Heal. Feed. Repair. Grow.

CHEHALIS RIVER MUTUAL AID NETWORK

Contact Us

Email crmutualaidnet@riseup.net

Phone 206-530-7806

Linktree linktr.ee/crmutualaidnet

A Zine on Homelessness, Encampments, and the Limits of Enforcement

One of the difficulties in understanding the legal issues involving homelessness is the fact that so many different areas of law are in play. I recently presented a webinar on the limits of enforcement with respect to homelessness, and I thought it might be a good idea to summarize some of the major issues. For a deeper dive, you can access my on-demand (pre-recorded) webinar here.

***Martin v. City of Boise* and Prohibitions on Camping, Sleeping, or Lying in Public**

We get frequent questions about this Ninth Circuit case, what it means, and how it impacts local governments. The case found that the City of Boise's enforcement of ordinances prohibiting camping, sleeping, or lying in public violated the Eighth Amendment ban on cruel and unusual punishment if an individual does not have a meaningful alternative (such as space in a shelter or a legal place to camp). My blog about this case, which was originally decided in September 2018, provides a summary and thoughts on how it impacts Washington local governments.

In the meantime, the Ninth Circuit Court of Appeals denied a request for rehearing before the full Ninth Circuit and amended its opinion slightly. Five judges joined in lengthy dissents from the denial of rehearing, and the City of Boise has sought review from the United States Supreme Court. No word yet on whether the Supreme Court will accept review, but we will keep you posted.

The *Martin* case is, in my opinion, part of a trend where courts conduct close scrutiny of enforcement practices that impact the homeless. What follows are a few examples of that trend.

Unauthorized Encampments—Seizures

The *Martin* case involves issuance of criminal citations to homeless individuals. A different Ninth Circuit case, *Lavan v. City of Los Angeles*, addresses a related issue—due process requirements for the removal of unauthorized encampments on public property.

Prior to clearing encampments, local governments must provide notice to camp resident (72-hour minimum notice is common). It is also important to have outreach personnel present during encampment removal, whose job it is to help individuals in an encampment identify shelter options or alternative locations to go to. Personal property found during the encampment removal must be held for a certain amount of time so that it can be claimed by the owner. For example, the City of Seattle's Unauthorized Encampment Removal Policy provides for a holding period of 70 days.

Unauthorized Encampments—Searches

In 2017, the Washington Court of Appeals ruled that tents and shelters set up on public property and used for habitation are protected from unreasonable searches under the Washington State Constitution. In *State v. Pippin*, Mr. Pippin was arrested when the police found drugs in his tent. The court ruled that law enforcement officers needed to obtain a search warrant before searching Mr. Pippin's tent. The court acknowledged the pervasiveness of homelessness and the need for the law to be flexible in responding to it, stating:

> 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.

Use of Vehicles for Habitation

A King County Superior Court judge ruled in 2018 that an individual residing in a vehicle may have homestead rights in the vehicle. The Homestead Act protects a person's residence and essential possessions from judgments and liens. Steven Long, a homeless individual who resided in his vehicle, challenged the City of Seattle's impoundment of his vehicle and the $500 impound fee charged by the towing company.

Although cars and trucks are not traditionally thought of as residences with respect the Homestead Act, the court noted that under RCW 6.13.010, "the homestead consists of real or personal property that the owner uses as a residence." The court ruled that the impound itself was legal, but that the impound fee constituted a lien on the vehicle, which should have been exempt under the Homestead Act.

It is important to note that as a Superior Court case this decision is not precedent for Washington local governments. However, it is currently pending before the Washington Court of Appeals, and MRSC will provide a summary and analysis once a decision is issued.

Panhandling Regulations

The Washington Supreme Court struck down an ordinance prohibiting begging or panhandling on First Amendment grounds in the 2016 case of *City of Lakewood v. Willis*. MRSC analyzed the case in this blog article, which provides a good overview.

