



ROBERT A. CARMICHAEL | Attorney  
bob@carmichaelclark.com

## MEMORANDUM

**TO:** John Williams, City Administrator  
**FROM:** Robert Carmichael and Luke Phifer  
**DATE:** June 10, 2022  
**SUBJECT:** Proposed Camping Ordinance – Three Options

---

### BACKGROUND

The city is considering adopting an ordinance that would prohibit camping in public spaces. This new ordinance will need to comply with the 9<sup>th</sup> Circuit's *Martin v. City of Boise*<sup>1</sup> decision, which prohibits imposing criminal penalties for sleeping in public spaces on homeless individuals who have no "practically available" means to obtain shelter elsewhere. You provided us with a draft ordinance based on the approach taken by Moses Lake. We made a few revisions and comments in an effort to eliminate arguments it is overbroad. The "Moses Lake" ordinance, with our proposed revisions, accompanies this memo. For comparison only, we are providing two alternatives based on ordinances currently in effect in Mercer Island and Vancouver, using the draft ordinance you provided. A brief overview of each approach is provided below.

### APPROACH 1: IMPOSE ONLY CIVIL PENALTIES (MOSES LAKE)

*Martin* specifically prohibited imposing criminal penalties for sleeping in public on those who lack the means to obtain shelter, so an ordinance that imposes only civil penalties will still be constitutional. The first option attached is based on Moses Lake's current ordinance<sup>2</sup>, which utilizes this approach.

Pros: This approach is straightforward -- it can be enforced uniformly at all times and in all locations, and as revised should pass constitutional muster.

Cons: Because this approach only imposes civil penalties, it may not provide a deterrent in practice. While someone violating the ordinance could be given a fine, there would be no mechanism to remove them if they continued camping. Washington law prohibits imposing penalties on a homeless defendant for failure to pay a legal financial obligation.<sup>3</sup> This means that even if the fine goes unpaid, there would be no means by which the violator could be compelled to leave their campsite.

---

<sup>1</sup> 902 F.3d 1031 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019).

<sup>2</sup> Moses Lake Municipal Code § 9.18.

<sup>3</sup> RCW 10.01.180(c).

## **APPROACH 2: IMPOSE CRIMINAL PENALTIES FOR VIOLATING THE ORDINANCE, BUT LIMITED TO CERTAIN AREAS OF CONCERN WITHIN THE CITY (VANCOUVER)**

This approach, which is based on part of Vancouver's ordinance<sup>4</sup>, complies with *Martin* by only imposing criminal penalties within certain areas of the city. Under this approach, certain public places where camping is of particular concern are identified as "Camping Impact Areas." The current draft includes within this category city parks, public water, wastewater, and stormwater facilities, as well as certain creeks. Other areas could be added, so long as sufficient space is left to reasonably accommodate the needs of the local homeless population.

Imposing criminal penalties in these limited areas provides an effective enforcement mechanism through which violators could be forced to leave their campsite. As currently drafted, civil penalties would remain in effect for camping in all public places that are not Camping Impact Areas.

Pros: Provides an effective enforcement mechanism to remove campers from areas where camping would be particularly problematic.

Cons: Because different penalties are imposed for violations that take place in different areas, enforcement personnel must determine whether the camping is taking place within a Camping Impact Area. Depending on what is included as "Camping Impact Areas" it could be difficult to determine the precise borders of those areas.

## **APPROACH 3: IMPOSE CRIMINAL PENALTIES THROUGHOUT THE CITY, BUT WITH ENFORCEMENT CONTINGENT ON THE AVAILABILITY OF SHELTER SPACE (MERCER ISLAND)**

Criminal penalties may be enforced when there is "practically available" shelter space within the "jurisdiction." Existing court decisions have not clarified how far away an available shelter space can be and still be within the jurisdiction, but Mercer Island's ordinance conditions enforcement on the availability of shelter space in Kirkland and Redmond.<sup>5</sup> Arguably, if shelter space is available in Bellingham, Lynden could enforce a city-wide prohibition on camping in public places, so long as the person camping had sufficient means to access the shelter space.

Nightly capacity figures for the Lighthouse Mission's Base Camp in Bellingham are reported at:

<https://www.thelighthousemission.org/stories-and-info/nightly-numbers-at-base-camp/>

Over the prior month (2/17/2022 – 3/17/2022) Base Camp was never at capacity.

---

<sup>4</sup> Vancouver Municipal Code § 8.22.040(B).

<sup>5</sup> Mercer Island Code § 9.60.060; <https://komonews.com/news/local/homeless-shelter-leaders-ask-why-they-werent-told-about-merc-island-camping-ban>.

Pros: This approach most clearly aligns with *Martin*. In addition, this approach allows for enforcement of criminal penalties throughout the entire city when shelter space is available.

Cons: Contingent on the availability of shelter space, which can fluctuate and is subject to factors outside the City's control. Furthermore, enforcement personnel would have to go through a process of determining if shelter space is available and "practically accessible" in each instance prior to pursuing enforcement.