No. 19-247

In the
Supreme Court of the United States

CITY OF BOISE, IDAHO,
Petitioner,

v.

ROBERT MARTIN, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE CITY OF ABERDEEN, WASHINGTON *AMICUS CURIAE* IN SUPPORT OF THE CITY OF BOISE

JOHN EDWARD JUSTICE
JEFFREY SCOTT MYERS
Law, Lyman, Daniel,
Kamerrer & Bogdanovich, P.S.
Post Office Box 11880
Olympia, WA 98508-1880
(360) 754-3480
(360) 357-3511 (fax)
jjustice@lldkb.com
jmyers@lldkb.com

MARY PATRICE KENT
Corporation Counsel
Counsel of Record
Office of Corporation Counsel,
City of Aberdeen
200 East Market Street
Aberdeen, WA 98520
(360) 537-3233
(360) 532-9137 (fax)
pkent@aberdeenwa.gov

Counsel for *Amicus Curiae*
City of Aberdeen, Washington
in Support of Petition of City of Boise

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

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INTEREST OF AMICUS CURIAE

The City of Aberdeen, Washington ("Aberdeen" or "City") is a Washington municipal corporation, with a population of 16,896. It is identified as an "economically distressed community" under Washington state law (Wash. Rev. Code § 43.168.020 (2009)). There are no public indoor shelters for unsheltered or homeless persons in Aberdeen. There is limited private shelter space that may or may not meet the definition of "available overnight space" in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)). There is only one permitted encampment for unsheltered or homeless persons in Aberdeen.[1]

Aberdeen supports and sympathizes with the discussion presented by the City of Boise's petition for certiorari addressing the serious challenges faced by large cities in managing their homeless issues. However, Aberdeen, as a smaller economically distressed city is forced to deal with the very same issues with significantly fewer resources.

Since the decision below, the City has faced two separate suits in the Western District of Washington (*Monroe, et al. v. City of Aberdeen, et al.,* 3:18-cv-05949-RBL (2019); and *Aitken, et al v. City of Aberdeen,* 3:19-

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[1] The City of Aberdeen, through its City Attorney, files this amicus curiae brief pursuant to U.S. Supreme Court Rule 37.4. Counsel of record Mary Patrice Kent for City of Aberdeen provided written notice of intent to file an *amicus curiae* brief with counsel of record for each part via email on September 12, 2019. Both parties have filed blanket consents with the Court (September 5, 2019 and September 6, 2019).

cv-05322-RBL (2019)) in its attempt to address conditions of the largest unpermitted homeless encampment here. As outlined in this brief the City has been severely hampered by the Ninth Circuit's decision below in our efforts to protect the health, safety, and welfare of all of our citizens when using public spaces.

SUMMARY OF ARGUMENT

Certiorari should be granted because: *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) has barred enforcement of laws prohibiting camping on public property without clearly defining what it means for a city to have available overnight shelter space; has impermissibly expanded prohibitions against criminalization to statutory restrictions imposed for public safety and welfare considerations of the community as a whole; and, the Ninth Circuit's decision has led to unintended consequences whereby unsheltered and homeless individuals are able to appropriate public property for their own use thereby denying the general public's enjoyment of its intended purpose.

Martin is being used to permit wholesale appropriation of public property, and to prevent the City from removing unsheltered and homeless persons from public property, regardless of what jurisdiction owns the property or what the health, safety, or welfare impacts may be.

Martin prevents the City's proper police authority to maintain public safety in the event that unsheltered and homeless people demand access to specific parcels

absent "available shelter" which is inadequately defined and cannot be practically determined by city officials responsible for protecting public health, safety and welfare. Together, these limitations have the unintended consequence of depriving public land-owners of trespass protections afforded to private land-owners.

ARGUMENT

I. Context/Background

Aberdeen's ability to reasonably respond to all of our citizens' health, safety, and welfare considerations is a challenge in the best of times. Faced with economic distress, the decision of the Ninth Circuit in *Martin* poses new challenges to deal with a burgeoning regional population of homeless in our community.

Historically, Aberdeen's employment was based around natural resource economies of timber and fisheries. In July 2019 the unemployment rate in Grays Harbor County, where the City is located, was 7.1% which is nearly twice that of the seasonally adjusted national average of 3.6%.[2] The average annual wage in 2017 was less than $40,000.00[3]. The rental vacancy rate hovers around 6%, a low rate was recognized as early as 1992 as an indicator of corresponding reduced availability of housing to very-low income people.[4]

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[2] https://esd.wa.gov/labormarketinfo/monthly-employment-report

[3] https://esd.wa.gov/labormarketinfo/county-profiles/grays-harbor

[4] https://www.huduser.gov/portal//Publications/pdf/HUD-006102.pdf

Recently released data shows that over 30% of Grays Harbor County residents who are sheltered experience at least one "housing problem" (defined as incomplete kitchen facilities, incomplete plumbing facilities, more than 1 person per room, or a cost burden greater than 30% of income).[5]

Although the annual point in time survey taken pursuant to state law indicates a slight reduction in total number of unsheltered and homeless persons in Grays Harbor County over the past five years,[6] the City of Aberdeen witnessed a significant increase at a single parcel in that same period. This encampment grew despite city efforts to remove unpermitted campers, as explained in local newspaper accounts of the City's efforts to abate environmental and public nuisance conditions there[7].

