

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: June 3, 2022
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Homelessness Lawsuits Summary

Attached for your use is a summary outlining pending and settled litigation that affect the City's response to homelessness. It describes the existing settlements and pending litigation in *Bloom v. City of San Diego*, as well as recent case law from the Ninth Circuit Court of Appeals. The summary may be made available to the public. We are available to provide more detailed information on these cases, including copies of the settlement agreements and hope these materials are helpful to you.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Heather M. Ferbert

Heather M. Ferbert
Chief Deputy City Attorney

HMF:sc
MS-2022-6
Doc. No.: 2997898
Attachment: Homelessness Lawsuits

cc: Charles Modica, Independent Budget Analyst

Homelessness Lawsuits – Summary [05/31/2022]

I. Spencer Settlement

1. The 2007 *Spencer* settlement concerns the City's enforcement of an illegal lodging law (Cal. Penal Code § 647(e), formerly 647(j)).
2. The lawsuit claimed the City violated the rights of homeless individuals by enforcing illegal lodging due to the involuntariness of homelessness and the necessary human acts of sitting down, lying down, and sleeping.
3. City-wide settlement resulted in the City agreeing not to enforce illegal lodging between 9:00 p.m. and 5:30 a.m. city-wide.
4. In 2010, the settlement was modified to allow enforcement in downtown area between 9:00 p.m. and 5:30 a.m. **IF:**
 - a. SDPD responds to a complaint;
 - b. SDPD confirms there is a bed available within the downtown area;
 - c. SDPD offers the bed to that person; and
 - d. The person refuses to accept the bed.
5. The U.S. District Court has continuing jurisdiction over the case.

II. Isaiah Settlement

1. The 2011 *Isaiah* settlement concerns the City's waste abatement procedures when homeless personal property is involved.
2. The lawsuit claimed the City violated the rights of homeless individuals by: (1) failing to provide adequate prior notice before abatements; and (2) using inadequate procedures for determining which property was waste (disposed immediately) and which is not (stored by the City for 90 days).
3. City-wide settlement includes three main features:
 - a. One-time settlement payment (which has been completed);
 - b. One-year pilot program to house storage bins in the downtown area where homeless individuals could store their personal belongings; and
 - c. Updated City abatement procedures when homeless personal property is involved, including the 72-hour noticing requirement and a detailed property sorting procedure.

4. In 2014, the *Isaiah* settlement was amended to approve separate abatement procedures for Downtown Partnership (Clean & Safe).
5. In 2018, the *Isaiah* settlement was amended to allow a three-hour abatement noticing period when storage space is available at the Sherman Heights storage facility. The City also agreed not to abate between 9:00 p.m. and 5:30 a.m.
6. In 2020, the *Isaiah* settlement was temporarily amended to allow a three-hour noticing period when any storage facility in the downtown area is not full, including storage at City shelters. The amendment expires when the local state of emergency related to Covid-19 terminates.
7. The U.S. District Court has continuing jurisdiction over the case.

III. Arundel Settlement

1. The 2019 *Arundel* settlement concerns enforcement of the City's encroachment ordinance (SDMC § 54.0110). This ordinance generally prohibits storing any object on public property.
2. Similar to *Spencer*, this lawsuit claimed the City violated the rights of homeless individuals when enforcing that law because homeless individuals have no place to put their belongings.
3. The City-wide settlement resulted in the City opening an additional storage facility on Lea Street for individuals to store their personal belongings. The City also agreed to adopt a written procedure for a progressive enforcement model.
4. The U.S. District Court has continuing jurisdiction over the case for an initial period of five years.

IV. Pending Litigation - Bloom

1. Disability Rights California (DRC) and other groups represent eleven homeless individuals, some with disabilities, who live in their RVs and vehicles, and who have sued the City over the City's Oversized Vehicle Ordinance (SDMC § 86.0139(a)) and the Vehicle Habitation Ordinance (SDMC § 83.0137(f)).
2. Plaintiffs allege these ordinances violate the constitutional rights of individuals and the Americans with Disabilities Act. Constitutional issues alleged include the 8th Amendment, right to travel, and equal protection. The litigation is ongoing.
3. The Oversized Vehicle Ordinance (SDMC § 86.0139(a)) prohibits parking of oversized vehicles, non-motorized vehicles, or recreational vehicles on street, park road, or parking lot between 2:00 - 6:00 a.m. and is enforced as a parking citation.
4. The Vehicle Habitation Ordinance (SDMC § 86.0137(f)) prohibits using a vehicle for habitation between the hours of 9:00 p.m. and 6:00 a.m. and prohibits using a vehicle for

habitation all the time within 500 feet of a residence or a school. The Ordinance is subject to progressive enforcement.

V. Martin v. City of Boise, 920 F. 3d 584 (9th Cir. 2018)

1. The City is also subject to federal and state law, including the United States Court of Appeals for the Ninth Circuit's decision in *Martin v. City of Boise*. The court ruled that cities cannot enforce ordinances that impose criminal sanctions against homeless individuals for sleeping outdoors on public property if there is no alternative shelter available to them.
2. The ruling focuses on the availability of "practically available" shelter.

VI. City Programs

1. The City and San Diego Housing Commission operate and administer multiple programs to provide shelter, safe parking lots, personal storage space, and other services to unsheltered individuals and families.
2. More information is available here: <https://www.sdhc.org/homelessness-solutions/city-homeless-shelters-services/>