BRINGING IT HOME:

A City Attorney's Perspective on Responding to Homelessness

And making communities Safer

By: Susana Alcala Wood, City of Sacramento

And

Valerie Flores, City of Los Angeles

IMLA CONFERENCE 2023

A. Introduction

A crisis of homelessness exists in California. Over 170,000 human beings are homeless in our state. Too many of our neighbors have no shelter from the cold in the winter or the heat in the summer. Life on the streets is stressful and dangerous. Our elected leaders look to their City Attorney to counsel them on how best to cut through bureaucratic red tape and help our neighbors experiencing homelessness.

At the same time, our clients may also call and relay frustration from local, housed residents that go something like this:

> *'I want you to go out right now and get rid of the RVs and tents that have been lined up on X street for weeks now! The neighbors are calling me every day yelling at me to do something!*

Sound familiar?

City Attorneys - even in larger agencies such as Los Angeles and Sacramento, don't have public works or code enforcement staff, don't direct police department efforts and enforcement, don't erect shelters or operate them, don't control the budget – yet every day we are asked to respond to homelessness and address the toll that chronic homeless takes on the persons experiencing homelessness, as well as the encampments take on the surrounding community and businesses.

Responding to the homelessness crisis and the impacts of encampments on public property and private property pose great challenges for California cities and the attorneys who advise them. When everyone is desperate for answers, they frequently turn to the lawyers demanding what can be done – or to express frustration at the limitations of the laws upon which we counsel. This paper discusses will present some approaches to provide creative solutions to address the crisis while providing support to

operational staff tasked with addressing homelessness impacts, as well as strategies that can help elected officials respond to their communities. A City Attorney's role can be a pivotal member of the advisory and response team that helps our clients navigate this complex social issue to stay consistent with the current state of the law.

B. Seeking clarity on What can be done.

Responding to questions of 'what can be done' to address the nuisance conditions created by encampments and related conditions requires an understanding of the current state of the law with a recognition that there is no real court guidance as to where public agencies can draw the line between balancing the needs of persons experiencing homelessness (PEH) with the needs of the community at large.

1. What the Boise case actually stands for – the Eight Amendment prohibits imposition of criminal penalties for an involuntary act – such as being homeless.

To begin with, the central question at issue in *Boise* was whether an ordinance that prohibits sleeping outside, as applied to PEH with no access to alternative shelter, violated the Eighth Amendment to the United States Constitution. (Martin v. City of Boise (9th Cir. 2018) 902 F.3d 1031, 1046, superseded by Martin v. City of Boise (9th Cir. 2019) 920 F.3d 584 [denying petition for panel rehearing and rehearing en banc].) The Ninth Circuit held in the affirmative, finding that the 8th amendment places substantive limits upon what government can criminalize. (Ibid, citing Ingraham v. Wright (1977) 430 U.S. 651, 667.) In its holding, the Boise Court concluded "that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being." (Boise, supra, at 1048 [internal quotation marks omitted]. In Boise, the Ninth Circuit opined that the "conduct at issue here is involuntary and inseparable from status – they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying or sleeping." (Boise, supra, at 1048, quoting Jones v. City of Los Angeles (9th Cir. 2006) 444 F.3d 1118, 1136, vacated by Jones v. City of Los Angeles (9th Cir. 2007) 505 F.3d 1006 [internal quotation marks omitted].) Consequently, the Court held that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." (Ibid.) That is, "'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public." (Boise, supra, at 1048, quoting Jones, supra, at 1138.) In its concluding remarks, the Court imposed a further requirement—that alternative sleeping space in any shelter must be "practically available." (Boise, supra, at 1049.)