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[5] https://www.huduser.gov/portal/datasets/cp.html

[6] See generally, https://www.commerce.wa.gov/serving-communities/homelessness/annual-point-time-count/; According to the 2019 point in time survey, there are 141 unsheltered and homeless persons in Grays Harbor County; down the number five years earlier in the 2014 survey (162 persons). The data does not address how many of these are located in the City of Aberdeen.

[7] https://www.thedailyworld.com/news/homeless-camped-along-chehalis-told-to-bug-out-again/ "up to 75 people there now" and http://www.thedailyworld.com/news/aberdeen-deals-with-fallout-from-riverfront-camp-restrictions/ "so far 108 people living along the riverfront"

II. Aberdeen Experience: River Street Property

A. Background

Since the decision below, the City has faced two separate suits in the Western District of Washington (*Monroe, et al. v. City of Aberdeen, et al.,* 3:18-cv-05949-RBL (2019); and *Aitken, et al v. City of Aberdeen,* 3:19-cv-05322-RBL (2019)) in its attempt to address conditions of the largest unpermitted homeless encampment here.

In 2018, Aberdeen's City Council ("City Council") approved the purchase of a privately held undeveloped parcel of property. (Appendix A – Parcel Map) The parcel is just over eight acres; it is bordered by the Chehalis River, an unfenced commercial railyard, and two family-owned light industrial properties. At its narrowest point it is approximately 250 feet wide between the river and the commercial railyard; terrain is uneven and covered with unmanaged vegetation. The only legal point of access is via an unimproved city right-of-way adjacent to a designated railroad crossing. There is no utility service (water, sewer, trash) to the property.

The property was purchased in an attempt to address repeated "nuisance" conditions including an unpermitted homeless encampment, and related health safety and public welfare concerns. The property had most recently been abated while in private ownership in 2016, when approximately 75 people were removed at the property owners' request. Two years later the property owner was either unable or unwilling to take

sufficient action to abate the situation, and so the City and the landowner reached an agreement and the City purchased the property.

When the sale closed in August 2018, there were over 100 people camping on the site. Since there are no utility services, people "disposed" of human waste either by digging holes near their shelters or utilizing an open bucket that was later emptied untreated into the surrounding brush areas or the Chehalis River. Law enforcement, fire, and medical responders all noted that when they were dispatched to the property they had to navigate uneven terrain with the waste pits, and grounds which also hid sharps and other dangers. People camping at the site also had unpermitted fires and unsafe heating arrangements commonly resulting in fire damage; fortunately, there were no deaths.

There were also multiple reports of individuals regularly driving and walking across the tracks rather than detouring the approximately 400 yards to the right-of-way adjacent to the designated railroad crossing. The railroad company reported multiple instances of damage and/or vandalism to railcars, switching equipment, and the tracks. Railcars carry a variety of cargo, including methanol which is a highly flammable material and can be explosive under certain conditions; a methanol explosion had the potential to destroy the unpermitted homeless encampment, nearby homes and businesses, an important transportation corridor, and create extensive environmental impacts. Fortunately, there has been no such large-scale catastrophic event.

However, there was a significant personal tragedy when one person trespassed through the railyard to access the encampment. As she crawled under a railcar, it began to move. Her legs were caught between the moving car and the tracks. Her screams brought Aberdeen police officers who were at the site responding to a different call; they were able to place tourniquets and stabilize her until the Aberdeen emergency medical responders arrived. She was airlifted to Seattle some 100 miles away. She lost both legs but survived the tragic occurrence.[8] Pedestrians continued to trespass across the tracks to the unpermitted encampment.

The sale to the City was concluded in mid-August 2018. There were over 100 people camping on the property at the time. As an interim measure, Aberdeen provided portable toilets and garbage service and allowed people to continue to camp at the site while assessing alternatives for removing the unpermitted campers from the property. (Appendix B – River Street Photographs)

As the City was conducting initial talks with the county and non-governmental service providers, the *Martin* decision was announced. Aberdeen's mayor allowed the campers to remain on the property through the winter months to provide some consistency to the campers, and to provide an opportunity to clarify the impact of *Martin* on Aberdeen's legislative and policy-making process.