In light of *Willis*, MRSC recommends that local governments review their regulations and enforcement practices. Asking for help or aid is protected speech and courts will closely scrutinize regulations that focus on certain types of speech (such as soliciting aid). Public safety laws (such as obstructing traffic) may present appropriate enforcement alternatives when fairly applied, since these laws do not regulate protected speech.

https://mrsc.org/Home/Stay-Informed/MRSC-Insight/June-2019/Homelessness-and-the-Limits-of-Enforcement.aspx

exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

FURTHERMORE, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

ADDITIONALLY, it is also the intent of this order to extend state emergency rent assistance programs and to incorporate the newly approved federal rental assistance funding. The goal is to continue to provide a path for eligible tenants to seek rental assistance, but to now also allow landlords, property owners, and property managers to initiate an application for rental assistance. This process should be collaborative, and I encourage the nonprofit and philanthropic communities to continue their support of programs that help educate and inform both parties of the benefits of these rental assistance programs. Although a new program may need to be created for the newly approved federal rental assistance, all counties should consider the existing program in King County as a model for creating this path for landlords and property owners and property managers.

ADDITIONALLY, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

MOREOVER, as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable re-payment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law. Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).Signed and sealed with the official seal of the state of Washington on this 18th day of March, A.D., Two Thousand and Twenty-One at Olympia, Washington. By:/s/ Jay Inslee, Governor

BY THE GOVERNOR:/s/ Secretary of State

•Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19, et seq., and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

•Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.

•The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's
notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement. Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been

SENT VIA E-MAIL

901 Fifth Ave, Suite #630
Seattle, WA 98164
(206) 624-2184
aclu-wa.org

April 17, 2019

To: Ms. Sara Watkins
First Vice President
Washington State Association of Municipal Attorneys
c/o Ms. Flannary Collins
Managing Attorney, MRSC
2601 4th Avenue, Suite 800
Seattle, WA 98121

RE: Recent Developments Questioning Constitutionality of Many Ordinances on Panhandling, Public Camping, and Religiously-Hosted Encampments

Dear Ms. Watkins,

We write to encourage MRSC and WSAMA members to evaluate the constitutionality of their jurisdictions' panhandling and camping ordinances in light of recent developments in the law. Failure to do so—leaving unconstitutional ordinances on the books—causes significant harm, particularly when the ordinances trigger the criminal process including arrest, conviction, and incarceration. Unconstitutional ordinances also risk lawsuits that are expensive to defend and risk incurring liability and attorneys' fees. MRSC and WSAMA members can avoid expense and liability by suspending enforcement of and then promptly repealing unconstitutional ordinances. Studies across the nation have also shown that it is less expensive to provide housing and services than to force homeless people to cycle through hospitals and jails.

Courts have repeatedly recognized that people without housing are protected by the same constitutional rights as everyone else. A series of recent court decisions, including *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015)1 and *City of Lakewood v. Willis*, 186 Wn.2d 210 (2016) on the free speech rights present in panhandling, and *Martin v. Boise*, 902 F.3d 1031 (9th Cir. 2018), *opinion amended on denial of rehearing, Martin*, No. 15-35845, 2019 WL 1434046 (9th Cir., April 1, 2019), on criminalization of public camping, have reaffirmed those rights and held unconstitutional municipal ordinances criminalizing such activities.

1 The *Reed* ruling was extended specifically to panhandling in remand of *Thayer v. Worcester*, 755 F.3d 60 (1st Cir. 2014) (*Thayer*, 135 S. Ct. 2887 (2015) (remanding case to 1st Cir. in light of *Reed*)). Because not every municipality is in compliance with the principles discussed in these cases, this letter provides a summary of what the law requires.

