

# **Legal Overview**

## **Addressing Homelessness in the City of Pomona**

***Homelessness is a status.***

***Homelessness is not a crime.***

***The City may not punish homelessness.***

***The City may prohibit and punish conduct.***

***The City's ordinances regulate conduct.***

***How does the City enforce those ordinances?***

# **Adoption and Enforcement of Ordinances**

**Start with Community Consensus.**

**↳ Policy**

**↳ City Ordinances**

**↳ Enforcement**

# Adoption and Enforcement of Ordinances

Federal law, State law, and the City's policies guide the City's adoption of ordinances and drive enforcement.

- In the context of homelessness, the City is facing:
  - Complex issues
  - Competing interests
  - Unclear Federal and State law on enforcement

↳ Liability

# Adoption and Enforcement of Ordinances

- The City is operating in an unpredictable legal climate.
- When formulating the policies and solutions that guide enforcement and subject the City to liability (lawsuits), the community should consider:

***How do we avoid, or do we accept, the risk that comes with taking a stance on enforcement efforts that impact the homeless, whether the stance is for stricter or more lenient enforcement?***

***How do we avoid, or do we accept, making Pomona the poster child on homelessness issues, whether for over-enforcement or under-enforcement?***

# There are 3 General Categories of “Quality of Life” Laws in California

*Also referred to as “community livability laws” or “anti-homeless laws.”*

1. Food Sharing Events (feeding the homeless)
2. Nighttime Conduct in Public Places (camping or sleeping, living in cars, storing belongings)
3. Daytime Conduct in Public Places (loitering, panhandling, use of shopping carts)

*Categories are based on when and how enforcement occurs, rather than when the conduct is prohibited.*

# **FOOD SHARING EVENTS**

# Food Sharing Events

## Balancing Interests:

- Provide for a Basic Need
- Safe and Appropriate Use of Public Space
  - Coordinating multiple uses of limited public space
  - Food Safety
  - Human waste, overflow garbage, food, litter, and debris on City property
  - Impacts on nearby residential and commercial property
  - Impacts on adjacent streets and sidewalks
  - Public Nuisance and Illegal behavior
  - Financial accountability for any resulting damage

# Food Sharing Events

## California Retail Food Code – Health & Safety Code Section 113700

- Temporary Food Facility: a food facility that is approved by the enforcement officer, and that operates at a fixed location for the duration of an approved community event, and only as part of the event.
- Nonprofit Charitable Temporary Food Facilities – Health and Safety Code Section 114332
- The City may regulate:
  - Food preparation conditions, temperatures, storage
  - Handwashing and restroom facilities
  - Time and frequency of event

# Food Sharing Events

## SUMMARY:

- **State law authorizes the City to require permits for food sharing events.**
- **Permits may restrict the time and frequency of events, and impose health and safety standards.**
- **The City may inspect events for compliance with permit conditions.**

**CAMPING OR SLEEPING,**  
**LIVING IN VEHICLES,**  
**STORAGE OF BELONGINGS**

# Camping or Sleeping, Living in Vehicles, and Storage of Belongings

- Can the City have ordinances against:
  - Camping on public property? **YES.**
  - Living in a vehicle? **YES.**
  - Storing personal property in public spaces? **YES.**
- Can the City enforce these ordinances?  
**MAYBE.**

# Camping or Sleeping, Living in Vehicles, and Storage of Belongings

- Pomona City Code Sections:
  - 46-603: Unlawful to **camp** or use camp paraphernalia on public property.
  - 46-606: Unlawful to **sleep** on a public street, sidewalk, walkways, or other public ways and City property
  - 46-605: Unlawful to sleep or **live in a vehicle** located in any public park, public place, or on any public street.
  - 46-604: Unlawful to **store any personal property** on public property.

# **CAMPING OR SLEEPING**

# Camping

## **Tobe v. Santa Ana – (1995)**

The California Supreme Court held that Santa Ana's ordinance prohibiting camping and storage of personal property in public spaces was valid.

- Punishes conduct, not status.
- Gives notice of what conduct is not allowed.
- Incidentally impacts the fundamental right to travel.
- The City has the power and duty to keep public property available for designated uses.

# Camping

## SUMMARY:

Based on the California Supreme Court's holding in Tobe v. Santa Ana, the City of Pomona's ordinance against camping on public property is valid on the books.

Note: The City's definition of "camping" includes living in trailers, camper shells, motor homes, and vehicles.

