



Right to sleep a fundamental right, says Supreme Court

Dhananjay Mahapatra, TNN Feb 25, 2012, 12.48AM IST

NEW DELHI: The Supreme Court has broadened the ambit of right of life to bring in a citizen's right to sleep peacefully under it. A citizen has a right to sound sleep because it is fundamental to life, the Supreme Court said on Thursday while ruling that the police action on a sleeping crowd at Baba Ramdev's rally at Ramlila Maidan amounted to violation of their crucial right.

"Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril," the court said, terming it as a basic human right.

Authorities have taken steps to protect citizens from being disturbed while they are asleep, like placing curbs on the playing of music late at night. But Tuesday's order elevates right to sleep in the hierarchy of rights and may goad the authorities to protect it.

A bench of Justices B S Chauhan and Swatanter Kumar was unanimous that the police erred gravely by clamping prohibitory orders under Section 144 of Criminal Procedure Code on the night of June 4 when the gathering at Ramdev's yoga camp was sleeping peacefully.

Though Justice Kumar wrote the lead judgment, Justice Chauhan elaborated on sleep as a fundamental right crucial to life and put it on the same plane as right to privacy and right to food, consistently held by the Supreme Court as an inviolable right which was part of right to life under Article 21 of the Constitution.

"Right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink etc," he said while slamming Delhi Police for using unwarranted force on the sleeping crowd, thereby breaching fundamental right to privacy.

But no citizen could claim sleeping to be his fundamental right. "Undoubtedly, reasonable regulation of time, place and manner of the act of sleeping would not violate any constitutional guarantee, for the reason that a person may not claim that sleeping is his fundamental right, and therefore, he has a right to sleep in the premises of the Supreme Court itself or within the precincts of Parliament," Justice Chauhan said.

He said sleep for a human being was a basic necessity and not a luxury. "If this sleep is disturbed, the mind gets disoriented and it disrupts the health cycle. If this disruption is brought about in odd hours preventing an individual from getting normal sleep, it also causes energy misbalance, indigestion and also affects cardiovascular health," the judge said.

"Sleep, therefore, is a self-rejuvenating element of our life cycle and is, therefore, part and parcel of human life. The disruption of sleep is to deprive a person of a basic priority, resulting in adverse metabolic effects," he said.

"To arouse a person suddenly brings about a feeling of shock and numbness. The pressure of a sudden awakening results in almost a void of sensation. Such an action, therefore, does affect the

basic life of an individual," Justice Chauhan said.

Rejecting the justification given by the police that the crowd was planning to disrupt peace, the judge said, "To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person."

Quoting a US court judgment, Justice Chauhan said, "The citizens/persons have a right to leisure; to sleep; not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen."

He said because of this, many countries have clamped complete night curfews at airports (that is, ban on landing and take-off at late night hours), for the reason that the concept of sound sleep had been associated with sound health which is an inseparable facet of Article 21 (right to life) of the Indian Constitution.

dhananjay.mahapatra@timesgroup.com

Sleep deprivation is torture. August 28th, 2009

One of the documents on interrogation techniques released this week in Washington was an internal CIA report that says, that "Sleep deprivation beyond 48 hours is known to produce hallucinations. It can reduce resistance to pain, and it makes people suggestible. **The State Department regularly lists sleep deprivation as a form of torture in its annual report on human rights abuses** ... Andrea Northwood, director of client services at the Center for Victims of Torture says 'It's a primary method that is used around the world because it is effective in breaking people. It is effective because it induces severe harm'. 'It causes people to feel absolutely crazy', she said, 'In many cases, there are lingering effects'.

The AP report says that, "The Obama administration has since rescinded authority for any of the severe methods. Under the rules of the U.S. Army Field Manual, which now governs all interrogations, prisoners must be allowed to sleep at least four hours during every 24-hour period".

Kartikey Shroff is a Senior Lawyer and Advocate of Gujarat High Court and the founder of the law office web www.kartikey.com

India's supreme court says: "Right to sleep is a Fundamental Right. To disturb sleep is a violation of Human Right."

It is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold- blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.