2. Lack of clear guidance as to what public agencies can do to address violations. [1]

Notwithstanding its self-described "narrow" holding, the Ninth Circuit's opinion in Boise left municipal practitioners and others in a quandary. Thus, it is not surprising that, in support of the City of Boise's petition to the United States Supreme Court for writ of certiorari to the Court of Appeals, stakeholders including advocacy organizations, business associations, cities and counties, individuals, neighborhood groups, labor unions, nonprofit organizations, and states filed briefs as amici curiae. Many significant operational and practical questions were left unanswered by the Ninth Circuit in Boise such as:

- What does it mean for shelter to be available? Where must the shelter be located? What kind of shelter must be available and what accommodations must it offer? Whether and under what circumstances do a shelter's policies render it unavailable for a PEH? When must a PEH have access to shelter? How must shelter availability be measured?[2]
- Who is considered homeless and what counts as appropriate shelter? How much housing must a jurisdiction build before its permitted to regulate encampments to provide for the safety of both PEH and residents? What constitutes a relevant "jurisdiction" as to the requirement for providing beds?[3]
- Does Boise's language mean that a local government must allow a PEH to store food in the public right of way and cook with an open flame? What about urination and defecation in public? [4]

Despite the unanswered questions and uncertainty, the Supreme Court rejected pleas for clarity from the City of Boise and amici curiae with one sentence: "[p]etition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied." (City of Boise, Idaho v. Martin (2019) 140 S. Ct. 674.) In so doing, the Court left Boise's ambiguity unresolved and open questions unanswered for all stakeholders to resolve before lower courts.

3. Post Boise Case law provides some (limited) additional guidance.

Litigation since the Boise decision has produced a few decisions, including a published Ninth Circuit opinion, but not much more clarity.

---

[1] Whether occurring on residential and commercial property or within an encampment, persons committing crimes may be arrested and prosecuted. This paper only addresses enforcement of city and county code violations related to homeless camping, including encampment conditions, right of way obstructions and similar.

[2] See Brief for Seven Cities in Orange County as Amicus Curiae, pp. 4-17, City of Boise, Idaho v. Martin (2019) 140 S. Ct. 674.

[3] See Brief for MaryRose Courtney and Ketchum-Downtown YMCA as Amici Curiae, p. 4, City of Boise, Idaho v. Martin (2019) 140 S. Ct. 674.)

[4] See Brief for City of Los Angeles as Amicus Curiae, p. 17, City of Boise, Idaho v. Martin (2019) 140 S. Ct. 674 [citation omitted].)

In *Shipp v. Schaff*, two unhoused residents of Oakland, California, filed suit against the city after receiving notice that its Department of Public Works would "temporarily close the encampment" they occupied on one of two days, for approximately eight hours, "to clean the site thoroughly." (Shipp v. Schaff (N.D. Cal. Apr. 16, 2019) 379 F. Supp. 3d 1033, 1035.) The notice they received advised that property left behind would be removed and stored, except for unsafe or hazardous property, which would be discarded immediately. (Ibid.) The United States District Court for the Northern District of California found that "[Boise's] holding does not extend to the situation here." where the requirement by the City to temporarily vacate an encampment did not implicate any criminal sanctions that triggered the Eighth Amendment (Id. at 1046.).) More importantly, quoting Boise's eighth footnote, the Court found that, "even assuming (as Plaintiffs do) that [the City enforces the temporary closure via citations or arrests], remaining at a particular encampment on public property is not conduct protected by [Boise], especially where the closure is temporary in nature." (Ibid.)

In *Aitken v. City of Aberdeen*, PEH located on an unimproved parcel owned by the City of Aberdeen, Washington, known as River Camp, filed suit against the city after it proposed an "Eviction Ordinance" that would effectuate their removal from River Camp, and expanded its "Anti-Camping Ordinance" in a manner that would punish camping on public property with a civil infraction, except when shelter is unavailable, in which case camping would be allowed on portions of any public right-of-way not expressly reserved for vehicular or pedestrian travel. (Aitken v. City of Aberdeen (W.D. Wash. July 2, 2019) 393 F. Supp. 3d 1075, 1078-79.)

The United States District Court for the Western District of Washington first observed that other "courts have been reluctant to stretch [Boise] beyond its context . . . ," citing Miralle v. City of Oakland for the proposition that a city may "clear out a specific homeless encampment because '[Boise] does not establish a constitutional right to occupy public property indefinitely at Plaintiffs' option.'" (Id. at 1081-82, quoting Miralle v. City of Oakland (N.D. Cal. Nov. 28, 2018, No. 18-cv-06823-HSG) 2018 WL 6199929, at *2; also citing Le Van Hung v. Schaff (N.D. Cal Apr. 23, 2019, No. 19-cv-01436-CRB) 2019 WL 1779584, at *5.) Here, too, the Court held that "[Boise] does not limit the City's ability to evict homeless individuals from particular public places . . . ." (Aitken, supra, at 1082.) Consequently, the Court denied Plaintiff's motion for a temporary restraining order enjoining enforcement of the "Eviction Ordinance." (Id. at 1086.)

