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## Legal Parameters In Dealing With Homeless Individuals

In preparation for the internal staff discussion of the scope of the City's legal authority to address the secondary impacts of the presence of homeless individuals within the City, this hand-out is a summary of an important Ninth Circuit Federal Appeals Court opinion and two (2) settlement agreements arising out of additional federal court litigations. These developments directly impact the scope of the City's legal authority to address its homeless population.

### [Martin v. City of Boise](#) – (Decided September 4, 2018; Amended April 1, 2019 [with dissenting opinions])

Five homeless plaintiffs sued the City of Boise, Idaho, challenging the city's anti-camping ordinance and its disorderly conduct ordinance as applicable to homeless people.

The Ninth Circuit Court of Appeals ruled that *a city may not prohibit a homeless person from sitting, lying, or sleeping on public property when no alternative shelter exists*. Before enforcing local anti-camping, loitering, and trespassing ordinances, local law enforcement must provide information on shelter opportunities within the community. However, the opinion falls short of requiring cities to actually provide shelters.

In a strongly worded dissent from a request to re-hear this appeal, four judges wrote: *“By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct the panel’s decision will inevitably result in the striking down of laws that prohibit public defecation and urination. The panel’s reasoning also casts doubt on public safety laws restricting drug paraphernalia, for the use of hypodermic needles and the like is no less involuntary for the homeless suffering from the scourge of addiction than is their sleeping in public. . . . I fear that the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws.* Halting enforcement of such laws will potentially wreak havoc on our communities. As we have already begun to witness, our neighborhoods will soon feature “[t]ents . . . equipped with mini refrigerators, cupboards, televisions, and heaters, [that] vie with pedestrian traffic” and “human waste appearing on sidewalks and at local playgrounds.” (Emphasis added.)

This highly controversial decision is likely to be appealed to the United States Supreme Court (who may or may not agree to hear the appeal). The deadline to petition the Court is August 29, 2019.

### [Orange County Catholic Worker v. Orange County](#) – (Filed January 2018)

This federal lawsuit was filed by the “Orange County Catholic Worker” organization on behalf of homeless plaintiffs alleging that the county and various cities’ enforcement of anti-camping, trespassing and loitering laws were unconstitutional.

The initial parties being sued were the County of Orange, the City of Anaheim, the City of Costa Mesa, and the City of Orange. The complaint was later amended to include the cities of Tustin, Brea, Buena Park, Cypress, Fullerton, La Habra, La Palma, Placentia, Stanton, Villa Park and Yorba Linda.

The lawsuit was recently resolved in a three-year settlement agreement that including the following elements:

- The Orange County Sheriff’s Department (OCSD) must follow new protocols in its interactions with the homeless:
  - Before enforcing any anti-camping or anti-loitering ordinances against a homeless person, the OCSD must first contact “System of Care” personnel for a “field screening” to determine appropriate placement for the individual.
  - OCSD and “System of Care” will work together to locate and offer appropriate shelter.
  - If a homeless person declines the proffered placement, a warning and an opportunity to relocate must first be given before further enforcement actions are taken.
  - There are defined “restricted areas” and county parks where a homeless individual may not be present outside of “normal business hours.” Even then, the OCSD must provide the individual a warning and a reasonable opportunity to leave before taking an enforcement action.
- If the County plans to undertake a development or other discretionary project that may displace any homeless persons, the County must provide notice of the same to Plaintiff’s counsel.
- The County must adopt “Standards of Care” for its Homeless Services.
- OCSD may “enforce any law not based on the individual’s unsheltered status against a person believed to be homeless, including issuing citations and arresting the person for an alleged violation of the law.”
- The County will pay reasonable attorneys’ fees and will meet with the Plaintiffs to settle individual damages claims.

**Carl Mitchell v. City of Los Angeles – (Filed March 2016)**

This federal court lawsuit was filed by homeless plaintiffs accusing the City of Los Angeles of unlawfully seizing, destroying, and/or failing to preserve property belonging to homeless individuals in or around downtown Los Angeles.

The lawsuit was recently resolved in a three-year settlement agreement including the following:

- The City of Los Angeles will not be allowed to remove property of homeless people in a designated area of Skid Row.
  - The city must give 24.5 hours’ notice before engaging in a cleanup.
  - Clean ups cannot be done when it is colder than 50 degrees out or it is raining.
  - Property that is seized must be stored for 90 days so that the same can be recovered.
  - Large items, such as refrigerators, couches, mattresses, and dressers remain prohibited on public property and rights of way.
  - The city may still remove “abandoned” items or those that present an immediate threat to public health or safety.