



# NO SAFE PLACE: ADVOCACY MANUAL

A Report by the National Law Center on Homelessness & Poverty

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The National Law Center on Homelessness & Poverty (NLCHP) is a 501(c)3 organization based in Washington, D.C. and founded in 1989 as the legal arm of the national movement to end and prevent homelessness. Through policy advocacy, public education, and impact litigation, NLCHP addresses the root causes of homelessness and seeks to meet both the immediate and long-term needs of homeless and poor people. Through training and support, NLCHP also enhances the capacity of local groups. We are the only national organization dedicated solely to using the power of the law to prevent and end homelessness in America.

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**Jeremy Rosen**  
Director of Advocacy

**Eric Tars**  
Senior Attorney

**Louise Weissman**  
Director of Operations

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# TABLE OF CONTENTS

|    |  |
|----|--|
| 6  | EXECUTIVE SUMMARY – TRENDS IN CASE LAW   |
| 8  | INTRODUCTION   |
| 9  | PUBLIC AWARENESS STRATEGIES TO COMBAT CRIMINALIZATION  |
| 9  | Calculate Local Costs of Criminalization   |
| 10 | Use Public Records Requests in Advocacy Efforts  |
| 11 | Use Surveys in Advocacy  |
| 12 | Use Media in Advocacy  |
| 14 | LEGAL STRATEGIES TO COMBAT CRIMINALIZATION   |
| 14 | Overview of Potential Legal Claims   |
| 14 | Constitutional Claims  |
| 15 | Persuasive Human Rights Theories   |
| 17 | Anticipating Litigation: Factual Research and Identifying Parties                                  |
| 19 | Litigation and Strategy  |
| 20 | Discovery  |
| 21 | Experts  |
| 21 | Summary Judgment   |
| 21 | Trial  |
| 21 | Settlement   |
| 22 | CASE SUMMARIES   |
| 22 | I. Challenges to Restrictions on Food Sharing  |
| 22 | II. Challenges to Restrictions on Sleeping, Camping, Sitting, or Storing Property in Public Places |
| 26 | III. Challenges to Anti-Begging, Anti-Soliciting and Anti-Peddling Laws                            |
| 31 | APPENDIX - MODEL POLICIES AND SURVEY   |
| 32 | MODEL GENERAL POLICE ORDER   |
| 35 | MODEL POLICY FOR CLEANING PUBLIC SPACES  |
| 36 | MODEL SURVEY   |

# EXECUTIVE SUMMARY: TRENDS IN CASE LAW

Since the previous edition of this manual was published in 2011, there have been significant trends in case law regarding criminalization. In this Executive Summary, we examine these trends in three specific areas – laws that forbid sharing food with homeless and poor persons, laws that prohibit sleeping, camping, sitting, or storing property in public places, and laws that criminalize begging, solicitation, or peddling.

Most recent cases have either upheld the legal rights of homeless persons to perform various life-sustaining behaviors in public places or have resulted in positive court decisions allowing legal challenges to proceed; some of these have led to favorable settlements, others are still pending. Since our last report in 2011, favorable results were obtained in:

- 100% of cases challenging laws restricting food sharing
- 71% of cases challenging laws restricting camping and sleeping in public
- 66% of cases challenging laws restricting begging and solicitation

Favorable results in these cases include success in securing injunctions to prevent enforcement of the challenged laws, awards of monetary damages, and settlements that modified laws or altered patterns of enforcement to comport with the civil rights of homeless people.

## Food Sharing

Many homeless persons living outdoors have no access to safe food. Seeing this need, community volunteers – often, but not always, from religious organizations – bring meals to people living on the street. A number of cities have banned public food sharing, arguing (despite a lack of evidence) that this poses a public health hazard for homeless persons. Recent litigation in several cities has challenged these bans.

- Federal courts in both Dallas (in an NLCHP case) and Philadelphia have struck down city ordinances restricting food sharing with homeless persons, after challenges were brought by faith based groups under state religious freedom statutes. Both courts found that the food sharing laws imposed a substantial burden on the plaintiffs' religious expression, and were not justified as the least restrictive means required to meet the claimed state interest in ensuring food safety. This is a higher standard for defendants to meet than courts would apply in a First Amendment challenge, where the state would merely have to demonstrate that restrictions on food sharing were reasonable time, place, and manner regulations.

## Camping and Sleeping

Homeless people with no other place to go must live in public places. Unfortunately, instead of providing housing and other help to homeless people, cities across the country are making this behavior illegal – often sending homeless people to jail, and destroying their personal possessions, for the “crime” of trying to survive outdoors. These local practices have been challenged through litigation.

- In 8th Amendment challenges to anti-camping ordinances, plaintiffs argue that enforcement of such laws violates the 8th Amendment prohibition against cruel and unusual punishment, when there is no available shelter space on a given night. Building on an earlier case from Los Angeles, federal courts in Boise, Idaho (in an NLCHP case) and Portland, Oregon

have allowed these challenges to anti-camping ordinances to move to trial, for fact-finding on what constitutes available shelter space and whether such space is in fact available.

- The 9th Circuit struck down a Los Angeles law prohibiting car camping, protecting residents in Venice and other areas whose only safe place to live was in their car. The court found the statute to be overly vague, as it allowed police to use the presence in a vehicle of items such as a cooler as evidence that someone was living in the car, when in fact having a cooler in their car could have just been a sign that someone was going to the beach.
- Many cities misguidedly conduct homeless sweeps, where police officers seize and destroy the personal property of homeless persons. Such property often includes food, clothing, medicine, identification, and irreplaceable photographs or other personal items. Courts in San Diego, Sacramento, and Anchorage have ruled in favor of homeless people challenging these sweeps as due process violations or illegal seizures. In these cases, courts have both awarded damages and required cities to adopt new policies that require proper notice before sweeps take place, along with provisions for the storage of personal property so that homeless persons may retrieve it later.
- In a number of cities, Occupy movement protestors sought to bring public awareness to homelessness by sleeping outdoors near government buildings such as city hall or the state house. Courts in Boise, Columbia, South Carolina, and Minneapolis refused to prohibit these important protests.
- Broad bans on panhandling have been struck down as violations of the First Amendment. The 6th Circuit struck down a Michigan statewide ban on begging, and an Arizona federal court found a similar state law to be unconstitutional. In addition, the 4th Circuit struck down a ban on panhandling in all of downtown Charlottesville, as did a federal court in Boise (in an NLCHP case) and a state court in Phoenix – which found that a ban on panhandling after dark was overbroad. The 7th Circuit disagreed, upholding a panhandling ban covering the downtown historic district of Springfield, IL. The split between federal circuits could lead to a Supreme Court decision addressing panhandling bans.
- Many cities have sought to indirectly ban panhandling, often through ordinances that prevent panhandling in streets or on median strips, or prohibit panhandlers from interacting with people in vehicles. These bans are typically justified as protecting public safety. Courts have reached different results in challenges to these laws. Bans have been struck down where the public safety justification seemed pretextual and other means of panhandling were not available, while laws have been upheld where public safety concerns were plausible and alternative means of panhandling were available.

Although legal advocates have been largely successful in challenging criminalization laws, some courts have upheld policies prohibiting the survival activities of homeless people in public places, often as permissible time, place, and manner restrictions.

Success in preventing the criminalization of homelessness will not achieve the long-term goal of ending homelessness by ensuring that all Americans have access to safe and affordable housing. Consequently, while we view this manual as an important resource to help advocates defend homeless people's civil rights as they try to survive on the streets, we also offer it as a roadmap for future legal challenges seeking remedies that will provide homeless persons with housing and supportive services.

### **Begging and Solicitation**

Many homeless persons who live outdoors, and do not have income from employment or government benefits, must resort to panhandling in order to survive. Unfortunately, too many local governments, instead of finding ways to help homeless persons obtain income, housing, and social services, seek to prohibit panhandling and involve violators in the criminal justice system. Many local panhandling ordinances have been challenged in court.

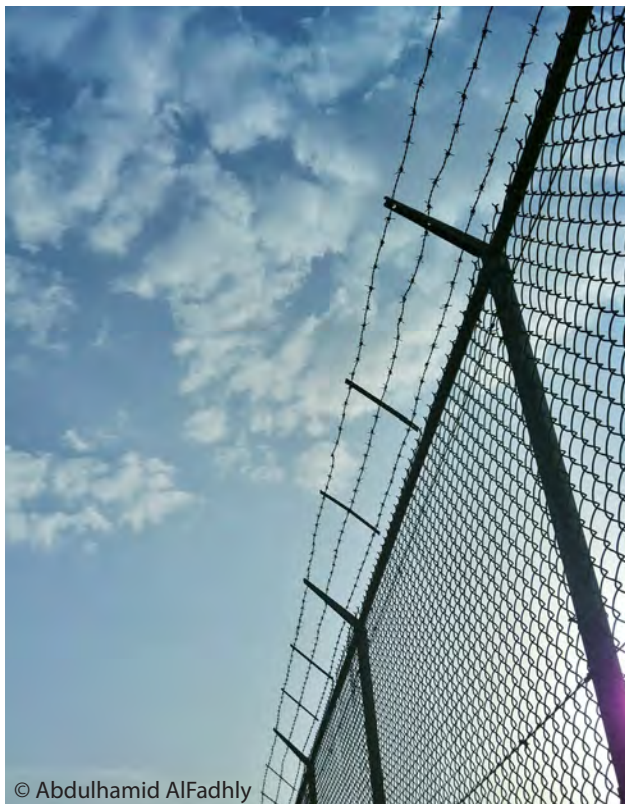
# INTRODUCTION

Our recent report on national trends in criminalization, *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, available at [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place), contains a summary of criminalization ordinances, an explanation of why such laws are both harmful to homeless persons and costly for communities, our prohibited conduct chart (detailing specific criminalization laws in selected cities), constructive alternatives to criminalization, and policy recommendations to address criminalization. This advocacy manual is a companion piece to *No Safe Place*. It is meant to be an additional resource for legal and policy advocates working on the ground to combat criminalization in their communities.

The manual begins with an Executive Summary that focuses on trends in criminalization case law. We then focus on public advocacy to combat criminalization. This section focuses on how to calculate the cost of criminalization of homelessness in your community, how to assess criminalization's impact on homeless persons and how to use that information in advocacy.

Next we examine legal strategies for challenging criminalization ordinances. This section is followed by case summaries from criminalization litigation since the publication of our last manual in 2011. The manual concludes with model police policies for interacting with homeless persons and cleaning public spaces.

We hope that advocates can use our report and this manual to bring a national perspective to their work and make connections between their efforts and those of advocates in different programs across the country.





# PUBLIC AWARENESS STRATEGIES TO COMBAT CRIMINALIZATION

## Calculate Local Costs of Criminalization

The costs associated with criminalizing homelessness are often much higher than the costs of providing permanent supportive housing or even temporary shelter for people. Plus, studies indicate that once someone is placed into supportive housing his or her medical costs, especially those associated with mental health and rehabilitation, often drop significantly. Cost data can be a strong advocacy tool in convincing lawmakers that criminalizing homelessness is neither fair nor cost-effective.

A number of cities' 10-year plans provide examples of what data to collect, how to find this data in your city and how to conduct a cost analysis comparing criminalization costs with costs of supportive housing. These plans provide a variety of strategies. Even if you do not have the time or resources to follow all of these suggestions, you can choose the ones that are most useful for your area.

### *Opening Doors: Federal Strategic Plan to End Homelessness*

The federal plan provides information from homelessness cost studies conducted between 2004 and 2009 in Atlanta, Chicago, Columbus, Denver, Los Angeles, Maine, Massachusetts, New York, Phoenix, Portland (Oregon), Rhode Island, San Francisco, and Seattle.<sup>1</sup> The plan found that on average, cities spend \$87 a day for jail and \$28 a day for shelter per person. Even if your community is not represented in this analysis, the cost comparisons can be useful to provide a general sense of the costliness of using the criminal justice system to address homelessness.