Next, the Court observed that other "[c]ourts have also limited [Boise] to situations involving criminal sanctions . . . ," citing Butcher v. City of Marysville for the proposition that a city may evict homeless occupants without implicating the Eighth Amendment because it "does not extend beyond the criminal process." (Aitken, supra, at 1082, quoting Butcher v. City of Marysville (E.D. Cal Feb. 25, 2019, No. 2:18-cv-02765-KAM-CKD) 2019 WL 918203, at *1-2; also citing Shipp, supra, at 1033.) In Aitken, however, the Court granted "a brief stay of enforcement" of Aberdeen's "Anti-Camping Ordinance," in large part "to determine whether [Boise's] rationale concerning criminal

sanctions extends to the civil penalties imposed by the Anti-Camping Ordinance." (Aitken, supra, at 1082.) Consequently, the Court granted Plaintiff's motion for a temporary restraining order enjoining enforcement of the "Anti-Camping Ordinance." (Id. at 1086.) Approximately two months later, in a minute order and without further analysis, the Court vacated its order enjoining enforcement of the Anti-Camping Ordinance. The parties settled and the case was dismissed six weeks later.

Finally, in *Gomes v. County of Kauai,* unhoused occupants of a county park, Salt Pond Beach Park, filed suit against the county after they were cited under the Kauai County Code on multiple occasions for illegal camping and constructing an illegal structure, even though the County of Kauai has only one homeless shelter with a maximum capacity of 19 occupants, and more than 500 persons experiencing homelessness countywide. (Gomes v. County of Kauai (D. Hawaii Aug. 26, 2020) 481 F. Supp. 3d 1104, 1106.)

Quoting Aitken, supra, the United States District Court for the District of Hawaii observed that "[Boise] does not limit the [c]ity's ability to evict homeless individuals from particular public places." [Citation omitted] [internal quotation marks omitted.] Nor does it 'establish a constitutional right to occupy public property indefinitely at Plaintiffs' option.'" (Id. at 1109, quoting Miralle, supra, 2018 WL 6199929, at *2.) Here, the Court found that, even if "the County of Kauai ordinance criminalized sleeping at Salt Pond Beach Park, with or without a permit, such a restriction would not by itself violate the Eighth Amendment." (Gomes, supra, at 1109.) That is because, "[u]nlike the ordinance considered by [Boise], which criminalized sleeping outside on public property anywhere in Boise [citation omitted], [the County of Kauai ordinance] is limited to public parks, not public land." (Ibid.) Consequently, the Court granted the County's motion to dismiss, albeit with leave to amend. (Ibid.)

4. Boise and its progeny does not prohibit Cities and public agencies from conducting camp management efforts or addressing nuisance conditions

Despite the efforts to expand the holding of Boise, and regular admonishments from federal courts to public agencies regarding actions that can be taken against PEH, Cities still retain the ability to address such conditions even as they work towards increasing shelter capacity.

Boise applies only to the issuance of criminal penalties for sitting, sleeping, or lying outside to persons experiencing homelessness who cannot obtain shelter; and it does not apply to the issuance of penalties—criminal or otherwise—for unlawfully sitting, sleeping, or lying on private property. (Ibid.)

Moreover, the Court qualified its holding, expressly stating that it was not suggesting "that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or

sleeping outside at particular times or in particular locations might well be constitutionally permissible." (Boise, supra, at 1048, n. 8, citing Jones, supra, at 1123 [emphasis in original].)

The panel opinion and concurrence in the denial of petition for panel rehearing or rehearing en banc suggest two paths to enforcement of an "unlawful camping" ordinance: first, a municipality might lawfully enforce such an ordinance throughout its jurisdiction so long as it first makes available "shelter" to its unhoused population, or, second, that it might lawfully enforce such an ordinance that does not apply to "all public spaces," but rather, leaves "alternative sleeping space" available, even outdoors.

