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Los Angeles ruling could jeopardize Palo Alto vehicle-dwelling law

Judges strike down ordinance similar to Palo Alto's

by Sue Dremann

The U.S. District Court of Appeals has ruled against a Los Angeles vehicle-habitation law similar to Palo Alto's, saying that it opens the door to discriminatory enforcement against the homeless and the poor.

Ninth Circuit Court Judges Harry Pregerson, Marsha Berzon and Morgan Christen filed their ruling on Thursday, June 19, with Pregerson writing the opinion in *Cheyenne Desertrain v. City of Los Angeles*. The court found the vehicle-habitation law violates the due process clause of the Fourteenth Amendment for being unconstitutionally vague.

The City of Palo Alto in December [postponed implementing](#) the controversial vehicle-habitation ordinance it had [approved in August 2013](#) because of the pending Desertrain case. The city put off any decision until the case's final disposition or at least until the end of 2014.

Now, city officials are faced with figuring out their next steps in the wake of this week's ruling. City Attorney Molly Stump said her office is in the process of reviewing the Desertrain ruling and that staff will take their recommendations to the City Council sometime between the council's summer hiatus and the end of the year.

But Owen Byrd, a former planning commissioner and board member of the Downtown Streets Team, said, "Discrimination against any group -- especially the poor -- has no place in Palo Alto. I hope this legal decision has policy impacts and persuades the City Council to remove the vehicle-habitation ordinance from our municipal code."

The Desertrain case took aim at the 1983 City of Los Angeles municipal code, which was being used to arrest homeless vehicle dwellers in Venice. Officers of the Venice Homelessness Task Force were to arrest people using their automobiles as "living quarters" and to distribute information to the dwellers concerning social services and shelter providers.

An individual did not need to be sleeping in the vehicle to be arrested; officers were to look for vehicles containing possessions normally found in a home: food, bedding, clothing, medicine and basic necessities. Officers gave a warning the first time, a citation the second and arrested the person the third time, according to the court opinion.

The four plaintiffs in Desertrain were variously subjected to harassment and arrest and had their vehicles impounded, according to the court. They were forced to sleep on the street in the rain, to come up with money to get their vehicles out of impoundment or to put their belongings in a rented storage locker to avoid being further cited or arrested.

The plaintiffs include a woman with epilepsy who had suffered a significant head injury and could no longer work because of the accident, a man with congestive heart failure that caused fluid buildup in his legs preventing him from walking long distances and a former businessman who lost his firm and home after the 2007 economic downturn and subsequently suffered from severe anxiety and depression.

The Los Angeles statute was vague, the appeals judges found, and it may authorize or encourage arbitrary and discriminatory enforcement.

The statute "offers no guidance as to what conduct it prohibits, inducing precisely this type of impermissible speculation and uncertainty," the court noted. Instead, the plaintiffs are left guessing as to what behavior would subject them to citation or arrest, the court said.

"Is it permissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain? These are all actions plaintiffs were taking when arrested for violation of the ordinance, all of which are otherwise perfectly legal," Justice Pregerson wrote. "And despite the plaintiffs' repeated attempts to comply with (the law), there appears to be nothing they can do to avoid violating the statute short of discarding all of their possessions nor their vehicles, or leaving Los Angeles entirely.

"All in all, this broad and cryptic statute criminalizes innocent behavior, making it impossible for citizens to know how to keep their conduct within the pale."

The Los Angeles ordinance presented the same vagueness concerns as an anti-loitering ordinance held unconstitutional by the U.S. Supreme Court in 1999, the court wrote.

"It is difficult to imagine how anyone loading up his or her car with personal belongings, perhaps to go on a camping trip or to donate household wares to the Salvation Army, and parking briefly on a Los Angeles street, would know if he or she was violating the statute. What's worse, even avoiding parking does not seem to be sufficient," the court noted.

One of the plaintiffs was not even parked -- she was driving her RV through Venice when she was pulled over and cited, Pregerson wrote.

Palo Alto's vehicle-habitation ban closely mirrors that of Los Angeles in its vagueness, said William Safford of Palo Alto law firm Safford Legal.

The Los Angeles law states that "no person shall use a vehicle parked or standing on any city street, or upon any parking lot owned by the City of Los Angeles ... as living quarters either overnight, day-by-day, or otherwise."

Palo Alto's vehicle habitation ordinance states: "It is unlawful for any person to use, occupy, or permit the use or occupancy of, any vehicle for human habitation on or in any street, park, alley, public parking lot or other public way."

