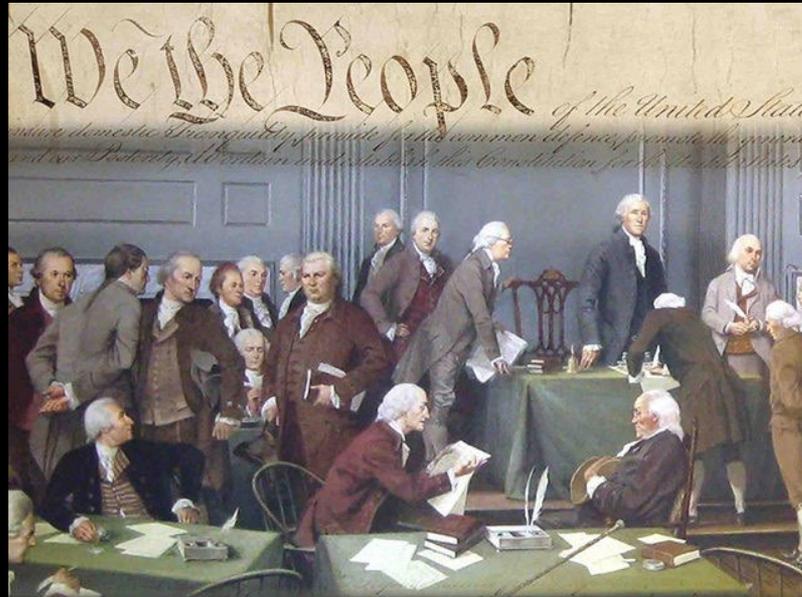




Legal Process for Camp Abatement  
August 20, 2019

# What are the rules?



# Constitutional Rights of All Citizens

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

-Fourth Amendment, U.S. Constitution

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

-Eighth Amendment, U.S. Constitution

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

-Fourteenth Amendment, U.S. Constitution

# Constitutional Rights, Continued

“No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.”

-Article 1, Section 7, Alaska Constitution

“The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

-Article 1, Section 14, Alaska Constitution

“The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.”

-Article 1, Section 22, Alaska Constitution

# What do the Courts Say?



*Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012)

“Violation of a City ordinance does not vitiate the Fourth Amendment’s protection of one’s property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully attended dog without implicating the Fourth Amendment. Indeed, the Supreme Court has recognized protected possessory interests even in contraband . . . .”

“Let us be clear about the property interest at stake in this appeal: The district court did not recognize, and we do not now address, the existence of a constitutionally-protected property right to leave possessions unattended on public sidewalks. Instead, the district court correctly recognized that this case concerns the most basic of property interests encompassed by the due process clause: Appellees’ interest in the continued ownership of their personal possessions. . . . The City demonstrates that it completely misunderstands the role of due process by its contrary suggestion that homeless persons instantly and permanently lose any protected property interest in their possessions by leaving them momentarily unattended in violation of a municipal ordinance.”

*Engle v. Municipality of Anchorage,*  
Case No. 3AN-10-7047 CI



# *Engle v. MOA*

- Five business day notice period is inadequate and violates due process. Court “declines to dictate an appropriate time frame,” but calls attention to comparable provisions of Municipal Code in which the Municipality provides “a minimum of 10 to 15 days before classifying property as abandoned.”
- “Valuable” property requiring storage deemed to include bedrolls, blankets, clothing, toiletry items, food, identification, a means for transporting the property (bag/box/suitcase/cart), family heirlooms, and belongings stored “in such a manner as to suggest ownership.”
- “Protection of the public . . . is outweighed by the more immediate interests of the plaintiffs in not having their personal belongings destroyed.”

*Martin v. City of Boise*, 902 F.3d 1031  
(9th Cir. 2018)



“Our holding is a narrow one. . . . We hold only that 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. That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter”

“Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest 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.”

# *Martin v. Boise* in the Courts

- *Shipp v. Schaaf*, 379 F. Supp. 3d 1033 (N.D. Cal. 2019): 8-hour daytime closure to clean camp does not violate *Martin*.
- *Le Van Hung v. Schaaf*, No. 19-CV-01436-CRB, 2019 WL 1779584 (N.D. Cal. Apr. 23, 2019): “clean and clear” of park does not violate *Martin*.
- *Quintero v. City of Santa Cruz*, No. 5:19-CV-01898-EJD, 2019 WL 1924990 (N.D. Cal. Apr. 30, 2019): where city offered either a shelter bed or a housing voucher to each resident of an encampment, abatement did not violate *Martin*.