On Oct. 14 2008

the B.C. Supreme Court handed down a landmark decision declaring that, **due to the lack of adequate homeless shelters, it was unconstitutional for the City of Victoria to prevent homeless individuals from erecting temporary structures for protection from the elements.** The ruling culminates a multi-year campaign by David Arthur Johnston to establish the "right to sleep". As the decision is based on an interpretation of Canada's Charter of Rights and Freedoms, the ruling applies to every municipality in Canada. In the wake of the decision, Victoria City Council passed a resolution which stipulates that such shelters must be removed by 7:00 each morning.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Victoria (City) v. Adams,***
2008 BCSC 1363

Date: 20081014
Docket: 05-4999
Registry: Victoria

Between:

The Corporation of the City of Victoria

Plaintiff

And

**Natalie Adams, Yann Chartier, Amber Overall,
Alymanda Wawai, Conrad Fletcher, Sebastien Matte,
Simon Ralph, Heather Turnquist and David Arthur Johnston**

Defendants

And

The Attorney General of British Columbia

Intervener

And

British Columbia Civil Liberties Association

Intervener

Before: The Honourable Madam Justice Ross
Reasons for Judgment

Counsel for the Plaintiff

Guy McDannold

Bruce Jordan

Counsel for the Defendants

Irene C. Faulkner

Catherine J. Boies Parker

Date and Place of Trial:

June 16-19, 2008
Victoria, B.C.

<http://www.courts.gov.bc.ca/jdb-txt/CA/09/05/2009BCCA0563.htm>

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Victoria (City) v. Adams*,
2009 BCCA 563

Date: 20091209
Docket: CA036551

Between:

The Corporation of the City of Victoria

Appellant
(Plaintiff)

And

**Natalie Adams, Yann Chartier, Amber Overall, Alymanda Wawai,
Conrad Fletcher, Sebastien Matte, Simon Ralph,
Heather Turnquist and David Arthur Johnston**

Respondents
(Defendants)

And

The Attorney General of British Columbia

Intervenor

And

British Columbia Civil Liberties Association

Intervenor

And

The Poverty and Human Rights Centre

Intervenor

And

Pivot Legal Society

Intervenor

And

The Union of British Columbia Municipalities

Intervenor

Before: The Honourable Madam Justice Levine
The Honourable Madam Justice Neilson

The Honourable Mr. Justice Groberman

On appeal from the Supreme Court of British Columbia
Victoria Registry, October 14, 2008,
Victoria (City) v. Adams,
2008 BCSC 1363 and 2009 BCSC 1043, Docket 05 4999

Introduction

[1] This appeal addresses a narrow issue: when homeless people are not prohibited from sleeping in public parks, and the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from erecting any form of temporary overhead shelter at night – including tents, tarps attached to trees, boxes or other structure – violate their constitutional rights to life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*?

[2] This was the question ultimately adjudicated by a Supreme Court justice, following protracted proceedings, after 70 homeless people set up a “tent city” in a public park in the City of Victoria known as Cridge Park. She declared unconstitutional those portions of the City’s parks and streets bylaws that prohibited homeless people who were legally sleeping in parks from erecting temporary overhead shelter in the form of tents, tarps attached to trees, and cardboard boxes. This is the City’s appeal from that order.

[3] The trial judge described the litigation, quoting Senior District Judge Atkins in *Pottinger v. City of Miami*, 810 F. Supp. 1551 at 1554 (S.D. Fla. 1992), as:

... an inevitable conflict between the need of homeless individuals to perform essential, life-sustaining acts in public and the responsibility of the government to maintain orderly, aesthetically pleasing public parks and streets.

[4] The conflict between “essential, life-sustaining acts” and the “responsibility of the government” aptly focuses the issues in this case. The claims of the homeless people recognized by the trial judge have a narrow compass in absolute terms – they are the right to cover themselves with the most rudimentary form of shelter while sleeping overnight in a public place, when there are not enough shelter spaces available to accommodate all of the City’s homeless. The City, on the other hand, bears the

responsibility to the public to preserve public places for the use of all, and of necessity focuses on the wide public impact of any use of public places for living accommodation. The constitutional context applies the most lofty of guaranteed human rights – the rights to life, liberty and security of the person – to the needs of some of the most vulnerable members of our society for one of the most basic of human needs, shelter. Thus, though the trial judge's decision in this case is narrow in scope, it takes on wide meaning and implications for all.