The ordinance further defines human habitation as "the use of a vehicle for a dwelling place, including but not limited to, sleeping, eating or resting, either single or in groups."

Los Angeles City Attorney Mike Feuer isn't going any further through the courts, although there is still an option to approach the full appeals court for a hearing.

"In the wake of the court's ruling today, I will work with other city leaders to craft a constitutional ordinance that respects both the rights and needs of homeless individuals and protects the quality of life in our neighborhoods," he said in a statement. "I believe this approach is much more constructive than continuing to litigate the legality of the old ordinance."

"More broadly, the persistence of homelessness continues to disgrace not only our city, but our region and our country as a whole. We need to make a break from the past, recognize that the civil and criminal justice systems alone can't effectively address homelessness, and commit ourselves to grappling with the issues that create homelessness in the first place. We've only begun to make strides in that direction, and it will take collective leadership to make meaningful progress," Feuer stated.

William Abrams, and attorney and managing partner of the Palo Alto office of Steptoe and Johnson and consulting professor at Stanford University who represents Palo Alto's vehicle dwellers, said he was heartened by the ruling and Feuer's statement.

"The L.A. ordinance is very similar to Palo Alto's ordinance. I think (the ruling) will apply completely if we were to have to go to court," he said. "We would invalidate the Palo Alto law by the reasoning of Judge Pregerson and his opinion."

He added that he hopes to avoid litigation and will be talking with Stump in the coming days about the ruling.

"I'm hopeful that we can have a very productive discussion with the city attorney's office," he said.

The statute doesn't criminalize behavior, but rather status, Abrams noted. The police power of the local government has laws in place to address disturbances, health-related issues or threats -- one's conduct -- but that does not include one's status, he said.

Safford also said he represents clients whose stories mirror the plaintiffs' in the Desertrain case.

He said that one aspect of the judges' ruling jumped out to him: that the Los Angeles law promotes arbitrary enforcement that targets the homeless.

The court quoted from a 1972 Supreme Court ruling in the case of *Papachristou v. Jacksonville*, which held that a city ordinance prohibiting "vagrancy" was unconstitutionally vague. If a statute provides "no standards governing the exercise of ... discretion," it becomes "a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure," the Supreme Court justices wrote.

During a number of discussions, Palo Alto officials have used those same words, referring to the ordinance as being a "tool for law enforcement" to use when rousting vehicle dwellers, Safford said.

"If you hand somebody a tool and the purpose of it is to run off undesirables, they're going to use it to run off undesirables," he said.

In the Desertrain case, the judges wrote: "Arbitrary and discriminatory enforcement is exactly what has occurred here. The law is broad enough to cover any driver in Los Angeles who eats food or transports personal belongings in his or her vehicle. Yet it appears to be applied only to the homeless."

Safford agreed.

"When grandma and grandpa are traveling to Seattle in their RV and they pass through Palo Alto, they will be violating the law," he said. "When I stop to get a cheeseburger and eat in my car, I'm violating the law. But the reality is that grandma and grandpa are not going to be prosecuted."

Chuck Jagoda, a Palo Alto vehicle-habitation advocate who has lived in his car, said Palo Alto police have been kind, avoiding any hassling of homeless people in the wake of the ban's passage. That has not been the case in some other local cities, he said.

"Homelessness is basically is a problem of lack of resources, and a ban puts people who are already in financial peril only more so, as the court has pointed out.

"Subtracting resources from the situation is evidence of a lack of understanding of the on-the-ground reality or such strong fear as to react madly -- without forethought or consideration," he said.

The Palo Alto City Council "deserves credit for their restraint in staying the enforcement of the dreaded and draconian vehicle-habitation ban they passed 7-2 last Aug. 5," he added. But Jagoda would have liked the council to not have enacted the ordinance in the first place, he said.

"As the Desertrain decision makes clear, it would be discriminatory to enforce rules against homeless people that are not enforced against home dwellers.

"It is unfortunate that some members of the city council saw fit to engage in such discrimination in passing the vehicle-habitation ordinance last August. They will show how they now feel by their actions in the near future. They will either rescind the ordinance or seek to enforce it. I cannot imagine they will choose the latter course. That would be most unfortunate," he said.

Photos



Cars, campers and RV's parked at Cubberley Community Center after the City Council voted to ban overnight parking at the center in August 2013. Photo by Veronica Weber.