

Enforcement of Aggressive Panhandling, Camping & Sleeping Ordinances



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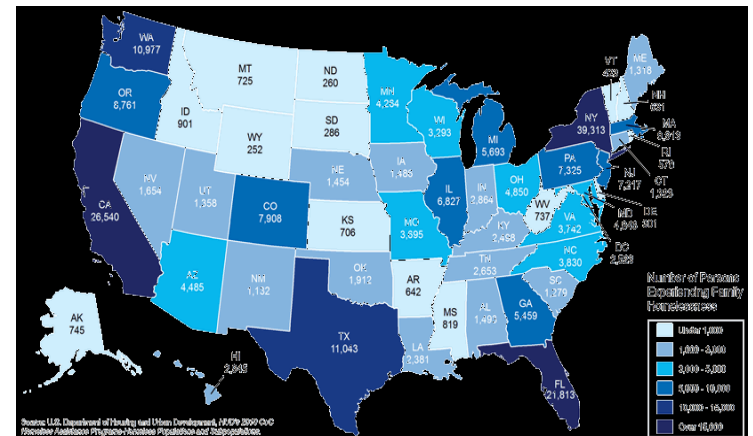
Definitions

- “Homeless Individual”
 - Lacks a fixed, regular and adequate nighttime residence; and
 - Has a primary nighttime residence that is ... [a shelter] or other place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.
(42 USC §11302(a))

Statistics

- On any given night in the United States:
 - Approximately 633,782 persons are homeless
 - 1/3 are unsheltered and staying in places not meant for human habitation
- 46% of homeless reside in 4 states (California, Florida, Texas & New York)
- However - Recent trends show decreases:
 - Since 2007, homelessness on any given night has decreased by 5.7%
 - The number of unsheltered persons declined by 13.1%
 - The number of homeless families declined by 8%

Family Homelessness by State



Impacts on Cities



Aggressive
Panhandling



Camping &
Storage



Response



Clinic Wins Legal Victories for the Homeless

The New York Times

Homeless Are Fighting Back Against Panhandling Bans

Los Angeles Times

The homeless and a fight for L.A.'s sidewalks

Editorial: City officials should not arbitrarily sweep streets of homeless people's belongings. Police, the homeless and neighbors concerned about clutter need to negotiate a compromise.

World Socialist Web Site

Hundreds of homeless forcibly evicted from Southern California refuge

HUFFPOST LOS ANGELES

LA Homeless Belongings Can't Be Removed From The Street, Rules Supreme Court

Fresno homeless lawsuit expands

Sacramento, California homeless file claims over seized property



Anti-Camping, Sleeping Ordinances

- Generally - prohibit sitting, sleeping, lying or camping on public property.
- Some also prohibit the storage of personal property on public property.

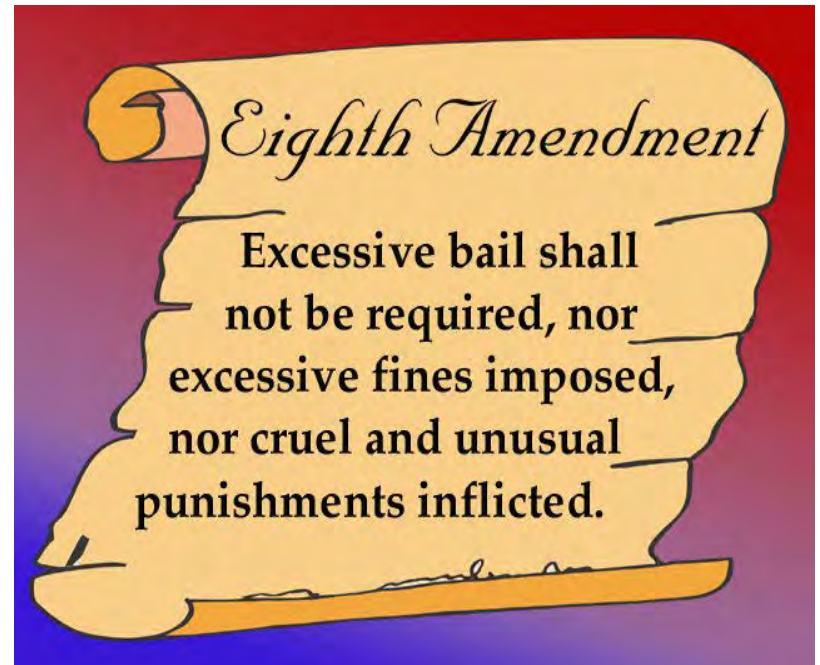


Anti-Camping, Sleeping Ordinances: State of the Law

- Anti-Camping:
 - Tobe v. City of Santa Ana - 1995 Challenge to Santa Ana ordinance that banned camping and storage of personal property in designated public areas.
 - Upheld by California Supreme Court –
 - No violation of inter/intra state travel rights
 - Not cruel & unusual punishment (prohibited “acts” not “status”)
 - Not vague, overbroad or discriminatory
 - No fundamental right to camp on public property
 - Ordinance rationally related to clean streets and maintenance
 - Homeless not a suspect class