*What about enforcement?*

# Camping or Sleeping

## Court Opinions Ruling on the Enforcement of Sleeping and Anti-Camping Ordinances Fall into Two Categories:

1. Enforcement is allowed because the ordinance punishes conduct, not status. [See *Lehr v. City of Sacramento (2009)* and *Allen v. City of Sacramento (2013)*.]
2. Enforcement is cruel and unusual punishment, (prohibited by the 8<sup>th</sup> Amendment) when the conduct is involuntary. [See *In re Eichorn (1998)* and *Jones v. City of Los Angeles (2006)*; conduct is “involuntary” when the conduct is a physiological necessity, the person has done all they can to alleviate their condition, and alternatives are inadequate (lack of available housing).]

**None of these cases provide direct legal authority.**

# Camping or Sleeping

## SUMMARY:

The City's ordinances prohibiting sleeping and camping on public property are valid on the books, but the legality of enforcement is unclear.

Existing case law does not provide direct legal authority applicable to the City of Pomona. The City may not rely on any of those cases as solid authority on whether or not to enforce, or the extent of enforcement.

Because the law on enforcement is unclear, the City's enforcement approach opens the City to liability (lawsuits).

Until the law is clear, the City should first determine its policy, and then enforce according to that policy.

# **LIVING IN VEHICLES**

# Living in Vehicles

## Desertrain v. City of Los Angeles (2014)

- The City of LA's ordinance prohibiting living in cars was unconstitutionally vague.
  - “No person shall use a vehicle parked... upon a City street... as living quarters either overnight, day-by-day, or otherwise.” – LAMC Section 85.02
  - No definition of “living quarters.” No defined duration.
- In response, the City of LA is considering two draft ordinances, and will adopt one based on their policy direction.

# Living in Vehicles

## The City of LA's Draft Ordinances Prohibiting Living in Vehicles

1. A person shall not live in a vehicle parked on a public street between 9 p.m. and 6 a.m.
2. A person shall not live in a vehicle parked on a public street between 9 p.m. and 6. am., *unless the person's dashboard displays a temporary vehicle lodging pass and is parked in a non-residential area as designated by a map issued by the City. Vehicle lodging passes and maps are available to persons requesting a pass and map after receiving homeless outreach services.*

# Living in Vehicles

## The City of LA's Draft Ordinances Prohibiting Living in Vehicles

Proposed Definition for “Living In” a Vehicle: when it reasonably appears, in light of all the circumstances, that a person is using a vehicle for lodging, and there is a combination of activity from two categories:

1. Sleeping, or preparing or cooking meals inside of the vehicle.
2. Storing contents inside a vehicle that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, kitchen utensils, cookware, cooking equipment, bodily fluids, or the storing of personal possessions that obscure all or part of the vehicle's windows.

# Living in Vehicles

## The City of Pomona's Ordinance Against Living in Vehicles

- The City's ordinance against camping and ordinance against living in vehicles extend to living in camper shells, trailers, and motor homes.
- Unlike the City of LA's unconstitutionally vague ordinance, Pomona's ordinance defines the prohibited conduct.
  - Prohibits “occup[ying] for the purpose of sleeping or living” in a vehicle, which includes sleeping, living in, occupying as a dwelling, or staying in the vehicle, in a manner not directly related to driving.

# Living in Vehicles

## SUMMARY:

- **Can the City of Pomona continue to enforce its ordinances against living in vehicles parked in public places or on public streets? YES.**
- **Factual challenges in enforcement:**
  - **Determining whether there is a person in the vehicle or trailer**
  - **Determining whether there is a person sleeping or living in the vehicle or trailer**

# **STORAGE OF PROPERTY**

# Storage of Property

## Lavan v. City of Los Angeles (2012)

- An ordinance prohibited leaving personal property on any parkway or sidewalk.
- Enforcement – Monday through Friday, 8 a.m. to 11 a.m. street cleaning, as posted on signs.
- Enforcement – The City removed and disposed of unattended items.

# Storage of Property

- The ordinance was valid.
- Enforcement of the ordinance was unconstitutional because:
  - Enforcement interfered with the individual's ownership interests in personal property.
  - Enforcement permanently deprived individuals of their possessions without providing sufficient notice and an opportunity to explain why they should not lose their property.

# Storage of Property

Dissenting Opinion (not legally binding):

- Individuals do not have ownership interests in unattended personal items left on public sidewalks.
- The City expressly provided notice by posting 73 signs indicating clean-up times.
- The City made an effort to remove only items that posed health and safety hazards (rotting food, human fecal matter, and drug paraphernalia).
- The Business Improvement District sponsored a warehouse providing free storage. Instead of breaking the law, the individuals could have used that storage space.

# Storage of Property

New Ordinance – Los Angeles Municipal Code Section 56.11

- 24-hour pre-removal notice
- Impoundment of personal property stored in public areas
- Post-removal notice
- 90 days storage
- Repossession procedure – No government-issued ID required.