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[8] http://www.thedailyworld.com/news/womans-legs-severed-by-train-in-accident-near-aberdeen-homeless-camp/

B. Monroe, et al. v. City of Aberdeen, et al.

In its attempt to provide some clarity of who was allowed to be at the River Street property, Aberdeen imposed limitations on visitors to the property. The City was sued, and accused of attempting to hide or isolate the campers in violation of federally protected Constitutional rights. (*Monroe*, Docket ("Dkt.") 1). Aberdeen entered a Stipulated Order on the matter (*Id.*, Dkt. 28), which included establishing rules for campers and visitors to the property.

C. Aitken, et al. v. City of Aberdeen

With the *Martin* decision, and in recognition of the shortage of available shelter space within city limits, Aberdeen halted enforcement of its public camping ordinance. The City then reviewed the language and City Council introduced and passed an ordinance conservatively design to comply with *Martin* limitations. The new ordinance entirely eliminated criminalization of public camping and established a class of city-owned property upon which Aberdeen will not enforce the ordinance at all when there is no available public shelter (*see generally*, Aberdeen Municipal Code ("AMC") 12.46 (2019)). That class of property is "[p]ortions of any street right of way that are not expressly reserved for vehicular or pedestrian travel" (AMC 12.46.040.A.4 and AMC 12.46.045.B).

Previously, City Council had introduced and passed a "Sit-Lie" ordinance restricting sitting and lying in a specific area of the greater downtown zone to the hours of 11:00pm and 6:00 am (*see generally,* AMC 12.41 (2018)). That ordinance was challenged via

referendum but failed to obtain the 604 valid registered voter signatures necessary to repeal the ordinance.

Since at least 2006, Aberdeen has codified its prohibition on obstruction of sidewalks without a permit (AMC 12.44.030). It is the only of the three ordinances challenged under *Aitken* that both carries criminal penalties and is to be strictly enforced.

In April and May of this year, the City Council brought forward and passed an ordinance closing the River Street property to all public access in consideration of the life safety, public safety and public welfare considerations described above (Aberdeen Ordinance 6645 (May 8, 2019)).

Citing to *Martin,* and asserting prospectively that taken together the public camping, sit-lie, and obstruction of sidewalk ordinances would have the effect of banishing homeless persons from Aberdeen, the City was again sued for its efforts to abate conditions at the River Street property (*see generally, Aitken,* Dkt. 1). This time the claim was filed before the ordinance closing the property to all public access was passed. Closure of the property was scheduled after the date Aberdeen had initially agreed to allow the campers to remain at the River Street property. (Appendix C – Ordinance 6645).

The plaintiffs asserted that *Martin* required Aberdeen to allow homeless and unsheltered persons to remain on the parcel of public property that they chose. (*Id.*, pp 10-18). The *Martin* court facially disclaims a requirement that the City establish a shelter (*Martin*, at 589, *internal quotes omitted*) ("we in no way dictate

to the City that it must provide sufficient shelter for the homeless"). Nevertheless, *Martin* then establishes criteria by which few cities, and certainly not Aberdeen, can practically do otherwise ("[cities] must either undertake an overwhelming financial responsibility to provide housing for or count the number of homeless individuals within their jurisdiction every night, or abandon enforcement of a host of laws regulating pubic health and safety." *Id.,* at 594-595, Smith, (*dissenting*)). The homeless population of Aberdeen includes a transient population; this factor throws into disarray whether Aberdeen, or any city, can ever clearly articulate how much shelter space is needed at any given time which *Martin* insists a city must identify before it can enforce public camping laws.

The City of Aberdeen spent $440,000.00 in the purchase, management and abatement of the River Street property. By October 15, 2019 the City will have spent another $85,000.00 to establish and operate a 3-month temporary alternative shelter location dedicated to public camping for up to 60-70 people, which has been at capacity for its entire existence. These expenditures of financial and human resources have impacted the ability of the City to maintain other public goals.

Aberdeen specifically mapped out those locations in the greater downtown area that met the requirements of AMC 12.46.045.B where enforcement was expressly prohibited when there is not available overnight shelter (Appendix D – Map of Identified Camping Areas). The area was limited to the downtown area based on criteria to which plaintiffs agreed, including

proximity to social service providers, and yet plaintiffs refused to accept the map as sufficient for their needs, and instead demanded the City identify a particular parcel for their exclusive use (*Aitken*, Dkt. 43).

The court initially enjoined enforcement of Aberdeen's public camping, sit-lie, and sidewalk obstruction ordinances while the City was allowed to close the dangerous property, despite the fact that we had expressly designated sidewalk areas where public camping is allowed when alternative overnight shelter is not available (*Aitken,* Dkt. 52). Recently, the injunction was lifted as a result of Aberdeen's demonstration of reasonable exercise of its police powers (*Id.,* Dkt. 69).

