STRATEGIES FOR ADDRESSING HOMELESSNESS AND AFFORDABLE HOUSING; POLICY SOLUTIONS AND ENFORCEMENT

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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. To address this burgeoning issue, 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.

Practical Considerations in the Wake of *Martin v. City of Boise*

In *Martin v. City of Boise*,[i] the 9th Circuit Court of Appeal in September 2018 issued a unanimous decision 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 2018.

The *Martin* case began more than a decade ago when Robert Martin and several other homeless people were given tickets or fines of $25 to $75 for camping on the sidewalk. They joined a lawsuit that challenged the punishments as unconstitutional.

Notably, the *Martin* Court reaffirmed the reasoning in an earlier-decided case, *Jones v. City of Los Angeles*[ii], 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.

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 argued that:

- The *Martin* 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 *Martin* decision creates a conflict among the lower courts, where at least three other circuit courts have rejected the Ninth Circuit's reasoning.

Beyond the legal ramifications of the decision, the Petition identified various logistical ramifications of the *Martin* decision:

- The *Martin* 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.

Various local officials throughout California joined Boise in asking the high court to hear the case, but explained their effort was never an attempt to criminalize the homeless; rather, it was a pursuit of a legal framework that is clear —

in comparison to a status quo that is ambiguous and confusing.

The "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 9th Circuit to maintain the health and safety of their communities," wrote lawyers for Boise.

"Nothing in the Constitution ... requires cities to surrender their streets, sidewalks, parks, riverbeds and other public areas to vast encampments," the lawyers said. The appeal was filed by Theane Evangelis and Ted Olson, partners at Gibson Dunn in Los Angeles.

A right to sleep on the sidewalk is not new for California city officials. In 2006, the 9th Circuit handed down a similar ruling that said the City of Los Angeles may not enforce laws against sleeping in public places. Rather than appeal, the city negotiated a settlement with lawyers for homeless people in which it agreed to not enforce such laws from 9 p.m. to 6 a.m.

The Supreme Court has previously relied on the 8th Amendment to limit the punishment for some crimes, but it is rare for judges to strike down a criminal law itself as cruel and unusual punishment. The 9th Circuit cited a 1962 decision in *Robinson vs. California*[iii], which struck down part of a state law that "made the status of narcotic addiction a criminal offense."

Judge Marsha Berzon said this principle extends to homelessness. "Just as the state may not criminalize the state of being homeless in public places," she wrote, "the state may not criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying or sleeping on the streets."

Los Angeles City Attorney Mike Feuer had urged the court to hear the *Martin* case and review the 9th Circuit's opinion. "The lack of clarity of the Boise decision, combined with its sweeping rationale, makes more difficult the efforts of Los Angeles to balance the needs of its homeless residents with the needs of everyone who uses our public spaces," he said.

He questioned whether the city must have shelter available for all 36,000 homeless people "before taking

enforcement action against a single unsheltered individual who refuses an available shelter bed in one of the city's regional shelters, just because shelters at the opposite end of the city are full."

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.

Lawyers for the homeless pointed out that in 2014, Boise announced its police "shall not enforce" its misdemeanor ordinances against sleeping or camping in public when no shelter space is available. The city thought this would end the litigation, but the 9th Circuit proceeded to issue a broad ruling last year.

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.

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.

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. The 9th Circuit had agreed with lawyers for the homeless who argued that prosecuting people for sleeping on the sidewalks violated the 8th Amendment's ban on cruel and unusual punishment if a city failed to provide adequate shelter.

A city ordinance "violates the 8th Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors on public property, when no alternative shelter is available to them," said the ruling by the 9th Circuit, which has jurisdiction over California and eight other Western states.

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.

Although the *Martin* decision imposes significant constraints regarding dealing with homeless encampments, it does not leave municipalities without recourse. Thus, while municipalities can no longer criminally enforce existing laws prohibiting camping on public property, or require homeless individuals to leave the jurisdiction, municipalties can continue to apply generally applicable laws to homeless persons, such as litter laws and use of private property, provided that those laws do not specifically criminalize acts necessary to live. Additionally, municipalities may conduct cleanups of encampments on public property, provided they provide advance notice before seizing and disposing of personal property, and do not arrest any persons or issue criminal citations.

