

Craig, Sondra

From: James Szymalak <jszymalak@uwlax.edu>
Sent: Thursday, June 8, 2023 2:56 PM
To: ZZ Council Members; ZZ City Clerk External
Subject: Legal opposition to J&A Agenda Item 23-0673

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Dear Council Members:

As a city resident, I share the same opposition as others to the proposal to amend Subsection 32-5 of the Code of Ordinances of the City of La Crosse regarding camping on City-owned property. I write separately to question the prudence and legality of proceeding with such measure.

The Ninth Circuit in *Martin v. City of Boise*, 920 F.3d 584 (2019) concluded that the Eighth Amendment prohibited the imposition of criminal penalties for sitting, sleeping, or lying outside on public property on homeless individuals who could not obtain shelter. Though not requiring cities to provide sufficient shelter for the homeless, as long as there were a greater number of homeless individuals in city than the number of available beds in shelters, the city could not prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public on the false premise they had some choice in the matter. The Supreme Court was given the opportunity to review, but declined (140 S.Ct. 674 (2019)).

In exceptionally compelling language, the *Martin* court stated:

As Jones reasoned, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” Moreover, any “conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.” As a result, just as the state may not criminalize the state of being “homeless in public places,” the state may not “criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.”

If this were to pass as written, the City of La Crosse would be exposed to potentially costly and protracted litigation to determine the state of the law here in the Seventh Circuit. If not abandoned on humanitarian grounds, I strongly recommend redrafting to exclude from coverage those with no alternative shelter. If the proposal proceeds as written, I would expect the Council to waive any privilege to allow the City Attorney to share their analysis of the proposal's legality under the Eighth Amendment.

Thank you for your thoughtful consideration of this matter.

Respectfully,

Jim Szymalak

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