### *Quincy, MA*

Quincy's 10-year plan provides suggestions for both the costs cities should track and sources of information on these costs. Specifically, the Quincy plan calls for tracking homeless individuals' use of the following services in order to compare these costs with those of providing housing and support services:

- Number of services utilized in Veterans Emergency Systems;
- Number of jail days;
- Emergency room visits;
- Number of emergency shelter beds utilized per night;
- Hospital admissions (both medical and psychiatric);
- Number of detox and/or transitional holding beds utilized per night;
- Number of protective custody calls responded to per night; and
- Number of ambulance calls received.<sup>2</sup>

The plan also explains how advocates can ask service providers for these costs. Advocates can ask ambulance companies and hospitals to track and report the number of homeless individuals they serve. Advocates can also ask their sheriff's department to track and record the number of arrests and jail stays that involve homeless individuals. The Quincy plan also proposes commissioning a study to compare the costs incurred for homeless individuals while they are homeless, and then after they find permanent housing.<sup>3</sup> After tracking these costs, the plan set out goals to reduce these costs by 25-40 percent by reducing chronic homelessness.

### *Additional Ways to Gather and Calculate Costs*

In order to figure out the criminal justice system costs for homeless individuals in your community in a given year, you can conduct a simple cost analysis of projected jail costs over a year using the Point-in-Time Count. Some jurisdictions count homeless individuals who are in jail during the Point-in-Time Count. Advocates in those jurisdictions should look at the results from the last local point-in-time count to find out how many homeless people were in jail on that date, as well as the average jail costs per person per day. This information can often be found from your local sheriff's department. In order to calculate the cost your community incurs each year by incarcerating homeless people, do the calculation of:

1 U.S. Interagency Council On Homelessness, *Opening Doors: Federal Strategic Plan to End Homelessness* (2010).

2 Quincy Leadership Council on Chronic Homelessness, *City of Quincy, Massachusetts 10-Year Plan to End Chronic Homelessness* (2005) 10-11, available at <http://www.endhomelessness.org/content/article/detail/623>.

3 Id. at 11.

$$\begin{array}{c}
 \text{Jail Costs Per Person} \\
 \times \\
 \text{Number of Homeless Persons} \\
 \text{in Jail on day of count} \\
 \times \\
 \text{365 days} \\
 = \\
 \text{Estimated Total of Incarceration Costs} \\
 \text{of Homeless Persons per year}
 \end{array}$$

Public records can also provide sources of information to find trends and identify costs. Local law enforcement will have information on arrests and citations for misdemeanor violations by homeless individuals. One way to search for such arrests and citations is by address. Many times a homeless person will list a local shelter or service provider as his or her address when arrested or cited. Police departments may have other ways of listing homeless persons' address in their records, such as "unknown," "no address," "homeless," or "transient." In addition, a search of ordinances most likely applied to homeless persons, such as anti-camping, anti-sitting, and other similar laws, can provide information about enforcement against homeless people.

Comparing this number to the total number of citations and arrests in an area during a specific time period can provide a picture of how homeless individuals are treated in your community relative to the broader population. To then show the cost benefit analysis of housing individuals rather than allowing them to remain homeless, compare the costs of acute services such as use of the criminal justice system with the cost of providing supportive housing.

Due to the economic recession, most cities are under pressure to reduce costs. Using these cost calculations to demonstrate that addressing homelessness through the criminal justice system is more expensive than providing housing and support services can be very persuasive with policymakers.

### Use Public Records Requests in Advocacy Efforts

Public records requests can be made of federal, state, and local governments. The federal Freedom of Information Act (FOIA) gives the public a right to obtain copies of certain documents from federal government agencies and applies to records held by agencies in the executive branch of government. Every U.S. state and some cities have passed laws similar to the federal FOIA

that permit the public to request records from state and local agencies. Public records requests can be helpful in identifying practices within your city that are negatively impacting homeless individuals. Any records obtained through such a request can be a very powerful tool in supporting advocacy efforts to combat criminalization measures.

#### *How To Make the Request:*

1. Determine what records you need.

When making a request, it is important to describe the document you are seeking as precisely as possible and include enough information that the record will be reasonably identifiable. This is also important because there may be a copying or processing fee for records requests. See the list below for ideas on what information can be requested.

2. Identify the agency that has the records.

Public records requests should be directed to the agency that prepared, owned, or retains the records. If it is unclear which agency has the particular records, requests can be sent to multiple agencies.

3. Make a request to the agency in writing.

The websites of many state agencies provide detailed instructions on how to make public records requests and contain a form that can be used to submit such requests. If the agency in question does not provide such information, a letter should be sent to the agency reasonably describing the records requested and clearly marked as a public records request.

4. Follow up on the request.

The federal FOIA requires a response within 20 working days, and state public records laws also impose deadlines by which the agency must respond. The request may be denied in whole or in part, but the agency is required to explain the reasons for denial. Negotiation may be helpful if the agency denies or challenges the scope of the request.

*What To Request:*

The different types of information advocates may consider seeking through a public records request include the following:

- All available records related to arrest, citation, warning or other actions taken by police officers in relation to violations under anti-camping, anti-panhandling, loitering, and/or other ordinances used in your community to target homeless individuals;
- Any and all internal police department statements of policy, practice, guidance, or similar documents relating to the enforcement of any of the ordinances for which you are seeking records;
- All records related to sweeps and policies related to cleaning public spaces;
- All records related to citizen complaints to the police department related to homeless persons;
- All communications between the police department and city officials related to homelessness;
- Any records related to jail capacity, the cost of incarceration, and judicial resources involved in prosecuting homeless individuals; and
- All records related to official figures on the size of the local homeless population and the maximum capacity of local homeless shelters.

Obtaining some of the above information through a records request can help identify patterns of enforcement and targeting of homeless persons. By having a clearer picture of such patterns, advocates will be able to approach policymakers with concrete information that can inform any advocacy. In addition, information obtained from public records requests can help identify recurring civil rights violations that will help develop a litigation strategy, should other forms of advocacy with the city fail.

**Use Surveys in Advocacy**

Surveys can be valuable tools when trying to gather information about the impact of criminalization measures in your city. Surveying people who are homeless can help identify which laws are being enforced against homeless people and any problems with enforcement, as well as any policies or practices of the city that are having a negative impact on homeless persons. This is a different purpose than that of the HUD point-in-time count or other government surveys, which focus only on measuring the number of homeless persons in a community. For an example of an advocacy survey, please see the model survey included in the Appendix.

*Developing the Survey*

The first step in the survey process is to develop a survey. A sample survey is included below to serve as a starting point. However, the survey should be adjusted to capture appropriate information for your city. For example, if sweeps are a problem in your city, you may want to focus the survey questions specifically on questions related to the sweeps procedures and any property destruction related to sweeps. It may be useful to collaborate with other service provider or advocacy groups to identify the most useful questions to include in a survey, as a wider range of groups may have a good sense of the extent of problems homeless individuals are facing.

*Recruiting Surveyors*

After the survey is developed, a plan for gathering the information should be developed. If your organization does not have the capacity to survey people, consider collaborating with other organizations. Another good source of surveyors could be students at nearby universities. Students may be interested in the work and have time to devote to the project. If you do not have a current connection to students at the university, try to identify either school groups related to social justice or professors who teach related subjects. They may help spread the word and recruit students.

Ideally, you should have one or two people on your survey team who have some sort of relationship with the people you are surveying. For example, having an outreach worker on your team is a good way to make sure that the people you are surveying have a familiar face and reference point when you are asking to survey them.

Anyone who will be conducting surveys should be trained beforehand to ensure that the surveys are conducted in a uniform manner and that surveyors interact with survey subjects appropriately. It can be helpful to have a group training for all surveyors, so that all participants operate under the same assumptions and using the same techniques.

#### *Location of Surveys*

Another logistic to sort out before beginning the survey process is to determine where the surveys will be taken, so that you can reach impacted individuals. Overnight and day shelters, as well as meal programs, can be a good place to start. However, it is also important to include people on the street. To the extent they do not access indoor services, it will be important to go out to where they are.

If your team has an outreach program involved in the survey process, this can be tremendously helpful in reaching people on the street. Surveyors can accompany the outreach workers to identify impacted individuals. Another way to reach people on the street is to ask outdoor meal programs if you can conduct surveys of the people they are serving.

#### *Confidentiality*

Some of the people you are surveying may not want to provide their names, as they may be worried about being targeted after taking the survey – a very valid concern. While it is certainly helpful to be able to identify individuals who have taken a given survey, you can still use the data gathered from the survey even if you do not have a name on the survey. To the extent you can find a way to follow up with the person, should you need to, you might want to ask to record his or her name on a separate document for follow up.

#### *Compiling the Data*

Once the surveys are complete, it is helpful to gather all the information into one document or spreadsheet to get a full picture of the types of problems homeless people are facing in your city. Understanding which laws are being enforced and how frequently is extremely important in any advocacy. Further, this data can help you determine what next steps to take.

#### *Next Steps*

After completion of the survey and compilation and analysis of the data, you can determine your next steps.

If you need to obtain more information about the enforcement of a certain type of law, you may want to consider conducting a public records request.

Once you have all the information you need, you can consider taking the information to policymakers or city officials to demonstrate the negative impact of particular laws or policies upon homeless persons and to work with them to create a more helpful approach.

Before contacting your policymakers or city officials, you may want to consult with a lawyer or the Law Center to identify any rights violations related to problems identified in the surveys. Referencing any legal problems with a city's practices in discussions with the city may provide motivation for a city to change its practices.

#### **Use Media in Advocacy**

The media can play an important role in how homelessness is approached in a community. Newspapers and news programs reach a lot of people and can sway public opinion, depending on what and how topics are reported in the news. Therefore, tracking news coverage of homelessness issues is very important, as is consulting with the media to provide perspectives that encourage non-criminalizing approaches to homelessness.

Following news coverage on homelessness issues in your city may be as simple as watching the local news and reading local papers. However, if many news sources exist in your city, you may want to try a more systematic way of checking the news. Given new technology, tracking articles about homelessness online can be streamlined considerably. For example, Google provides an alert service that can be set up to send you articles based on certain search terms, such as "homeless."

By tracking homelessness news coverage, you can identify any news stories that may bolster or hinder your advocacy efforts. If news coverage is perpetuating harmful approaches to homelessness in your community, it is important to provide another perspective. Writing letters to the editor to respond to such articles can be one way to weigh in. Another way may be to contact the reporter who wrote the article or filed the TV story and provide another perspective.

Besides reacting to news coverage, it is also important to be proactive in getting out a constructive point of view. Your organization may want to issue press releases

if something newsworthy happens in your community regarding homelessness. For example, it may be helpful to issue a press release in conjunction with the release of the results of your community's annual homeless count. Such a press release can contain not only the results of the count, but also any information about the lack of adequate resources to address the problem and suggestions for solutions to the problem.

Another way to connect members of the media to the issue of homelessness is to invite local reporters to any conferences, town hall meetings, or other gatherings focused on the issue of homelessness. Including reporters in such events can help them become educated about the topic and also potentially raise public awareness through any subsequent reporting on the event. Since the media can play such a strong role in swaying public opinion, taking an active approach to influencing homelessness news coverage can be a very useful and important tool in any advocacy efforts to end homelessness.



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# LEGAL STRATEGIES TO COMBAT CRIMINALIZATION

Lawyers may use various legal strategies to combat criminalization measures. When policy advocacy fails, lawyers may consider bringing civil rights litigation against a municipality to challenge civil rights violations faced by homeless persons. In addition, criminal defense lawyers may use constitutional arguments in the criminal proceedings to challenge a charge against a person. Further, even if not raising constitutional challenges in the criminal context, simply by providing representation to targeted individuals in citation defense, lawyers can dramatically reduce the negative impact of measures that criminalize homelessness. This section focuses on considerations when bringing civil rights litigation.

**This manual does not create an attorney-client relationship with you. The information herein is not offered as legal advice and should not be used as a substitute for seeking professional legal advice. It does not provide an exhaustive list of considerations to be worked out before bringing litigation in any particular case.**

## Bringing Litigation

### Overview of Potential Legal Claims

Homeless individuals and service providers have brought various legal challenges to municipal ordinances or statutes that criminalize homelessness. Claims may be brought under 42 U.S.C. § 1983 against laws that violate rights guaranteed by the United States (U.S.) constitution. State constitutions may offer differing or broader protections.<sup>4</sup> In addition, human rights protected by international treaties can provide persuasive theories that have gained traction in some courts.

<sup>4</sup> See, e.g., *Archer v. Town of Elkton*, Case No. 1:2007-CV-01991 (Md. Dist. Ct. July 27, 2007) (arguing that the seizure and destruction of personal property violated state constitutional provisions).