The *Martin* 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 municipalities important tools in regulating these particularly problematic areas.

Creating Solutions to Homelessness

Municipalities have a host of tools to overcome challenges to the siting and construction of emergency shelters and homeless support centers. For example:

- Emergency Shelter as of Right: SB 2 requires 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.[iv]

- Shelter Crisis Declaration: Govt. Code 8698: suspends certain regulations that could delay a shelter project.

- Public Contract Code Section 22050: Provides for expedited public contracting procurement in the event of an emergency, such as a shelter crisis.

- 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

Municipalities relying on various forms of federal and state grant funding must be vigilant to ensure they comply with all funding deadlines and expenditure and reporting constraints.

Creating Affordable Housing as a Solution to Homelessness

California currently has the lowest home ownership rates since the 1940's. Among the top 30 most expensive rental markets in America, California is home to 21 of them. According to the federal government, housing is

"affordable" if it costs no more than 30% of the monthly household income for rent and utilities.

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, for example, 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.

Affordable housing is built as a result of strong partnerships between governments, housing developers, community leaders, and private financial institutions. Most affordable housing developments are built for families and individuals with incomes of 60% or less than the area median income (AMI). Affordable housing developments

create an 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.

Various legislators are attempting to address this challenging issue in vastly different ways. For example, dozens of housing bills were proposed in 2018 and 2019.

- State Senator Ben Allen is proposing to add a referendum to 2020 ballot that would repeal California Constitution Article 34, adopted in 1950, which provides: "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 is believed to add $10K-$80K to the cost of low-income housing. Senator Allen's effort is supported by LA Mayor Eric Garcetti.

- Assemblymember Cecilia Aguiar-Curry is proposing a constitutional amendment to make it easier for local

governments to fund new housing: lowering the voter approval threshold from 2/3 to 55%.

- Another 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.

One of the most well known bills was SB 827, an incentive package to generate new housing near transit 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

State Senator Scott Weiner is now proposing SB 50, the More Housing, Opportunity, Mobility, Equity, and Stability (HOMES) Act: a sequel to SB 827. Senator Weiner and

State Senator Mike McGuire have negotiated various provisions in SB 50 to ensure that the one size fits all approach from SB 827 is no longer part of the legislation and to give cities some flexibility to achieve home construction targets on their own before losing authority over their zoning standards. One of SB 50's key approaches is the potential creation of affordable fourplexes near public transit.

As of today, SB 50 contains the following key Fourplex provisions, which apply to all cities, regardless of population.

- 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.

- 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.).

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.

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

    - 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 ¼ 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.

SB 50 underwent major changes in amendments added on January 6, 2020:

- 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).

- 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).

Governor Newsom has pledged to rapidly expand California's housing stock by 3.5 million units by 2025 and to streamline state housing regulations. He has pledged to increase affordable housing tax credit from $85 million

to $500 million, phased in over a few years, to spur new housing development. Overall, Governor Newsom's spending plan calls for $2 billion in one-time and ongoing funds for all housing initiatives, ranging from local planning grants to loans to help middle-income residents afford homes.

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.

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.

If a housing bill is passed by the legislature, Governor Newsom will likely sign it. The strategy of "no" will not work. Rather, local public agencies have to be proactive in negotiating and legislating for housing bills that will create opportunities for affordable housing without depriving municipalities of local control. If local agencies are not proactive in developing some type of alternative, they will have to live with the consequence of saying no.

Addressing Public Health and Safety Issues Related to Homelessness

Homelessness presents municipalities with a variety of challenging social and public health, safety and welfare issues. Many of these issues require complex, long-term strategies with no simple or straightforward solutions. However, certain public nuisances that result from the effects of homelessness, such as encampments and the use of vehicles as living quarters, may demand more immediate attention by city officials. Local public officials can enhance their long range likeilihood of success by following certain procedures in addressing homelessness-related nuisances.

Homeless Encampments on Public Property

Homeless encampments of various sizes have become common in many cities. These encampments can deprive the public of the use of certain city sidewalks, parks, or recreational areas. These encampments 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. At the same time, homeless encampments may contain an individual's only belongings, including medicine and personal mementos. In dealing with homeless encampments, therefore, city officials must be sensitive to the constitutional rights of homeless individuals.