The Criminalization of Panhandling is Almost Always Unconstitutional

1. Panhandling is constitutionally protected speech and restrictions on it are subject to strict scrutiny

With *Reed*, 135 S. Ct. 2218 and the remand of *Thayer* based on *Reed*, the United States Supreme Court reconfirmed that a request for charity in a public place, which includes the typical panhandling activity of holding a sign asking for money, is speech protected by the

First Amendment. *Reed* together with the *Thayer* remand further recognize that an ordinance attempting specifically to regulate panhandling is a "content based" regulation that is presumptively unconstitutional and subject to strict scrutiny.

2. Ordinances regulating panhandling near vehicles must be extremely narrow and justified by clear evidence of necessity

In *Lakewood*, 186 Wn.2d 210, the Washington Supreme Court followed *Reed* and found unconstitutional an ordinance forbidding "begging" at on and off ramps to state highways and at intersections of major/principal arterials. Its analysis shows that any ordinance attempting to regulate solicitation of people in vehicles must be (1) extremely narrow as to geographic area and conduct regulated, (2) content-neutral, and (3) justified by clear evidence of necessity (simply asserting a traffic hazard is not sufficient).
Although some Washington municipalities repealed their ordinances regulating activities at on and off ramps and traffic intersections, others passed amendments insufficient to comply with *Lakewood*, and some have failed to make any of the needed changes at all.
3. Broad restrictions on panhandling, time-based restrictions, and restrictions purporting to limit "coercion" are unconstitutional

Moreover, many other restrictions on panhandling, which significantly limit the locations or times where this protected free speech activity is permitted, are also unconstitutional under the principles of *Reed* and *City of Lakewood*. These ordinances should be removed
For example, in Aberdeen, Aberdeen Mun. Code § 9.02.050(C) ("AMC") forbids "solicitation":
1. While a person is approaching to use, or is using, or has just finished using, an automated teller machine which shall include within twenty (20) feet of said machine;
2. At the entrance of a building, unless the solicitor has permission from the owner or occupant;
3. While a person is approaching to use, or is using, or has just finished using, a public pay telephone;
4. While a person is approaching to use, or using, or has just finished using a self-service car wash;
5. While a person is approaching to use, or is using, or has just finished using, a self-service fuel pump;
6. While a person is at a public transportation stop, or shortly after such person disembarks from a public transportation vehicle;
7. Any parked vehicle as occupants of such vehicles enter or exit such vehicle;
8. At ingress or egress between private and public property, unless the solicitor has permission from the owner or occupant;
9. In any public transportation facility or public transportation vehicle; or
10. After sunset or before sunrise.
Similar provisions can be found across the state, including in Lakewood Mun. Code § 9.04 (2017), Centralia Mun. Code § 10.37 (2017), and Chehalis Mun. Code § 7.04.320(I) (2015), to name just a few.
Courts across the country have repeatedly confirmed these provisions are an unconstitutional infringement of protected speech. The First Amendment protects peaceful requests for charity in a public place. *See, e.g., United States v. Kokinda,* 497 U.S. 720, 725 (1990) ("Solicitation is a recognized form of speech protected by the First Amendment.").The government's authority to regulate such public speech is exceedingly restricted, "[c]onsistent with the traditionally open character of public streets and sidewalks…."

the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution that contain the findings required by this paragraph.

•Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.

•Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

•Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectible, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.•Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. "Customary and routine" means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding financial resources, including coordinating with residents in applying for rent assistance through the state's Emergency Rent Assistance Program (ERAP) or an alternative state rent assistance program, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on June 30, 2021, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

•Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of this Proclamation.

This prohibition does not apply to emergency shelters where length of stay is conditioned upon a resident's participation in, and compliance with, a supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable requirements under Washington law, and nothing in this paragraph waives those requirements.

•Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.

•Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that(a)

McCullen v. Coakley, 573 U.S. 464, 477 (2014). Courts use the most stringent standard—strict scrutiny—to review such restrictions. *See, e.g., Reed,* 135 S. Ct. at 2226-27 (holding that content-based laws may survive strict scrutiny only if "the government proves that they are narrowly tailored to serve compelling state interests."); *McCullen,* 573 U.S. at 486.