### Constitutional Claims

#### *Anti-Panhandling Ordinances*

One way municipalities have targeted poor and homeless individuals is by passing laws prohibiting panhandling, solicitation, or begging which may infringe on the First Amendment right to free speech. Courts have found begging to be protected speech and laws that restrict this speech beyond what is necessary to serve a compelling governmental interest, target speech based on content, or do not provide alternate channels of communication can violate the First Amendment.<sup>5</sup> In addition, some courts have found laws prohibiting begging or panhandling to be unconstitutionally vague where the ordinances do not provide clear notice of the conduct prohibited and could be enforced in an arbitrary or discriminatory manner.<sup>6</sup>

#### *Anti-Camping or Anti-Sleeping Ordinances*

Because many municipalities do not have adequate shelter space, homeless persons are often left with no alternative but to sleep and live in public spaces. Despite not dedicating enough resources to give homeless persons access to housing or shelters, some municipalities have enacted laws imposing criminal penalties upon homeless individuals for sleeping outside.

<sup>5</sup> See *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Loper v. New York City Police Department*, 999 F.2d 699 (2nd Cir. 1993); .

<sup>6</sup> See *State v. Boehler*, 262 P.3d 637 (Ariz. App. 2011).

Laws punishing people for sleeping outside have been challenged in courts as a violation of homeless persons' civil rights. Some courts have found that arresting homeless people for sleeping outside when no shelter space exists violates their Eighth Amendment right to be free from cruel and unusual punishment.

Laws penalize travel if they deny a person a "necessity of life."<sup>7</sup> Advocates have contended that arresting people for sleeping outside violates the fundamental right to travel by denying access to a necessity of life, i.e. a place to sleep. At least one court has found that if people are arrested for sleeping in public, those arrests have the effect of preventing homeless people from moving within a city or traveling to a city, thereby infringing upon their right to travel.<sup>8</sup>

### *Loitering Measures*

Municipalities have used broadly-worded loitering ordinances to target homeless individuals in public spaces. The Supreme Court has held that such ordinances are unconstitutionally vague when they do not give clear notice of the prohibited conduct or would allow for selective or arbitrary enforcement.<sup>9</sup> Many loitering ordinances use similarly broad and vague language and could be challenged as violating the Due Process Clause of the Fourteenth Amendment.

### *Sweeps*

Some municipalities also target persons experiencing homelessness by conducting sweeps of areas where homeless individuals sleep, rest, and store belongings. During sweeps, police or city workers may confiscate and destroy belongings in an attempt to "clean up" an area. Although cities may clean public areas, courts have found that seizing and destroying homeless persons' personal property violates Fourth Amendment rights to be free from unreasonable searches and seizures and that failing to follow certain procedures when managing confiscated private property may implicate due process rights.<sup>10</sup>

7 Memorial Hosp. v. Maricopa County, 415 U.S. 250, 258-59 (1974).

8 Pottinger v. City of Miami, 76 F.3d 1154 (11th Cir. 1996).

9 Chicago v. Morales 527 U.S. 41 (1999); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

10 See Lehr v. Sacramento, 624 F. Supp. 2d 1218 (E.D. Ca. 2009); Pottinger v. Miami, 810 F. Supp. at 1571-1572; Kincaid v. Fresno, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006) (order granting preliminary injunction); Justin v. City of Los Angeles, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000) (order granting preliminary injunction).

### *Anti-Food Sharing Ordinances*

Recently, municipalities have indirectly targeted homeless people by restricting service providers' food sharing programs.<sup>11</sup> Historically, municipalities have attempted to restrict food sharing on providers' property through zoning laws. More recently, some municipalities have passed laws to restrict food sharing in public spaces, such as parks.<sup>12</sup> Some courts have found that food sharing restrictions can violate religious groups' right to freely exercise their religious beliefs.<sup>13</sup> Food sharing restrictions may also violate providers' free speech rights.

### **Persuasive Human Rights Theories**

Human rights theories provide useful tools when challenging ordinances criminalizing homelessness. Legal arguments supported by human rights treaties ratified by the U.S. can be used to ensure domestic law complies with such treaties, which have the same binding force as federal law.<sup>14</sup> Further, under international law, once the U.S. merely signs a treaty, it is obligated not to pass laws that would "defeat the object and purpose of [the] treaty."<sup>15</sup>

The Law Center has laid a solid base for using human rights in policy advocacy and litigation against criminalization measures. Federal documents recognize human rights standards as relevant to criminalization: a 2012 report by the U.S. Interagency Council on Homelessness acknowledged that "in addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights,"<sup>16</sup> and the Council now maintains a web page devoted to human rights and alternatives to criminalization.<sup>17</sup> At the international level, two of the three treaty bodies

11 For more information about trends in food sharing restrictions, see National Law Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2014).

12 See <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-lauderdale-homeless-feeding-sites-20141021-story.html>.

13 See, Big Heart Ministries v. City of Dallas, 2011 WL 5346109 (N.D. Tex. Nov. 4, 2011), Findings of Fact and Conclusions of Law, Filed March 25, 2013, available at: <http://www.scribd.com/doc/132875015/Judge-Solis-Ruling-in-Big-Heart-Ministries-Case>; Chosen 300 Ministries v. City of Philadelphia, 2012 WL 3235317 (E.D. Pa. Aug. 9, 2012).

14 U.S. Const. art. VI, § 2; Id. art. II, § 2, cl. 2.

15 The Vienna Convention on the Law of Treaties, May 23, 1969, art. 18(a), 1155 U.N.T.S. 331.

16 U.S. Interagency Council on Homelessness, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 8 (2012).

17 U.S. Interagency Council on Homelessness, *Human Rights and Alternatives to Criminalization*, <http://usich.gov/issue/human-rights>.

which oversee human rights treaties ratified by the U.S., the Human Rights Committee (HRC) and Committee on the Elimination of Racial Discrimination (CERD), have specifically condemned the criminalization of homelessness in the U.S. and called on the U.S. to “[a]bolish laws and policies making homelessness a crime.”<sup>18</sup> The third treaty body to which the U.S. is subject, the Committee Against Torture, is set to consider such recommendations at its review of U.S. compliance in November 2014.

While human rights treaties may not be enforceable on their own in domestic courts, judges in both state and federal settings have looked to human rights law and jurisprudence in a number of cases.<sup>19</sup> In addition, lawyers can also cite to these sources in policy advocacy.<sup>20</sup> Numerous resources and networks exist to help litigators use these rich resources in their advocacy.<sup>21</sup>

### *Cruel and Unusual Punishment*

On multiple occasions, the U.S. Supreme Court has looked to international law in interpreting the scope of the 8<sup>th</sup> Amendment protection against cruel and unusual punishment.<sup>22</sup> The Law Center has strategically built up commentary from the HRC and numerous other U.N. human rights monitors addressing criminalization of homelessness as cruel, inhuman, and degrading treatment – the international equivalent of our 8<sup>th</sup> Amendment standard – to provide evidence of an international norm that can guide judges to make similar findings domestically.<sup>23</sup> Rather than simply

enjoining such laws only to see communities make minimal changes to the laws but continue criminalizing practices, international law may also provide support for more expansive remedies – such as provision of housing – to address underlying constitutional violations.<sup>24</sup>

### *Freedom of Movement*

In *In Re White*, the California Court of Appeals cited the right to freedom of movement recognized in international law to support its conclusion that both the U.S. and California Constitutions protect the right to intrastate and intra-municipal travel.<sup>25</sup> The petitioner challenged a condition of her probation that barred her from being in certain defined areas of the city. The HRC, which oversees compliance with the International Covenant on Civil and Political Rights (ICCPR), has emphasized that the right to movement and the freedom to choose your own residence are important rights that should only be breached by the least intrusive means necessary to keep public order.<sup>26</sup> Further, in *Koptova v. Slovak Republic*, the CERD, which oversees the International Covenant on the Elimination of Racial Discrimination (ICERD), held that municipal resolutions in villages in the Slovak Republic, which explicitly forbade homeless Roma families from settling in their villages, and the hateful context in which the resolutions were adopted, violated the right to freedom of movement and residence within the border of a

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*the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012); U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, USA: “Moving Away from the Criminalization of Homelessness, A Step in the Right Direction” (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

18 U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014); Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, ¶ 12 (2014).

19 See Opportunity Agenda, *Human Rights in State Courts* (2014), [http://opportunityagenda.org/human\\_rights\\_state\\_courts\\_2014](http://opportunityagenda.org/human_rights_state_courts_2014).

20 See, e.g. Leo Morales, An open letter to Mayor Bieter & Boise City Council re: proposed Ordinance 38-14, criminalizing houselessness in Boise, ACLU of Idaho (Sept. 23, 2014), <https://acluidaho.org/an-open-letter-to-mayor-bieter-boise-city-council-re-proposed-ordinance-38-14-criminalizing-houselessness-in-boise/>.

21 See, e.g. American University Washington College of Law Center for Human Rights and Humanitarian Law, *Local Human Rights Lawyering Project*, <http://www.wcl.american.edu/humright/center/locallawyer.cfm>; Columbia Law School Human Rights Institute, Bringing Human Rights Home Lawyers Network, <http://web.law.columbia.edu/human-rights-institute/bhrh-lawyers-network>.

22 See, e.g. *Roper v. Simmons*, 125 S. Ct. 1183, 1199 (2005); *Graham v. Florida*, 130 S. Ct. 2011; 176 L. Ed. 2d 825 (2010); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002).

23 See U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014); U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of*

24 Eric Tars, Heather Maria Johnson, Tristia Bauman & Maria Foscarnin, *Can I Get Some Remedy? Criminalization of Homelessness and the Obligation to Provide an Effective Remedy*, 45 Col. HRLR 738 (2014), [http://nlchp.org/documents/HLRL\\_Symposium\\_Edition\\_Spring2014\\_Can\\_I\\_Get\\_Some\\_Remedy](http://nlchp.org/documents/HLRL_Symposium_Edition_Spring2014_Can_I_Get_Some_Remedy).

25 *In Re White*, 158 Cal. Rptr. 562, 567 (Ct. App. 1979).

26 Human Rights Committee, General Comment 27, Freedom of movement (Art. 12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).



country in violation of the ICERD.<sup>27</sup>

### *Equal Protection/Discrimination*

Laws criminalizing aspects of homelessness, such as bans on sleeping or sitting in public, or the selective enforcement against homeless people of neutral laws such as those prohibiting loitering or public intoxication may violate human rights law. Both the ICCPR and ICERD, which the U.S. has signed and ratified, prohibit discrimination on the basis of race, and both the ICCPR and the Universal Declaration of Human Rights, a non-binding U.N. declaration, also protect against discrimination on the basis of property and “other status,” which can include homelessness.<sup>28</sup> Laws that have a disparate impact on homeless individuals who are members of racial minorities have also been held to violate the ICERD and the ICCPR. In response to reports that “some 50% of homeless people are African American although they constitute only 12% of the U.S. population,” the HRC stated that the “[U.S.] should take measures, including adequate and adequately implemented policies, to ensure the cessation of this form of de facto and historically generated racial discrimination,”<sup>29</sup> and the CERD expressed concern “at the high number of homeless persons, who are disproportionately from racial and ethnic minorities ... and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces” and called on the government to take corrective action.<sup>30</sup> The U.S. Supreme Court has also looked to international law in interpreting our own equal protection standards under the 14<sup>th</sup> Amendment.<sup>31</sup>

### *Forced Evictions/Sweeps*

“Sweeps” that remove people from public spaces or outdoor encampments, frequently without notice or housing relocation, may violate homeless people’s right to freedom from forced evictions under international law. Forced evictions are described as “the permanent

or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>32</sup> According to human rights law, “[e]victions should not result in rendering individuals homeless or vulnerable to the violation of other human rights.”<sup>33</sup> In addition, “[n]otwithstanding the type of tenure [including the illegal occupation of land or property],” under human rights law “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>34</sup> For homeless individuals affected by sweeps, human rights law requires that municipalities “take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>35</sup> This principle has been applied in cases from South Africa establishing that homeless people could not be evicted unless alternative shelter was available.<sup>36</sup>

## **Considerations for Litigation**

### **Anticipating Litigation: Factual Research and Identifying Parties**

Before a complaint is ever filed, counsel must consider a wide range of factors to present the strongest case.