[5] The trial judge declared that the City's parks and streets bylaws that prohibit homeless people from erecting temporary shelter violate s. 7 and are not "saved" by s. 1 of the *Charter*, and are "of no force and effect insofar and only insofar as they apply to prevent homeless people from erecting temporary shelter" (at para. 239). The effect of the order is to allow homeless persons to erect temporary overhead shelter while sleeping outside in City parks and streets.

The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter

The landmark victory in the 1979 lawsuit *Callahan v. Carey* paved the way for further legal victories that ensured the right to shelter for homeless men, women, children, and families in New York City.

Callahan v. Carey

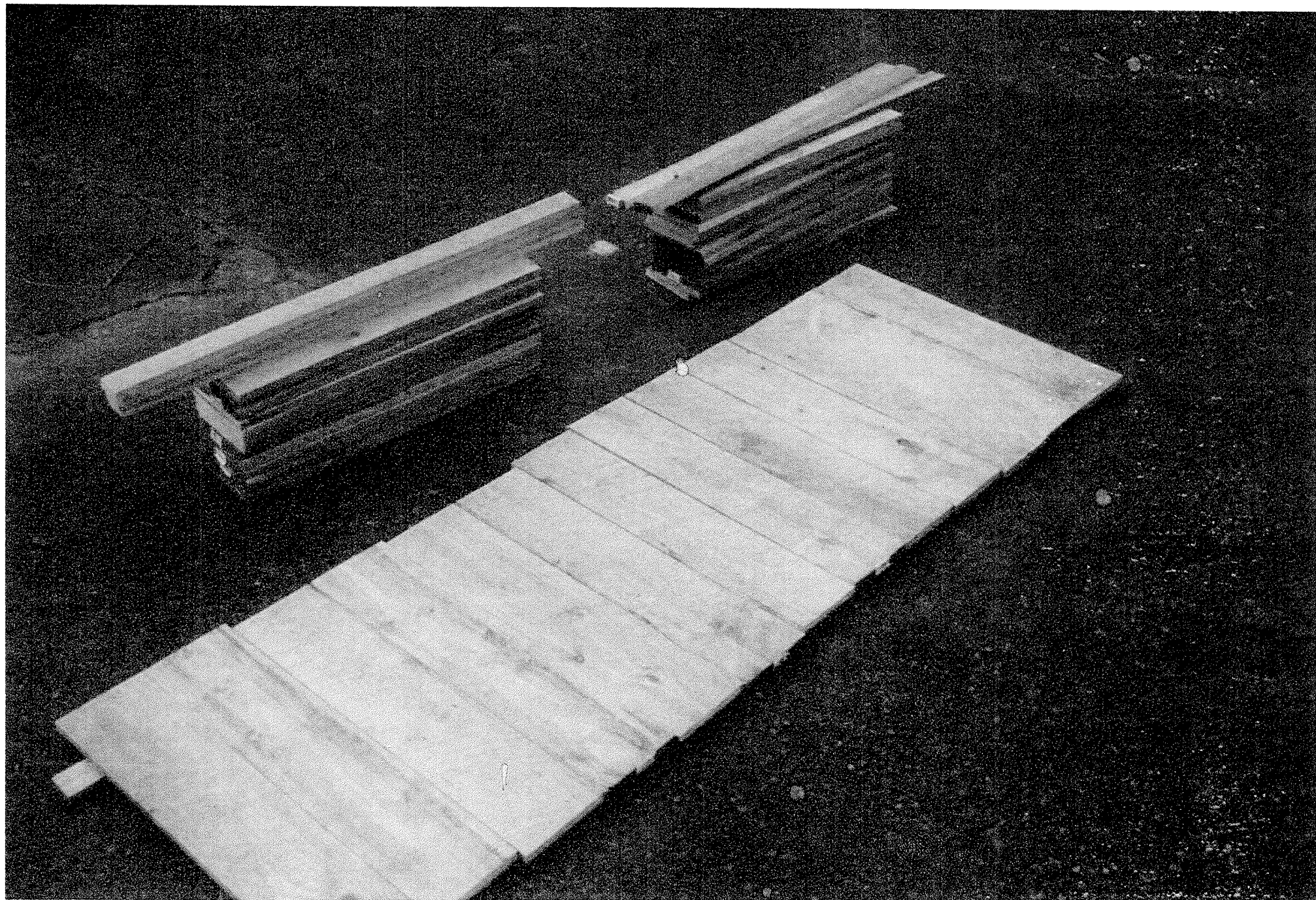
When modern homelessness first emerged in the late 1970s, thousands of homeless New Yorkers were forced to fend for themselves on the streets, and many died or suffered terrible injuries. In 1979 a lawyer named Robert Hayes, who co-founded Coalition for the Homeless, brought a class action lawsuit in New York State Supreme Court against the City and State called *Callahan v. Carey*, arguing that a constitutional right to shelter existed in New York. In particular, the lawsuit pointed to Article XVII of the New York State Constitution, which declares that "the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...."

