Public Camping Ordinances Update

~November 2018

Martin v. City of Boise

In a September 4, 2018 ruling (Martin v. City of Boise, 2018 U.S. App. LEXIS 25032), the Ninth Circuit Court of Appeals held that a Boise, ID ordinance violated the Eighth Amendment to the extent that it imposed criminal sanctions against homeless persons for sleeping outdoors, on public property, when they had no alternative shelter access available. The Ninth Circuit essentially ruled that criminalizing the status of being "homeless," or criminalizing the "unavoidable consequences" of that status—such as sitting, lying or sleeping on sidewalks and other public grounds—may constitute cruel and unusual punishment.

This federal court decision now affects laws in 9 western states, including California. It creates new challenges for public agencies to prosecute people for sleeping or camping on public property in violation of local ordinances. However, the City of Boise has indicated it may seek rehearing en banc by the entire 9th Circuit panel or an appeal to the U.S. Supreme Court.

Impact

Judicious analysis of the *Martin v. Boise* ruling will likely lead to amendment of the Eureka Municipal Code. Until then, continued prosecution of the City's public camping-related and sit-lie ordinances could lead to liability for the City of Eureka. If it stands, this case could have a significant impact on municipalities with substantial homeless populations and inadequate or insufficient homeless shelter facilities. As a result, following the *Martin* ruling Eureka Police officers are provisionally no longer citing individuals for sleeping in public spaces under EMC 93.02 (camping prohibited) and EMC 93.03 (unlawful habitation in autos/trailers). This limited suspension of enforcement may continue until such time as the City's ordinances and policies have been ensured to comply with this court decision.

What We Are Doing

- The City Attorney's Office is actively working with staff to review and expeditiously bring an amended camping ordinance(s) before the City Council.

- The Eureka Police Department (EPD) is nearing completion of a comprehensive unsheltered homeless survey within our jurisdiction designed to help the City and community service providers better understand and address the fundamental issues associated with the state of homelessness in Eureka.

- EPD continues to track shelter space availability within the City of Eureka (including emergency overflow options). Most nights there have been beds available for individuals in need.

- The City is in the process of hiring a qualified professional consultant to conduct an independent inventory and analysis of all homeless shelter providers located within the city limits.

- The City is also working with a tech firm to develop a free mobile phone app called "The Eureka Shelter Finder." The purpose of the app is to inform interested persons about the location and availability of shelter beds currently available in the city.

- Eureka continues to closely partner with the Humboldt County Department of Health and Human Services and other community stakeholders and service providers through our innovative Mobile Intervention and Services Team (MIST). MIST endeavors to balance enforcement with compassionate outreach to the homeless and linkage to services. EPD is increasingly moving toward this collaborative, interdisciplinary approach to addressing homeless issues.

by Chief Steve Watson

- The City is in the process of launching its new homeless resource and support program, "UPLIFT Eureka." This program will guide homeless people to existing resources and work programs in the community with the assistance of volunteer "co-pilots" who will serve as advocates for the participants as they work their way to success. EPD is also working in partnership with UPLIFT Eureka to create a homeless diversion component to the program in lieu of referral to the criminal justice system and prosecution or fines for minor offenses.

- *Martin v. Boise* further illuminates the critical need for more affordable housing and safe, legal shelter options in Humboldt County. Eureka is making progress on this issue but others still need to contribute more.

- In addition to the City's ongoing support for Betty Chinn's Blue Angel Village, which shelters up to 40 chronically homeless people at a time while offering intensive case management services aimed at transitioning them into permanent housing solutions, the City is actively working in partnership with Chinn to establish a second homeless transitional housing facility using donated PG&E trailers.

- EPD will continue to clean-up illegal camps. Nobody has the right to litter in public, destroy property, trespass, create a public health or safety hazard, obstruct the flow of pedestrian and vehicular traffic, or interfere with rights of others to use public areas for their intended purposes. There is a distinction between the act of sleeping and setting up or remaining at a "campsite" on public property (or public right-of-way) for purposes of dwelling in that particular place.

- *Martin* does not apply to enforcement on private property or to particular times and locations where access to public property is restricted.

- Even before the *Martin* decision, it has been EPD procedure that officers generally will not take enforcement action for prohibited camping in public spaces between 9:00 PM and 6:00 AM absent extenuating circumstances. Our patrol responses to this issue are largely complaint-driven.

- EPD is responsible for preventing crime and maintaining law and order within the city by enforcing the laws of the U.S., the state, and city. It is also EPD's duty to promote the public health and safety by helping the city maintain public areas in clean, sanitary and accessible condition. Officers will continue to respond to and investigate complaints including assessing the occurrence of other possible law violations.

- Other Eureka Municipal Codes and California Penal Codes were not affected by *Martin* and will still be used to enforce crime, disorder and quality of life issues in our city, including:

  - Alcohol violations
  - Public intoxication
  - Disturbing the peace
  - Littering
  - Building campfires
  - Animals at large
  - Trespassing
  - Drug activity
  - Marijuana use in public
  - Obstruction of movement in public ways
  - Unlawful possession of shopping carts
  - In parks after posted closing hours
  - Damaging or interfering with property
  - Aggressive and intrusive solicitation

Martin is a "Narrow" Holding

Martin provides some guidance concerning what the ruling does not cover:

- A city is not required to provide sufficient shelter for the homeless.

- A city may still limit the time and place where people sit, lie, or sleep in public places.

- The court acknowledged:

  "Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures."

- *Martin* does not cover individuals who do have access to free shelter or the means to pay for it, but choose not to use it.

- The court's ruling did not strike down Boise's ordinances in their entirety but rather only applied to individuals with no shelter options under the circumstances in this case.

What's Next

The City of Boise may seek a rehearing en banc or an appeal to the U.S. Supreme Court. Meanwhile, the City of Eureka is reviewing our camping and sit-lie ordinances in light of *Martin* while EPD continues to maintain law and order through judicious use of other applicable laws and ordinances.