

Homeless Rights

By Karla James with the assistance of Osha Neumann, Attorney at Law

Few will be surprised to hear that there has been an ongoing attempt by the Berkeley Police and University of California Police to rid the south campus area around Telegraph Avenue of “unsightly” homeless people. The tools in their toolbox are a number of laws that can be selectively applied to those Berkeley stakeholders who are without housing. All too often, these laws are taken out of context or outright misrepresented. Here are a few examples.

Sitting against a building in not trespassing.

This is one we hear about a lot. People leaning up against a building are told they are trespassing and asked to move along. Nothing could be further from the truth; it is a physiological impossibility to be “on” or “in” a building that one is leaning against, even if there is some co-mingling of subatomic particles. Back in 1995 Berkeley enacted an ordinance making it illegal to sit within 6 feet of a building in a commercial zone. The ACLU sued the city, and the court ruled that it violated the First Amendment right to assembly and free speech. The City Council subsequently withdrew the ordinance. Police often act as though this law was still in effect, although police training bulletin number 188 clearly says that the “presence of a homeless person on a public street or sidewalk or in a public park, in and of itself, is not a crime.”

It is not a crime to sleep.

Sleep is a basic human need and is not illegal. Police improperly tell people that they can’t sleep in their car. The law actually prohibits the habitation of “campers” or “house cars.” A house car is defined as “a motor vehicle originally designed or permanently or temporarily altered and equipped for human habitation.” It is clearly improper for the Berkeley police to tell people they can’t nap in their car (BMC 12.76.020).

It’s not a crime to sleep in a park or other public space during the hours they are open to the public. All parks in Berkeley have a curfew from 10pm to 6am, unless otherwise posted.

In the area around campus known as “the box” (see map), there are some street on which lying on sidewalks is prohibited between the hours of 7 am and 10 pm

Monday through Saturday, and 10 am and 6 pm on Sundays and holidays.

It seems to be common practice for Berkeley and UC Police to tell people that they can’t sleep on the median strip between the sidewalk and the street. There is no particular law against lying there. If it is adjacent to a park, it is not part of the park so that the curfew laws don’t apply. If it is adjacent to a sidewalk on which lying is prohibited, those rules may apply. But those rules have a limited time-frame, and don’t apply after 10pm Monday through Saturday, after 6pm on Sunday.

California State Penal Code Section 647(j) makes “lodging” in public places a misdemeanor. But the Alameda County Superior Court ruled the law was “unconstitutionally ambiguous,” and the Berkeley City Council voted in 2001 to make it the lowest law enforcement priority. The problem with the law is the selective way that it is enforced. A student napping on the campus lawn is fine, but a homeless person napping at People’s Park is arrested.

Campus police sometimes cite homeless people for “lodging” when they find them asleep on campus with a bunch of their stuff around them. This is a ridiculous and vague law which the police use because they can’t think of anything else to charge homeless people with. Whatever “lodging” might mean, being asleep doesn’t turn you into a lodger.

A “defense of necessity” could be brought if at the time a person is cited, there is no other legal place for him/her to sleep within the boundaries of the city.

On some streets in “the box” area around campus, there is also a prohibition of three or more “stationary dogs,” known as the “three-dog rule.” It makes it an infraction or misdemeanor to have three stationary dogs within a 10-foot area of the sidewalk.

Persons thought to be in violation of the three-dog rule or who are lying on the sidewalk must be warned prior to citation (BMC 13.36.015).

Being on a public sidewalk, in a public space, or in an area that is open to the public is not trespassing. And it doesn’t matter if the area is privately owned, or owned by the city or university. If it is open to the public and not posted “no trespassing” then the police can’t single out

a person and make him/her leave, while others are left alone (BMC 13.52.010). But it is illegal to interfere with any lawful business in an establishment that is open to the public. The owner or agent, or police officer acting on behalf of the owner, can ask someone to leave their property, and if the person doesn’t leave, they can be charged with a misdemeanor (PC602.1).

A person can be charged for trespassing:

- (1) If a person is found to be on property that is posted with a sign that says both “private property and no trespassing.” If it just says one or the other, it is not enough.
- (2) If a person has been told to leave the property by the owner or agent or a police officer acting on behalf of the property owner, and the person doesn’t leave or returns to the property. In this situation, the person must first be given a warning by police before he/she can be arrested.

It is not illegal to stand or sit on the sidewalk as long as you are not intentionally or significantly blocking the sidewalk (BMC 13.36.010).

Sitting on milk crates or chairs on a city street is not illegal. Berkeley Police have repeatedly misconstrued an ordinance (14.48.020) about not placing objects on sidewalks. The former city manager sent a memo to the chief that said, “Please cease enforcement as it applies to people sitting on sidewalks.” The Berkeley Police issued a training memo reaffirming that it doesn’t apply to people sitting on the sidewalk or on a box. People still get cited for it though.

The selling of Street Spirit

The selling of Street Spirit newspapers is protected under the First Amendment right to freedom of the press, and so a vendor permit is not required. It is also legal to sell newspapers from a city sidewalk or while sitting on a city bench.

It is okay to tie a dog up to a parking meter but not to a lamppost, fire hydrant, ornamental tree, or the enclosure around the tree (BMC 10.12.110). At least one person has spent 3 days in jail when he was improperly charged with a crime for tying his dog to a parking meter (his dog was also unlicensed).

Is it legal to panhandle?

