

# CLIENT NEWS BRIEF

## Court Limits Enforcement of Public Sleeping Ordinances

A federal appeals court has held that a city could not enforce local ordinances that prohibit homeless persons from sleeping outside when shelter is not available. Municipalities with similar ordinances may be affected by the Ninth Circuit Court of Appeals' decision in *Martin v. City of Boise*.

### Background

At a time when homelessness is an issue that cities and counties are increasingly called to address, a common trend is to prohibit sleeping and camping on the sidewalk, in parks, and in other public places. The City of Boise enacted ordinances to do just that. The ordinances prohibit the use of "any of the streets, sidewalks, parks, or public places as a camping place at any time" where "camping" is defined as "the use of public property as a temporary or permanent place of dwelling, lodging, or residence" and "[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private" without permission.

Several homeless residents challenged enforcement of the Boise ordinances. The factual basis for their claim was fairly straightforward: Plaintiffs are homeless; there is not enough room at the homeless shelters for all of the city's homeless; plaintiffs and other homeless persons have no choice but to sleep outside and in public when the shelters are full; therefore, plaintiffs and other homeless persons are forced to violate the city's ordinances. Their claim rested on the Eighth Amendment's prohibition against cruel and unusual punishment. Specifically, the Amendment's "substantive limits on what the government may criminalize" was at issue.

The court examined prior U.S. Supreme Court cases concerning narcotics addiction and public drunkenness, as well as the since-vacated Ninth Circuit decision in *Jones v. City of Los Angeles* that restrained enforcement of an ordinance that prohibited sitting, lying, and sleeping in public. The court adopted the reasoning of its prior ruling in *Jones*, finding Boise's ordinances effectively criminalize the status of being homeless, as opposed to undesirable conduct that can be prohibited.

The *Martin* court concluded that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." "[A]s long as there is no option of sleeping indoors," the court ruled, "the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter."

### Takeaways

Despite the ruling, there is likely a future for sleeping and camping ordinances. The court declared that "[its] holding is a narrow one" and made some important qualifications regarding its ruling. Some clues are also found in the text of the decision. For example, the court's regular reference to "public

September 2018  
Number 50



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Number 50

property” suggests that sleeping and camping ordinances may still be enforced when the conduct occurs on private property, regardless of shelter space.

The court further made clear, albeit in a footnote, that the ruling “does not cover 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.” Moreover, it did not say a city can never prohibit sleeping in public when there is insufficient shelter space. Without making an express decision on this point, the court said that “an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible,” and, “an ordinance barring the obstruction of public rights of way or the erection of certain structures” may be acceptable. This may mean that permitting outdoor sleeping in designated places and times will permit widespread enforcement of such an ordinance elsewhere.

Throughout *Martin*, the court focused on the natural and necessary act of sleeping, stating that “the two ordinances criminalize the simple act of sleeping outside on public property.” This raises an interesting point about camping ordinances. The court was critical of the city’s enforcement of the camping ordinance against homeless persons “with some elementary bedding,” sleeping “with blankets,” or when other indicators of “camping” are absent. It appears that the problem did not lie with the camping prohibition itself, which would prevent the act of constructing a camp or other shelter, but with sleeping and taking basic precautions in order to sleep outside.

The court stated that its ruling does not require cities to provide homeless shelters. But, when there are more homeless people than available shelter beds, the ordinances will be unenforceable. Practical unavailability of shelter beds may also impact enforcement. During the litigation, Boise instituted a “no space, no enforcement” protocol where the shelters would self-report if they were full so the ordinances would not be enforced that night. However, one shelter had a policy of not turning away anyone seeking shelter and never reported that it was full. As a result, the exception was never actually triggered. There was also evidence of limits on the number of consecutive days someone could stay at one shelter before a mandatory stay-away period. Additionally, due to the time of day that beds were assigned and preferences given to returning guests, a shelter with available room might stop making assignments for the night before prospective guests learn they are unable to get a bed at the other shelter, leaving them with no place to go.

The city reportedly will appeal the panel decision to the full Ninth Circuit. Until new decisions are issued, this ruling applies and municipalities that prohibit sleeping or camping in public places should review their ordinances and consult legal counsel concerning continued enforcement.

If you would like more information about the *Martin* decision or have any questions regarding municipal sleeping or camping ordinances, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).