#### *Factual Research: Topics to Investigate*

Counsel should seek to learn as much as possible about the ordinance or statute that will be challenged. This includes developing a firm understanding of the law’s

27 Koptova v. Slovak Republic, (13/1998), CERD, A/55/18 (8 August 2000) 136.

28 See International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter “ICCPR”]; Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (194; International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969).

29 Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee (2006).

30 Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, ¶ 12 (2014).

31 See, e.g., *Lawrence v. Texas*, 539 U.S. 558 (2003); *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring).

32 Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003) [hereinafter “General Comment No. 7”]. For an excellent summary of forced evictions under international law, see UN HABITAT and UN Office of the High Commissioner for Human Rights, *Forced Evictions*, Fact Sheet No. 25 Rev. 11 (2014), <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

33 General Comment No. 7.

34 Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

35 General Comment No. 7.

36 See, e.g., *Occupiers of 51 Olivia Road, Berea Township and Another v. City of Johannesburg and Others*, (24/07) [2008] ZACC 1 (19 Feb. 2008); Michael Clark, *Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government*, SERI (2013), [http://www.seri-sa.org/images/Evictions\\_Jurisprudence\\_Nov13.pdf](http://www.seri-sa.org/images/Evictions_Jurisprudence_Nov13.pdf).

enactment, the jurisdiction's history of and policies regarding enforcement of the ordinance or statute, the municipality's relationship with shelters and other service providers, and difficulties homeless individuals may have complying with the ordinance. This research may be conducted by interviewing homeless individuals and service providers, reviewing municipal documentation found online, and by submitting public records requests.

The jurisdiction's history of or policies regarding enforcement will be critical to persuading a court that the problems identified in the eventual complaint are real, concrete, and recurring (and, therefore, not subject to dismissal on mootness or ripeness grounds). The types of questions counsel should ask about the nature of the enforcement include: (1) whether there have been changes in frequency and magnitude of enforcement; (2) whether any notable swings in enforcement efforts are tied to particular events, political trends, enactment of new laws, or local citizen complaints; (3) whether enforcement spikes during certain seasons or times of day; (4) whether enforcement is focused on a particular area (and, conversely, whether some locations do not see enforcement); and (5) whether enforcement is selective, meaning specific groups, such as homeless individuals, or a certain subset of the homeless population, are targeted. Most importantly, counsel should note how potential defendants are enforcing the statute vis-à-vis specific individuals: is law enforcement issuing verbal warnings or citations, arresting violators, mandating relocation to a local shelter, or enforcing the law through some other means? Identifying municipal or police policies on enforcement is also important. Initial research on policies can be done by reviewing materials (such as press releases and reports) on a municipality's website and reviewing statements made to news media and in municipal or city council meetings. These facts will be critical in determining which legal claims have the greatest chance of success.

Local service providers (such as shelters, food kitchens, clinics, and other social service organizations that serve indigent individuals) can serve as useful resources to understanding the municipality's attitude toward homelessness. Those service providers that are critical of criminalization practices may be important allies in working with plaintiffs and gathering factual information. They may also serve as informal consultants who can help counsel understand the conditions and challenges facing the local homeless population. In contrast, some service providers may not be receptive to assisting in challenges or may be hesitant to publicly support such efforts because of their relationships with the municipality and/or its police department.

Counsel should examine additional barriers that may hinder homeless individuals' abilities to comply with the ordinance or statute at issue. For example, mental health issues may make it incredibly difficult for an individual to function in certain shelter environments and may create obstacles to compliance with relevant ordinances. Transportation issues may also limit access to available services, particularly if these are located away from public transportation or if individuals' physical disabilities make transportation difficult. Individuals with criminal records – even those consisting mostly of violations of quality of life ordinances – may not be eligible for public benefits or housing assistance, or may be turned away by private landlords. Religious differences may inhibit an individual from seeking shelter or services from certain providers, thereby limiting the individual's ability to comply with the law. Similarly, due to limited resources, there may not be sufficient services available for those in need. For instance, emergency and temporary shelters may have insufficient space, leaving homeless individuals or families with no alternative but to inhabit public places. Physical disabilities, alcoholism and substance abuse, and other factors, synergistically increase the likelihood of going without shelter or being unable to access needed services.

#### *Issues To Consider In Working With Plaintiffs*

Working effectively with plaintiffs is one of the most important aspects of litigation.<sup>37</sup>

**Individual Plaintiffs.** Generally speaking, as to individual plaintiffs, counsel should consider whether plaintiffs (1) meet the legal requirements of Article III standing; (2) have claims not barred by applicable statutes of limitation; (3) have compelling facts; and (4) will be able to participate at depositions and trial. Plaintiffs who have ties within the homeless community and will be able to offer counsel guidance on the issues faced by and remedies most likely to benefit the homeless community can be particularly helpful.

To have standing, a plaintiff must demonstrate that he or she has personally suffered or will imminently suffer an injury that is fairly traceable to defendant's conduct and that a favorable decision is likely to redress the injury.<sup>38</sup> Injuries to constitutional rights are sufficient to establish standing. Where injunctive relief is sought, a plaintiff must further demonstrate a likelihood of future harm from the unconstitutional enforcement;

<sup>37</sup> In addition to the issues discussed here, counsel should be aware of any jurisdictional, organizational, or ethical rules or limitations related to establishing the attorney-client relationship.

<sup>38</sup> See generally Erwin Chemerinsky, *Constitutional Law: Principles & Policies* § 2.5 (2d ed. 2002).

this additional requirement is unnecessary for claims for monetary damages. While some defendants have successfully argued that plaintiffs without convictions under anti-camping ordinances lack standing,<sup>39</sup> other courts have found that homeless plaintiffs have standing to challenge anti-camping or anti-sleeping ordinances, even if they have not yet been convicted under the ordinances.<sup>40</sup> Defendants may also argue that standing does not exist where a plaintiff, who seeks only injunctive relief, is no longer homeless, is incarcerated, or has moved from the area. Beyond these general points, however, there are several specific considerations.

First, counsel should consider the number of individual plaintiffs appropriate for an action. Having a large number of plaintiffs acts as a cautionary buffer; this will limit the effectiveness of a defense strategy based on eliminating individual plaintiffs. This is particularly important given that unsheltered homeless individuals may move to other areas in hopes of locating permanent shelter and employment or may become unavailable for other reasons. Further, a large number of plaintiffs will serve to underscore the severity of the issues raised in the litigation. A demographically diverse group of plaintiffs, where possible, may likewise represent the broad harm of a given ordinance.

Second, counsel should think carefully about the potential vulnerabilities of specific plaintiffs, in order to best address those vulnerabilities, prepare those plaintiffs for deposition and trial, and identify where supplemental information or expert testimony may need to be procured. Plaintiffs will likely need to explain the circumstances of their past and current living situations and how they became homeless, their employment history, any medical or mental health issues that impact their claims or damages, any criminal record and periods of incarceration, and the circumstances of their citations. Plaintiffs' mental health or criminal histories may also impact the weight given to their testimony. Counsel should consider from the outset whether protective orders may be needed with respect to confidential or sensitive information about the plaintiffs.

Third, counsel should consider how to stay in communication with plaintiffs throughout the duration of any litigation. There are a variety of ways to do so. Some homeless individuals will have email addresses that they check regularly. Others will routinely stay at

the same shelter and will be accessible on a regular basis at the same location. To ensure that counsel does not lose touch with plaintiffs (and that counsel is not surprised by any unexpected developments), it is advisable to schedule weekly meetings.

**Class Actions – A Special Case.** A class action can seek relief for a large group of individuals. However, counsel must consider whether the requirements embodied in Rule 23 of the Federal Rules of Civil Procedure can be met, as well as the relative strategic merits of a class action. Some legal services organizations are prohibited from participating in class actions as either counsel or party. However, obtaining certification of the class is an additional hurdle to overcome in a lawsuit and may be a better option for certain types of suits than others.

**Organizational Plaintiffs.** Organizations may be named as plaintiffs if they can demonstrate injury. Having organizations as plaintiffs can be an advantage, in the event that individual plaintiffs' claims are mooted out. Religious groups, shelters, other service providers as well as advocates may have a stake in the outcome of litigation challenging an ordinance. However, the adversarial nature of litigation may impair existing relationships with a municipality. Organizations that are unwilling or unable to be plaintiffs may nevertheless be able to offer valuable assistance throughout the litigation process.

#### *Issues to Consider in Identifying Defendants*

While conducting pre-trial research, counsel should consider potential defendants. This may include examining the actions of various government entities, including state and local governments and their agencies and law enforcement departments. Actions may be brought against specific individuals, based upon the level of individual knowledge and conduct. Counsel must give special consideration to issues of sovereign and qualified immunity and the requirement of § 1983 that liability is grounded in an official municipal policy.<sup>41</sup>

### **Litigation and Strategy**

#### *Drafting the Complaint*

In addition to working with plaintiffs to identify the appropriate claims and defendants, counsel has other strategic considerations when drafting the complaint.

<sup>39</sup> See *Johnson v. Dallas*, 61 F.3d 442, 445 (5th Cir. 1995).

<sup>40</sup> *Jones v. Los Angeles*, 444 F.3d at 1126-31; *Anderson v. Portland*, 2009 U.S. Dist. LEXIS 67519, \*12.

<sup>41</sup> Erwin Chemerinsky, *Constitutional Law: Principles & Policies* 488-89 (2d ed. 2002).

**Level Of Detail.** Counsel should consider the appropriate level of detail in drafting the complaint. In addition to meeting the requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure, *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the complaint can be persuasive writing that will educate the court, the media, and the public on the effects of criminalizing homelessness.

**Jury Demand.** Counsel should consider whether a bench trial or jury trial is preferable given the specific claims and parties. This will likely involve research and considering a local counsel's perspective on the court and the potential jury pool.

**Remedies.** Challenges to criminalization measures have been most successful where plaintiffs have sought specific declaratory and/or injunctive relief.<sup>42</sup> Monetary damages may also be sought and awarded, though these have been awarded more frequently where a plaintiff's property has been seized or destroyed.<sup>43</sup> Given the needs of the specific plaintiffs, appropriate remedies may also include reimbursement of criminal fines and costs of incarceration, and expungement of violations of the challenged ordinances. Attorneys' fees and litigation costs are typically sought, when available. Given the urgent nature of homelessness, counsel should consider pursuing a temporary restraining order or preliminary injunction. Counsel should also consider seeking affirmative remedies in appropriate cases.<sup>44</sup>

In deciding whether to grant a preliminary injunction, courts frequently consider four factors, whether: (1) the moving party is substantially likely to prevail on the merits of his claim, (2) the moving party will suffer irreparable injury unless the injunction issues, (3) the threatened injury outweighs the harm the injunction may do to the opposing party, and (4) the injunction would not be contrary to the public interest.<sup>45</sup> Irreparable harm is defined as harm that the plaintiff would suffer absent a preliminary injunction, that cannot later be compensated by damages or a

decision on the merits.<sup>46</sup> Some courts do not structure or weigh the factors in any particular order, allowing the judge to exercise more discretion in determining whether a preliminary injunction should be issued; other courts will provide more guidance as to how to weigh or order similar factors.<sup>47</sup>

### *Filing the Complaint or Sending a Demand Letter?*

Sending a demand letter to the defendants, prior to filing the complaint, may provide an unanticipated opportunity to educate decision-makers and resolve the matter outside of litigation. For instance, the municipality may be willing to amend the objectionable ordinance or put in place a policy clarifying it and limiting enforcement against persons experiencing homelessness. Counsel who is familiar with municipal decision-makers will have the best sense of whether this is an appropriate strategy. Preliminary research will help inform counsel as to the most appropriate tone of any demand letter and other negotiations with municipalities.

## Discovery

### *Plaintiffs' Discovery*

Discovery provides important opportunities for factual development of the case – particularly in the context of challenges to criminalization measures for which many of the relevant documents will be held by the defendants instead of the plaintiffs. Counsel should strategically consider the use of interrogatories, requests for admission, and requests for production to gain information and documentary support needed to prove each element of plaintiffs' affirmative case.

