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Work Session I:

A Tale of 2 Cities: Legal Strategies and Solutions for Handling Homelessness

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A Tale of Two Cities: Legal Strategies and Solutions for Handling Homelessness



Constitutional Considerations in Developing Regulations and Strategies Impacting the Homeless

Conduct and the Constitution

- First Amendment
  - Panhandling
    - Aggressive
    - Passive
  - Large Group Feedings
- FOURTH AMENDMENT
  - Lost / Abandoned Property
- EIGHTH AMENDMENT
  - Sleeping outdoors

This conduct is hurting my business . . .



Regulations often start to address complaints

From: Kerri Dollinger <kerridollinger@gmail.com>

To: jmuoio@wpb.org,

Date: 04/13/2015 06:04 PM

Subject: Pan Handling at North bridge

Hi Mayor-

There is an increase in pan handling on the West Palm side of the North Bridge. Perhaps there could be a sign put up there for no panhandling or some intervention.

Thank you for your time.

Best regards,

Kerri

Sent from my iPhone

First Amendment

- The First Amendment guarantees all people the right to engage not only in 'pure' speech but 'expressive conduct as well.'
- Over time and after much litigation many courts have found panhandling equivalent to solicitation and deserving of at least some level of first amendment protection.

Making the News . . .

CLEMATIS STREET'S THE ALCHEMIST CLOSES, CITING CHANGING AREA, HOMELESS PROBLEM

- Although "in the last two years, we were . . . Still making money, "the area is in a bit of a decline."
- He cited "an increasing problem with the downtown West Palm Beach's homeless population getting out of control. They were even coming into the restaurant and harassing people."



West Palm's Alchemist restaurant closes on Clematis Street Page 1 of 4

The Gardens Summer GreenMarket has you covered this summer at STORE Self Storage & Wine Storage!
EXPAN

Caption

Clematis Street's The Alchemist closes, citing changing area, homeless problem

July 20, 2018
By Leslie Gray Streeter, Palm Beach Post Staff Writer

The Alchemist has sold its last bucket of bacon.

The Clematis Street gastropub, popular for its creative cocktail menu and quirky menu items like the aforementioned literal metal pails of crispy pork, closed for good Sunday night. Craig Steel, general manager and partner in the Daiza Restaurant Group, said that until that evening, the organization had tried to prevent what had gradually become an inevitable decision.

Did you know? This Boca restaurant is closing after 32 years in business

https://www.palmbeachpost.com/entertainment/clematis-street-the-alchemist-closes-citing-... 9/24/2018

City of Worchester - Panhandling

- *Thayer v. City of Worchester*, 135 S.Ct. 2887 (2015)
  - Ordinances
    - Aggressive Panhandling & Solicitation
    - Standing or Walking on a Traffic Island
  - District Court found ordinances
    - content neutral -applied equally without regard to the message being conveyed
    - legitimate government interest in promoting safety
    - Narrowly tailored
    - Alternative channels – only applied to vocal requests & only as to unwanted or bothersome

UNITED STATES SUPREME COURT

- The Supreme Court vacated the Judgment and remanded the case for further consideration in light of its holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015).

- Government "has no power to restrict expression because of its message, its ideas, its subject matter or its content."

- Government regulations are content based where:
  - "A law applies to a particular speech because of **the topic discussed** or the idea or message expressed."

Town of Gilbert v. Reed Continued:

- CRUCIAL FIRST STEP
  - Is the law content neutral on its face?
  - The inquiry is not just does the government disagree with the message sought to be conveyed.
  - A regulation is not content neutral on its face if it regulates speech – in the case of begging – solicitation of funds.
  - Where one has to inquire as to what is said to decide if the regulation is violated, it regulates speech on its face.

Post *Reed*

- Regulations relating to medians content neutral because it targets conduct – i.e. being in the median.
- Courts have found panhandling content based because it regulates solicitation of donations.
- Surviving Narrow Tailoring
  - Governments must go back to the drafting board and "define with particularity the threat to public safety they are seeking to address, and then enact laws that precisely and narrowly restrict only that conduct which would constitute a threat."

More Complaints . . .





City of West Palm Beach

- We Can Regulate that Right?



Food Distribution Ordinances

- 9th Circuit
  - Any person who serves or distributes food to the public in City parks or on the City Hall lawn must
    - Comply with applicable state food safety standards.
    - Obtain a permit for events involving 150 persons or more on City owned, controlled, or maintained and not subject to the food safety standards.
  - 11th Circuit
    - Sponsors of large group feedings of 25 or more people within the Greater Downtown Park District must obtain a permit.

Is Food Distribution Expressive Conduct?