The Coalition brought the lawsuit on behalf of all homeless men in New York City. The lead plaintiff in the lawsuit, Robert Callahan, was a homeless man suffering from chronic alcoholism whom Hayes had discovered sleeping on the streets in the Bowery section of Manhattan.

On December 5, 1979, the New York State Supreme Court ordered the City and State to provide shelter for homeless men in a landmark decision that cited Article XVII of the New York State Constitution.

In August 1981, after nearly two years of intensive negotiations between the plaintiffs and the government defendants, *Callahan v. Carey* was settled as a consent decree. By entering into the decree, the City and State agreed to provide shelter and board to all homeless men who met the need standard for welfare or who were homeless "by reason of physical, mental, or social dysfunction." Thus the decree established a right to shelter for all homeless men in New York City, and also detailed the minimum standards which the City and State must maintain in shelters, including basic health and safety standards. In addition, Coalition for the Homeless was appointed monitor of shelters for homeless adults.

Excerpted from: <http://www.coalitionforthehomeless.org/pages/the-callahan-legacy-callahan-v.-carey-and-the-legal-right-to-shelter>



Chapter 14A.50 Conduct Prohibited on Public Property

14A.50.020 Camping Prohibited on Public Property and Public Rights of Way.

A. As used in this Section:

1. "To camp" means to set up, or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live.

2. "Campsite" means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

B. It is unlawful for any person to camp in or upon any public property or public right of way, unless otherwise specifically authorized by this Code or by declaration by the Mayor in emergency circumstances.

C. The violation of this Section is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment for a period not to exceed 30 days or both.

14A.50.050 Erecting Permanent or Temporary Structures on Public Property or Public Rights of Way.

A. It shall be unlawful to erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material(s) in or upon non-park public property or public right-of-way without a permit or other authorization from the City.

B. In addition to other remedies provided by law, such an obstruction is hereby declared to be a public nuisance. The City Engineer, City Traffic Engineer, or Chief of Police may summarily abate any such obstruction, or the obstruction may be abated as prescribed in Chapter 29.60 of this Code.

C. The provisions of this Section do not apply to merchandise in the course of lawful receipt or delivery, unless that merchandise remains upon the public right of way for a period longer than 2 hours, whereupon the provisions of this Section apply.

D. The provisions of this Section do not apply to depositing material in public right-of-way for less than 2 hours, unless the material is deposited with the intent to interfere with free passage or to block or attempt to block or interfere with any persons(s) using the right-of-way.

Chapter 29.10 Definitions

29.10.020 Definitions.

(Amended by Ordinance Nos. 173248, 173270, 174265, 176381, 176955, 180330, 181699, 182488 and 183534, effective July 1, 2010.) The definitions of words with specific meaning in this Title are as follows:

000. Structure. That which is built or constructed, an edifice or building of any kind, or any piece or work artificially built up or composed of parts joined together in some definite manner.

Oregon Revised Statutes - 2011

Chapters 431 - 470

446.265 Transitional housing accommodations; regulation and limitations; definition. (1) A municipality may approve the establishment of a campground inside an urban growth boundary to be used for providing transitional housing accommodations. The accommodations may consist of separate facilities, in the form of yurts, for use as living units by one or more individuals or by families. The person establishing the accommodations may provide access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities. The accommodations shall provide parking facilities and walkways.

(2) Transitional housing accommodations described under subsection (1) of this section shall be limited to persons who lack permanent shelter and cannot be placed in other low income housing. A municipality may limit the maximum amount of time that an individual or a family may use the accommodations.

(3) Campgrounds providing transitional housing accommodations described under this section may be operated by private persons or nonprofit organizations. The shared facilities of the campgrounds are subject to regulation under the recreation park specialty code described under ORS 446.310 to 446.350. The transitional housing accommodations are not subject to ORS chapter 90.