Key categories of documents that may be available through discovery include: (1) copies of citations, police records or reports, audio-recordings, and emails relating to violations of the challenged ordinances; (2) guidance and instructions on enforcement, whether formal or informal (such as in emails), and training materials on the challenged ordinances; (3) internal communications regarding enforcement policies and practices; (4) annual or periodic reports or data relating to enforcement; (5) defendants' organizational/hierarchy charts; (6) reports or policy documents regarding the ordinances at issue or homelessness; (7) defendants' submissions to federal or state government agencies

42 *Jones v. City of Los Angeles*, 444 F.3d at 1120, 1138 (noting that plaintiffs sought a declaratory judgment that enforcement violates homeless persons' rights to be free from cruel and unusual punishment and an injunction against enforcement from 9:00 p.m. to 6:30 a.m. and in cases of medical necessity).

43 *See, e.g., Pottinger v. Miami*, 810 F. Supp. at 1570 ("[A] homeless person's personal property is generally all he owns; therefore . . . its value should not be discounted").

44 *Eric S. Tars, Heather Maria Johnson, Tristia Bauman, and Maria Foscarinis, Can I Get Some Remedy? Criminalization of Homelessness and the Obligation to Provide an Effective Remedy, supra* note 20.

45 *E.g. Vision Center v. Opticks, Inc.*, 596 F.2d 111 (5th Cir. 1979); *Trak Inc. v. Benner Ski KG*, 475 F. Supp. 1076, 1077 (D. Mass. 1979); *SK&F, Co. v. Premo Pharmaceutical Laboratories, Inc.*, 625 F.2d 1055, (3d Cir. 1980). *CPG Products Corp. v. Mego Corp.*, 502 F. Supp. 42 (S.D. Ohio 1980); *Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111 (7th Cir. 1997).

46 *Sampson v. Murray*, 415 U.S. 61 (1974) (citing *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958).

47 *Lancor v. Lebanon Housing Authority*, 760 F.2d 361, 362 (1st Cir. 1985) (heightened importance of probability of success); *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6 (7th Cir. 1992) (making the first two factors requirements); *Ilapak Research & Development S.A. v. Record SpA.*, 762 F. Supp. 1318 (N.D. Ill. 1991) (acknowledging that Seventh Circuit courts are to employ a sliding scale approach).

that pertain to homelessness (e.g. submissions to HUD); and (8) citizen complaints or other materials defendants may use to justify their practices. Materials that can be used to demonstrate an official policy or custom are of particular importance in litigating claims brought under § 1983.

As in other litigation, the meet and confer process is an opportunity to negotiate discovery and protection of confidential or sensitive information in documents. However, motions to compel may be necessary to secure materials critical to proving the case.

Depositions provide additional opportunities to develop information necessary to support the affirmative case, particularly with respect to proving an official policy or custom. Documents received earlier in discovery will help identify key witnesses to depose, including officers who have issued citations, persons responsible for the training or supervision of officers, and decision-makers who have created policy or have acquiesced to existing policy.

### ***Defendants' Discovery***

Counsel may encounter particular challenges when working with plaintiffs to respond to defendants' discovery requests. Plaintiffs who are homeless and have no reliable place to store their belongings may not have access to the documents sought. To the extent requests seek materials relating to enforcement, responsive documents may already be in the defendants' possession. Counsel can assist plaintiffs in procuring documents from medical providers, employers, and government agencies; however, this process may be time-consuming. Further, such materials may contain confidential or sensitive information that should be produced only subject to a protective order.

Memory issues may also be a hurdle both in responding to requests and in depositions. For instance, plaintiffs who frequently violate the challenged ordinances, out of necessity, may not recall the specific circumstances that led to the violation for which they were cited or arrested. Care should be given to adequately prepare plaintiffs for questioning.

### ***Third-Party Discovery***

Shelters and other service providers may also have key materials and information needed in the litigation. Service providers who are supportive of the litigation may be willing to provide documents or information without a subpoena or court order. Defendants will likely also seek such discovery from third-party service providers.

## **Experts**

Experts can play an important role in helping fact-finders better understand conditions faced by many homeless individuals and reasons why compliance with ordinances may be impossible. Experts may address the conditions and causes of homelessness, the local conditions and availability of shelter and services, safety concerns at shelters and in sleeping outdoors, and the effects of medical and mental health issues on compliance with the ordinances at issue.

## **Summary Judgment**

Based on the information gleaned in discovery, counsel should evaluate whether there is sufficient evidence to seek summary judgment as to some or all of plaintiffs' claims, or as to liability. Strategically, there may be an advantage to resolving certain issues before trial, particularly if there is uncertainty in the applicable law. Additionally, counsel should consider the likely strengths and weaknesses of plaintiffs' and other witnesses' trial testimony.

## **Trial**

When litigation leads to trial, counsel should carefully consider trial strategy and themes in light of the locality, its population and potential jury pool (or, if plaintiffs have selected a bench trial, in light of the judge's prior jurisprudence). Counsel should consider the most effective way to convey a compelling message about the impact of the given ordinance on the lives of the plaintiffs. In crafting the affirmative case, counsel should consider which witnesses and evidence can best support that message and the elements of each claim. As with depositions, counsel must take special care to prepare trial witnesses.

## **Settlement**

Settlement negotiations, although at times used as a delaying tactic, offer potential for a constructive solution that may balance the rights of homeless individuals with a municipality's goals. Settlements may limit enforcement against homeless individuals under certain circumstances, such as when shelters are full, or in specified locations or during certain hours. Settlements have frequently included funds set aside to assist homeless individuals. Conditions for settlement need to be clear to the parties involved, others similarly situated, and law enforcement, so that all understand what is permitted. To prevent future violations of rights, settlement conditions should also be tailored to allow effective monitoring.

# CASE SUMMARIES

**[Note – cases from before 2011 can be found in the previous edition of this manual, available at: [http://www.nlchp.org/documents/Criminalizing\\_Crisis\\_Advocacy\\_Manual](http://www.nlchp.org/documents/Criminalizing_Crisis_Advocacy_Manual)]**

## I. Challenges to Restrictions on Food Sharing

### A. New Cases

Chosen 300 Ministries v. City of Philadelphia, 2012 WL 3235317 (E.D. Pa. Aug. 9, 2012)

Plaintiffs, a collection of approximately 15 religious organizations that had been providing food to hungry and homeless people in outdoor parks for up to 20 years, sought a preliminary injunction to block enforcement of regulations banning outdoor feeding in all Philadelphia city parks. Plaintiffs argued that the regulations interfered with their free exercise of religion under the First Amendment and the Pennsylvania Religious Freedom Protection Act (PRFPA).

The district court granted the preliminary injunction and held that the policy violated the plaintiffs' rights under the PRFPA. The court found that the regulations imposed a substantial burden on plaintiffs' exercise of religion by preventing them from sharing food with homeless people where they were found. The court did not address the First Amendment issue out of judicial restraint.

The City filed a notice of appeal with the Third Circuit on August 13, 2012, but withdrew the appeal a week later. On September 27, 2012, the parties entered into an interim agreement whereby the City agreed to suspend enforcement of the food sharing ban, engage in discussions with plaintiffs regarding the City's outdoor food sharing issues, and pay the plaintiffs' attorneys' fees.

### B. Updates to Existing Cases

Big Hart Ministries v. City of Dallas, 2011 WL 5346109 (N.D. Tex. Nov. 4, 2011)<sup>48</sup>

Big Hart Ministries and Rip Parker Memorial Homeless Ministry, non-profit religious organizations that conduct food sharing programs for homeless individuals, jointly

filed a suit challenging the enforcement of a Dallas ordinance restricting food sharing. The plaintiffs claimed the ordinance violates homeless persons' right to life, free exercise rights, free speech rights, right to travel, right to freedom of association, right to due process, and equal protection rights, as well as their rights under the Texas Religious Freedom Restoration Act.

In June 2009, the City of Dallas filed a motion to dismiss. The court granted the motion in part and denied it in part, allowing the free exercise, due process, equal protection, and liberty claims to proceed, as well as the claim under the Texas Religious Freedom Restoration Act.

The parties both filed motions for summary judgment in October 2010. The plaintiffs' moved for partial summary judgment that the ordinance is impermissibly vague, and the City of Dallas moved for summary judgment on all issues.

Following a trial in June 2012, the court ruled that the plaintiffs had standing to bring their claims as organizations because none of the plaintiffs' individual members needed to establish a burden on their personal exercise of religion. The court also found that the ordinance placed a substantial burden on the plaintiffs' sincerely held religious beliefs in violation of the Texas Religious Freedom Restoration Act. Because the ordinance violated Texas state law, the court did not reach the constitutional arguments. One month after the court's ruling, the City moved to alter or amend the judgment and for a new trial. Since then, the parties have been engaged in settlement discussions.

*NLCHP serves as co-counsel in this case, along with Akin Gump Strauss Hauer & Feld LLP*

## II. Challenges to Restrictions on Sleeping, Camping, Sitting, or Storing Property in Public Places

### A. New Cases

#### Federal Cases

Occupy Columbia v. Haley, 738 F.3d 107 (4th Cir. 2013)

Protesters brought a § 1983 action against South Carolina government officials seeking a preliminary injunction to prevent officials from interfering with their 24-hour occupation of State House grounds.

<sup>48</sup> Findings of Fact and Conclusions of Law, Filed March 25, 2013, available at: <http://www.scribd.com/doc/132875015/Judge-Solis-Ruling-in-Big-Heart-Ministries-Case>.

Plaintiffs alleged that a curfew requiring them to leave the public grounds between 6pm and 6am each day violated their First Amendment rights of free speech, peaceable assembly, and petition. Defendants argued in response that camping and sleeping on the State House grounds were not protected expression under the First Amendment, and even if they were, the curfew constituted a permissible time, place, and manner restriction.

The district court found that Plaintiffs' conduct was protected expression under the First Amendment, that the curfew was not a reasonable time, place, and manner restriction, and granted a preliminary injunction. The defendants appealed.

Occupy Columbia subsequently filed an amended complaint in September 2012. The appellants moved to dismiss, arguing that the injunctive relief claims were moot, and that they were entitled to qualified immunity on the claims for damages. The district court dismissed the injunctive relief claims, but found that the defendants did not have qualified immunity. The Fourth Circuit affirmed, holding that Defendants were not entitled to qualified immunity, and that "in the absence of a valid time, place and manner restriction, arresting members of Occupy Columbia for their presence and protest on State House grounds after 6:00 p.m. was a violation of their First Amendment rights."

Occupy Minneapolis v. County of Hennepin, 866 F.Supp. 2d 1062 (D. Minn. 2011)

Plaintiffs who maintained a continuous "occupation" of two plazas next to a government center brought suit against the County, the County Sheriff, and several County Commissioners alleging that restrictions imposed on protesters in the plaza, including a prohibition against sleeping on the public property, violated their rights to freedom of speech, assembly, and to petition the government for redress of grievances under the First Amendment. The court granted in part and denied in part the plaintiff's motion for a temporary restraining order.

The motion was granted to the extent that it sought to enjoin the County from prohibiting signs and posters taped to plaza property. The court found, however, that while protesters' activity of sleeping on the plazas was protected speech, the prohibition against it was a valid time, place, and manner restriction.

Defendants' request to file a motion for reconsideration was denied in December 2011. In the subsequent

settlement, the County agreed to remove trespass notices and return seized property, and the protestors agreed not to sleep on the plaza.

Porto v. City of Laguna Beach, 2013 WL 2251004 (C.D. Cal. 2013)

Leonard Porto brought suit against the City of Laguna Beach, alleging that enforcement of a law prohibiting sleeping in public places violated his rights under the First, Fourth, Eighth, and Fourteenth Amendments. The court found that Porto did not have standing to challenge the anti-sleeping ordinance because he had never been issued a citation or arrested under the law. Merely being threatened, awoken, and issued "courtesy notices" was not sufficient. The court also dismissed Porto's Fourth Amendment claim because no search or seizure was conducted.

Sanchez v. City of Fresno, 914 F. Supp. 2d 1079 (E.D. Cal. 2012)

Luis Sanchez, a homeless resident of the City of Fresno, brought claims under § 1983 and California law challenging the City's practice of seizing and destroying homeless persons' property during "clean ups" of homeless encampments. This case was one of more than thirty similar cases filed by homeless individuals, all of which were consolidated for pretrial purposes, with the above-captioned matter serving as the lead case. The City's motion to dismiss the case was granted in part and denied in part. The court found that the plaintiffs' federal takings claim was not ripe and that the City had a rational basis for targeting the possessions of homeless individuals for "clean up." The court held, however, that the plaintiffs stated a substantive due process claim and a claim for conversion.

