



Homelessness in Nevada: Striking a Balance Between Individual Rights and Community Quality of Life

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Homelessness is a pressing social issue affecting communities across the U.S., including here in Nevada. On any given night in 2022, there were 7,618 individuals experiencing homelessness, including 5,645 individuals in Southern Nevada.¹ A recent survey conducted in southern Nevada indicated that 13,076 individuals of all ages, including veterans, families with children, and couples, will experience homelessness this year.² Most alarmingly, Nevada is one of 12 states where the homeless population has more than doubled from 2007 to 2022.³ In fact, between 2020 and 2022, the number of individuals experiencing chronic homelessness in Nevada increased by 107 percent.⁴

As the number of individuals experiencing homelessness rises, local governments face the challenge of finding a balance between safeguarding homeless individuals' rights and addressing quality of life concerns for businesses and community residents. This article delves into the issue of homelessness in Nevada, exploring the changing legal landscape and the efforts undertaken by local governments to adopt and enforce local laws that strike a balance between individual constitutional rights and the community's well-being.

Changing Legal Landscape

Over the last few years, local governments have witnessed significant legal changes impacting the ability to enforce camping ordinances. One crucial development is the recognition of the right to sleep. In 2019, the Ninth Circuit Court of Appeals ruled in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), that criminally prosecuting individuals for sleeping on public property when they have no alternative shelter violates the Eighth Amendment's prohibition against cruel and unusual punishment. The court tried to limit its holding in a footnote, stating "... our holding does not cover individuals who do have access to adequate temporary shelter,

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whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.”⁵ Then, in *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023), the Ninth Circuit expanded the holding in *Martin* to apply to civil citations where civil and criminal punishments are closely intertwined. These decisions by the Ninth Circuit Court of Appeals have limited local governments’ options to protect the health and safety of their communities—both housed and unhoused.

When the Ninth Circuit Court of Appeals declined to rehear *Martin* en banc, Judge Milan D. Smith Jr. stated in his dissent that he feared “the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws. Halting enforcement of such laws will potentially wreak havoc on our communities.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting). In the aftermath of *Martin*, the practical difficulty for local governments has been legally deciphering the meaning of “adequate temporary shelter” that is “realistically available” in updating the language and enforcement procedures under anti-camping ordinances.⁶

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just short of the needed majority of the Ninth Circuit’s active judges with a 14-13 split. This broad divide within the nation’s largest federal court will likely pique the interest of the U.S. Supreme Court.

These two decisions have had a profound impact on Nevada’s local governments, necessitating a shift from criminalizing homelessness toward a more compassionate approach.

Government Efforts to Balance Rights and Quality of Life

Recognizing the multifaceted nature of homelessness and the changes in the law, local governments have implemented various strategies to address the issue while considering the concerns of other citizens and businesses.

One significant initiative is a service-based model approach, where local governments prioritize connecting homeless individuals with essential services and resources. Outreach teams comprised of social workers, healthcare professionals, and law enforcement work together to engage with those experiencing homelessness, to assess their needs and provide access to healthcare, mental health services, substance abuse treatment, and other resources to address the underlying cause of an individual’s homelessness.

At the state level, the government has recognized the importance of collaboration and coordination between various stakeholders in addressing homelessness. The Nevada Interagency Council on Homelessness, created in 2017, serves as a platform for representatives from different agencies, service providers, and advocates to

work together, share information, and develop comprehensive strategies to combat homelessness effectively. The Nevada Interagency Advisory Council on Homelessness to Housing was established by Assembly Bill 174 from the 2019 legislative session. The council is responsible for collaborating with state and local agencies to promote cooperation between all levels of government to develop a strategic plan to combat housing insecurity, increase awareness of issues related to homelessness, collaborate with and request the assistance of experts in reducing housing insecure populations, and report progress on the state-wide efforts on homelessness to housing.⁹ On September 15, 2020, the council established the Technical Assistance Committee that was charged with forming a strategic plan, which was adopted on October 26, 2022.¹⁰

Local Government’s Actions

While ensuring the protection of homeless individuals’ constitutional rights is crucial, it is equally important to address the concerns of other citizens regarding the impact of homelessness in their communities. At the local and state levels, Nevada governments have implemented measures striking a balance between these two areas of concern.