The ordinances listed above, banning panhandling (but not other forms of speech) whenever there is a person at a bus stop or leaving a parked car, or in any location "after sunset or before sunrise," cannot survive strict scrutiny because they do not serve any compelling state interest and they are not narrowly tailored. In fact, every court to consider similar regulations has stricken the regulation. *See, e.g.*, *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Cutting v. City of Portland, Maine*, 802 F.3d 79 (1st Cir. 2015); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011); *Thayer v. City of Worcester,* 144 F. Supp. 3d 218, 237 (D. Mass. 2015) ("[M]unicipalities must go back to the drafting board and craft solutions which recognize an individual[']s… rights under the First Amendment…); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); *Browne v. City of Grand Junction, Colo.*, 136 F. Supp.3d 1276, 1293 (D. Colo. 2015).

Similarly, time-based restrictions on requests for charitable donations (prohibiting solicitation between sunset and sunrise) have been repeatedly struck down by the courts. *See, e.g.*, *Browne*, 136 F. Supp. 3d at 1292-93 (30 minutes after sunset to 30 minutes before sunrise); *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 580 (6th Cir. 2012) (6 pm curfew for door-to-door solicitation).

Another regulation found in many municipalities' ordinances, including Aberdeen at AMC § 9.02.050(D), forbids "Solicitation by Coercion[.]" Again, these ordinances have repeatedly been found to fail the requirement that they be narrowly tailored to serve a compelling state interest. *See, e.g., Thayer v. City of Worcester,* 144 F.Supp.3d 218 (D. Mass. 2015) (the municipality had multiple existing ordinances that could address aggressive contact, the content-based ordinance was not the least restrictive means); *McLaughlin*, 140 F. Supp. 3d 177; *Browne*, 136 F. Supp. 3d 1276; *Cutting*, 802 F.3d 79.

For these reasons, jurisdictions' panhandling ordinances should be carefully reviewed for constitutional validity.

The Criminalization of Public Camping is Unconstitutional When Shelter is Not Available

In many jurisdictions, people without housing are forced to live on public property because the shelters are full, have time limits, condition entry on religious participation, condition entry on separation from one's family members, or require compliance with onerous rules. People camping in public have nowhere else to go, and cannot survive without some form of shelter. Criminally punishing the involuntary act of living while homeless is unconstitutional.

In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), the Ninth Circuit concluded that "so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds [in shelters]" for the homeless, Los Angeles could not enforce an ordinance against homeless individuals "for involuntarily sitting, lying, and sleeping in public." Although the *Jones* case was vacated pursuant to a settlement agreement, Jones, 505 F.3d 1006 (9th Cir. 2007), the Ninth Circuit recently reaffirmed the *Robinson/Jones* analysis in *Martin*, 902 F.3d 1031, *order amended and rehearing en banc denied*, *Martin*, No. 15-35845, 2019 WL 1434046, holding a Boise anti-camping ordinance unconstitutional:

[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.

Martin, No. 15-35845, 2019 WL 1434046, at *14 (citing *Martin*, 902 F.3d at 1048). Applying similar reasoning, Washington courts have also struck down anti-camping or anti-sleeping ordinances, since they effectively deny homeless people the right to engage in activities essential to human survival (shelter, sleep). *City of Everett, Wash. v. Bluhm*, No. CRP 7006 (Everett, Wash. Mun. Court Jan. 12, 2016); *City of North Bend, Wash. v. Bradshaw*, No. Y123426A (Issaquah, Wash. Mun. Court Jan. 13, 2016). The cities in those cases chose not to appeal the rulings. In Tacoma, the City dismissed numerous anti-camping criminal cases rather than defend the validity of its ordinance and cities and counties across the state have announced suspensions of their anti-camping ordinances in light of *Martin*. There is no justification for keeping constitutionally suspect laws like these on the books when the cities are on notice that punishing public camping when essential to survival is cruel and unusual punishment under the United States Constitution.