Plaintiffs filed an amended complaint alleging, among other things, an illegal search and seizure and denial of due process and equal protection under the U.S. and California Constitutions. Defendants moved for summary judgment, which was granted on all claims except intentional infliction of emotional distress. The court found that there was sufficient evidence of conduct that a reasonable juror could find to be outrageous. As of November 17, 2014, the parties have yet to file dispositive motions regarding the intentional infliction of emotional distress claims.

Watters v. Otter, 955 F.Supp. 2d 1178 (D. Idaho 2013)

Members of Occupy Boise who had established a tent city on state capitol grounds sought an injunction

against enforcement of Idaho’s anti-camping law and a related law authorizing the State to remove and dispose of any unauthorized personal property.

The State successfully moved for summary judgment as to the facial constitutional challenges. Although the court found that Occupy Boise’s tent city and overnight camping constituted expressive conduct protected under the First Amendment, the court found that the ban on “camping” or “sleeping” was a reasonable time, place, and manner restriction. It also found the ban on personal belongings related to camping was constitutionally proper. The court held, however, that Occupy Boise could maintain a 24-hour presence at the symbolic tent city provided that the protestors complied with all constitutional rules, including the prohibition against sleeping.

### State Cases

Miller-Jacobson v. City of Rochester, 941 N.Y.S.2d 475 (2012)

Members of Occupy Rochester sought a preliminary injunction to prevent the City from removing the group’s encampment from a park or requiring the protesters to cease use of the park after hours. Plaintiffs asserted that the policy was an unconstitutional prior restraint on expressive activity in a public forum, that it contained no standards to limit or guide the Commissioner, and that it provided no opportunity for judicial review of an adverse decision. Plaintiffs further asserted that it was overbroad both on its face and as applied, and it was not narrowly tailored to advance a significant governmental interest.

The court found that the plaintiffs’ assertion was without merit because the ordinance did not grant unlimited discretion to the Commissioner to grant or deny permission to camp or use the city parks after-hours. Holding that the subject law narrowly focused on the substantial government interest in regulating the safe use and enjoyment of the parks, the court granted the City’s motion to dismiss.

People v. Bounville, 921 N.Y.S.2d 502 (NY City Crim Ct 2011)

The defendant was charged with sleeping on a makeshift mattress located on a public sidewalk in violation of an administrative code making it unlawful to leave various types of movable property on a street or public place. The court held that the prosecutor’s complaint was facially insufficient because it was devoid

of any facts giving reasonable cause to believe that the defendant left any property on the sidewalk or that the bed could reasonably be deemed a prohibited structure. The court further found that there were no factual allegations to support a contention that the bed, which was located in a commercial district after business hours, obstructed the sidewalk.

### B. Updates to Existing Cases

#### Federal Cases

Anderson v. City of Portland, 2009 WL 2386056 (D. Or. 2009)

A group of homeless individuals filed suit challenging enforcement of a City of Portland ordinance that makes it unlawful for any person to camp or set up a temporary structure in public places without a permit. Plaintiffs alleged that the City’s enforcement of the anti-camping ordinances violated their Eighth Amendment right to be free from cruel and unusual punishment. Plaintiffs also alleged that they were denied equal protection, and that enforcement of the ordinance interfered with their fundamental right to travel, and also infringed on their substantive liberty interests.

The City successfully moved to dismiss the plaintiffs’ right to travel and substantive due process claims since enforcement of the ordinances did not prevent the plaintiffs from traveling to or from Portland, nor exclude them from certain areas of the city. The court denied the City’s motion to dismiss, however, with respect to the plaintiff’s Eighth Amendment and equal protection claims.

Plaintiffs filed an amended complaint in 2011, but voluntarily dismissed the lawsuit when the two sides reached a settlement. In the settlement, the City agreed to pay a total of \$3,200 in damages to the six plaintiffs and three other individuals who brought claims. In lieu of paying attorney fees, the City made \$37,000 available for its rental assistance program, which helps people experiencing homelessness afford permanent housing. Furthermore, the police were required to change their policies to provide additional notice before issuing camping citations and to improve procedures related to the removal of homeless persons’ property.

Bell v. City of Boise, 709 F.3d 890 (9<sup>th</sup> Cir. 2013), 993 F.Supp. 2d 1237 (D. Idaho 2014)

Homeless plaintiffs filed a lawsuit against the City of Boise, the Boise Police Department, and the Chief of



Police, challenging the enforcement of Boise's anti-camping and disorderly conduct ordinances. The plaintiffs claimed that enforcement of these ordinances when there is insufficient shelter availability violated their right to travel and their right to be free from cruel and unusual punishment under the Eighth Amendment. Plaintiffs also argued that the vague and overbroad anti-camping law violated their right to due process under the Fourteenth Amendment.

The district court granted summary judgment for the defendants, dismissing the case for lack of subject matter jurisdiction and on mootness grounds. The Ninth Circuit Court of Appeals reversed and remanded, holding that jurisdiction does exist and that the plaintiffs' prospective relief claims were not mooted by the defendant's voluntary cessation of enforcement of the anti-camping law when no shelter space was available.

In February 2014, the plaintiffs filed an amended complaint alleging a violation of the Eighth Amendment, seeking injunctive relief under 42 USC § 1983, and declaratory judgment that the Boise City Codes against camping and disorderly conduct are unconstitutional. On a motion to strike, the court dismissed the § 1983 claim, finding that retrospective claims remained unavailable to the plaintiffs. The case is expected to go to trial in 2015.

*NLCHP serves as co-counsel in this case, along with Idaho Legal Aid Services and Latham & Watkins, LLP*

Catron v. City of St. Petersburg, 2009 WL 3837789 (M.D. Fla. 2009), 658 F.3d 1260 (11<sup>th</sup> Cir. 2011)

Plaintiffs filed a complaint against the City of St. Petersburg under § 1983 alleging violations of the First, Fourth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Article I, Section IX of the Florida Constitution, based on the city's "anti-homeless policies." The policies included the enforcement of ordinances that ban trespassing in public spaces, storing belongings on public property, sleeping in or on a right-of-way, and public urination/defecation. Plaintiffs also alleged that the city had a policy of stopping homeless people and asking for identification, searching their possessions, and directing them to vacate public areas. Plaintiffs sought injunctive and declaratory relief. Defendants filed a motion to dismiss which was granted. Plaintiffs appealed to the 11<sup>th</sup> Circuit where the court vacated and remanded, finding that plaintiffs had stated a procedural due process claim under the U.S. Constitution and a right to travel claim under the Florida

Constitution. Facing a hostile judge in the district court, however, the plaintiffs voluntarily dismissed their case.

*NLCHP served as co-counsel on this case, along with Southern Legal Counsel and Florida Institutional Legal Services*

Desertrain v. City of Los Angeles, 754 F.3d 1147 (9<sup>th</sup> Cir. 2014)

A group of homeless plaintiffs, each cited for violating the law, challenged the constitutionality of a Los Angeles ordinance prohibiting the use of vehicles "as living quarters." Plaintiffs alleged that the police selectively enforced the law against homeless people in violation of their equal protection rights. Additionally, the plaintiffs argued that the law was unconstitutionally vague because it provided insufficient notice of the prohibited conduct and promoted arbitrary and discriminatory enforcement.

The City successfully moved for summary judgment at the district court level. However, the Ninth Circuit reversed, holding that the ordinance was unconstitutionally vague in violation of due process.

The Isaiah Project, Inc. v. City of San Diego, Case No. 09 CV 2699 (S.D. Cal.)

Homeless individuals and the Isaiah Project, a homeless services organization, challenged the City's destruction of personal property after the plaintiffs had temporarily left their belongings on the sidewalk while seeking services at a nearby day center and church. The plaintiffs alleged that notice regarding seizure of their property was inadequate, because, among other things, it predated plaintiffs' temporary placement of the property and it was not posted where the raids occurred. Plaintiffs' lawsuit alleged due process and equal protection violations, along with infringement of their right to be free from unreasonable search and seizure under the Fourth Amendment.

In March 2011, the parties reached a settlement agreement. The agreement provided for \$160,000 to be paid to the plaintiffs. The City also agreed to lease to the Isaiah Project a large warehouse in downtown San Diego, to provide 250 storage bins, and to comply with a new procedure for storage of homeless persons' personal property. In November 2011, the court approved the settlement class and judgment.

Lehr v. City of Sacramento, 624 F.Supp.2d 1218 (E.D. Ca. 2009)

A group of homeless plaintiffs and non-profit organizations brought a § 1983 action challenging a Sacramento anti-camping ordinance. Plaintiffs alleged that enforcement of the law violated the Fourth, Eighth, and Fourteenth Amendments, including protections against cruel and unusual punishment and unreasonable search and seizure.

The court held that enforcement of the ordinance did not violate the Eighth Amendment, but that there was a genuine issue of material fact as to whether the seizure of property against the will of one plaintiff, Connie Hopson, violated the Fourth Amendment.

In March 2010, Sacramento County settled the case for \$488,000 in damages and a promise to give 48 hours' notice before sweeping a homeless camp. The City of Sacramento continued to fight the case, however, and a class-action lawsuit commenced against the City on May 9, 2011. Following a trial, the jury found that police seized and destroyed personal property of homeless people, that the police had a longstanding custom or practice of not giving adequate notice to homeless individuals concerning how they could retrieve their property, and that the police failed to implement an appropriate policy concerning booking and handling the property. Policy changes were not ordered, but the plaintiffs were awarded attorney's fees and costs of \$783,079.58.

### State Cases

Engle v. Anchorage, Case No. 3AN-10-07047CI (Alaska Super. Ct.)

The ACLU of Alaska, on behalf of a class of homeless people, sued the City of Anchorage in state court alleging that an ordinance governing the abatement of homeless camps violated due process and equal protection rights, and also constituted an unreasonable search and seizure. The ordinance permitted city officials to clean up or "abate" illegal homeless camps after providing residents of the camps with 5 business days' notice. Individuals remaining in the camps at the time of abatement were given 20 minutes to gather their belongings, after which their property was considered abandoned and could be disposed of as waste.

The court entered a preliminary injunction preventing the City from enforcing the ordinance on July 26, 2010.

Plaintiffs then moved for summary judgment, asserting that the ordinance provides an inadequate notice period and allows for destruction of personal property instead of storage and the opportunity for retrieval. The court found that the ordinance's notice period, administrative appeals process, and the destruction of property violate due process. In 2011, the city issued a revised ordinance to comply with the court's ruling.

### III. Challenges to Anti-Begging, Anti-Soliciting and Anti-Peddling Laws

#### A. New Cases

#### Federal Cases

ACLU of Idaho v. City of Boise, 998 F. Supp. 2d 908 (D. Idaho 2014)

The ACLU and local residents challenged a city ordinance prohibiting panhandling in public areas. The plaintiffs moved for a preliminary injunction, arguing that the restriction violated the plaintiffs' free speech rights under the First Amendment.

The court granted the motion with respect to portions of the panhandling law governing non-aggressive solicitations. In so granting, the court found that the ordinance was not content neutral, as it only restricted solicitation speech for donations of money or property, treating it differently from other solicitation speech. The court further held that the ordinance was not narrowly tailored to meet a significant governmental interest.

The ordinance contained a severability clause, however, and the court noted that the aggressive solicitation prohibition was likely to survive a constitutional challenge since it related to the safety and protection of its citizens, as was the section restricting solicitation of donations where the solicitor has to step into the roadway.

Pursuant to a settlement, the City repealed the enjoined portions of the ordinance.

*NLCHP served as co-counsel in this case, along with the ACLU of Idaho.*

Baldwin v. D'Andrea, 13-cv-08161, 2013 WL 5823094 (D. Ariz. Oct. 4, 2013)

An Arizona ordinance providing that, "[a] person commits loitering if such person intentionally [i]s present in a public place to beg, unless specifically

authorized by law” was challenged on First Amendment grounds. Before responsive papers or motions were filed, the parties settled. Pursuant to the settlement, Arizona conceded that the statute was unconstitutional and subjected itself to an injunction preventing enforcement of the statute.

