

LETTER OF UNDERSTANDING – OR DEPT OF JUSTICE

SWORN PERSONNEL OVERTIME FOR CANNABIS ERADICATION & SUPPRESSION

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

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ADDRESS AND ZIP CODE

Email

✓ Joseph Gordon		
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Submitted by
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9/4/2013

www.cldc.org

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City Upholds First Amendment Rights at Free Speech Plaza: Curfew Unconstitutional

EUGENE, OR: Eugene Municipal Court Judge Karen Stenard issued a ruling upholding the rights of protestors to hold 24-hour protests at the Wayne Morse Free Speech Plaza in downtown Eugene. The case arose after former defiled Lane County Administrator Liane Richardson secretly amended a Lane County administrative regulation that imposes a nighttime curfew eliminating the right to assemble and protest at a traditional public forum. On January 7, 2013, twenty-one protestors took a stand to challenge the unconstitutional curfew and were arrested by Eugene Police. Lawyers with the Civil Liberties Defense Center filed motions with the Court challenging the constitutionality of the curfew and subsequent arrest of the activists.

The City Judge noted that it was unusual to have a situation where Lane County was ordering City Police to arrest people based on a County regulation. As argued by the CLDC, the court ruled: "The Court finds that when balancing the stated governmental interest with the impact it has on the right to assemble, the curfew does not withstand constitutional scrutiny when applying even the least stringent, content and speech neutral analysis to this group of defendants.... [E]nforcement of a curfew which closes the very area that the County designated "Free Speech Plaza" (much of which is barely distinguishable from a sidewalk) for a third of every day significantly limited Defendants' rights to speech and assembly, regardless of the curfew's intent."

The Court declined to make a broader ruling that would have struck the entire Lane County rule as unconstitutional due to the concern that it did not have jurisdiction as a City Court to invalidate a County regulation. However, the ruling makes it clear that the County cannot evict or arrest lawful protestors from the Plaza at night.

"We are hopeful that these rulings send a clear message to Lane County that they cannot eliminate constitutional rights because they do not like the inconvenience that protest sometimes brings about. Democracy and free speech can be acrimonious at times, but that does not give the government the right to silence the people. The Constitution is not suspended from 11pm to 6am and curfews are a serious restriction upon the rights guaranteed to all of us." Said lead attorney Lauren Regan of the Civil Liberties Defense Center. "We look forward to working with the acting County administrator to reinstate and reinvigorate the First Amendment rights of everyone in this community in an attempt to avoid another lawsuit against the County. This is not a community that will tolerate censorship, and with the help of amazing activists like these, the CLDC will assist in zealously defending the rights of the people to exercise First Amendment rights to the broadest extent possible." Regan added.

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SUBMITTED BY
MARK HOFHEINS
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PORTLAND CITY COUNCIL MEETING RECORD- SEPTEMBER 4, 2013- OCCUPY LIASON MARK J HOFHEINS JR-

Points of Discussion/ Overtime for cannabis sanctions/ Misappropriated Funding/ Alternative uses

- 1) Proper police training in how to appropriately handle the transient/handicap/ADA persons;
- 2) Independent investigations for abuse of power and excessive force under the color of law;
- 3) Constitutional Law and the recognition therein through proper ethics;
- 4) Example in bicycle officer Sanders and the officer that was bitten after invading a sleeping transients space and inciting the animal to it animalistic instinct of protection of its owner by shoving a camera into its comfort and safety zone as only a few of the most obvious and recent events to unfold;
- 5) Locker system, to be discussed further in depth September Twenty Fifth, 2013, with prayer for outreach discussion prior to that date, Commissioner Nick Fish being supportive of the proposal even as it has only been communicated verbally.
- 6) Finding places For transient individuals to safely sleep instead of being forced into "unsafe and inhumane" places where the City is forcing the health and life of the transient to be at risk by poisoning them with direct contact with fossil fumes and carbon dioxide, known to kill rapidly, also known to kill in suicide attempts and incidental deaths in children and families in the middle and upper classes even,
- 7) Henceforth with this knowledge, I implore the council to acknowledge the City's, Bureau of Police included are "Causing immediate and forceful harm, intentional murder, and/or engaging in assisted suicide!"
- 8) Tents are one safeguard against some, but not all! [present Eugene Ruling] *ATTACHED
- 9) Repealing the city ordinance that is subjectively discriminative against The Transient Class in particular!

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

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.

11) Camping ban Re-enacted after being overturned?

Camping ban overturned

Landmark decision by Multnomah County Judge Stephen Gallagher overturns Portland's nineteen-year-old anti-camping ordinance

Portland, Oregon

October 2000

By Remona Cowles

Homeless people in Portland, Oregon have finally received much needed relief. For nineteen years Portland's Anti-Camping Ordinance made it criminal to sleep outdoors—in public, on private property, or in vehicles. The ordinance was ruled unconstitutional on September 27 by Multnomah County Judge Stephen Gallagher, who felt it was cruel and unusual punishment.

Judge Gallagher found the ordinance to be in violation of the United States Constitution because those without homes are punished for the status of being homeless. The ordinance was also found to be in violation of equal protection and the fundamental right to travel by denying homeless people the opportunity to possess their belongings with them while traveling throughout the city.