In *Lavan v. City of Los Angeles*[v], the Ninth Circuit Court of Appeals upheld an injunction that prevented the City of Los Angeles from seizing and destroying homeless property left unattended on public property. The injunction did not apply if there was an objectively reasonable belief that the property was truly abandoned or the property posed an immediate public health and safety threat or was evidence of a crime or contraband. While the Court did not find a constitutional right to leave personal property on public property, the Court did

conclude that the Fourth and Fourteenth Amendments of the U.S. Constitution protect a homeless individual's right to keep his or her unattended but unabandoned property. In the Court's view, the seizure and *immediate* destruction of homeless property was not reasonable.

Based on *Lavan*, cities should proceed cautiously in dealing with homeless encampments on public property. Initially, the enforcement team should confirm that public property is involved. Homeless encampments on private property raise a separate set of issues, as discussed below.

Assuming that the encampment is on public property, enforcement officers should take the following steps in dealing with the removal of property owned by homeless individuals:

- **Provide Advance Notice**. Give as much notice as feasible that (1) the homeless individual's property needs to be removed and (2) the city will remove and store the property if the homeless individual does not comply and remove it within the timeframe provided. The amount of notice should be based on the circumstances of the situation. However, when conducting scheduled sweeps

of homeless encampments, cities should post several written notices in the area designated for clean-up, at least 72 hours in advance. The notices should include the following information:

1. A statement of the nature and purpose of the clean-up;

2. The legal authority for the clean-up (i.e., cite to the city's anti-camping ordinance or other applicable regulations; the city attorney should be consulted *in advance* to assist in reviewing the local ordinances to ensure they are up to date and otherwise enforceable);

3. The specific location(s) where the clean-up will occur;

4. The date and time of the posted notice, as well as the date and time of the scheduled clean-up;

5. A notice that items left in the clean-up area on the date and time of the scheduled clean-up will be impounded by the city;

6. The address where individuals may claim personal belongings that are collected by the city, and a statement indicating the date on which the belongings will be deemed finally abandoned and destroyed;

7. A brief description of the process for reclaiming lost belongings (i.e., owner will be required to describe lost items to prove ownership);

8. A list of local facilities and shelters where homeless individuals may relocate for temporary shelter; and,
9. A phone number that individuals may call for more information.[vi]

- **Remove the Property**. The city should then document all property removed from the encampments in as much detail as possible, preferably with a written description and photographs. The inventory list must include the items collected, the date and time of location, the storage location and hours of operation, directions on how the homeless person can retrieve the seized property, and the date on which the seized property will be destroyed. The City should provide the inventory list to the homeless individual if possible. 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.[vii]

Homeless Encampments on Private Property

Homeless encampments on private property present similar public nuisance problems and health and safety concerns. While property owners are typically responsible for nuisance conditions on their own property, many property owners or nearby neighbors look to city officials for assistance in abating these conditions and removing unwelcome squatters. As with the removal of encampments on public property, public officials should proceed cautiously.

Following the *Martin* decision, the Northern District of California has repeatedly upheld the City of Oakland's policy that allows Oakland to "clean and clear" homeless encampments by providing a notice of trespass 72 hours in advance. Central to these decisions was that Oakland's cleanups did not involve any arrests or issuance of citations.[viii]

After properly identifying the owner of the subject private property, city officials should determine whether the owner has consented to the homeless encampment on the property. In a situation in which the property owner has allowed the encampment to exist or cannot be

located, the city should address the situation as a standard public nuisance abatement issue. A court-approved inspection warrant under California Code of Civil Procedure[ix] section 1822.50 et seq. may first be necessary to evaluate the extent of the problem and determine the appropriate remedy.

In situations in which the owner did not consent to the homeless encampment, local law enforcement may cite the squatters for misdemeanor trespass under the Penal Code.[x] With regard to homeless property located on private property, city officials must determine whether to leave the clean-up to the property owner or confiscate the homeless property. If the city ultimately elects to remove property owned by homeless individuals from the private property encampment, the city should follow the same procedures for removing homeless encampments from public property, including providing advance notice and storage of the property when required by the statutes.