Local authorities have focused on enhancing public safety and cleanliness in areas affected by homelessness. By increasing police presence, improving lighting, and implementing targeted sanitation efforts, local governments aim to alleviate concerns regarding public health and safety. At the same time, these efforts are carried out with sensitivity, recognizing that punitive measures alone do not address the root causes of homelessness.

To address business owners’ and residents’ concerns, many local governments have encouraged dialogue and cooperation. Stakeholder meetings and community forums provide a platform for citizens to express concerns, share ideas, and collaborate on solutions. By involving all stakeholders, local governments aim to foster understanding and empathy among different segments of society.



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Most recently, in *Johnson*, the Ninth Circuit upheld a constitutional challenge to an ordinance that assessed civil penalties for violations of an anti-camping ordinance.⁷ The court reasoned that the anti-camping ordinance prohibited individuals from engaging in an activity that they could not avoid.⁸ Subsequently, the Ninth Circuit denied Grants Pass’s request for rehearing en banc. A petition for a writ of certiorari has been filed with the U.S. Supreme Court and is pending review. Interestingly, the denial of rehearing fell

For example, the city of Henderson utilized a citywide approach requiring collaboration by various city departments in an effort to balance the rights of unhoused individuals and the quality-of-life issues for all other citizens. This citywide approach resulted in the creation of the Henderson Homeless Response Team (HHRT), which makes contact with and aids individuals experiencing homelessness. The goal of HHRT is to engage the individuals who are experiencing homelessness with the ultimate goal of removing barriers by connecting them to necessary social services such as Medicaid or obtaining identification documents from the state. HHRT continues its relationship with individuals and provides case management services to assist them in overcoming the obstacles that prevent them from obtaining safe, stable housing.

The final tool utilized in Henderson’s comprehensive approach is the creation of a camping ordinance that aligns with recent Ninth Circuit decisions and enhances public safety by ensuring public rights-of-way are accessible to all residents, businesses, and stakeholders. While this ordinance prohibits individuals from obstructing certain public areas, the ordinance is not punitive. Instead, the ordinance is a tool that assists in addressing homelessness by requiring staff to make social services connections and seek available shelter in lieu of criminalization.

Homelessness is a complex issue that requires a multifaceted, compassionate response. Lawyers will occupy a crucial role in addressing the complex interplay between causes of homelessness, the responsibilities of local governments, and the delicate balance between individual rights and community safety. The changing legal landscape and governments’ efforts to strike a balance between the rights of homeless people and the quality of life for other citizens require a firm commitment to address homelessness. By prioritizing stable housing, offering support services, and promoting collaboration among service providers, Nevada endeavors to create a more inclusive and compassionate society that respects the rights of all individuals.

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BETHANY SANCHEZ is an assistant city attorney for Henderson with 17 years of expertise in planning, development, economic development, regulation, and enforcement, dedicated to upholding premier community standards.



ENDNOTES:

1. 2022 U.S. Dep’t of Hous. & Urb. Dev., Office of Cmty. Planning & Dev., Annual Homelessness Assessment Report to Congress 101 (2022); Southern Nevada Homeless Census and Survey (2022).
2. Southern Nevada Homeless Census and Survey (2022).
3. AHAR, supra note 1, at 76.
4. *Id.* at 74.
5. *Martin*, 920 F.3d at 617 n. 8.
6. Gary Blasi, *Legal Right to Shelter*, 42-Dec L.A. Law 30, 57 (December 2019).
7. *Johnson*, 72 F.4th at 890.
8. *Id.*
9. Nevada Dept. of Health and Human Services. <https://dphh.nv.gov/>
10. Nevada Interagency Council on Homelessness to Housing Strategic Plan, October 2022, available at <https://nevadahomelessalliance.org/wp-content/uploads/2023/07/NV-ICHH-2022-Strategic-Plan.pdf> (last visited 11/3/2023).

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