



TO: GCSB Board of Directors

FROM: Peter Kampa, General Manager

DATE: November 15, 2021

SUBJECT: Item 4E. Discussion and Update Regarding Accommodations for the Displacement of the Homeless on District Property

RECOMMENDED ACTION:

This item is intended for information only, and potential Board direction.

BACKGROUND:

At the recent CSDA Annual Conference, a breakout session was held surrounding the accommodations public agencies, such as the District, may have to make for the local homelessness population with regard to allowing them to sleep on District property.

There are many challenges to be faced with appropriately addressing the growing homelessness concern in the state of California. The impacts of this growth are being felt statewide by many public agencies, and the District is no exception. While the District is sympathetic on this issue, the local homeless population does impact the District, specifically within Mary Laveroni Park. The issues that the District has had to face are not uncommon from what other's experiences are; residency taken up in areas making them unusable by other park users, large amounts of trash, health concerns related to the human feces and urine in the park, fire concerns from warming/cooking fires.

For several years now, the District has been working on a park improvement master plan to enhance local recreational opportunities. Ensuring that all park users have access to the park and the proposed new amenities is very important, and why the breakout session was of concern to District management. In order to gain a better understanding of the issue and what the District was legally required to do, it reached out to legal counsel to prepare a memo about the issue. This memo has been attached for the Board's review and staff seeks direction from the Board regarding expectations of management in terms of addressing and/or accommodating homeless on District properties.

ATTACHMENTS:

1. Memorandum Martin v. City of Boise

NEUMILLER & BEARDSLEE
A Professional Corporation

Memorandum

Via E-Mail

TO: Daniel J. Schroeder
FROM: Allison M. Felkins
DATE: October 15, 2021
FILE: 32981-38913
RE: Martin v. City of Boise - Homelessness

Questions Presented

1. What is the holding in *Martin v. City of Boise*?
2. Are special districts required to comply with *Martin v. City of Boise*?
3. If the City of Sonora has homeless facilities, is that close enough to be considered available beds?

Brief Answers

1. In *Martin v. City of Boise*, the court held that an ordinance violates the Eighth Amendment's prohibition against cruel and unusual punishment, to that extent that it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.
2. Special districts are required to comply with *Martin v. City of Boise* because the case does not impose an affirmative duty to provide shelter to homeless individuals, but rather prohibits agencies from criminalizing activities related to homelessness, such as sleeping or lying in public when there are not enough shelter beds available to accommodate all the homeless individuals in an area.
3. In *Martin v. City of Boise*, the court looked to county statistics to determine the ratio of homeless individuals to shelter beds. However, considering the rural nature of Groveland and Tuolumne County, and the lack of public transportation, Sonora shelters likely would not be considered available beds for Groveland.

Discussion:

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

In *Martin v. City of Boise*, the court held that an ordinance violates the Eighth Amendment's prohibition against cruel and unusual punishment, to that extent that it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them. The court reasoned that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status of being. More specifically, it is unconstitutional to criminalize the involuntary act or condition of sitting, sleeping, or

lying outside on public property because it is the unavoidable consequence of one's status of being homeless individuals who cannot obtain shelter.

The Boise law that was challenged, and other laws referenced by the court were absolute prohibitions on camping or sleeping anywhere within a jurisdiction. For example, there were two Boise ordinances at issue, the first ordinance criminalized using "any of the streets, sidewalks, parks or public places as a camping place at any time." The second ordinance criminalized "occupying, lodging, or sleeping in any building, structure or place, whether public or private" without permission. The court found these ordinances to be unconstitutional because individuals were being punished for the act of sleeping, or lying outside when there was no practically available shelter or place to sleep available to them.

However, this does not mean a jurisdiction cannot regulate the act of sleeping or camping outside at all. In *Martin*, the court explicitly states, "[n]or 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."

GCSD can limit when and where individuals may sleep, such as prohibiting sleeping in certain parks, or prohibiting camping in parks at certain times.

2. Are special districts required to comply with *Martin v. City of Boise*?

Martin v. City of Boise involves a city. Cities have police powers and have the ability to open homeless shelters. This raises the question of whether a special district, which does not have police power, nor the ability to open a homeless shelter, has to comply with the *Martin* decision. The *Martin* case does not impose an affirmative duty on an agency to provide sufficient shelter for the homeless. The court holds 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, or sleeping in public. Therefore, special district must comply with the *Martin* decision, and are prohibited from criminalizing sitting, lying, or sleeping in public, when there is a greater number of homeless individuals than the number of available beds in a jurisdiction.

3. If the City of Sonora has homeless facilities, is that close enough to be considered available beds?

In *Martin*, the court looked to the number of shelters and beds in Ada County, the county where the City of Boise is located. There were an estimated 354 beds and 92 overflow mats for homeless individuals, compared to the estimated 867 homeless individuals.

So, if the county statistics for Tuolumne County provide that there are more shelter beds in the county than there are homeless individuals, then this fact may allow

GCSD to enact and enforce an ordinance against sleeping in any public places. However, Ada County is Idaho's most populous county, as compared to Groveland and Tuolumne County, which is a fairly rural area. There is a possibility the court would not look to the entire county when determining the ratio of homeless individuals to available beds. Factors such as whether homeless individuals can easily access shelters in different cities within the county, or easily move around the county may be considered when determining if there are beds available. Thus, the distance to those shelters and available public transportation available to the homeless might be issues a court would look at.

AMF:amf