In Blain v. California Department of Transportation (Caltrans), unhoused residents of Oakland challenged as unconstitutional the state's intended closure—ostensibly permanent—of the encampment they occupied, which was located on state property. (Blain v. Cal. Dept. of Transp. (N.D. Cal. July 22, 2022) 616 F.Supp.3d 952, 955.) The United States District Court for the Northern District of California explained the reason for Boise's holding, as did the Gomes Court in different terms, being that "prohibiting homeless people from sleeping in the entire city without providing shelter beds would be to criminalize something involuntary and status-based." (Id. at 959.) Finding no Eighth Amendment violation, the Court concluded that "Caltrans solely seeks to prohibit the plaintiffs from living on a discrete property, so the concerns in [Boise] have not been show to be present." (Ibid.)

In Wills v. City of Monterey, an unhoused resident of Monterey challenged the constitutionality of five core ordinances: the first prohibited using a motor vehicle for habitation on any public property, or in a public or private parking lot, between 10:00 p.m. and 6:00 a.m.; the second prohibited, among other things, camping outside designated areas and without first obtaining a permit; the third prohibited causing an obstruction by placing anything on a sidewalk; the fourth prohibited intentionally obstructing or impeding the free movement of any pedestrian or vehicle on any public property; the fifth prohibited sitting or lying on a commercial sidewalk between 7:00 a.m. and 9:00 p.m. (Wills v. City of Monterey (N.D. Cal. Aug. 1, 2022) 617 F.Supp.3d 1107, 1118-19.)

The United States District Court for the Northern District of California presented the question on which the case turns as "whether the ordinances collectively criminalize sleeping outside anywhere in the City (particularly in the evening, the normal sleeping period for most people), or whether the ordinances merely criminalize sleeping in certain areas of the City. (Id. at 1120, citing Sausalito/Marin County Ch. of Cal. Homeless Union v. City of Sausalito (N.D. Cal. Dec. 13, 2021, No. 21-cv-01143-EMC) 2021 WL 5889370, at *2 [Boise "prohibits a ban on all camping, not the proper designation of permissible areas"].) The city argued that its five ordinances "do not criminalize sleeping outside in all public places in the City at all times" because the anti-camping ordinances restrict only overnight camping, and because the commercial sidewalk ordinance permits overnight camping. (Id. at 1120.)

Second, the Court observed that the city amended its anti-camping ordinances to allow unhoused residents to sleep in parks, but continued to prohibit them from using "bedding, sleeping bag, or other material used for bedding purposes." (Id. at 808.) The Court called attention to the issuance of a citation in Boise to a woman found sleeping on the ground, wrapped in blankets, as "an example of the anti-camping ordinance being 'enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements'; [Boise] deemed such enforcement unconstitutional." (Id. at 808-09, quoting Boise, supra, 920 F.3d at 618.) "It follows," the Court held, "that the City cannot enforce its anti-camping ordinances to the extent they prohibit 'the most rudimentary precautions' a homeless person might take against the elements." (Grants Pass, supra, at 809.) As in Boise, the Ninth Circuit characterized its decision in Grants Pass as "narrow," stating that its "decision reaches beyond [Boise] slightly." (Id. at 813.) Nevertheless, the City of Grants Pass filed a petition for writ of certiorari in the Supreme Court. (See City of Grants Pass, Oregon v. Johnson, No. 23-175, Proceedings and Orders.)

C. A Sampling of City Responses.

1. The City of Sacramento's Response.

In California's capital city, the Sacramento City Council took a number of steps to proactively protect public spaces that serve vital government functions.

a. Adoption of a 'Critical Infrastructure Ordinance' (the "Protection of Critical Infrastructure and Wildfire Risk Areas." City of Sac. Ord. No. 2020-0009-February 2020.) Citing at least 1,009 fires associated with homeless encampments over a six-month period in 2019 including damage to a Department of Utilities facility, impeded access to to the Sacramento Water Treatment Plant, and damage to levees related to such encampments, the ordinance is directed at mitigating the threat of fire and other potential causes of destruction and damage to and interference with, critical infrastructure and wildfire risk areas and similarly sensitive areas, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near those areas.". By its terms, the ordinance identifies as critical infrastructure levees and any other real property or facility so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare." (See Sac. City Code, 8.140.020.) Critical infrastructure is designated by the city manager and approved by the city council.