In this instance, plaintiffs' interpretation of *Martin* resulted in Aberdeen being forced to focus its scarce resources not on actually responding to the City's recognized homelessness crisis, but instead on defending its reasonable legislative response in court. For Aberdeen, *Martin* is not the judicial shield interpreting the Constitution and laws, it is wielded as a sword by which the legislative and police authorities of the city are hewn away and held captive by unelected authorities.

Aberdeen is well aware of the need to humanely and compassionately address unsheltered and homeless residents' needs. In its attempt to protect these vulnerable persons, however, *Martin* manages only to reduce the options available to communities such as ours.

III. *Martin* does not clearly define "available overnight shelter"

Aberdeen has no public indoor overnight shelter, and the fewer than 100 available shelter beds that are located here may or may not comply with *Martin*, because the majority of those beds are in faith-based shelters. Each of the shelter locations have restrictions related to gender, familial or marital status, and/or length of stay requirements. Like the shelters in *Martin,* the shelters in Aberdeen have religious requirements and may exclude individuals for non-capacity related reasons, such as behavioral issues. *Martin* suggests that in such circumstances, "as a practical matter, no shelter is available." *Martin,* at 610.

Likewise, *Martin* does not address where such shelter space may be located in order to be "available". The City of Aberdeen is immediately adjacent to the City of Hoquiam. However, the City cannot use the possibility of sheltering in Hoquiam because it is not within the City's jurisdiction. Reliance on regionally available services in partnership with other local governments should be allowed, yet it appears foreclosed by the prohibition on a city from enforcing its laws where it does not have the shelters available. If nothing else, it subjects cities who might otherwise rely on regional shelters to possible risk of civil rights violations if *Martin* requires that it have shelter space within its boundaries.

Therefore, under *Martin,* there is no current scenario under which the City may criminally enforce public camping restrictions because no overnight

shelter is unrestrictedly "available" to our entire unsheltered or homeless population. This necessarily requires Aberdeen to allow public camping somewhere regardless of the impact to the community as a whole, or the impact to scarce City resources.

In recognition of the limitations on "available" shelter beds, even before *Martin,* Aberdeen had not strictly enforced its public camping ordinance; when *Martin* was announced Aberdeen could not enforce its camping ordinance at all.

IV. *Martin* has impermissibly expanded prohibitions against criminalization to generally applicable protections of public health and welfare

Justice Berzon's concurrence denying an *en banc* hearing notes that "only municipal ordinances that criminalize sitting, sleeping, or lying in **all** public spaces … violate the Eighth Amendment." (*Id*., at 589 quoting 902 F.3d at 1035, *emphasis in original*).

Aberdeen's law now imposes only civil penalties for public camping "not to exceed $25.00" (AMC 12.46.050) consistent with state law which also identifies rule-making authority to describe judicial discretion (Wash. Rev. Code § 7.80.130.2 (2002)); identifies a class of property where public camping is lawful when there is no available shelter; and, defines what is meant as "available shelter". Nonetheless, the *Aitken* plaintiffs expanded *Martin* to prohibit even these limited civil sanctions and unrelated public safety ordinances noted above.

The *Martin* rationale implicating Eighth Amendment protections for criminal penalties is "circumscribed … in three ways: limits the kinds of punishment; proscribes punishment grossly disproportionate to the severity of the crime; and, imposed substantive limits on what can be made criminal and punished as such [with last limit to be applied sparingly]." *Ingraham v. Wright*, 430 U.S. 651 (1967). *Ingraham* noted that Cruel/Unusual protections are limited to criminal penalties; (*Id.*, at 667-69). While 26 years later *Austin* noted that Eighth Amendment protection "cuts across the division between civil and criminal" (*Austin v. United States,* 509 U.S. 602, 609-10 (1993)); but only that monetary penalties are subject to an "excessive fines" analysis (*Id.*).

> In *Halper [United States v. Halper*, 490 U.S. 495 (1989)], we focused on whether "the sanction as applied in the individual case serves the goals of punishment." 490 U. S., at 448. In this case, however, it makes sense to focus on §§881(a)(4) and (a)(7) as a whole. *Halper* involved a small, fixed-penalty provision, which "in the ordinary case ... can be said to do no more than make the Government whole." *Id.*, at 449. (*Id.,* 622)

Martin should not now expand Eighth Amendment protections such that no laws may ever be applicable to unsheltered persons.

V. *Martin* has created unintended consequences including appropriating of public property for personal use; and shifting responsibility for local management of homelessness to the federal judiciary.

A. Martin has encouraged appropriation of public property by the homeless.

Currently, Aberdeen is also facing the challenge of *Martin's* overbroad language impacting public camping not only on *city-owned* public property but also on public property in general within Aberdeen's jurisdiction. *Martin's* proscription against enforcing anti-camping laws on "public property" when shelter space is unavailable indicates that Aberdeen may not take action when the homeless occupy any publicly owned property, including property owned by other public agencies such as Grays Harbor County, Grays Harbor Transit, and the Port of Grays Harbor, just to name a few jurisdictions that own property in the City of Aberdeen.

