



Lawmaking through a loophole

City attorney acknowledges new levee camping ban was born out of Ninth Circuit defeat, but ordinance could've gone further

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Sacramento Mayor Darrell Steinberg poked the proverbial elephant in the room:

Was City Hall's new attempt to outlaw camping along levees, under hollow sidewalks and within 25 feet of government buildings, roads, railroad tracks, utilities, public and private land "a clever workaround" to a 2018 federal appeals court ruling that protected the rights of homeless people to sleep outdoors?

"Are you essentially using this critical infrastructure ordinance ... [to] de facto ban camping under a different pretext?" Steinberg wondered aloud during the Feb. 25 City Council meeting.

The mayor made it clear he didn't think that was the case. The city attorney sort of undercut him.

"Ever since the Boise decision was issued by the Ninth Circuit on Sept. 4th, 2018, we have been advising our Police Department and all of our enforcement agencies and members of the council as far as what we could do to address the impacts of unlawful camping throughout the city," city attorney Susana Alcalá Wood said in response to Steinberg.

Got that? The city still considers homeless people to be engaged in "unlawful camping" and spent the past 18 months looking to reassert that paradigm. Citing a footnote in the Ninth Circuit ruling, local officials contended the city could prohibit camping near critical infrastructure or areas at risk for wildfires.

How does the city define these terms? According to the ordinance the City Council considered last week, they're whatever the city manager decides they are.

The ordinance that the council adopted didn't go quite that far. For now, it will ban camping along three miles of levees inside the city. City Manager Howard Chan will have to return with a list of specific locations he wants to add to this new camping prohibition.

That finagling happened after homeless and civil rights advocates pushed back against the implied *carte blanche*, and argued that city leaders were not accepting that their anti-camping ordinance, like others across the

country, came down on the wrong side of the U.S. Constitution.

"There are ways to protect critical infrastructure without criminalizing homeless people and trying to reenact the pre-Boise vs. Martin camping ban," Paula Lomazzi, executive director of the Sacramento Homeless Organizing Committee, told the council.

"The logic of Boise was not to comb through every freaking footnote to see if you could figure out a way to get around it," added Bob Erlenbusch, executive director of the Sacramento Regional Coalition to End Homelessness.

Erlenbusch also took issue with the way the ordinance could be enforced without notice. "So homeless people have no idea if they're camping on quote-unquote *critical infrastructure* until after the fact, until their stuff is gone," he scolded.

A 24-hour notice was added to address the due process concerns. The ordinance had its supporters, too.

Fire Marshal Jason Lee said city firefighters responded to more than 1,000 fires associated with encampments in the five months between May and October 2019.

Reclamation District 1000 general manager Kevin L. King said daily monitoring of the levee system is hampered by the dozens of encampments stretching along the riverbanks.

And Simon Antill of the Sacramento Yacht Club described taking a recent boat trip and witnessing "a colossal volume of garbage" along the river banks.

Councilman Jeff Harris, whose district covers the levees, said the ordinance is also intended to protect the very people who might be displaced into more visible areas of the city. People living outdoors are particularly vulnerable to wildfires and flood, he noted.

"We are not trying to criminalize homelessness with this ordinance," Harris said.

When Chan returns with his list of "critical infrastructure" locations, the City Council will get another chance to prove it. □

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