Anti-Camping, Sleeping Ordinances: Necessity Defense

- Recall that Tobe was a facial challenge to the City's Anti-Camping ordinance.
- More recently - courts are allowing "necessity" defense to be used against citations.
 - Necessity Defense Based on Eighth Amendment – *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."*



Anti-Camping, Sleeping Ordinances: Necessity Defense

- Issue: *Whether certain conduct cannot constitutionally be punished because it is, in some sense, involuntary.*
- Examples:
 - In re Eichorn (1998) - as applied challenge to enforcement of Santa Ana ordinance upheld in Tobe. *If a homeless person truly has nowhere to go, it would violate constitutional rights to punish that person for merely trying to sleep, eat and survive.*
 - Jones v. City of Los Angeles (2006) – “...Eighth Amendment prohibits [a city] from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in [the city].”
 - Lehr v. City of Sacramento (2009) – Improper for City to punish an individual for camping in public where there is no local shelter available.
 - Bell v. City of Boise (2013) – homeless individuals have standing to sue based upon claims that their Eighth Amendments rights have been violated.

Anti-Camping, Sleeping Ordinances: Necessity Defense



Thus –

- While anti-camping ordinances are constitutional...

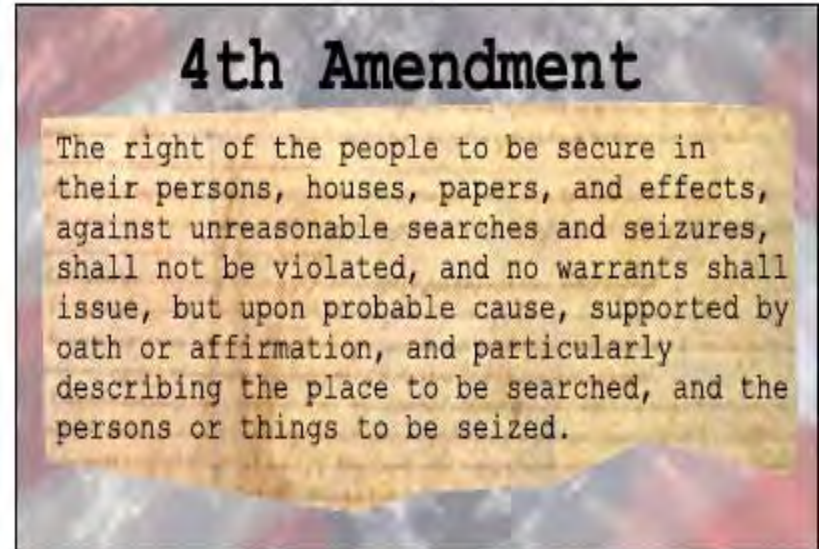
Some courts will consider an Eighth Amendment - “Necessity” Defense to enforcement.

Confiscation of Unattended Property

- Issue: Many anti-camping ordinances include components that prohibit persons from storing unattended belongings on public property.
- Lavan v. City of Los Angeles (2013) – City seized and immediately destroyed briefly unattended personal possessions of the homeless. Claim was that the possessions were briefly unattended because the homeless were attending to necessary tasks (eating, showering, bathroom break).
 - Held: “...because homeless persons’ unabandoned possessions are ‘property’ within the meaning of the Fourteenth Amendment, the City must comport with the requirements of the Fourteenth Amendment’s due process clause if it wishes to take and destroy them.”

Confiscation of Unattended Property

- Additional Caution: Fourth Amendment right to privacy and unreasonable searches and seizures.
 - Comes into play when property is stored in areas where a homeless individual (1) manifests a subjective expectation of privacy; and (2) society is willing to recognize such an expectation as reasonable.



Confiscation of Unattended Property

- General suggestions for confiscation of abandoned property:
 - Provide 24-72 hour written notice before items are seized.
 - Make good faith effort to locate owner(s).
 - Inventory/document (pictures or video) items seized.
 - Leave notice to inform of seizure and opportunity to claim.
 - Store belongings for 90 days (Cal.Civ. Code 2080 et seq.)
 - Protect any perishable belongings (i.e. medication)



Most important – Staff Training!