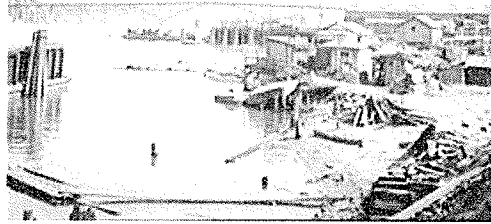
(4) To the extent deemed relevant by the Department of Consumer and Business Services, the construction and installation of yurts on campgrounds used for providing transitional housing accommodations established under this section is subject to the manufactured structures specialty code described in ORS 446.155. Transitional housing accommodations not appurtenant to a yurt are subject to regulation as provided under subsection (3) of this section.

(5) Campgrounds established for providing transitional housing accommodations shall not be allowed on more than two parcels in a municipality. In approving the use of parcels for a campground, the municipality shall give preference to locations that have access to grocery stores and public transit services.

(6) As used in this section, "yurt" means a round, domed tent of canvas or other weather resistant material, having a rigid framework, wooden floor, one or more windows or skylights and that may have plumbing, electrical service or heat. [1999 c.758 §6]

Hooverville

From Wikipedia



Hooverville in Portland, Oregon

A '**Hooverville**' was the popular name for shanty towns built by homeless people during the Great Depression. They were named after the President of the United States at the time, Herbert Hoover, because he allegedly let the nation slide into depression. The term was coined by Charles Michelson, publicity chief of the Democratic National Committee.

Background

Homelessness was present before the Great Depression, and hobos and tramps were common sights in the 1920s, but the economic downturn increased their numbers and concentrated them in urban settlements close to soup kitchens run by charities. These settlements were often formed on empty land and generally consisted of tents and small shacks. Authorities did not officially recognize these Hoovervilles and occasionally removed the occupants for trespassing on private lands, but they were frequently tolerated or ignored out of necessity. The New Deal enacted special relief programs aimed at the homeless under the Federal Transient Service (FTS), which operated from 1933-35.

Some of the men who were forced to live in these conditions possessed construction skills and were able to build their houses out of stone. Most people, however, resorted to building their residences out of wood from crates, cardboard, scraps of metal, or whatever materials were available to them. They usually had a small stove, bedding and a couple of simple cooking implements.

**PORTLAND CITY COUNCIL
COMMUNICATION REQUEST
Wednesday Council Meeting 9:30 AM**

Council Meeting Date: 3-14-12

Today's Date 3-15-12

AUDITOR 02/15/12 AM 9:58

Name Moses WROSEN

Address 10227 N Macrum

Telephone (503) 453-9937 Email MACRUMLOOSENUT@YAHOO.COM

Reason for the request:

ADDRESS COUNCIL REGARDING
THE FUNDAMENTAL HUMAN RIGHT OF SAFE
AND WARM SLEEP

Moses W. Wrosen
(signed)

- Give your request to the Council Clerk's office by Thursday at 5:00 pm to sign up for the following Wednesday Meeting. Holiday deadline schedule is Wednesday at 5:00 pm. (See contact information below.)
- You will be placed on the Wednesday Agenda as a "Communication." Communications are the first item on the Agenda and are taken promptly at 9:30 a.m. A total of five Communications may be scheduled. Individuals must schedule their own Communication.
- You will have 3 minutes to speak and may also submit written testimony before or at the meeting.

Thank you for being an active participant in your City government.

Contact Information:

Karla Moore-Love, City Council Clerk
1221 SW 4th Ave, Room 140
Portland, OR 97204-1900
(503) 823-4086 Fax (503) 823-4571
email: Karla.Moore-Love@portlandoregon.gov

Sue Parsons, Council Clerk Assistant
1221 SW 4th Ave., Room 140
Portland, OR 97204-1900
(503) 823-4085 Fax (503) 823-4571
email: Susan.Parsons@portlandoregon.gov


Request of Moses Wrosen to address Council regarding the fundamental human
right of safe and warm sleep (Communication)

MAR 14 2012

PLACED ON FILE

Filed MAR 09 2012

LaVonne Griffin-Valade
Auditor of the City of Portland

By  _____

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Leonard		
Adams		