- *Santa Monica Food Not Bombs vs. Santa Monica*, 450 F.3d 1022 (9th Circuit 2006).
  - Found Community Event Law requiring a permit for 150 or more narrowly tailored but did not opine on the food distribution of the regulation.
- *Fort Lauderdale Food Not Bombs vs. City of Fort Lauderdale*, 16-16808, 2018 WL 4000057 (11th Cir. Aug. 22, 2018).
  - Finding food distribution by Food Not Bombs was expressive conduct warranting a time, place and manner review of the regulations in question.

Can’t we “clean up” those bags?





Fourth Amendment

- Property "found" on Public Property
  - Unattended (protected)
  - Abandoned (not protected)
- When is unattended property voluntarily abandoned and was the seizure reasonable is determined by whether adequate notice was provided prior to seizing the property.
- Regulations in this area take thoughtful consideration balancing the needs of the government and rights of the homeless.
- Adopting a policy and regulations that provide notice is key.

Proper Notice / Policy Considerations

- Factors to consider:
  - How many days or how much time is given to voluntarily remove the property before seizure?
  - Is the property immediately destroyed?
  - Was the location where the property was taken and a process to retrieve the property provided?
  - Was the notice oral or written?
  - Does staff follow a policy as it relates to clean up?

More News / More arrests?

Can’t I get any sleep around here?

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BREAKING NEWS Two killed in traffic crash west of Boynton Beach

Everyday Easy LEARN MORE Publix.

Paper airplane was homeless man’s home, until city canceled his flight

LOCAL By Joe Capozzi - Palm Beach Post Staff Writer



David Velazquez, who is homeless, sits on Monday, Aug. 28, 2017, at the giant steel paper airplane sculpture on Flagler Drive where he has been living in downtown West Palm Beach. The city doesn't want him living under the airplane and came by Friday and gave him a week to leave. (Lannis Waters / The Palm Beach Post)

Updated: 4:48 p.m. Monday, August 28, 2017 | Posted: 3:59 p.m. Monday, August 28, 2017





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WPB residents air concerns over homeless problem

Estimated 300 people live on WPB streets

25 WPBF NEWS

Updated: 10:18 AM EST Feb 19, 2016



Terri Parker

Investigative Reporter

WEST PALM BEACH, Fla. — The same thing that draws tourists to South Florida also draws the homeless.

It’s the story no one want to talk about until you’re harassed.

Eighth Amendment & Anti-Camping Ordinances

- Does an arrest for sleeping outdoors constitute cruel and unusual punishment for a homeless individual?
- The Eleventh Circuit found no Eighth Amendment violation where there were sufficient shelters that never reached maximum capacity and did not turn people away. *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000).
- However, the court specifically stated that the ordinance challenged targeted conduct and does not provide criminal punishment based on a person's status.

Martin v. City of Boise, 902 F.3d 1031, 2018 WL 4201159

- Ninth Circuit held that the Cruel and Unusual Clause of the Eighth Amendment precludes the enforcement of a statute prohibiting sleeping outside against homeless individuals who have no access to alternative shelters for the same reasons articulated in the now-vacated *Jones v. City of Los Angeles.*
  - *Eighth Amendment prohibits punishing involuntary act or condition if it is the unavoidable consequence of one's status or being.*

Universal and Unavoidable Consequence of Being Homeless

- Sitting, sleeping and lying are universal and unavoidable consequences of being human.
- Conduct is involuntary and inseparable from status where humans are biologically compelled to rest whether by sleeping, lying or sitting.
- Just as the State cannot criminalize the status of being homeless in public places it **cannot criminalize conduct that is an unavoidable consequence of being homeless.**

What Can be Regulated?

- Individuals sleeping outdoors who have access to adequate temporary shelter but choose not to use it
- sleeping outdoors under an appropriate time, place, and manner restriction
- Obstructing right of way
- Erecting certain structures

Violence and Mental Health

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BREAKING NEWS **Two killed in traffic crash west of Boynton Beach**

NEW: West Palm stabbing suspect tells police he's 'tired of being picked on for being homeless'

LOCAL By Julius Whigham II - Palm Beach Post Staff Writer



Chad Bailey

Posted: 11:54 a.m. Monday, March 12, 2018

WEST PALM BEACH — A man accused of stabbing a woman outside of a downtown sushi restaurant Friday night told police he committed the act

Ads by Google Report this ad Why this ad?



Caption

Arrest made in random stabbing attack on bicyclist under West Palm bridge

May 12, 2018
By Andrew Marra, Palm Beach Post Staff Writer

WEST PALM BEACH — Police have arrested a suspect in the stabbing of a 60-year-old woman last month as she rode her bike under the Royal Park Bridge in downtown West Palm Beach.