Also worth noting, the new LAMC Section 56.11 bans tents in public areas between 6 a.m. and 9 p.m.

# Storage of Property

## Kincaid v. Fresno (2008)

- Settlement of a Class Action against the City of Fresno
- Class consisted of “all persons whose personal belongings have been unlawfully taken and destroyed in a sweep, raid, or clean-up” by the City
- Settlement terms:
  - The City of Fresno pays \$1.4 Million to the Plaintiffs
  - The City of Fresno paid \$750,000 in attorneys fees and \$100,000 in legal costs to Plaintiffs’ counsel

# Storage of Property

## SUMMARY:

- The City's ordinance against storage of personal property on public property is valid.
- The City may enforce the ordinance.
- If the City removes unattended personal property, the City should provide the owners with a way to retrieve the property that was temporarily moved during enforcement.

**LOITERING**

# Loitering

- Loitering is not illegal and most ordinances prohibiting loitering are unenforceable.  
*[People v. Sup. Ct. (Caswell)]*
- An ordinance is unenforceable if it prohibits a person from just being at a location for any amount of time.
- Exception: Courts have upheld ordinances prohibiting loitering with intent to commit a crime.

# Loitering

## SUMMARY:

Based on current law, the City's loitering ordinances are unenforceable, except those tied to criminal activities.

- **Unenforceable:**

- 34-155: prohibits loitering on certain properties

- 34-156: prohibits loitering on private parking lots

- 34-267: prohibits loitering by minors during school hours

- **Enforceable:**

- 34-291: prohibits loitering by street gangs for illegal purposes

# **PANHANDLING**

# Panhandling

- Can the City have ordinances:
  - Prohibiting panhandling? **NO.**
  - Prohibiting aggressive panhandling? **YES.**
  - Regulating panhandling? **YES.**
- Can the City enforce these ordinances?  
**MAYBE.**

# Panhandling

- It's a misdemeanor to accost (aggressively approach or confront) others in a public place or any place open to the public for the purpose of begging or soliciting alms. (Penal Code § 647(c); *People v. Zimmerman*.)
  - In *People v. Zimmerman*, the Court noted that Section 647(c) “bears a rational relationship to the state’s legitimate interest in protecting citizens from intimidation, harassment, and other improprieties,” which may accompany the accosting of persons.
- This panhandling regulation is aimed at conduct of individuals who accost others for handouts. The regulation does not extend to a person who merely sits or stands by the wayside.

# Panhandling

- The City has authority to protect the public's health, safety, and welfare.
- That authority includes the authority to regulate panhandling.
- Panhandling regulations must meet certain criteria.  
(*L.A. Alliance for Survival v. City of L.A.*)

# Panhandling

An ordinance regulating panhandling must:

- (1) be narrowly tailored;
- (2) serve a significant government interest;  
and
- (3) leave open ample alternative channels  
for communicating the information.

# Panhandling

The City's regulation of aggressive panhandling:

30-608: aggressive panhandling is unlawful

- This regulation is enforceable because it is:
  - (1) Narrowly tailored
  - (2) Serves significant government interest: protecting citizens from intimidation, harassment, and other improprieties
  - (3) Leaves open ample alternative channels

# Panhandling

The City's other regulations of panhandling:

- 30-605: unlawful in public rights-of-way.
- 30-606: unlawful in unauthorized locations of commercial parking areas.
- 30-607: unlawful within 25 feet of certain listed locations.

# Panhandling

30-605: unlawful in public rights-of-way.

- Regulation unenforceable. Not narrowly tailored.

## **Comite De Jornaleros de Redondo Beach v. City of Redondo Beach**

- Redondo Beach had ordinance prohibiting panhandling and other solicitation in public right-of-way.
- Court held that while the city had an interest in promoting traffic flow and safety, the ordinance was not narrowly tailored to apply in only those situations and the City had less restrictive alternatives, such as existing traffic laws.

# Panhandling

30-606: locations of commercial parking areas

- Legality of enforcement is unclear.
- Existing case law does not provide applicable legal authority.
- It is clear individuals have speech protections on some private property, including shopping centers. (*Robins v. Pruneyard Shopping Center*).
- Private property owners may enforce restrictions and prohibit trespassing on private property that is not open to the public.

# Panhandling

30-607: unlawful within 25 feet of listed locations

- Legality of enforcement is unclear, except that City can enforce regulation around ATMs.
- Existing case law does not provide direct legal authority applicable to the City of Pomona. The City may not rely on any of those cases as solid authority on whether or not to enforce, or the extent of enforcement.