Browne v. City of Grand Junction, No. 14–cv–00809, 2014 WL 1152020 (D. Colo. Mar. 21, 2014)

Panhandlers in the City of Grand Junction brought a First Amendment challenge to an ordinance prohibiting begging, the solicitation of employment, business contributions, or sales and the collection of money from the occupants of vehicles traveling on public streets. The plaintiffs moved for a preliminary injunction and temporary restraining order.

The court found that the provision constituted a content based restriction on speech that was not narrowly tailored to serve the City’s interest in public safety. The court ordered a temporary restraining order pending a final ruling on the merits.

On April 2, 2014, the City adopted an emergency ordinance amending portions of the challenged panhandling ordinance. Although some of the challenged provisions were omitted in the amended ordinance, other provisions remained. The district court vacated the temporary restraining order in light of the amended ordinance. Under the current scheduling order, discovery on plaintiff’s motion for a permanent injunction is to be concluded by January 16, 2015, with dispositive motions due on February 16, 2015.

Chase v. Town of Ocean City, 825 F. Supp. 2d 599 (D. Md. 2011)

The plaintiff, a spray paint artist and street performer, challenged the constitutionality of ordinances that restricted “peddling, soliciting, hawking or street performing” on the boardwalk, prohibited all commercial activity on and near the boardwalk, and imposed licensing requirements. In a motion for preliminary injunction, the plaintiff argued that the ordinances were content based restrictions that unconstitutionally infringed on his right to free expression under the First Amendment.

The court granted the motion in part and denied the motion in part. In reaching its decision, the court found that the ordinance was a reasonable time, place, and manner restriction. The court found, however, that the City had failed to demonstrate that the ordinance was

narrowly tailored to serve a significant government interest or that it left open an adequate alternative channel of communication. The court further found that the law’s registration scheme broadly restricted speech and failed to strike a balance between the speech affected and governmental interests.

Clatterbuck v City of Charlottesville, 708 F.3d 549 (4th Cir. 2013)

The plaintiffs, who regularly begged on the Downtown Mall, filed a § 1983 action challenging the constitutionality of an ordinance restricting panhandling in the area. The district court dismissed the action, finding the ordinance to be a content neutral, permissible time, place, and manner restriction. The plaintiffs appealed and the City cross-appealed the determination that the plaintiffs had standing.

The Court of Appeals for the Fourth Circuit reversed and remanded, finding that the plaintiffs had standing to challenge the law and that the district court had erred in dismissing the case. The court further found that the ordinance was not content neutral as it prohibited solicitations that requested immediate donations or things of value, yet allowed donations of things that have no “value”. The court also accepted plaintiffs’ complaint that the City enacted the ordinance to reduce the presence of impoverished people on the Downtown Mall in violation of the First Amendment, noting that the ordinance contained no statement of purpose and none of the evidence properly before the court indicated the City’s reasons for enacting it.

On remand, the parties filed motions for summary judgment, which were stayed pending the Supreme Court’s resolution of McCullen v. Coakley. The parties briefed the effects of McCullen in July of 2014, and the motion for summary judgment remained pending as of November 17, 2014.

Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936 (9th Cir. 2011) (en banc)

Organizations representing the interests of day laborers challenged an ordinance that bars individuals from standing on a street and soliciting employment, business, or contributions from an occupant of any motor vehicle. The plaintiffs argued that the ordinance, on its face, was an unconstitutional restriction on protected speech in violation of the First Amendment. The district court agreed with the plaintiffs and issued a preliminary injunction barring the City from enforcing the ordinance, which was affirmed on appeal. After the

plaintiffs filed cross-motions for summary judgment, the district court issued final judgment for the plaintiffs. In an *en banc* ruling, the Ninth Circuit affirmed the district court decision. The Ninth Circuit disagreed with the City's argument that the ordinance only prohibited solicitation conduct and not solicitation speech, noting that the ordinance applies to more than an actual physical exchange and that 'solicitation' was broadly defined. The Ninth Circuit further found that the restriction was not narrowly tailored to achieve the City's interest in promoting traffic flow and safety, as significantly more speech was restricted than was necessary, and the City could have employed various less restrictive alternatives to achieve its goals. While the Ninth Circuit accepted that the City need not necessarily employ the least restrictive alternative, it stated that the City may not select an option that unnecessarily imposes significant burdens on First Amendment protected speech.

Contributor v. City of Brentwood, 726 F.3d 861 (6<sup>th</sup> Cir. 2013)

Vendors for The Contributor, a newspaper written and sold by homeless and formerly homeless persons, brought suit challenging the constitutionality of an ordinance that prohibited the sale or distribution of newspapers on public streets and to the occupants of motor vehicles. The plaintiffs contended that the ordinance violated their First Amendment right to free speech as it did not leave open adequate alternative channels of communication.

The District Court for the Middle District of Tennessee disagreed, finding that the ordinance did leave open adequate alternative channels of communication, and the Sixth Circuit affirmed on appeal. In affirming, the Sixth Circuit reasoned that it would be an onerous burden to require a municipality to prove the adequacy of alternative channels of communication.

Cosac Foundation Inc. v. City of Pembroke Pines, No. 12-62144, 2013 WL 5345817 (S.D. Fla. 2013)

The plaintiff, who ran a street newspaper distributed by homeless persons entitled, The Homeless Voice, challenged the constitutionality of a permitting scheme governing the solicitation of charitable donations. The plaintiff argued that the ordinance was unconstitutionally overbroad, and impermissibly restricted speech based on its content. Alternatively, the plaintiff argued that, even if the ordinance was content neutral, it could not be upheld as a reasonable time, place, or manner regulation.

The court granted the City's motion for summary judgment, finding that the ordinance was content neutral as it applied to people and organizations whether commercial or charitable, and that it did not distinguish speech on the basis of the views expressed. Further, the court concluded that the restriction was narrowly tailored to promote a substantial government interest in providing safe roadways and freely flowing traffic.

Cutting v. City of Portland, 2014 WL 580155 (D. Me. Feb. 12, 2014)

Plaintiffs sought an injunction preventing enforcement of an ordinance restricting people from standing or sitting on any traffic median. The plaintiffs, consisting of individuals who used the medians when panhandling or when holding political signs, argued that the restriction infringed on their rights under the First and Fourteenth Amendments.

The court granted permanent injunctive relief to the plaintiffs, finding that the ordinance was a content based restriction on speech that unconstitutionally favored campaign signs over all other categories of speech.

Hassay v. Mayor & City Council of Ocean City, 955 F. Supp. 2d 505 (D. Md. 2013)

Plaintiff, an accomplished violinist and street artist who performed for donations, challenged a noise ordinance prohibiting the audibility of musical instruments and amplified sound beyond 30 feet. The plaintiff sought a preliminary injunction and claimed that the restriction was content based as it set a different threshold of audibility for sound generated by musical instruments than sound generated by the human voice.

The court granted the motion, noting that it is well established that music qualifies as protected speech under the First Amendment, even where it is for entertainment purposes and donations are received. The restriction was not content neutral and, even if it was, it was not narrowly tailored to serve a significant government interest. Finally, the restriction did not leave open ample alternative channels for communication, as it requires the musicians to change their performances so substantially that they can no longer communicate or express the emotions they seek to impart to their audience.

Jefferson v. Rose, 869 F. Supp. 2d 312 (E.D.N.Y. 2012)

A plaintiff, who was incarcerated for violating an anti-loitering statute that had previously been declared unconstitutional in Loper v. N.Y.C. Police Dep't, 802 F. Supp. 1029 (S.D.N.Y. 1992), brought suit alleging a violation of his rights under the First and Fourth Amendments.

The court granted the plaintiff's motion for preliminary injunction and ordered the Suffolk County Police Department to cease enforcing the invalidated statute. The police were further enjoined from arresting, threatening to arrest, or attempting to arrest anyone for loitering or begging.

Norton v. City of Springfield, 2013 WL 5781663 (C.D. Ill. 2013)

The plaintiffs, two homeless persons who panhandled, sought a preliminary injunction barring the City of Springfield from enforcing an ordinance that prohibited vocal appeals, but not written requests, for immediate donations in the downtown historic district. The plaintiffs contended that the law was an unconstitutional content based restriction on speech in violation of the First Amendment.

The court denied the motion and found that the ordinance is a content neutral time, place, and manner restriction. The court further found that the restrictions were narrowly tailored to serve a significant government interest and that it left open sufficient alternative channels for communication.

The Seventh Circuit affirmed, holding that the ordinance was content neutral because it regulated only where a person may request money, not the marketplace of ideas implicated by the First Amendment. As of November 17, 2014, plaintiffs petition for en banc review is pending in the Seventh Circuit.

*NLCHP serves as co-counsel in the appeal of this case, along with Adele Nicholas, Mark Weinberg, and Latham & Watkins, LLP*

Pindak v. Cook County, No. 10 C 6237, 2013 WL 1222038 (N.D. Ill. 2013)

The plaintiff, who had routinely been ordered by security personnel to leave a public plaza where he was peacefully panhandling, filed suit against Cook County and several public and private entities responsible for managing the property. The plaintiff argued that the uniform practice of removing panhandlers from the

plaza violated the First Amendment both on its face and as applied to him, and sought declaratory, injunctive, and monetary relief.

The defendants moved to dismiss, and the court granted the motion as to the municipal and private property management companies because the plaintiff failed to show that their policies and training fell short of constitutional standards. The court denied the motion, however, as to the remaining defendants. The court found that the plaintiff had adequately alleged a widespread practice of banning peaceful panhandling on the plaza and that the Cook County Sheriff knew that his deputies were violating the plaintiff's First Amendment rights by carrying out the ban. The case remains pending.

Speet v. Schuette, 726 F.3d 867 (6th Cir. 2013)

Homeless plaintiffs who were repeatedly arrested or ticketed under a Michigan anti-begging statute, which provided that begging in a public place amounted to disorderly conduct carrying a penalty of up to 90 days jail, brought suit challenging the law as a violation of First and Fourteenth Amendment rights.

The District Court for the Western District of Michigan found the law unconstitutional and granted the motion for partial summary judgment.

The Court of Appeals for the Sixth Circuit unanimously affirmed the District Court's decision, holding that the statute was not narrowly tailored to achieve Michigan's interest in preventing fraud.

Thayer v. City of Worcester, 755 F.3d 60 (1st Cir. 2014)

Plaintiffs sought a preliminary injunction against enforcement of two City of Worcester ordinances restricting panhandling. Plaintiffs alleged that the ordinances, which prohibited aggressive panhandling and walking on traffic medians for purposes of soliciting donations, were content based restrictions on speech and unconstitutionally vague.

The district court denied the motion, concluding that the restrictions on speech applied with equal force without regard to message, that the City had a legitimate interest in promoting the safety and convenience of its citizens, and that the ordinances were narrowly tailored to achieve their intended purposes. The plaintiffs' argument that the ordinances discriminate against poor and homeless people was also rejected because there was no likelihood of establishing

the City's discriminatory intent.

The Court of Appeals for the First Circuit affirmed, noting that the text of the ordinances did not identify or affect speech except by reference to the behavior, time, or location of its delivery. In addition, the court found that enforcement of the ordinance solely against the poor was not in itself probative of discrimination.

Wilkinson v. Utah, 860 F.Supp.2d 1284 (D. Utah 2012)

Several plaintiffs who engaged in panhandling challenged the constitutionality of an ordinance prohibiting a person from sitting, standing, or loitering on or near a roadway for the purpose of soliciting contributions from the occupant of a vehicle. The court granted summary judgment with respect to the plaintiffs' First Amendment claims against Utah, finding that the statute was unconstitutional even if construed as a content neutral time, place or manner restriction. The court reasoned that the regulation was not narrowly tailored to serve the government's legitimate interests of traffic and public safety because it was substantially broader than necessary to achieve them.

### **State Cases**

Norred v. State, 996 N.E.2d 868, (Ind. App. 2013)

The plaintiff was convicted of Class C misdemeanor panhandling after a Sheriff's deputy saw him asking for money from motorists. The plaintiff appealed, arguing that the evidence was insufficient to support his conviction. In view of the deputy's testimony and the plaintiff's admission that he was trying to get money and had received some, the court concluded that the evidence was sufficient. The plaintiff's argument that he was merely standing in the middle of the intersection holding a sign and that he only spoke to motorists when they spoke to him first was merely a request for the court to reweigh the evidence, which they could not do.