Sleeping in Vehicles

Another challenging health and safety issue involving the homeless has been the use of vehicles as living quarters on city streets and other public property. For some, the idea

of homeless living in a vehicle, which in some instances may be an individual's last remaining possession, might seem preferable to the homeless living on the street. This activity, however, can lead to overcrowding on public streets , unsanitary conditions, and neighborhood blight. A recent Ninth Circuit Court of Appeals decision again involving the City of Los Angeles demonstrates the difficulties and legal obstacles that cities may face in addressing this issue.

In *Desertrain v. City of Los Angeles*, the Ninth Circuit struck down the city's ordinance, adopted in 1983 that restricts the use of vehicles as living quarters on public streets and in public parking lots. In 2010, the city increased its enforcement activities under the ordinance in response to numerous complaints about homeless people living in vehicles on public streets in the Venice area of the city. According to the complaints, these individuals were dumping trash and human waste on streets and parkways and endangering public health.

Following the issuance of several citations and multiple arrests under the ordinance, a group of homeless individuals brought an action against the City claiming that the police had violated their constitutional rights. The

Ninth Circuit held that the ordinance language was unconstitutionally vague and promoted arbitrary enforcement. In the Court's view, the ordinance was broad enough to cover any person who transports personal belongings in a car, but was only applied to homeless individuals.

However, following *Desertrain*, a city's vehicle habitation prohibition should clearly define what it means to use a vehicle as a dwelling. Such a definition should establish the quantum of evidence necessary to prove that an individual is actually using a vehicle as a dwelling. City officials should work closely with their city attorneys to craft appropriate language. In addition, enforcement officers 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 may not be sufficient. Enforcement officers should make observations over an extended period of time in order to support an allegation that an individual is using a vehicle as a dwelling as defined by the local ordinance.

CONCLUSION

Dealing with nuisance conditions created by homeless encampments and the use of vehicles for dwelling purposes requires patience, vigilance, and sensitivity. Local agencies must provide reasonable notice to homeless individuals before enforcement officers confiscate homeless property and must provide homeless individuals with an opportunity to reclaim their property. Local officials must also ensure that their ordinances provide clear guidance to homeless individuals regarding what conduct is prohibited. Taking these steps may be time consuming and challenging, but they will help cities address some of the short-term problems associated with homelessness and minimize potential litigation risks.

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[i] *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031

[ii] *Jones v. City of Los Angeles* (9th Cir. 2006) 444 F.3d 1118

[iii] Robinson v. California (1962) 370 U.S. 660

[iv] *Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 783-784; 40 Ops.Cal.Atty.Gen. 243 (1962).

[v] *Lavan v. City of Los Angeles* (9th Cir. 2012) 693 F.3d 1022

[vi] *Kincaid v. City of Fresno* (E.D. Cal., Dec. 8, 2006, 106CV-1445 OWW SMS) 2006 WL 3542732, *38.

[vii] No published opinion has determined what constitutes a "reasonable" period of time for storing homeless property. *Kincaid*, which was not published, held that California Civil Code section 2080.2 imposed a mandatory duty on the defendant city to hold and store impounded property for 90 days. Civil Code 2080.2 provides, "If the owner appears within 90 days, after receipt of the property by the police department or sheriff's department, proves his ownership of the property, and pays all reasonable charges, the police department or sheriff's department shall restore the property to him." The application of section 2080.2 to homeless property remains a topic of debate.

[viii] *Le Van Hung v. Schaaf* (N.D. Cal., Apr. 23, 2019, No. 19-CV-01436-CRB) 2019 WL 1779584, at *4; *Miralle v. City of Oakland*, 2018 WL 6199929, at *2 (N.D. Cal. Nov. 28, 2018) ["Martin does not establish a constitutional right to occupy public property indefinitely at Plaintiffs' option."]; *Shipp v. Schaaf* (N.D. Cal., Apr. 16, 2019, No. 19-CV-01709-JST) 2019 WL 1644401, at *3.

[ix] Code Civ. Proc. § 1822.50 et seq.

[x] Penal Code section 602(m) (prohibits individuals from "[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").