# Panhandling

## Los Angeles Alliance for Survival v. City of LA

- The City of LA's ordinance prohibited aggressive panhandling and panhandling in specific locations.
- Plaintiffs sued the City of Los Angeles and claimed that the City's panhandling ordinance was an impermissible infringement of the CA Constitution's Liberty of Speech Clause.

# Panhandling

## Los Angeles Alliance for Survival v. City

- Plaintiffs successfully obtained an injunction against the City, preventing the City from enforcing the panhandling ordinance.
- The City ultimately settled the case and removed all location restrictions on panhandling except for location restrictions applicable to ATMs.

# Panhandling

## **Salzman v. City of Arcata (2012)** (not legally binding)

- The Court held that the City's location-specific prohibition on panhandling was unconstitutional.
  - The Court acknowledged that the City had valid interests (preventing congestion and controlling traffic and protecting citizens from unwanted communication), **BUT**
  - The Court found that the legitimate interests were "insufficient in most instances to justify the infringement of solicitors' right, and, for that reason, it is largely unconstitutional"
  - The Court upheld the panhandling restriction within 20 feet of ATMs.

# Panhandling

## SUMMARY:

**Based on current law, the City's aggressive panhandling ordinance is enforceable. It is:**

- (1) Narrowly tailored
- (2) Serves significant government interest: protecting citizens from intimidation, harassment, and other improprieties
- (3) Leaves open ample alternative channels

**For the remainder of the City's panhandling ordinances, until the law is clear, the City should determine its policy and enforce according to that policy.**

# **SHOPPING CARTS**

# Shopping Carts

- Use of shopping and laundry carts (“carts”) is regulated by State and City law. (B&P § 22435 *et. seq*; PMC Article VIII.)
- If the intent is to deprive an owner of possession of a cart, it is a misdemeanor to:
  - Remove carts from retail establishments;
  - Possess a removed cart or cart with its serial numbers removed or altered;
  - Abandon a cart; or
  - Alter a cart or remove its serial numbers.

# Shopping Carts

- All carts must have an affixed sign that:
  - Identifies the owner;
  - Provides notice of the procedure utilized for authorized removal of the cart;
  - Provides notice that unauthorized removal or possession of the cart is a violation of law; and
  - Lists a number or address for returning the cart

# Shopping Carts

- The City can impound a Cart if the following conditions are satisfied:
  - The cart is outside the retail establishment; and
  - The cart is not retrieved within 3 business days from the date the owner receives actual notice from the City of its discovery and location. (B&P § 22435.7.)
- The City can immediately impound a cart if:
  - It is in a location that impedes emergency services; or
  - The City provides actual notice within 24 hours following the impound and informs the owner as to its location.

# Shopping Carts

## Mandatory Abandoned Cart Prevention Plan

- Every business with carts must have an approved abandoned cart prevention plan, that includes:
  - Name of business/owner
  - Inventory of carts and cart identification
  - Community outreach (e.g., notice removal unlawful)
  - Loss prevention measures (e.g., wheel locks)
  - Employee training
  - Cart retrieval

# Shopping Carts

## SUMMARY:

It is a crime to remove a cart from a retail establishment, possess a removed cart, abandon a cart, or alter a cart.

The City can impound carts found outside the retail establishment.

All businesses with carts must have an Abandoned Cart Prevention Plan.

# **PENDING LEGISLATION**

# Pending Legislation

## **Assembly Bill 718 (AB 718) – Chu and Gonzalez**

Cities and counties shall not prohibit or punish sleeping or resting in a lawfully parked vehicle. The City may still regulate criminal activity and storage of vehicles on public streets.

# Pending Legislation

## Senate Bill 608 (SB 608) – “Right to Rest Act” - Liu

- Right to use public spaces in the same manner as anyone else
- *Additional right to exercise, in public areas, the same civil and human rights afforded in homes and private places*
- Right to use and move freely in public without time limits
- Right to rest in public spaces
- Right to protect oneself from the elements
- Right to eat, share, accept, or give food in public spaces
- Right to pray, meditate, worship, or practice religion in public
- Right to occupy a car or RV that is legally parked on public property, or parked on private property with the owner’s permission
- Exemption from Penal Code Section 647(e) – misdemeanor for disorderly conduct for lodging in a place without permission

# Pending Legislation

## Senate Bill 608 (SB 608) – “Right to Rest Act”

### Concerns:

- SB 608 expressly grants the right to sue cities for deprivation of those rights, and recovery of attorneys fees and damages, including statutory damages of \$1,000 per violation, and **exemplary damages**.
- Impact on the City’s compliance with the NPDES-MS4 Stormwater Permit.
- Financial burdens
- Extension of rights protected in private spaces into public areas

# CONCLUSION

**Start with Community Consensus.**

↳ **Policy**

↳ **City Ordinances**

↳ **Enforcement**