Martin has created considerable uncertainty as to the enforceability of trespass ordinances and other laws that protect such property from unwanted appropriation by homeless campers who refuse to leave said property and who claim that enforcement of such laws would violate their civil rights as set forth in *Martin*.

Based on Aberdeen's experience, *Martin* is being cited not only to prohibit criminal laws against camping or remaining on public property, but also for

any attempt to exercise police powers to maintain public safety and welfare, including through civil means. *Aitken* managed to sustain a complaint regarding public camping and sit-lie ordinances that had only civil consequences. *Martin* creates this ambiguity by leaving unresolved the scope of its holding concerning the ability to enforce laws during times that shelters are not available for the homeless population.

Martin also fails to answer or define what constitutes criminalizing status as opposed to enforcing criminal laws based on actions. Prohibitions of camping in specific locations are generally applicable laws that do not criminalize status or the presence of the homeless in the community but are designed to assure that public spaces are used for their intended purposes. This means that parks are available for recreation for all inhabitants, parking lots are available for motorists to use.

Under *Martin,* local governments with limited shelter space have seen parking lots transformed into encampments that remain on a semi-permanent basis. Those who set up these encampments refuse to leave, depriving the public from using that property for its intended purpose. Campers refuse to leave even dangerous locations, like the River Street property in Aberdeen, unless shelter beds are provided at a location of their choosing. Shelter beds outside the city limits are not considered as "available" and are rejected by the homeless, even if the city offers assistance.

Similar to the settlements in Southern California, due process protections must be built into temporary encampments established by cities like Aberdeen who may seek to provide mitigation and temporary shelter on public property. This interpretation of *Martin* implies that by giving a homeless person a place to stay for the night, they obtain property rights permitting them to remain on the public's property until notice and an opportunity to be heard are provided. *Cf. Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011) (City's homeless residents had a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that were open to the public generally.) Although well intentioned, this results in removing from the public fisc whatever location the homeless use as an unauthorized encampment by imbuing them with a quasi-property interest merely because they are present, regardless of dangers that their presence may create to themselves or others.

Homeless and unsheltered persons in Aberdeen and regionally have appropriated public properties with designated public uses, which denies the community at large use of those properties for their intended purpose.[9] In instances of appropriation of undeveloped property, it restricts development by the City, and/or results in claims that the City is attempting to ghettoize the population and remove them from areas where social services are available. In seeking

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[9] Daily Olympian, Homeless camps sprouting, growing throughout downtown Olympia, https://www.theolympian.com/news/local/article220251925.html.

locations for mitigation sites to shelter the homeless, cities are forced to shift property from its intended use to establish temporary encampments or shelters.[10]

In the *Aitken* litigation, the court directed the parties to "negotiate a suitable ... place" (*Aitken*, Dkt. 40, p. 7, lines 8-9), thereby interpreting that the city was required to identify and dedicate specific parcels, while at the same time stating "I'm not urging you -- or the city to deed a parcel of property from the public fisc." (*Aitken,* Dkt. 40, p. 9, line 24-25). In commenting on the homelessness crisis around the country, the *Aitken* court acknowledged the issue and then stated very clearly "People under our economic system are not permitted to appropriate property for their own domain." (*Id.*, p. 15, lines 20 – 22) Unfortunately, this is precisely what homeless people are doing in cities in the region, and are attempting to do in Aberdeen.

B. Martin is causing a shift in responsibility for local policy and management to the federal judiciary.

One of the consequences of *Martin* is to incentivize civil rights litigation by homeless individuals who argue it is a violation to seek to remove them from inappropriate locations under trespass and anti-camping ordinances unless there is a shelter bed provided. Homeless or unsheltered persons are provided notice that a specific parcel of public property

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[10] KBKW, City of Aberdeen Seeks Grays Harbor Transit Property for Homelessness Mitigation Site, https://kbkw.com/city-of-aberdeen-seeks-grays-harbor-transit-property-for-homelessness-mitigation-site/

will be cleared for public health and welfare considerations and in proper exercise of local police powers.

Aberdeen's experience is that those persons then cite *Martin* to shift local decision-makers' legislative authority to the federal judiciary, seeking to replace police powers with injunctive authority to meet the plaintiffs' policy objectives. This allows plaintiffs, like in *Aitken* and *Monroe,* to seek court injunctions against enforcement of laws, putting a federal judge in the unenviable position of determining how homeless encampments are addressed and potentially in the role of formulating homelessness policy for local government.

The *Aitken* court addressed the issue head-on, stating

> "What you're asking is for me to somehow seize the purse and require the political branches of government in Aberdeen to alter the situation to provide a safer, more accommodating place. In a democracy the political branches have the power of the purse. They have the police power for ensuring safety and health."