The case was brought by the State of Oregon against Norman Wickes, Sr. and his son, Norman Wickes, Jr., who had been living in their vehicle, parked nightly at various locations in Portland to sleep. Portland police had, over a short period of time, given the Wickes over forty citations for camping in their vehicle. Interestingly, it would have been legal for the Wickes to sleep in their truck had they had a home to live in. This disparity is one of the issues that made Judge Gallagher's ruling possible.

Judge Gallagher spoke eloquently and thoughtfully on behalf of homeless people. Demonstrating a keen knowledge of the issues faced by homeless people in their daily struggle to survive, Judge Gallagher offered a point by point explanation for his ruling.

In response to the question whether enforcement of the ordinance constitutes cruel and unusual punishment, and is therefore unconstitutional under the Oregon and United States Constitutions, Judge Gallagher wrote, "The court finds it impossible to separate the fact of being homeless from the necessary 'acts' that go with it, such as sleeping. The act of sleeping or eating in a shelter away from the elements cannot be considered intentional, avoidable conduct. This conduct is ordinary activity required to sustain life. Due to the fact that they are homeless, persons seek out shelter to perform these daily routines. Yet the City considers this location to be a campsite if the homeless person maintains any bedding. The homeless are being punished for behavior indistinguishable from the mere fact that they are homeless. Therefore, those without homes are being punished for the status of being homeless...This court does not accept the notion that the life decisions of an individual, albeit seemingly voluntary decisions, necessarily deprive that person of the status of being homeless."

Judge Gallagher also found that the ordinance burdens homeless people's fundamental right to travel. "The homeless carry their belongings with them

or store them in a location to which they have access. Those belongings necessarily include the tools required to participate in the basic necessities of life—bedding for sleeping and a stove for food preparation. If a homeless person is traveling through our city, or traveling within our city looking for work and a permanent place to reside, he is not allowed to remain in his vehicle or lean-to without being in violation of the ordinance. By denying defendants the ability to partake in simple necessities of life, the ordinance restricts their freedom of movement. Homeless choosing to travel through our city are not allowed to stop without being in violation. Those homeless who are trying to make a life in the city are in constant violation."

In response to the City's argument that homeless people camping pose health and safety dangers, Judge Gallagher argued, "Although protecting the health and safety of the citizens of this city may very well be compelling, there are less restrictive means to address the problem. The Wickes found themselves living out of their car due to their inability to find adequate and affordable housing. Rather than slapping a homeless person with a citation for maintaining life in a public place, the city could first explore avenues of providing sufficient housing for all individuals. Adequate services should also be in place to help individuals find housing and jobs...There are a great number of alternatives regarding housing, job training, mental health services, etc., that should be put in place to both minimize the effect of homelessness, and eliminate homelessness altogether, before our city resorts to arresting individuals for sleeping and eating in the only locations available to them."

Judge Gallagher concluded, "Individuals without a home must carry what belongings are necessary to survive, such as bedding and food, with them at all times, or store them in a place to which they have access. The place where these belongings are kept is by law deemed to be a campsite. Every time a homeless person remains at that location, he is in violation...Those without homes are impermissibly punished for the status of being homeless. Performing such life sustaining acts as sleeping with bedding is a necessary action for someone without a home. This act of sleeping is not conduct that can be separated from the fact of the individual's status of being homeless. Portland's anti-camping ordinance punishes the status of being homeless."

Understandably, Mr. Wickes Sr. responded to Judge Gallagher's ruling with elation. "It was absolutely necessary to get that mean-spirited law overturned. Don't stereotype those who are homeless. I wanted to do it the right way. I choose not to commit crimes to resolve my situation. I hung on. A lot of people get worn out—I was on the verge of being worn out, but I endured and prayed. My son and I—we have moxy. I would suggest Mayor Vera Katz be homeless for two or three months to see what it feels like to not be able to bathe when you need to, change your clothes, go to the restroom, or any of the normal things that everybody takes for granted. Being homeless is not a crime, and it's demeaning to the police who are forced to spend time they could use to fight real crime to roust homeless people. Mayor Vera Katz needs to leave it alone and accept the defeat. This country was founded by people who camped and now we're too good for that. Judge Gallagher made the right decision."

With the help of Northwest Pilot Projects, JOIN, and the generosity of Durham Construction Co., Mr. Wickes, Sr. and his son are now housed. Wickes, Jr. is now attending school, where he is studying computer technology in a special program that will be followed by a new job in the local computer industry.

Expressing his relief, Mr. Wickes commented, "You know what I did last night? I took a bubble bath—just because I could. It felt great!"

Mayor Vera Katz responded with frustration to Judge Gallagher's ruling, promising to use other violations to continue the City's efforts to keep homeless people off the streets. Some of the violations often used to keep homeless people on the move are trespassing, loitering, and public nuisance. An increase in these kinds of violations could be expected if Mayor Katz's strategy is put into effect. Mayor Katz hopes that the District Attorney will appeal the decision, and that the ordinance can continue to be enforced until the case is heard again—a process that may take as long as a year.

The decision of some homeless people to remain living outdoors, when examined more closely, is not a decision to be homeless, but rather a decision to stop head-butting the brick wall of barriers to obtaining a home in a housing market that has no mercy. This ruling may mean the dissolution of some of those barriers. Social service workers who help homeless people find housing are hoping this will mean that their clients' criminal records will be cleared of anti-camping violations—ironically, one of the many barriers to obtaining housing for their clients.

For the full article and related information, go to:
<http://www.streetroot.org/archives/2000/10/gallagherruling.html>