

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

**A Presentation By:**

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# Agenda

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

# Homelessness in California

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

# Homelessness in California

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

# Addressing Homelessness

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

# Addressing Homelessness

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

# Case Studies

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

# Case Studies:

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

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



# Case Studies:

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

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

# Case Studies:

## Stanislaus County / Modesto/ Turlock:

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

# Continuum of Care

## Outreach & Engagement



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

## Coordinated Entry



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

## Shelter & Housing\*



### Shelter & Housing Inventory

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

### Supportive Services / Peer and Community Supports

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

# Case Studies:

## Orange County / Santa Ana:

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

# Case Studies:

## Orange County / Santa Ana:

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

# Tools to Avoid Community Resistance and Delay

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

# Tools to Avoid Community Resistance and Delay

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

# Funding Homelessness Strategies: Collaboration with Sierra Club

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



# Funding Homelessness Strategies

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

# Funding Homelessness Strategies

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

# Examples of Funding Constraints

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

# Funding Homelessness Strategies

PROGRAM	FUNDING	ELIGIBLE APPLICANTS	DEADLINE	SPECIAL RULES	USES	STATE ENTITY
Homeless Youth and Exploitation Program	\$1M new funding; \$2.077M total funding	4 counties: - LA - SD - SF - Santa Clara	6/29/18	Limited to homeless and exploited youth	Outreach, food, safe shelter, stabilization planning	Office of Emergency Services
Housing for a Healthy California (AB 74)	\$36M (Nat'l Housing Trust Fund) & TBD up to \$56M (from SB 2)	Counties and/or developers	May 2019	One-time funding of SB 2 funds	Construction or acquisition of affordable housing, operating assistance, admin costs	Department of Housing and Community Development

# Funding Homelessness Strategies

PROGRAM	FUNDING	ELIGIBLE APPLICANTS	DEADLINE	SPECIAL RULES	USES	STATE ENTITY
CalWORKS Housing Support Program (HSP)	\$24.2M in 2018-19; \$48.4M in 2019-20	County human services depts	8-9/18	Suppl. to existing HSP programs	Assist CalWORKS families with move-in assistance, temporary rental subsidies, case mgt	Dept. of Social Services
CalWORKS Homeless Assistance Program (HA)	\$8.1M in 2018-19; \$15.3M in 2019-20 to raise daily rate from \$65 to \$85	County human services depts	8-9/18	Suppl. to existing HA programs	Up to 16 days of housing assistance/ vouchers for CalWORKS recipients	Dept. of Social Services

# Funding Homelessness Strategies

PROGRAM	FUNDING	ELIGIBLE APPLICANTS	DEADLINE	SPECIAL RULES	USES	STATE ENTITY
Homeless Mentally Ill Outreach and Treatment Program (MNIOT)	\$50M	Direct allocation to counties; County must pass Resolution & notify DHCS	9/25/18	One-time funding; can't use in place of existing funding for services	Fund multi-disciplinary teams for outreach for homeless persons with mental illness	Dept. of Health Care Services
California Emergency Solutions & Housing Program (CESH)	TBD up to \$56M (portion of 50% of SB 2 first year revenue)	Admin Entities designated by Continuums of Care (e.g., local government & nonprofits)	10/15/18	One time funding w/ 2 rounds anticipated 11/18 and Early 2019	Rental assistance, operating subsidies for permanent & emergency housing intervention, systems support	Dept. of Housing & Community Development

# Funding Homelessness Strategies

PROGRAM	FUNDING	ELIGIBLE APPLICANTS	DEADLINE	SPECIAL RULES	USES	STATE ENTITY
Domestic Violence Assistance Program	\$8M new funding; \$28M total state funding 2018-19	Existing orgs or applicants may apply	9/7/18	Non-competitive	Shelter, transitional housing, services for victims of domestic violence	Office of Emergency Services
Homeless Emergency Aid Program (HEAP)	\$350M (\$250M based on homeless count; \$100M based on total share of homeless count)	Cities or counties via Continuums of Care	12/31/18	Counties must declare shelter crisis	Homeless prevention, criminal justice diversion, emergency aid, svcs for homeless youth (5%)	Homeless Coordinating and Financing Council / Business Consumer Services and Housing Agency

# Funding Homelessness Strategies

PROGRAM	FUNDING	ELIGIBLE APPLICANTS	DEADLINE	SPECIAL RULES	USES	STATE ENTITY
No Place Like Home / Prop 2	\$200M in 2018-19; up to \$1.8B in bond proceeds	Counties or counties working with nonprofit developer	8/15/19 1/30/20		Build / refurbish permanent supportive housing for mentally ill	Dept. of Housing & Community Development
Home Safe Program	\$15M over 3 years	County Adult Protective Services	12/3/18	Funding available over 3 years; must provide 1:1 matching funds; pilot program	Housing supports and services for victims of elder and dependent adult abuse	Department of Social Services



# Other Funding Sources for Homelessness Strategies

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

# Affordable Housing Alternatives

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

# Part 2 – Enforcement Issues

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

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

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

# ***Martin v. City of Boise***

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

# ***Martin v. City of Boise***

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

# ***Martin v. City of Boise***

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

# ***Martin v. City of Boise***

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



# Homeless Encampments

- Santa Ana Civic Center, November 2017



# HOMELESS ENCAMPMENTS: ISSUES

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

# Homeless Encampments: Competing Concerns

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

# Homeless Encampments: Fourth Amendment Issues

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

# Homeless Encampments: Fourth Amendment Issues

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

# Homeless Encampments: Fourth Amendment Issues

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

# Homeless Encampments: Handling Homeless Individuals' Property

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

# Homeless Encampments: Handling Homeless Individuals' Property

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



# Homeless Encampments: Handling Homeless Individuals' Property

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

# Homeless Encampments: Handling Homeless Individuals' Property

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

# Homeless Encampments: Handling Homeless Individuals' Property

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

# Homeless Encampments on Private Property

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

# Sleeping in Vehicles

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

# Sleeping in Vehicles

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

# Sleeping in Vehicles

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

# QUESTIONS?



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