State v. Boehler, 262 P.3d 637 (Ariz. App. 2011)

The plaintiffs appealed their convictions under a section of the Phoenix City Code that made it unlawful to vocally panhandle after dark. The plaintiffs alleged that the ordinance infringed upon their free speech rights in violation of the First Amendment.

The court agreed, invalidated the challenged provision, and reversed the plaintiffs' convictions. The court stated that, even if the law could be construed as content

neutral, it was unconstitutionally overbroad. The restriction applied to any cash solicitation after dark without regard to whether it was made in an offensive, aggressive or abusive manner. In reaching its decision, the court noted that the constitution does not permit government to restrict speech in a public forum merely because the speech may make listeners uncomfortable.

### **B. Updates to Existing Cases**

Brown v. Kelly, 609 F.3d 467 (2nd Cir. 2010)

An individual who was arrested for panhandling under a loitering statute that had previously been declared unconstitutional by the New York Court of Appeals brought a putative class action lawsuit against several defendants, including New York City and a putative defendant class of statewide political subdivisions, law enforcement, and prosecutorial personnel. The court ordered that the defendants case enforcement.

Despite the order, enforcement of the laws continued. After litigation on the issue of class certification, on December 21, 2012, the district court entered an order approving a settlement which provided for the distribution of \$15 million for members of the plaintiff class as well as sealing of all records involving cases where plaintiffs were charged with violation of the loitering statute.

# APPENDIX - MODEL POLICIES AND SURVEY

## Model Policies and Procedures

Based on positive practices in communities around the country, the Law Center has developed the following model policies and procedures for police departments and other relevant agencies that cities can adopt to ensure that homeless residents are treated with respect and that their rights are protected.

The Metropolitan Police Department of the District of Columbia has adopted a policy largely reflecting the below model language, and holds a 2-hour “Homeless 101” class for all new recruits coordinated by the Washington Legal Clinic for the Homeless. This class includes a presentation by a formerly homeless individual about life on the streets and has been extremely well received by trainees. See: <https://go.mpdonline.com/GO/GO-OPS-308-14.pdf>.

Although local service providers disagree with how well it has been implemented, the City of St. Louis has excellent policies on paper for addressing the cleaning of homeless encampments, available at <https://www.stlouis-mo.gov/government/departments/human-services/homeless-services/documents/upload/Moving-Forward-2nd-Edition-2012.pdf>.



# MODEL GENERAL POLICE ORDER

## TITLE: Interactions with Homeless Persons

### I. BACKGROUND

a. The purpose of this policy is to ensure that employees of the Police Department understand and are sensitive to the needs and rights of persons experiencing homelessness and to set forth procedures for law enforcement officers to follow during contacts with such persons. This policy recognizes that all persons, including people experiencing homelessness, have the right to be peacefully in any public place so long as their activities are lawful. It also explicitly affirms that homelessness is not a crime.

### II. POLICY

a. The policy of the Police Department is to treat persons experiencing homelessness in a manner that protects their needs, rights and dignity, while providing appropriate law enforcement services to the entire community. The Department recognizes that in law enforcement situations involving homeless individuals, it is preferable to make referrals to organizations that provide services to them, and to refrain from initiating contacts that interrupt innocent activity and may violate an individual's constitutional and human rights. The Department also recognizes that the solution to homelessness is housing and urges the City to focus its efforts on increasing housing rights and resources.

### III. DEFINITIONS

a. A person experiencing homelessness is an individual who lacks a fixed, regular and adequate night-time residence, or has a primary night-time residence that is:

- i. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
- ii. An institution that provides a temporary residence for individuals intended to be institutionalized;
- iii. A private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- iv. A low-cost motel or other situation without a long-term lease;

v. Sharing the housing of friends or family without a legal right to remain.

### IV. PROCEDURE

#### a. Contact

i. Law enforcement officers may at any time approach a person experiencing homelessness who has not been observed engaging in criminal conduct, to offer advice about shelters, services, or other assistance that is available. In appropriate situations, officers may also contact an outreach worker from a public or private homeless services provider. The person experiencing homelessness is free to choose whether or not to accept any referral, and shall not be threatened with arrest or citation as an inducement to accept.

ii. Officers shall refrain from detention, arrest, interrogation, or initiation of any other criminal law enforcement interaction with persons experiencing homelessness so long as they are not engaged in unlawful activities.

iii. Officers shall refrain from communicating in any way, to persons who are or appear to be homeless, that they are not allowed to be in a particular public space because of their homeless status.

#### b. "Move On" Orders

i. Officers shall not order any person to move to another location when that person has a legal right to be present where he or she is, absent safety, security, or other constitutionally permissible reasons.

ii. It is Department policy not to give "move on" orders and not to arrest people for failure to move on if there is any other reasonable way to resolve the situation.

#### c. Requests for Identification

i. Requests for identification made to a person who is or appears to be homeless shall be subject to the same legitimate law enforcement requirements as are applicable to such requests when made to any other person, but with sensitivity to the special needs and circumstances of the individual situation.



1. Requests or demands for identification shall be made only with good cause. Requests for identification shall not be made pursuant to casual contact with persons who are or appear to be homeless. At no time shall requests or demands for identification be made in order to harass, intimidate, threaten or make any other unwarranted show of authority.
2. When a person who is or appears to be homeless is unable to produce a valid form of identification, the officers shall not penalize the person for failing to produce the requested identification.

#### d. Personal Property

- i. The personal property of homeless individuals shall be treated with the same respect and consideration given to the personal property of any other person, with particular sensitivity to the special needs and circumstances of the individual situation.
- ii. In arrest situations, persons experiencing homelessness shall not be required to abandon personal property they identify as their own at the arrest site. Officers shall not damage, hide or cause to be abandoned the personal property of any such person. Where practical, officers shall adopt or facilitate measures that will best safeguard personal property, as identified by the arrestee.

1. The personal property of homeless arrestees is to be handled in the same manner as the property of other arrestees.

2. Homeless individuals have a constitutionally protected expectation of privacy in their personal belongings and closed containers. Officers shall refrain from instituting any search, frisk, or other such investigation where the elements of reasonable suspicion or probable cause are not met. A person's status of being or appearing to be homeless, without more, does not constitute reasonable suspicion for such a search.

3. In no event shall any officer destroy personal property known to belong to a homeless person, or recognizable as property of a homeless person, unless it poses a health hazard.

#### e. Arrest Situations

- i. Arrests of all persons, including those who are homeless, shall comply with the law and Department policies and procedures.

1. An officer always has the right to approach any individual, including a person who is or appears to be homeless, to allay any suspicions the officer may have about the individual, and ascertain that no criminal activity is occurring or is imminently threatened.

2. When encountering a person experiencing homelessness who has allegedly committed a nonviolent misdemeanor, where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, officers shall offer referral to an appropriate social service provider in lieu of physical arrest, such referral being contingent on the voluntary agreement of the individual. Appropriateness of alternatives includes considerations for each homeless social service providers includes consideration of family status (including companion animals), mental or physical disabilities, and religious or ethical beliefs.

3. In particular, where persons experiencing homelessness are engaged in a life-sustaining behavior, such as sleeping, resting, eating, drinking, urinating or defecating, in the absence of an adequate private alternative place to undertake those activities, they shall not be cited or arrested for performing those activities.

## V. TRAINING AND IMPLEMENTATION

### a. Training

- i. In collaboration with [local homeless service agency], the Department shall conduct trainings on this policy with all new recruits, and annually with all officers assigned to patrol duties.

### b. Implementation

- i. The Department shall annually evaluate compliance with this policy, including an assessment of citation and arrest records for:

1. Individuals listing no address or known local shelter addresses;

2. Ordinances frequently used against homeless persons (anti-camping, -sleeping, -loitering, -panhandling, public urination or defecation, etc.

ii. This evaluation shall seek to determine if individual officers or the Department as a whole is unfairly targeting persons experiencing homelessness or otherwise not complying with the policy.

iii. If non-compliance is found, the Department shall take steps to correct the issues, including, but not limited to, providing additional training on the policy.



# MODEL POLICY FOR CLEANING PUBLIC SPACES

## I. PURPOSE

The purpose of this protocol is to establish procedures for disposition of property discovered during the cleaning of public spaces, including areas where individuals who are homeless may be located. The goal is to ensure that the owners of any property discovered during a cleaning are afforded due process of law and provided with support by appropriate service provider agencies.

## II. NOTICE

The city agency responsible for cleaning public spaces shall provide 14 days' notice prior to cleaning a space in which homeless individuals are located. Written notice should be provided to each person at the location and shall also include a posted written notice in conspicuous places at the location. The written notice shall be in both English and Spanish [or other locally appropriate foreign language] and include the date and time the cleaning will occur, advisement that property is subject to confiscation if not removed, the procedure for retrieving any confiscated property, the current contact information of the government agency responsible for storing the property, and the contact information of an appointed service provider agency.

Prior to posting written notice of the cleaning, the city agency shall contact a pre-designated service provider to provide homeless persons with notice of the cleaning. The agency should have the ability to conduct outreach to the individuals located at the cleaning site. The 14-day notice period will not commence until the city agency has made contact with the service provider agency.

The 14-day notice period refers to regular business days and does not include weekends or holidays. This will allow outreach workers a reasonable period of time to contact the persons at the cleaning location and to arrange for any necessary services.

## III. RELOCATING HOMELESS INDIVIDUALS

If the site to be cleaned is to be made permanently inaccessible to its former homeless residents, those residents shall not be evicted from that location until adequate alternative locations are made available to them. Adequate shelter or housing means accommodations which are appropriate to each homeless person's family status (including companion animals), mental or physical disability needs, and religious or ethical convictions. An adequate alternative outdoor location should be located where homeless persons will not be subject to further immediate dislocation or harassment, and will have reasonable access to food, sanitary services, public transportation, and social services.

## IV. SORTING AND STORING PROPERTY

Any property remaining at the cleaning site after the 14-day notice period shall be sorted through. Any items that are spoiled or mildewed shall be considered trash. Appropriate arrangements shall be made to have those items disposed of.

Personal items that do not appear to be spoiled or mildewed, such as clothing, bedding, photographs, personal papers, and keepsakes, shall be processed and stored for 6 months at a designated storage site from which its owner may retrieve it. The storage site should be easily accessible by public transit or other means accessible to persons with low income.

# MODEL SURVEY

Below is a sample survey that can serve as a starting point when developing your own survey.

\*\*\*\*\*

Date of Survey: \_\_\_\_\_

Name of Surveyor: \_\_\_\_\_

Location of Survey: \_\_\_\_\_

## **Sample Police Interaction Survey**

Name: \_\_\_\_\_

Where you can be reached: \_\_\_\_\_

Alternate contact or mailing address: \_\_\_\_\_  
\_\_\_\_\_

Age: \_\_\_\_\_

Gender: \_\_\_\_\_

Employment: \_\_\_\_\_

1. Have you had any recent interaction or been harassed by the police? If so, please give details:

2. What did the officer(s) say or do to you?

3. Were you arrested? If yes, for how long were you detained? When were you released? Were you charged with a violation of any law? Under which laws were you charged?

4. The following apply to me:

( ) I pled guilty, the sentence was \_\_\_\_\_

- ( ) I pled not guilty and the charge was dismissed.
- ( ) I pled not guilty and was convicted. The sentence was \_\_\_\_\_
- ( ) The charge was dismissed without a pleading.
5. When you were arrested, did the officer(s) take your belongings? If yes, were you given a voucher or receipt for your belongings? Were your belongings returned to you upon being released? If no, do you know what happened to them?
6. Have the police ever taken or destroyed your belongings in a situation when you were not arrested?
7. In the last year, how many tickets or citations have you been given by the police?
8. Did you ever retain the public defender to defend you on any of these charges? If no, why not?
9. How many times in the past year have the police asked you to “move on,” leave a particular area, or see identification? Please describe any details:
10. Have you ever utilized any of the homeless services/shelters in the community? When? Which ones? What was your experience like?
11. Have you ever tried to stay at a homeless shelter and been refused? Why?
12. If you don’t generally go to shelters, why? Have you stayed at any of them in the past? If applicable, why do you choose not to return?
13. Do you utilize any of the food distribution services/meals provided by local groups/shelters? Which ones? How frequently?