And the plaintiffs' responded that the court "…ha[s] the power to order them to do that. But you [also] have the power to tell them, 'You can't kick these people out'" [of a self-selected and dangerous location]. (*Aitken,* Dkt. 40, p. 5. Line 5-19*).* In other words, the *Aitken* plaintiffs expressly demanded the court to replace local exercise of police authority with the court's judgment.

Such a role is more properly left to elected representatives who can assess local circumstances, available resources and develop mitigation strategies to address the consequences of homelessness, the attendant economic issues, substance abuse problems, mental health issues and other maladies associated with this population. Instead of empowering local governments to address these situations, *Martin* curtails local authority and prevents locally developed responses.

The concerns expressed by Judge Smith in his dissent in *Martin*, at 595, n. 12 (dissent to denial of rehearing *en banc*), have been echoed by Judge Leighton in the Aberdeen cases. At the May 7, 2019 *Aitken* hearing, he said "You know, that's the problem, the political branches of government at the national level, at the state level, and at the local level are forcing the judiciary to run the country. And that's nonsense. That is un-American." (*Aitken,* Dkt. 40, p. 18, lines 16 – 20). The Courts should not control resources or set social policy and *Martin* ties the hands of those elected officials with whom police power is invested.

CONCLUSION

For the reasons noted above, *amicus curiae* City of Aberdeen, Washington respectfully requests that this Court grant the petition for review.

Respectfully submitted,

MARY PATRICE KENT
Corporation Counsel
Counsel of Record
Office of Corporation Counsel,
City of Aberdeen
200 East Market Street
Aberdeen, WA 98520
(360) 537-3233
(360) 532-9137 (fax)
pkent@aberdeenwa.gov

JOHN EDWARD JUSTICE
JEFFREY SCOTT MYERS
Law, Lyman, Daniel, Kamerrer
& Bogdanovich, P.S.
Post Office Box 11880
Olympia, WA 98508-1880
(360) 754-3480
(360) 357-3511 (fax)
jjustice@lldkb.com
jmyers@lldkb.com

Counsel for *Amicus Curiae*
City of Aberdeen, Washington
in Support of Petition of City of Boise

September 24, 2019

APPENDIX

APPENDIX

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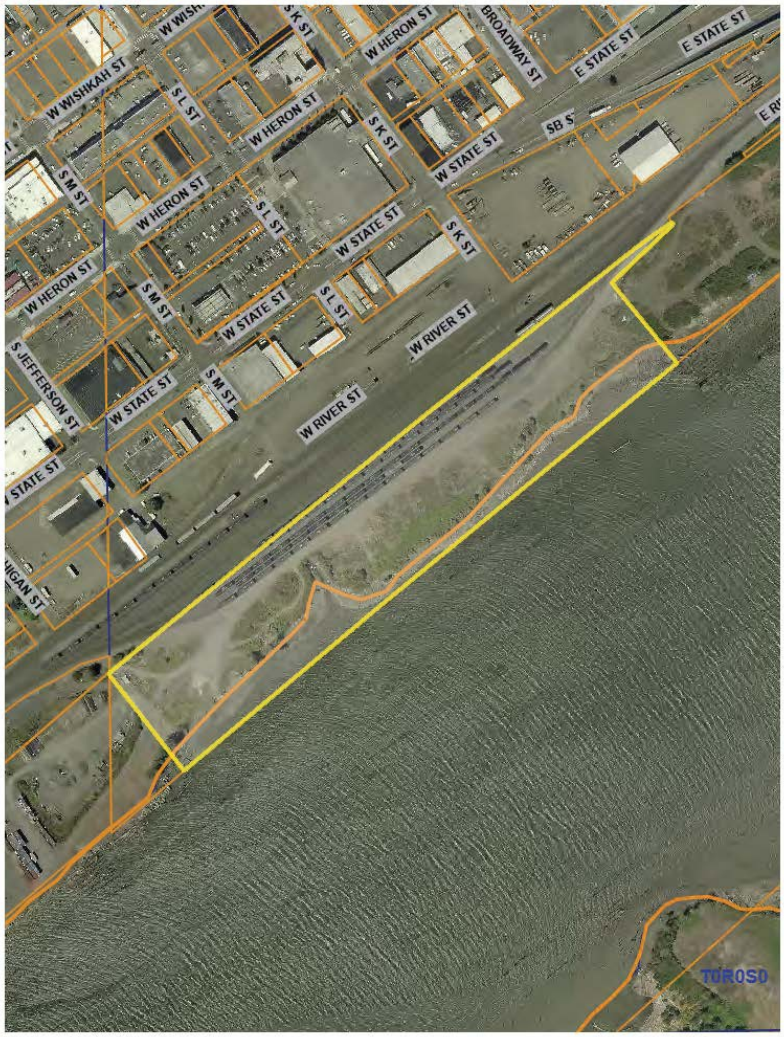
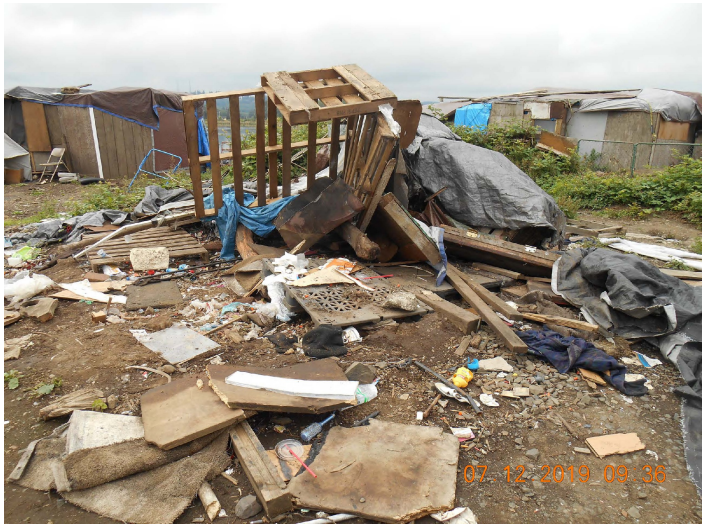
APPENDIX A