   In general terms, the ordinance prohibits camping and storing personal property for designated areas that include within 25 feet of, and within 25 feet of a pedestrian or vehicular entrance to, or exit from, critical infrastructure, on portions of a public right-of-way that, under local, state, or federal law, must remain free of obstruction to first responders, medical facilities, and (4) in wildfire risk areas.

(See Sac. City Code, § 8.140.030, subs. A-B.) The ordinance provides that, except for violations that pose an imminent threat to public health or safety, which the city may abate immediately, the city may abate the foregoing violations upon 24 hours' notice.

b. Adoption of Encampment Response Protocols. Sacramento developed a new response model system with specified protocols aimed to effectively categorize and respond calls for service related to homeless encampments. In summary, these new protocols aim to address the following more effectively:
    - Outreach efforts
    - Assess needs of encampment residents (PEH) and provide appropriate resources;
    - Establish rapport and connect PEHs to social services as appropriate and available;
    - Prioritize and assign an appropriate response/resources to different encampments;
    - Establish coordinated response with County and state partners for larger encampments such as the example above.
    - Encampment management
    - Prioritize locations based on the nature of calls for service and field assessments;
    - Determine need for contractors, support from specialty departments, or partners;
    - Execute cleanup and removal of trash and hazardous materials.
    - Identified three types of coordinated responses: General, Rapid and Coordinated
c. Adoption of a Sidewalk encroachment ordinance: Prohibiting any encroachment on public sidewalks that prevents four feet of clearance (mirrors ADA requirements).
d. Creation of a Department of Community Response.

    On July 1, 2021, the City of Sacramento created the Department of Community Response (DCR) as a stand-alone department. DCR consists of two primary divisions. The Homeless Services Division handles numerous agreements that provide services and programming for families and individuals experiencing homelessness. The Community Outreach Division deploys social workers and outreach specialists who perform outreach to households experiencing homelessness and connect them to services.

e. City of Sacramento and County of Sacramento Partnership Agreement. On December 6, 2022, the City of Sacramento and the County of Sacramento entered into a Partnership Agreement. The key provisions of the agreement are as follows: 5-year term with annual updates; Outlines roles and responsibilities of each agency; Addresses key provisions of the Emergency Shelter and

Enforcement Act of 2022; Demonstrates shared commitment to the Sacramento Local Homeless Action Plan (LHAP) and Coordinated Access System; and Sets forth provisions for accountability and measuring progress with reports in open session to both City Council and Board of Supervisors every 6 months.

2. The City of Los Angeles Response.

In the aftermath of the *Boise* decision, Los Angeles has redoubled its efforts to find shelter and affordable housing solutions and has simultaneously enacted ordinances to create a balance on the public spaces share by its residents, house and unhoused alike.

a. **Declaration of Emergency.** When Mayor Karen Bass was sworn into office in December of 2022, one of her first acts in Office was to issuing a formal Declaration of Emergency relating to the homelessness crisis and the lack of affordable housing in Los Angeles. The Declaration of Emergency allows the Mayor to coordinate citywide planning, secure contracts with builders and vendors and streamline contracting processes for affordable housing, shelter and service providers.
b. **Developer Incentives.** To fund its aggressive efforts to encourage and build more affordable housing and secure funding for addressing and preventing homelessness, Los Angeles has an ordinance requiring developers to pay an Affordable Housing Linkage Fee, assessed on new construction to fund new – and rehabilitate existing – affordable housing. Los Angeles Municipal Code Section 19.18 B.2. Los Angeles also offers a density bonus for developments that include affordable housing units. LAMC Section 12.22 A. 25-31.
c. **Ballot Measures Infuse Funding into City's Efforts.** City and County voters have – through the passage of ballot measures – infused resources into the effort in Los Angeles to aid in the production of new housing, shelter and homelessness prevention methods, including:
    - HHH – Voter approved City of Los Angeles ballot measure to issue $1.2 billion in general obligation bonds to develop or acquire supportive housing
    - H – County ballot measure approved by a 2/3rds majority of voters to impose a ¼-cent sales tax to create a revenue stream dedicated to addressing and preventing homelessness
    - ULA – Voter approved City of Los Angeles ballot measure to impose a tax on the sale of real estate transactions above $5 million dollars to fund affordable housing projects and provide resources to tenants at risk of homelessness.