Yes, it is a First Amendment right to ask others for help. But there are some restrictions. California Penal Code section 647(c) makes it illegal to “accost other persons in any public place or in a place open to the public for the purpose of begging or soliciting alms.” The courts have interpreted “accosting” as walking up to someone. It is okay to stand or sit in place and ask people for money as they walk by. Also Berkeley has a law that makes it illegal if the “solicitor acts in a manner which would cause a reasonable person who was solicited to fear for his or her own safety” (BMC 13.37.010). The law also says that it is a crime for the solicitor to follow the person being solicited closely after they have informed the solicitor by words or conduct that he/she does not want to be solicited. It is illegal to solicit within 10 feet of an ATM (BMC 13.37.020).

There are a number of catch-all laws that apply to everyone but which are sometimes selectively enforced by the police. One of these is that dogs and cats must be licensed and dogs can't run at large. If you are riding a bicycle, it must be licensed, and at night you must have a light on the bike (this is a law that Copwatchers are often threatened with). It is illegal in Berkeley to smoke outside within 20 feet of a doorway. This makes it illegal to smoke on most of Telegraph Avenue and almost any commercial district in Berkeley. It is also illegal to smoke within 20 feet of any bus stop.

People's Park

South of campus, is another strange jurisdiction with it's own set of laws. Officially, it is the University of California property, but people charged with violations of the People's Park rules are actually charged under a Berkeley Municipal Code (6.36.010), which remains on the books from the time when the park was under the joint jurisdiction of the University and the City of Berkeley. Some of the unique rules/laws that only apply in People's Park are as follows:

- No mattresses, furniture, or other household items allowed; a mattress is defined as a pad that is more than one-inch thick).
- People can bring into the park only personal belongings that can be “reasonably carried on the person or used for recreational purposes.”
- You may not store personal possessions in the park at any time.
- No carts are allowed in the park except baby carriages, wheelchairs, or wheelbarrows or other carts used for gardening.

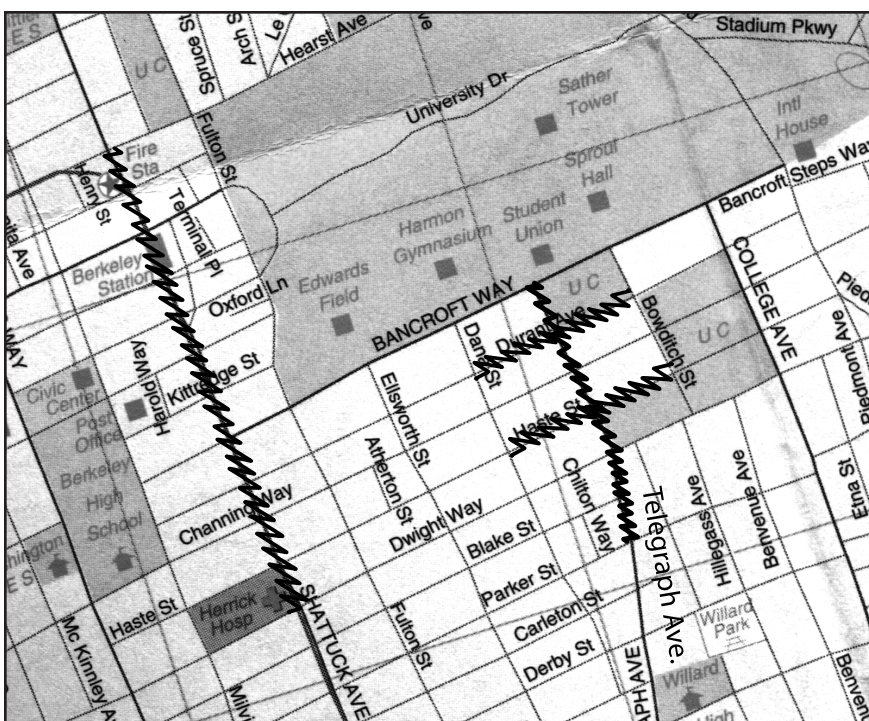
If the police confiscate personal items from people, they are stored in a refrigerated container railcar under University Avenue next to the highway. The problem here is twofold: – It is really too far for a person to walk from People's Park to the highway to retrieve his/her possessions. In order to retrieve possessions, people must contact

the Berkeley Mobile Crisis Team, which is notoriously hard to reach. The Mobile Crisis Team phone number is 510-981-5254.

Under California law, items must be held for 90 days to allow time for people to reclaim their possessions. We have had many complaints that the Berkeley Police department is destroying or throwing away people's personal property immediately after it has been confiscated.

We have also had many complaints, some of which have been sustained by the Berkeley Police Review Commission, about illegal searches of people and their possessions. Police are clever in the way they ask for permission to search, so be alert, and never consent to a search of your person or property, even if you “don't have anything to hide.”

And remember that according to Berkeley police training bulletin number 188, “All persons, regardless of their economic or living conditions, shall be treated equally. The homeless enjoy the same legal and individual rights afforded to others. Departmental personnel shall at all time respect these rights.” Yet as stated in a complaint brought against the Berkeley Police Department by the Suitcase Clinic Legal Services, many homeless people have “come to believe that their rights to be on the sidewalk depends on the mood and whim of the officer on the beat.” We are all stakeholders in this community; home owners and homeless and everyone in between. And as such, we all equally deserve and must demand to be treated with respect.



Areas where people can't lay on the sidewalks, and can't have 3 stationary dogs.

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