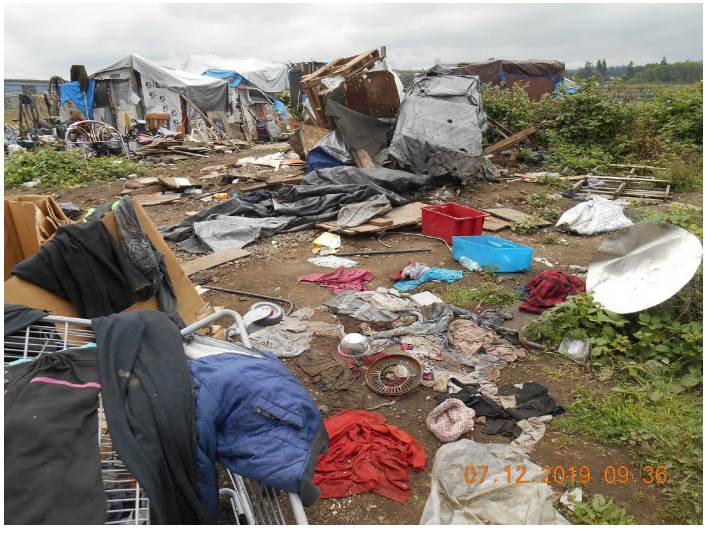
Parcel Map



APPENDIX B

River Street Photographs





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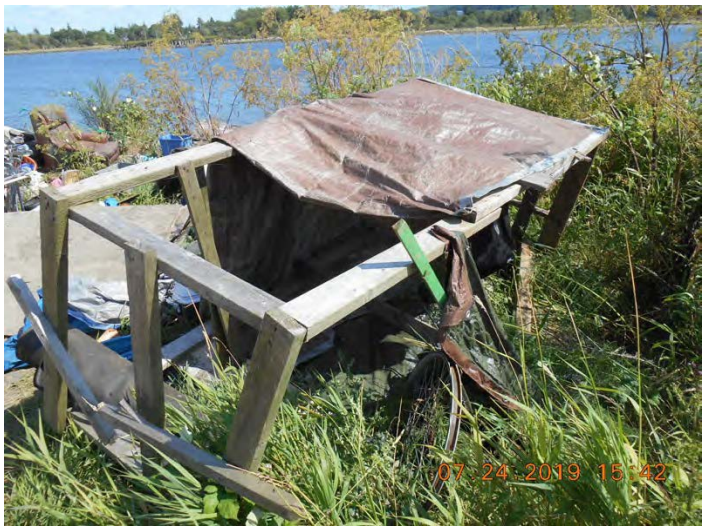

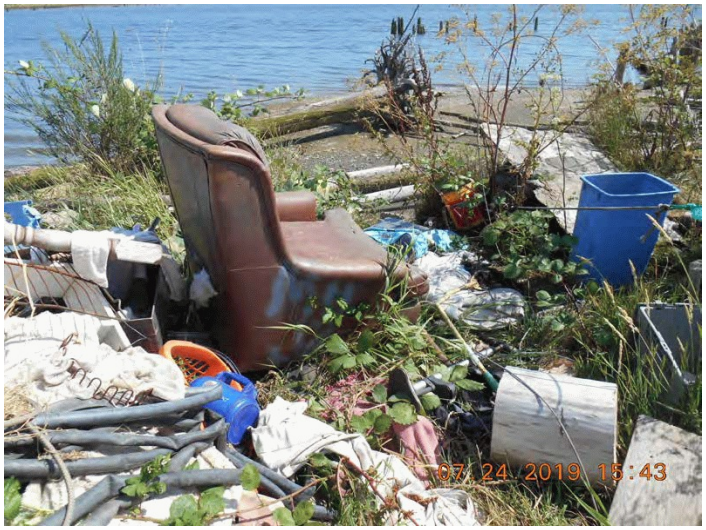

APPENDIX C

Ordinance 6645

[Dated May 8, 2019]