Panhandling

“Contrary to common belief, panhandlers and homeless people are not necessarily one and the same. Many studies have found that only a small percentage of homeless people panhandle, and only a small percentage of panhandlers are homeless.”

-Michael S. Scott, United States Department of Justice, *Office of Community Oriented Policing Services* (2003)



Homelessness & Transiency: Its Manifestation as Aggressive Panhandling

- Department of Justice's 2003 report found that most panhandlers believed regular, minimum wage employment would scarcely be more profitable than panhandling.
- While the DoJ's report is over a decade old, the perception and sentiment echoed by the report reflects both law enforcement and the public's concerns regarding the health, sanitation, aesthetics and access to parks and other public property.
- Many cities have adopted laws criminalizing prototypical homeless and transient activities such as panhandling, creating legal challenges in regulatory approaches.

Homelessness & Transiency: Its Manifestation as Aggressive Panhandling

- Helping Families Save Their Homes Act of 2009, passed by Congress and signed by the President in 2009, requires the United States Interagency Council on Homeless to devise a comprehensive strategic plan for cities to help eradicate homelessness.
- California cities are disproportionately impacted by homelessness – over 130,000 homeless in the state in 2012, with 65% sleeping in public spaces.*
- Small cities often lack the social service providers and resources to address the root cause of homelessness:
 - Accordingly, complaints from residents, business owners and tourists often lead cities to exert their police power in the form of enforcement against the adverse impacts associated with panhandling

*Source: U.S. Department of Housing and Urban Development, 2012, <http://www.hudhre.info/index.cfm?do=viewHomelessRpts>

Constitutional Protection In Writing City Ordinances

- As a result of case rulings and settlements with both homeless and First Amendment advocacy groups, most California city ordinances share several common features which serve to protect them against Constitutional challenges. They are:
 1. Prohibitions on “aggressive solicitation,” including: immediate request for funds accompanied by verbal or physical threats or coercion, or persisting in requests following a negative response from the individual being solicited;
 2. Regulation of activity on public property and/or privately owned property open to the public or large groups of the public; and
 3. Prohibitions on solicitation of any kind in specified locations (often including: *banks, cash checking businesses, automated teller machines, public transportation facilities, in locations which impede traffic*)

California Constitution Speech Considerations: Lessons of Los Angeles Alliance for Survival

- While the First Amendment protects solicitation under the Federal constitution, the California Constitution provides broader protections under Art. I, §2(a): the Liberty of Speech clause
 - However, the California Supreme Court’s “. . . decisions dating back more than 80 years have recognized that requests for the immediate donation or payment of money – which often encompassed within and protected by the liberty of speech clause – may create distinct problems and risks that warrant different treatment and regulation.” Los Angeles Alliance for Survival, 22 Cal.4th 352, 356-57 (2000).
- In Los Angeles Alliance for Survival v. City of Los Angeles, 22 Cal.4th 352 (2000), plaintiffs, a coalition of homeless advocacy organizations, brought suit against the City of Los Angeles’s aggressive panhandling ordinance as an impermissible infringement of the Liberty of Speech Clause
- The federal district court issued a preliminary injunction, holding that plaintiffs had standing to challenge the ordinance as overbroad, and that it was most likely invalid on its face under the Liberty of Speech Clause



California Constitution Speech Considerations: Lessons of *Los Angeles Alliance for Survival*

- On appeal to the 9th Circuit, the court asked a certified question to the California Supreme Court: what was the appropriate standard to assess the ordinance?
- California Supreme Court held that, identical to precedent under the federal Constitution, such ordinances were content neutral regulations of place, time and manner restrictions, and accordingly were assessed under the intermediate scrutiny standard.
- Government bears the burden of justifying the regulation under the following requirements:
 1. ***The ordinance is narrowly tailored;***
 2. ***The ordinance serves a significant government interest; and***
 3. ***The ordinance leaves open ample, alternative avenues of communication***

California Constitution Speech Considerations: Lessons of Los Angeles Alliance for Survival

The 9th Circuit accepted the California Supreme Court's certified question, but still affirmed the District Court's decision barring enforcement of the L.A. ordinance and the case ultimately settled, resulting in the removal of ordinance language allowing property owners to order panhandlers off property surrounding restaurants, bus stops and other places.

The ordinance's prohibition on panhandling within a certain distance of ATMs was upheld.