Interference with Religiously-Hosted Encampments is Prohibited

We have also received reports about various jurisdictions subjecting residents of religiously-hosted encampments to interrogation, demands for identity, and searches that fail to comply with Washington's constitutional protections against unreasonable searches and seizures. RCW 36.01.290 specifically protects the right of religious institutions to host temporary encampments for people experiencing homelessness, and forbids municipalities from enacting ordinances or regulations or "tak[ing] any other action" that imposes any conditions other than those necessary to protect public health and safety and even then only if such actions do not substantially burden the decisions or actions of the religious organization. Subjecting the beneficiaries of the religious organizations' hosting to police activities that other citizens could not be subject to violates not only basic constitutional requirements but also RCW 36.01.290.

Conclusion

Criminalization of panhandling and public camping is inhumane and counterproductive in addition to being unconstitutional as described above, plus unlawful anti-panhandling and anti-camping ordinances are costly to enforce and only exacerbate problems associated with homelessness and poverty. Numerous communities have created alternatives that are more effective, and that address the concerns of neighborhoods, businesses, city agencies, and elected officials. *See* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2018), https://nlchp.org//wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf. We urge your members to place an immediate moratorium on enforcement of questionable ordinances and proceed with a rapid repeal to avoid potential litigation.

Sincerely,

/s/Nancy Talner

Nancy Talner, Senior Staff Attorney
American Civil Liberties Union
Of Washington Foundation
901 5th Ave, Suite 630
Seattle, WA 98164
206-624-2184
talner@aclu-wa.org

https://www.aclu-wa.org/docs/letter-municipalities-regarding-recent-developments-questioning-constitutionality-many

WHEREAS, positive COVID-19-related cases and hospitalizations steadily rose from early September 2020, through early January, 2021, and the number of COVID-19 cases and COVID-19-related hospitalizations continue to put our people, our health system, and our economy in a precarious position; and

WHEREAS, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and as of March 15, 2020, there are at least 330,367 confirmed cases with 5,149 associated deaths; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on June 30, 2021, as provided herein. I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic. I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

WHEREAS, as of March 2021, current information suggests that at least 76,000 tenants in Washington will be unable to pay their rent in the near future, reflecting the continued financial precariousness of many in the state. According to the state's unemployment information, significantly more people are claiming unemployment benefits in Washington now versus a year ago. This does not account for the many thousands of others who are filing claims with separate programs such as Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation: in December 2020, nearly 275,000 new and ongoing claims for unemployment-related assistance were filed; and

WHEREAS, a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

WHEREAS, I issued Proclamations 20-25, 20-25.1, 20-25.2,and 20 25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 ("Safe Start – Stay Healthy" County-By-County Phased Reopening), wherein I amended and transitioned the previous proclamations' "Stay Home – Stay Healthy" requirements to "Safe Start – Stay Healthy" requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

WHEREAS, when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

WHEREAS, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remained in place while I worked with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the increased spread of the virus, and those strategies included dialing back business and other activities; and

WHEREAS, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health's face covering requirements and several restrictions on activities where people tend to congregate;

WHEREAS, on October 6, 2020, due to the increased COVID-19 infection rates across the state, I announced that all counties would remain in their current reopening phases as a result of the continuing surge in COVID-19 cases across the state; and

Is Your Camping Ordinance Constitutional?

October 1, 2018 by Oskar Rey

A recent Ninth Circuit Federal Court of Appeals case — *Martin v. City of Boise* — ruled that it is unconstitutional for the City of Boise to enforce ordinances prohibiting camping in public places against homeless individuals at times when no shelter space is available. Washington is part of the Ninth Circuit, so this decision applies to Washington municipalities.

Many Washington municipalities have ordinances that prohibit camping and sleeping on public property (e.g., camping ordinances). This blog will examine the case and provide thoughts on the status of such ordinances in light of this decision.

