abating these conditions and removing unwelcome squatters
- Ask the squatters to leave voluntarily and to take their belongings with them. Without the property owner's permission, the squatters are committing misdemeanor trespass in violation of Penal Code section 602(m), which prohibits "[e]ntering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession."
- Confiscation of homeless property located on private lands will likely be subject to same considerations as if it had been on public property

# Sleeping in Vehicles

- In *Desertrain v. City of Los Angeles*, the Ninth Circuit struck down an ordinance restricting the use of vehicles as living quarters on public streets and in public parking lots.
- “No person shall use a vehicle parked or standing upon any City street, or upon any parking lot owned by the City of Los Angeles and under the control of the City of Los Angeles or under control of the Los Angeles County Department of Beaches and Harbors, as living quarters either overnight, day-by-day, or otherwise.”



# Sleeping in Vehicles

- The ordinance had two problems.
  - First, the ordinance was drafted too broadly for either a reasonable person or a police officer to understand what conduct was prohibited.
  - Second, the L.A.P.D. was enforcing this vague ordinance against individuals for conduct other than sleeping in a vehicle.

# Sleeping in Vehicles

- Under *Desertrain*, a vehicle habitation prohibition will have to clearly define what it means to use a vehicle as a dwelling or living quarters
  - the quantum of evidence necessary to prove that an individual is actually using a vehicle as a dwelling or living quarters. For example, observing an individual sleeping in a vehicle over an extended period of time or days.
- The Ninth Circuit observed repeatedly in its opinion that the four primary plaintiffs were engaged in seemingly innocuous conduct when they were contacted and/or cited by the L.A.P.D.
- Local agencies that want to enforce these types of ordinance will need to be patient in observing possible violators and gathering evidence. The mere fact that an individual is storing personal items in a car will not be sufficient.

# QUESTIONS?



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