First Amendment Federal Speech

Considerations: Lessons of *Roulette v. City of Seattle*

- In *Roulette v. City of Seattle*, 97 F.3d 300 (9th Cir. 1996), the 9th Circuit considered a challenge by homeless advocates to an ordinance prohibiting people from sitting or lying on sidewalks in commercial areas between 7:00 a.m. and 9:00 p.m. Plaintiffs argued that the ordinance violated their free speech by preventing the expressive conduct of soliciting.
- The 9th Circuit held that, “by its terms, the ordinance here prohibits only sitting or lying on the sidewalk . . . [which] are not forms of conduct integral to, or commonly associated with, expression” *Roulette v. City of Seattle*, 97 F.3d at 305.

First Amendment Federal Speech

Considerations: Lessons of *Roulette v. City of Seattle*

- The 9th Circuit also rejected petitioners' facial due process challenge arguing the ordinance was a blatant attempt to drive out the unsightly homeless, finding that on its face, the ordinance was a neutral measure to protect sidewalks for their intended purpose
 - Protection for city ordinances under First Amendment claims was further endorsed by the court in *Douchette v. City of Santa Monica*, 955 F.Supp. 1192, 1209 (C.D. Cal. 1997), in which the court held the city's interests in preventing harassment and intimidation in areas where people experience particular vulnerability (e.g. public parking lots, outdoor restaurants, ATMs) justified the regulations imposed

Ordinances Regarding Solicitation on Private Property

- In enacting ordinances extending aggressive solicitation provisions to private properties, cities are faced with the difficult quandary whether the property affords the solicitor speech protections
- In *Robins v. Pruneyard Shopping Center*, 23 Cal.3d 899, 910 (1979), the court concluded that, “sections 2 and 3 of article I of the California Constitution protect speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned.”
- *Pruneyard*, 23 Cal.3d 899 at 907-91, based its holding on findings that large shopping centers are the functional equivalent of the traditional town center business district where the public has free speech rights
- Subsequent decisions (*Albertson’s Inc..v. Young*, 107 Cal.App.4th 106, 118 (2003)), have focused on whether the private property owner has made the land the equivalent of a traditional public forum with a public character for purposes of expressive activity, while no single factor is determinative.

Ordinances Regarding Solicitation on Private Property

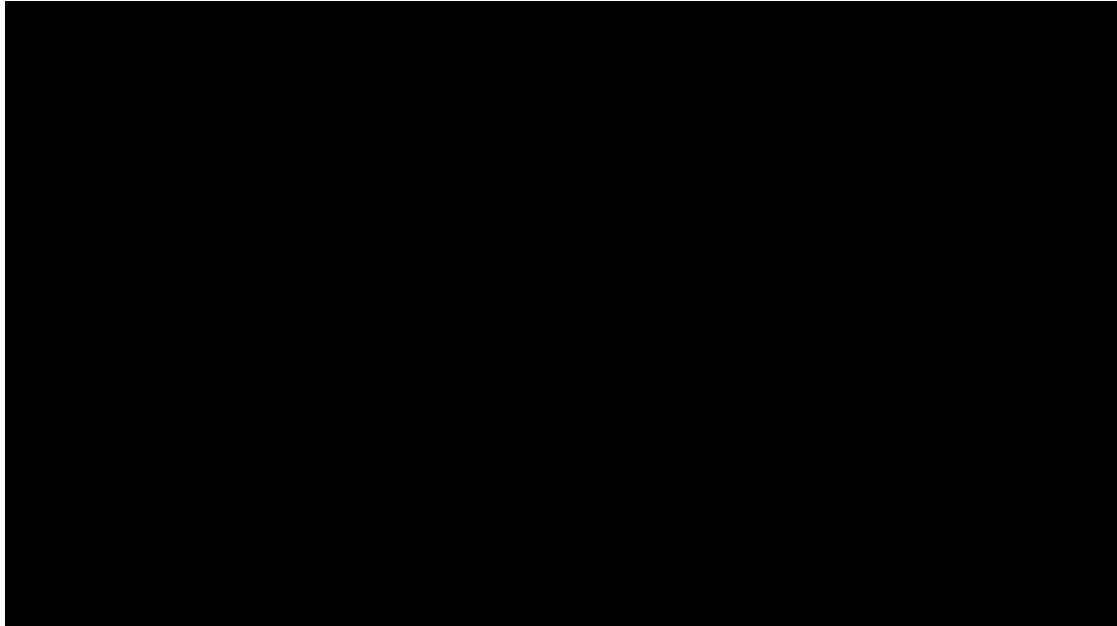
Private property owners may enforce reasonable time, place and manner restrictions involving solicitation on their properties subject to the same three governmental regulations previously discussed.

Due to the more intensive nature of the analysis regarding whether private properties avail themselves to traditional public forums, many police departments will provide the alternative

to an onsite business manager or operator to file a citizen's arrest form, but will not other than to keep the peace.



Wrap Up



Thank you for attending!

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