Martin Requires that there be Alternatives to Public Camping

Martin was a challenge by homeless individuals to Boise's enforcement of camping ordinances against homeless individuals when no shelter space is available. They argued that citing homeless individuals under such circumstances is tantamount to criminalizing homelessness. The court agreed, stating:

> an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.

There was extensive discussion of Boise's attempt to show that there is sufficient shelter space for Boise's homeless population. Of the three shelters in Boise, two are operated by churches, and there was evidence that the church shelters required participation in religious activities. The court ruled that shelter space is not "available" if homeless individuals are required to participate in religious instruction in exchange for shelter. The court also noted that all the shelters had limits on how long a person can stay, and that the annual, point-in-time homeless counts suggested there were more unsheltered homeless than shelter spaces in Boise.

From the court's standpoint, it is not a simple question of whether an ordinance prohibiting camping on public property is constitutional. Rather, enforcement of such an ordinance is cruel and unusual punishment under the Eighth Amendment if a homeless person has no alternative to living and sleeping outside:

> As 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.

In other words, camping ordinances are not inherently unconstitutional, but a municipality can be in violation of the Eighth Amendment if the person cited had no meaningful alternative to sleeping outside.

Additional Information on the Scope of Martin

In footnote 8, the *Martin* court set forth some limits on the scope of its decision:

1. It does not cover individuals who do have access to adequate temporary shelter but choose not to use it.
2. Even when shelter is unavailable, an ordinance may prohibit sitting, lying, or sleeping outside at certain times or in certain locations.
3. An ordinance may prohibit obstruction of rights-of-way or the erection of certain types of structures.
4. Whether such ordinances are consistent with the Eighth Amendment will depend on "whether it punishes a person for lacking the means to live out the 'universal and unavoidable consequences of being human…'"

What Should Cities Do in Response to Martin?

Martin raises both legal and policy issues for a municipality to consider:

- If a municipality is enforcing camping ordinances, it should obtain review by its legal counsel in light of the *Martin* case and suspend enforcement until that process is complete.
- Many camping ordinances predate the rise of the homelessness population in this region. As a policy matter, a municipality may want to review its camping ordinances to determine whether they are in keeping with current legislative priorities.
- A municipality should decide, as a matter of policy, if it wants to create a system that tracks the number of available shelter beds and the number of homeless individuals in its jurisdiction. Being able to show that shelter beds are available will require ongoing efforts and may be logistically difficult since the number of homeless individuals and the number of shelter beds in a jurisdiction will fluctuate over time. Municipalities will need to coordinate with other entities to the extent shelters in the area are operated by third-party agencies or nonprofits. If a municipality opts not to track this information, then it will be vulnerable to a legal challenge if it enforces ordinances that prohibit camping or sleeping in public.
- A municipality can consider limiting the applicability of camping ordinances to certain times of day or certain types of properties. Under *Martin*, the questions will be whether there is shelter space available or whether there are places in the jurisdiction where a homeless individual can sleep or camp without violating camping ordinances.

https://mrsc.org/Home/Stay-Informed/MRSC-Insight/October-2018/Is-Your-Camping-Ordinance-Constitutional.aspx

hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non- emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

WHEREAS, the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 "that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;" and

WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; "Airbnb's"; motor homes; RVs; and camping areas; and

WHEREAS, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents' home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling ("holdover occupant"), unless the landlord, property owner, or property manager (collectively, "landlord") has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

WHEREAS, a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

STATE OF WASHINGTON
OFFICE OF GOVERNOR JAY INSLEE

PROCLAMATION BY THE GOVERNOR EXTENDING AND AMENDING 20-05 AND 20-19, et seq.20-19.6 Evictions and Related Housing Practices

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

WHEREAS, the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

WHEREAS, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic

A MESSAGE FROM
MAYOR SCHAVE
April 13, 2021

Hello fellow Aberdeen residents –

This week's City Council agenda has an extension for the TASL (Temporary Alternative Shelter Location) for otherwise unsheltered people at the City Hall employee parking lot. Since the TASL has been operating for nearly 2 years, I imagine that many of us may wonder how long "Temporary" is, and what has gotten us to this point. To answer that question, I'd like to remind us all of the history that got us to this point.