# Municipal Code – Abatement Options

- b. A notice of campsite abatement shall identify whether it is a 72-hour notice, ten-day campsite notice, ten-day zone notice, or notice to quit; and the subsequent abatement activities of the municipality shall comply with the respective procedure for removal of a prohibited campsite and the personal property thereon:
- i. 72 hours' notice, protected land use. After verbal notice to an apparent occupant of a prohibited campsite within 100 feet of protected land uses the municipality may post the prohibited campsite with a notice stating all personal property not removed within 72 hours of the date and time the notice is posted may be removed and stored. For the purposes of this section:
    - (A) Protected land uses shall include: paved greenbelt and major trail systems (including but not limited to Coastal, Chester Creek, Ship Creek, Campbell Creek); schools; playgrounds; habilitative care facilities; the Harry J. McDonald Memorial Center; community centers; neighborhood recreation centers; and athletic fields.
    - (B) The separation distance shall be measured from the lot line of the protected land use to the nearest illegal camp structure.
  - ii. 72 hours' notice. The municipality may post a prohibited campsite with a notice stating all personal property not removed within 72 hours of the date and time the notice is posted may be removed and stored.
  - iii. Ten days' notice, campsite abatement. The municipality may post a prohibited campsite with a notice stating all personal property not removed within ten days of the date and time the notice is posted may be removed and disposed of as waste, unless sooner claimed or disposal authorized by the owner. At the expiration of this ten-day period the personal property may be disposed of as waste if no person has either given notice or removed property in accordance with this section.
  - iv. Ten days' notice, zone abatement. The municipality may post a zone or campsite area with notice stating all personal property in or around the posted zone at the end of ten days of the date and time the notice is posted may be removed and disposed of as waste, unless sooner claimed or disposal authorized by the owner.
    - (A) Notice shall be conspicuously posted under the circumstances and describe in detail the zone to be abated. The notices shall be within sight of one another and reasonably maintained for the entire notice period.
    - (B) At the expiration of the notice period any personal property in the zone may be disposed of as waste if no person has either given notice or removed the property in accordance with this section.
    - (C) Tents, structures, and associated personal property placed in the zone after notices were posted shall be stored pursuant to subparagraph B.15.c.
    - (D) Zones shall be contiguous, reasonably compact, identifiable areas with boundaries that are recognizable landmarks, clear transition areas between developed and undeveloped lands, or physical features of development such as roads, rights-of-way cleared of trees, paved trails, utility lines, private property yards or fences, or named structures. At any one time, the municipality shall post no more than ten zones to be abated.
    - (E) If the action to physically remove the campsite is not commenced by the municipality within ten days of the removal date provided in the notice, the municipality shall repost notice before abatement may occur. Nothing shall prohibit the municipality from posting notice that the removal in a zone or campsite area will occur over a period of several days.

h. Exceptions:

- i. Nothing in this section shall prevent a peace officer from conducting an investigation, search, or seizure in a manner otherwise consistent with the state and federal constitutions, or federal, state or local law.
- ii. Nothing in this section shall prevent lawful administrative inspection or entry into a prohibited campsite, nor prevent clean-up of any items not listed in subparagraph c.iii., or of garbage, litter, waste or other unsanitary or hazardous conditions on public land at any time.
- iii. Where exigent circumstances posing a serious risk to human life and safety exist, the abatement of a campsite may proceed without prior notice. Personal property removed under this paragraph shall be stored in accordance with subparagraph B.15.c., to the extent reasonable and feasible under the circumstances.
- iv. When the public land where a prohibited campsite is located is clearly posted with no trespassing signage, no camping signage, or as not being open to the public, including posting of closed hours, the abatement of the campsite may proceed without additional notice, and after the occupants of the prohibited campsite are provided at least one hour to remove their personal property. Personal property removed under this exception may only be disposed of in accordance with [chapter 7.25](#) or subparagraph B.15.c.