d. **Settlement Agreement in *LAAlliance* case spurs homeless Shelter Building and Spurs Legal Argument over City and County Obligations Under Welfare and Institutions Code Section 1700.** In *LA Alliance for Human Rights v. City of Los Angeles,* plaintiffs sued the City of Los Angeles and County of Los Angeles over conditions in Skid Row and other areas. (*LA Alliance for Human Rights, et al. v. City of Los Angeles, et al.* (C.D. Cal. Apr. 20, 2021, No. LA CV 20-02291-DOC-(KESx)) 2021 WL 1546235.) Plaintiffs brought 14 causes of action, including, in part, violation of mandatory duty under section 17000, inverse condemnation, waste of public funds, violations of the California Environmental Quality Act, the California Disabled Persons Act, and the Americans with Disabilities Act, as well as Due Process and Equal Protection claims. With regard to the Welfare and Institutions Code section 17000 argument, that section provides, "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Section 17000 requires counties "to provide indigent residents with emergency and medically necessary care." (*Fuchino v. Edwards-Buckley* (2011) 196 Cal.App.4th 1128, 1134.) However, section 17000 does not require counties "to satisfy all unmet needs," and it does not "mandate universal health care." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1014.) "The Legislature has eliminated any requirement that counties provide the same quality of health care to residents who cannot afford to pay as that available to nonindigent individuals receiving health care services in private facilities." (Ibid.) Instead, counties need only provide "subsistence medical services" or "medical services necessary for the treatment of acute life-and-limb-threatening conditions and emergency medical services." (Id. at 1014-15.)

On April 12, 2021, Plaintiffs sought a preliminary injunction, partially seeking to place homeless individuals in shelter by October 2021. In a sweeping order, United States District Judge David O. Carter issued a preliminary injunction ordering city and county officials to take extensive action to mitigate the effects of those experiencing homelessness and to house all homeless people living in Skid Row within 180 days. As part of the ruling, Judge Carter ordered that the Mayor place $1 billion in an escrow account and explain why he had not issued an emergency declaration, that the City Controller create a report of all land available to house homeless individuals and that all sales and transfers of over 14,000 City properties cease until the report is finished; that, within 90 days, the City and County provide shelter immediately to all unaccompanied women and children living in Skid Row, in 120 days, to all families, and, within 180 days, to the general population of Skid Row; and that the City and County split the cost of providing operational services equally (Id.

at *62.) In a particularly small part of his 110-page order, Judge Carter found that, although Plaintiffs did not bring a section 17000 cause of action against the City of Los Angeles, the mandates of that section nevertheless apply to cities, reasoning that "the City, on many occasions, has decided to use vast swaths of [funds received from the state and federal government for homelessness] to provide services to the homeless." (Id. at *51.) The court further stated that, "under the aegis of local, state, and federal initiatives, the City and County together have become jointly responsible for fulfilling the mandate at least as it pertains to confronting the crisis of homelessness." (Ibid.) The Court then concluded that "the most reasonable interpretation of § 17000—the interpretation most in step with modern partnerships and funding arrangements between the City and County—is that it applies not only to counties alone, but to cities and counties when they undertake a joint venture directed to the goals of § 17000, such as a coordinated effort to alleviate homelessness in their jurisdictions." (Ibid.) Defendants appealed this order to the Ninth Circuit on several grounds. Relevant to this discussion, the League of California Cities filed an amicus brief narrowly arguing the Court wrongly applied section 17000 to cities. Notably, Plaintiffs did not bring a section 17000 cause of action against the City of Los Angeles; yet, the Court sua sponte extended this claim to the City. First, amicus argues that basic statutory interpretation of section 17000 does not contemplate cities, as it applies to counties only. Next, amicus cites to the California Supreme Court case of *Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1104, which outright rejected an argument that section 17000's mandate apply to cities. *Tobe's* progeny has upheld this principle in various California court rulings. Despite acknowledging *Tobe's* precedence in his order, Judge Carter overruled it, citing examples of city and county collaboration in addressing homelessness. Finally, amicus argues that the district court's order oversimplified the housing process, leading to broad implications that Judge Carter did not consider.

