

Brief Overview of Local Regulations Addressing Secondary Impacts of Homelessness

City of Newport Beach, California.

June 10, 2019.

National Statistics



- Estimated 553,000 people are homeless in the United States.
- Homelessness has increased for the last two years consecutively.

** 2018 Annual Homeless Assessment Report to Congress.
U.S. Department of Housing and Urban Development.

California



- 22% of the U.S. homeless population resides in California (129,972).
- Highest number of homeless under 25 (33% of nation).
- Highest number of homeless veterans (25% of nation).
- Highest number of chronically homeless (33% of nation).
- Highest number of unsheltered homeless (69% of state total).

*** People Experiencing Homelessness. California Department of Housing and Community Development. (2019)*

“Secondary effects” of homelessness.



- Pollution of environment and/or water supply;
- Substance abuse;
- Degradation or damage to natural environment;
- Damage to public and private facilities;
- Solicitation of money;
- Sleeping on benches and sidewalks;
- Police calls for services involvement based on complaints of noise, violence, vagrancy, or crime;

*** Homeless Encampments: Problem-Oriented Guides for Police Problem-Specific Guides Series No. 56 (2010). U.S. Department of Justice Office of Community Oriented Policing Services.*

Anti-Camping Ordinances

- Anti-Camping ordinances generally prohibit sitting, sleeping, lying or camping on public property.
 - enacted to preserve and maintain public property for its intended purpose
- Have been upheld as facially valid by the California Supreme Court.
 - prohibits conduct by anyone, is not aimed at any particular class of persons
 - rational basis test applies because homeless persons are not deemed a suspect class under the Fourteenth Amendment (Equal Protection)
 - the fundamental right to travel does not include the right to camp on public property

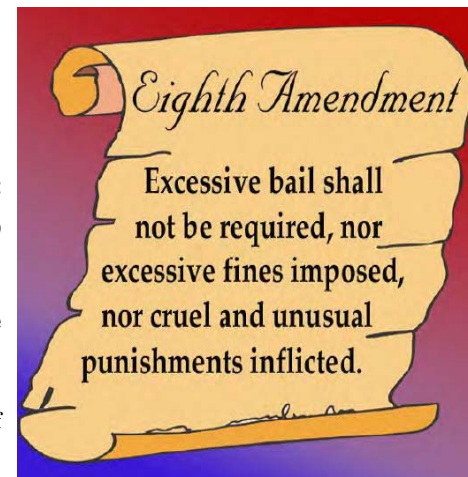
** *Tobe v City of Santa Ana*, 9 Cal. 4th 1069 (1995).



Limitations to Anti-Camping Ordinances

- Eighth Amendment
 - (Cruel and Unusual Punishment) - cannot penalize a person for sitting, sleeping, lying or camping on public property *if the person has nowhere to sleep indoors.*
 - reasonably adequate shelter must be available in order to enforce an anti-camping ordinance

** *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006); *Martin v. City of Boise* No. 15-35845 (9th Cir. 2018).



Anti-Storage of Personal Belongings Ordinances

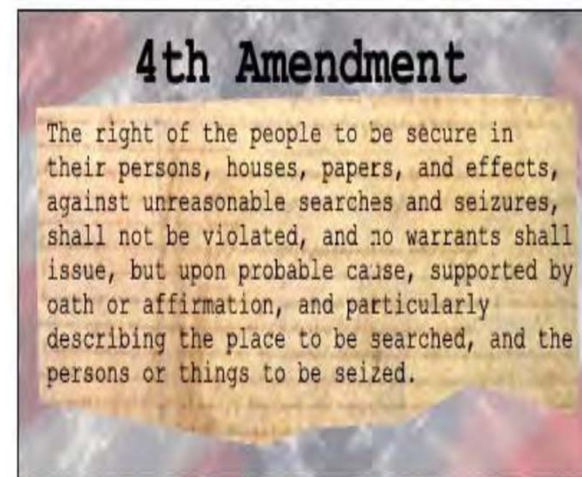
- Ordinances may prohibit persons from storing unattended belongings on public property, and authorize seizure and destruction of unclaimed property.

*** De-Occupy Honolulu v City & County of Honolulu, U.S. Dist. WL 2285100 (2013) (D. Haw. May 21, 2013).*



Limitations to Anti-Storage of Personal Belongings Ordinances

- Fourteenth Amendment (Due Process) requires prior notice and opportunity to retrieve seized property.
 - In 2017, Judge Carter required Santa Ana to give 24 hours notice before seizing property and that “essential items” like tents, sleeping bags, and medical papers be stored within one mile of where they were taken.
- Fourth Amendment (Unreasonable Searches and Seizures) may be implicated when there is a reasonable expectation of privacy.



** *Lavan v City of Los Angeles*, 693 F. 3d 1022 (9th Cir. 2012); *De-Occupy Honolulu v City & County of Honolulu*, U.S. Dist. WL 2285100 (2013) (D. Haw. May 21, 2013).

Anti-Solicitation Ordinances

- California Supreme Court has held that an ordinance designed to regulate solicitation for immediate payment of money is “content neutral” and therefore subject to “intermediate scrutiny.”
- *Theoretically* may regulate *time, place, and manner* of solicitation for immediate payment of money if the ordinance is:
 - (i) narrowly tailored,
 - (ii) serves a significant government interest, and
 - (iii) leaves open ample alternative avenues of communication

** Los Angeles Alliance For Survival v. City of Los Angeles, 22 Cal.4th 352 (2000).



Difficulty of Anti-Solicitation Ordinances

- Difficulty of the intermediate scrutiny test:
 - significant government interest –preventing visual blight; avoiding congestion; protecting the purposes for which public property is dedicated
 - narrowly tailored – cannot be over inclusive by regulating conduct that does not cause the harm to be addressed by the ordinance
 - leave open ample, alternative avenues of communication – can the speaker effectively reach its intended audience in some other way
- Difficult to avoid regulating content, triggering the strict scrutiny test.
- In 2018, the Court in *SCREH v. Sacramento*, enjoined City from enforcing an anti-solicitation ordinance. The City subsequently repealed the ordinance.

** *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (2011)



Recap: Regulations to address Secondary Effects

- Anti-Camping Ordinances may legally prohibit people from camping in public places if there is an alternative indoor place for the person to go.
- Personal Belonging Ordinances may legally prohibit the unattended storage of personal belonging on public property provided that reasonable prior notice and an opportunity to respond is provided.
- Anti-Solicitation Ordinances theoretically may prohibit certain types of solicitation for the immediate payment of money, but difficult to withstand judicial scrutiny.



NBMC Title 10 Offenses And Nuisances



- 10.04 Intoxicating Liquor
- 10.06 Human Waste
- 10.08 Interference with Use of Sidewalks
- 10.12 Interfering with Law Enforcement
- 10.16 Gambling
- 10.24 Discharge of Weapons
- 10.26 Community Noise Control
- 10.28 Loud and Unreasonable Noise
- 10.32 Sound-Amplifying Equipment
- 10.45 Hotel—Loitering
- 10.50 Public Nuisance Abatement
- 10.52 Abandoned or Wrecked Vehicles
- 10.54 Public Nudity
- 10.56 Drug Paraphernalia
- 10.59 Graffiti