CITY OF SEQUIM

FACT SHEET

Homelessness, Panhandling, Vagrancy, and Related Issues

SUMMARY

The United States and Washington Supreme Courts have clarified that, while local governments cannot penalize someone based upon a status, such as being poor, unhoused, or mentally ill, they may enforce "generally applicable" laws. This means that a city is able to regulate activities such as camping or parking in public places as long as violations are handled without consideration of the person's status and enforcement does not "criminalize" homelessness or certain other states of being.

BACKGROUND

In June 2024, the United States Supreme Court reversed the 9th Circuit Court of Appeals' 2019 decision in *Martin v. Boise*[1] and held that enforcing generally applicable anti-camping laws does not violate the Eighth Amendment's protections from cruel and unusual punishment. Shortly thereafter, the Washington State Supreme Court similarly decided that there is no "right to reside" in vehicles parked on a public street in violation of a generally applicable parking ordinance. This allows for the enforcement of parking regulations but does not make living in a vehicle parked along public roadways unlawful.

Jurisdictions must continue to be cautious when adopting and enforcing laws or policies that appear to be based upon individuals' mental health, substance use, or inability to afford appro-

[1] The 9th Circuit decision in *Martin v. Boise* held that the 8th Amendment of the U.S. Constitution prohibited punishing an involuntary act or condition if it was an unavoidable consequence of one's status or being, such as sitting, sleeping, or lying on public property. It further stated that homeless individuals could not be compelled to go to shelters where they were required to participate in religious activities in exchange for that shelter.

priate housing. Officers still cannot cite or arrest people simply because they ask for money, live in vehicles, or make us uncomfortable. All of these activities have been found to be covered under fundamental rights and protections granted by the federal and state Constitutions, such as freedom of speech, travel, and assembly; equal protection; and the prohibition against unlawful search and seizure.

Jurisdictions ***can*** enforce laws that apply to everyone equally, including regulating park hours, setting parking limits, and restricting uses of public rights-of-way. To do so, however, local jurisdictions must still take special care when enforcement impacts people who may be unable to pay a fine or impoundment charge.

CURRENT STATUS

While the City can now enforce laws such as "no unauthorized persons allowed in park after posted closing time" or "no parking for longer than four hours without a permit," this means that *everyone* must be subject to being cited for such violations. *It is still unconstitutional to enforce generally applicable laws only against certain people based on status, such as being unhoused.* In addition, the Supreme Court's decision did not change many other laws that impact a local jurisdiction's enforcement actions, such as a violator's ability to pay, notice and storage requirements before and after cleaning up an encampment, and "homestead rights" for persons living in vehicles.

The City of Sequim, along with nearly every municipality in the country, is working hard to address concerns about the unhoused and the mentally ill. This includes finding ways to provide adequate resources in our community, such as food, shelter, medical/mental health services, and treatment for substance use disorders. Local nonprofits, churches, and other agencies are critical to finding meaningful solutions.

The City's desire to help resolve these issues is how the Sequim Health and Housing Collaborative (SHHC) came into existence. SHHC consists of The Sequim Food Bank, Healthy Families, The Free Clinic, United Way of Clallam County, Peninsula Behavioral Health, and Olympic Community Action Programs (OlyCAP). SHHC uses "navigators" who help people access various services, like mental/physical health and treatment, substance use treatment, meals, and shelter. For further information, or if you want to help, please contact any of the SHHC agencies.

SCENARIOS/EXAMPLES

- Police cannot arrest a person who is holding a sign on the sidewalk, highway ramp, or outside a storefront. Protestors, Girl Scouts, Salvation Army and other charitable organizations, and panhandlers all have constitutional protections.
- Police cannot arrest a person for simply sleeping in a park, on a bench or sidewalk, near a storefront, or at a bus stop. A person must be actually obstructing pedestrian traffic or violating generally applicable laws, and even then they may simply be asked to move.
- Police cannot arrest a person for mumbling, yelling, or frightening others unless that person poses a real threat of harm to themselves or others. Police do not have the authority to send a mentally ill person to involuntary treatment.
- Police cannot arrest or cite someone, tow their vehicle, or destroy their belongings simply because a person lives in a vehicle.
- Arresting someone requires actual, and in most cases intentional, unlawful conduct.

SOURCES – CASE LAW

MRSC - Homelessness and the Limits of Enforcement
Homelessness & Housing Toolkit for Cities (mrsc.org)
MRSC - Regulation of Unauthorized Camping, Loitering, and Solicitation of Aid

Please also refer to the City's other Fact Sheets related to this topic.

1972—City's vagrancy laws unconstitutional. Legislative direction to the police "to arrest all suspicious persons would not pass constitutional muster." *Papachristou v. City of Jacksonville*, U.S. Supreme Court.

1983—California statute requiring people who "loiter and wander streets" to provide "credible" identification and justification for their whereabouts to law enforcement when asked is unconstitutional. *Kolender v. Lawson*, U.S. Supreme Court.

2006— Ordinance prohibiting peaceful "asking, begging, pleading, or soliciting" for money or other things of value is unconstitutional. *ACLU of Nevada v. City of Las Vegas*, 9th Circuit Court of Appeals.

2010—Police use of force diminished by fact that person is mentally ill and thus, use of force differs in degree and in kind than that normally used. The "purpose of detaining a mentally ill individual is not to punish him, but to help him." *Bryan v. MacPherson*, 630 F.3d 805, 9th Circuit Court of Appeals.

2012—City wrongfully interfered with homeless persons' property, such as legal papers, and shelters, by seizing and destroying that property, violating the 4th and 14th Amendments. *Lavan v. City of Los Angeles,* 9th Circuit Court of Appeals.

2016—City of Lakewood's ordinance prohibiting begging, panhandling at freeway on-ramps and major intersections is unconstitutional. "The First Amendment protects 'charitable appeals for funds,' including appeals in the form of begging or panhandling." *City of Lakewood v. Willis,* Washington State Supreme Court.

2021—Vehicles used as a residence are protected under the Homestead Act. If a vehicle "serves as the owner's principal residence, the City may not withhold the vehicle from the owner under threat of forced sale." Impound fines and fees are subject to review for "excessive fines" prohibited by the 8th Amendment. *City of Seattle v. Long,* Washington State Supreme Court.

2024 – Enforcement of generally applicable camping laws do not constitute cruel and unusual punishment in violation of the Eighth Amendment. *City of Grants Pass v. Johnson*, United States Supreme Court. The Washington State Constitution does not protect the right to reside in a vehicle parked on a public street in violation of generally applicable parking ordinances. *Potter v. City of Lacey,* Washington State Supreme Court.