In early 2018, City Council had two workshops identifying the city's increasing unsheltered population as a priority to address that led the City Council to authorize Mayor Larson to purchase property on River Street in May, 2018. That property had essentially become an unpermitted encampment of nearly 150 people at its height, and the City intended to clean the property and stop people from camping there because of many health and safety concerns. The purchase took a while to go through, and shortly after Aberdeen bought it the federal 9th Circuit of Appeals – where we are located – announced a decision that homeless persons cannot be criminally charged for camping on public property if there is no available shelter space.

Aberdeen did not then, and still doesn't, have enough shelter beds that meet the federal requirement of "available" for the number of unhoused people who are living outside. As a short-term setup, the City provided sanicans and garbage cans at the River Street property and defined some areas where people could camp. That was not a reasonable solution, and on July 2019, City Council approved the TASL so that there was at least a short-term location with basic sanitary resources (sanicans, a dumpster, and potable water) while we worked with county and state organizations hoping for some assistance. That assistance was not provided, and in March 2020 City Council authorized the closure of the TASL by May 15, 2020.

We all know what also happened in March 2020 – the novel coronavirus and COVID-19. Governor Inslee issued Proclamation 20-19 barring evictions. The City got a call from the Washington Attorney General's office that the Proclamation applies to the TASL, and that we could expect legal action from them if we moved forward with the closure of TASL while the terms of the Proclamation are in place.

Each time the Proclamation got extended, so did the TASL. And each time that has happened, we have tried to get more information and some form of help to address the issue. As people have moved out, the TASL shrinks. Right now there are fewer than 25 people in the TASL, and the Proclamation is set to expire on June 30, 2021.

Aberdeen will continue to follow the state law governing the TASL and our treatment of the unhoused population. I hope this trip down memory lane will help explain why the temporary location is still in operation. Stay safe and be kind to each other!

Sincerely,
Mayor Schave

Washington court rules that even if your home is a tent, you have a right to privacy inside it

Published: October 18, 2017

Every person has the right to privacy in their home, regardless of whether that home is a lean-to on a roadside or a mansion on a mountain.

By ruling that a homeless man camping on public land has the same right to privacy inside his tent as others have in their homes—and that police can't enter without a warrant— the Washington Court of Appeals this month affirmed this right.

The case, *State of Washington v. Pippin*, involves William Pippin, who was living in a shelter he'd fashioned by draping a tarp over a fence and a guardrail in Vancouver, Washington, when he was visited one morning by police. When officers rapped on the tarp, Pippin told them he was just waking up and would come out shortly.

Instead of waiting for Pippin to emerge, officers lifted the tarp, revealing Pippin sitting up in his makeshift bed; as Pippin got out of bed, officers saw a bag containing methamphetamine. By entering Pippin's tent without permission, police conducted an unlawful warrantless search of his home, the ACLU-WA said in friend of the court brief in the case. The State Court of Appeals agreed: Pippin's rights were violated under Article I, section 7 of the Washington constitution, which mandates that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law."

One's home has throughout history been seen as the ultimate bulwark against government intrusion, the court said in its decision. Because a person's home is likely to contain intimate details of their life that must not be revealed against their will, the law protects homes from warrantless searches.

But one need not occupy a traditional home to have this privacy right. Courts have also found that, for people who are homeless, closed baggage and containers are protected areas.

"Taking sleeping bags and tents from homeless people actually makes it less likely that they'll be able to connect with the services they need and do the things they need to do to get into housing," said Emily Chiang, Legal Director of the ACLU-WA. "It is profoundly destabilizing and only makes it harder for them to survive outdoors."