On July 7, 2021, Ninth Circuit Justices John B. Owens, Jacqueline Nguyen, and Michelle Friedland heard oral argument. Judge Owens, in response to a city attorney's statement that Judge Carter's order was "judicial overreach," signaled sympathy for the district court, stating, "[y]ou could also, I think, call it judicial frustration." The injunction was overturned.

e. **Creative Shelter Ideas Implemented.** Another signature effort by newly elected Los Angeles Mayor Karen Bass is the Inside Safe program, which takes people out of homelessness and places them into hotels while searching for longer-term housing. For vehicle dwellers, the City Council is exploring a permit system that will regulate where and how many vehicles may be used for dwelling on City streets.

- **Adoption of Ordinance Banning Sitting, Lying or Sleeping in Certain Areas.** Post *Boise,* the City adopted an ordinance that bans sitting, lying and sleeping in certain locations, including: 1) In a manner that blocks ADA compliance; 2) Within 10 feet of driveways or loading docks; 3) Within 5 feet of building entrances/exits; 4) With 2 feet of fire hydrant; 5) In a manner that interferes with activity approved via City permit; 6) In a vehicle or bike lane; 7) Within 500 feet of any DESIGNATED park or library; 8) Within 500 feet of any DESIGNATED overpass, underpass, freeway ramp, tunnel, bridge, pedestrian bridge, subway, wash, spreading ground, or active railway; 9) Within 1,000 feet of any DESIGNATED facility providing services to persons experiencing homelessness; 10) For one year in any encampment that has become dangerous as a result of a death or serious bodily injury, serious or violent crimes, or fires (nuisance encampments); and 11) Within 500 feet of ALL schools and daycare centers. LAMC Section 41.18.
- **Adoption of a Street Engagement Strategy.** Strategy requires up to six weeks of outreach before enforcement can take place around designated sensitive sites under LAMC 41.18.
- **Adoption of Ordinance Regulating the Storage of Personal Property in the Public Areas.** The City of Los Angeles regulates the storage of personal property in public spaces as follows: 1) Precludes the storage of more than 60 gallons of personal property in public; 2) Precludes the storage of hazardous materials and contraband; 3) Precludes the storage of any personal property in a manner that blocks ADA passage, driveways, ingress, and egress; 4) Allows the City to seize and store for 90 days unattended personal property or property in excess of 60 gallons; 5) Allows the erection of tents only during overnight hours, cold and rainy days; and 6) Allows for the removal and storage of personal property violating the ordinance. LAMC Section 56.11
- **Special Personal Property Rules Apply in City Parks.** In a City park, the City's ordinance: 1) Precludes a person from bringing a Bulky Item into a park (with exceptions for recreational items); 2) Precludes the erection of tents that are not open on all sides; 3) Precludes storage of any personal items in a park after closure; and 4) Allows for the removal and storage of any personal items left in a park after closure.

D. Conclusion

While the challenge that California jurisdictions face in the wake of Boise and Grants Pass, cities continue innovating to both reduce homelessness and mitigate adverse

impacts of encampments on public property. In so doing, even in litigation, they provide guidance to other municipalities regarding their options and obligations with respect to persons experiencing homelessness. However, a number of questions remain to be answe3red regarding the ability of cities and other public agencies to continue to enforce public health and safety laws while they work to open and expand shelters and create housing for PEH. And even as they take these actions, will it be enough? Will shelter space be considered practically available if it doesn't accommodate pets, or voluminous personal possessions? What if it does not provide unpartitioned beds, or provides motel vouchers for motels with worn out amenities? What about safeground sites that provide water and restrooms, but no electricity? And particularly for a small jurisdiction, is it enough if shelter is available in a neighboring city or in the county? These questions are not merely hypothetical, but rather, based upon the very real operations of municipalities throughout the state. It remains to be adjudicated.