If issued, the injunction would not stop the City from collecting actual garbage or waste on public property, nor would it preclude the City from offering outreach or services to unhoused individuals that address the root causes of homelessness. And it would not prevent the City from dealing with immediate health and safety concerns.

Representing the Plaintiffs are ACLU-WA cooperating attorneys Todd Williams and Eric Lindberg of Corr Cronin Micheslon Baumgardner, Fogg, and Moore LLP, and ACLU-WA staff attorneys Nancy Talner and Breanne Schuster.

Source: https://www.aclu-wa.org/news/aclu-wa-asks-court-halt-seattle%E2%80%99s-illegal-seizure-and-destruction-unhoused-peoples-property

ACLU-WA Asks Court to Halt Seattle's Illegal Seizure and Destruction of Unhoused Peoples' Property

Published: September 07, 2017

Today the ACLU of Washington is asking the U.S. District Court in Seattle to issue a preliminary injunction to stop the City of Seattle and the Washington State Department of Transportation (WSDOT) from taking and throwing away property owned by people living outside. The ACLU-WA will also ask the Court to certify the lawsuit as a class action and allow the individually named Plaintiffs—Lisa Hooper, Brandie Osborne, Kayla Willis, and Reavy Washington— to represent the class.

The action comes in a class action lawsuit (*Hooper v. City of Seattle*) the ACLU of Washington filed in January against the City and WSDOT for violating the constitutional rights of people living outside by seizing and discarding their property without adequate notice, an opportunity to be heard, or a meaningful way to reclaim any property that was not immediately destroyed. The Episcopal Diocese and Real Change also are plaintiffs in the suit.

"In this country, the government can't just take and destroy your personal property without at least telling you formally that it's going to do so and giving you a meaningful opportunity to get it back," said Breanne Schuster, ACLU-WA Staff Attorney.

Nearly two years after the Mayor declared a state of emergency on homelessness, the rates of people living outside have only increased. A 2017 count found more than 2,000 people sleeping outside in Seattle in the dead of winter, with no shelter but what that they can erect themselves in the form of materials like tarps, blankets, and tents. Not since the Great Depression have so many people been forced to live outdoors in our city. By seizing and frequently discarding items that these individuals own and that are essential to their daily living, the City and WSDOT are worsening their circumstances.

Pippin lived in a lean-to, but that a home is temporary does not diminish the right to privacy within it, "nor does the flimsy and vulnerable nature of an improvised structure. For the homeless, those may often be the only refuge for the private in the world as it is," the court said.

The court rebuked the State's assertion that Pippin's homelessness was a choice: "To call homelessness voluntary, and thus unworthy of basic privacy protection is to walk blind among the realities around us."

Such an argument would wrongly penalize people for being poor by stripping from them the privacy rights the law guarantees everyone else. "Our Constitution means something better," the court said.

To illustrate what that might look like, the court quoted "King Lear," who, in Act 3, Scene 4, has been stripped of his power and wealth, and faces a raging storm.
At last Lear sees how poor and homeless people in his Kingdom suffer as they struggle to endure the elements. Remorseful for his blindness to their plight, Lear implores those in power not to follow his lead, but to instead, "Expose thyself to feel what wretches feel, That thou mayst . . . show the heavens more just."

The lessons learned by Shakespeare's tragic hero should not be lost on us. The law exists, the court said, not only to prevent anarchy and grease the wheels of our economy, but also to "bring signs of justice amid our thirsts and furies and, in doing so, remind us of our humanity."

Doug Klunder and Nancy Talner of the ACLU of Washington wrote the brief, which was also signed by Homeless Rights Advocacy Project, Outsiders Inn, and Real Change.

Source: https://www.aclu-wa.org/story/washington-court-rules-even-if-your-home-tent-you-have-right-privacy-inside-it