BILL # 19-05

ORDINANCE NO.6645

AN ORDINANCE PROHIBITING PUBLIC ACCESS TO RIVER STREET PROPERTY FOR LIFE SAFETY, PUBLIC SAFETY, AND PUBLIC WELFARE REASONS

WHEREAS, the City Council for the City of Aberdeen is responsible to undertake Ordinances necessary for the municipal government and management of affairs of the City, including to control and improve properties of the City; and

WHEREAS, the City Council is responsible to regulate the common areas of the City; and,

WHEREAS, the City Council is responsible to provide and enforce regulations for the protection of health, cleanliness, peace and good order of the City; and

WHEREAS, life safety, public safety, and public welfare considerations related to public access to property owned by the City since August 2018 require further analysis of use and access to the property.

NOW, THEREFORE,

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. RIVER STREET PROPERTY DEFINED. The following described real property, consisting of approximately eight (8) acres, as also shown on Exhibit A attached to this Ordinance, is owned in fee simple by the City of Aberdeen:

Tax Parcel # 029901800101:

Lot 1, Tract 18, Aberdeen Tide and Shore Lands, as described in that certain Statutory Warranty Deed, dated May 6, 1980, and recorded May 19, 1980, as Auditor's File No. 166816, records of Grays Harbor County;

EXCEPT that portion conveyed to Grays Harbor County and Puget Sound Railway Company by Deed recorded April 23, 1909, and under Auditor's File No. 40019, Volume 101 of Deed, page 405, records of Grays Harbor County;

ALSO EXCEPT the following described property:

Beginning at the intersection of the Inner Harbor Line of Tract 17, Aberdeen Tide and Shore Lands, with the Southerly right-of-way line of the Oregon Washington Railroad and Navigation Company, as established by Decree of Superior Court of the State of Washington for Grays Harbor County, as recorded in Volume 29 of Miscellaneous, page 472, records or Grays Harbor County;

Thence South 51°05'46" West along said "Inner Harbor Line" a distance of 1025 feet;

Thence North 36°42'47.9" West parallel to the Southwesterly line of platted Broadway within

the Plat of Weatherwax and Benn's Addition to the City of Aberdeen, a distance of 270 feet, more or less, to the Southerly line of said Oregon Washington Railroad and Navigation Company;
Thence Easterly along said Southerly line a distance of 1120 feet, more or less, to the point of beginning;
Situate in the County of Grays Harbor, State of Washington.

SECTION 2. FINDINGS OF LIFE SAFETY, PUBLIC SAFETY, PUBLIC WELFARE CONCERNS.

1. Location: The undeveloped River Street property is located on a strip of land between the Chehalis River and the Poynor Rail Yard, at one point only 250 feet between the River and the active commercial Rail Yard. Rail Yard operators have reported that many people walk across the tracks, including when rail cars are moving; such activity has led to injuries including a woman losing both her legs in a tragic accident as she was crossing under a rail car immediately adjacent to the River Street property. Other reports include that vehicles driving to or from the River Street property have damaged rail switching equipment which could lead to widespread and catastrophic incidences, especially if a train carrying explosive methanol were to derail.
2. Sanitation and Utilities: There is no permanent connection to public utility services or sanitary systems. The lack of sanitary systems and utilities further complicates maintaining basic

hygiene and health practices, exacerbating existing health conditions and increasing pressure on the overtaxed public health system.

3. Access: Access to the property is limited to an undeveloped City right of way. Public safety agencies regularly respond to medical, fire and police calls at the River Street property, and they have only one point of ingress and egress. Once on the property, if calls involve entering the property itself responders must navigate overgrown and uneven grounds which are peppered with physical and medical hazards.
4. Zoning. The property is zoned General Commercial. Residential uses in General Commercial are limited to "upper floors of buildings" (AMC 17.36.020.M); individual residences or shelters at ground level are neither permitted nor conditional uses (AMC 17.36). There are no structures on the River Street property which meet building or construction codes.
5. FINDING: In consideration of the above the City Council finds the River Street property in its current condition to be unfit for either human habitation or open public access.

SECTION 3. EXERCISE OF POLICE POWERS IN LIGHT OF LIFE SAFETY, PUBLIC SAFETY, AND PUBLIC WELFARE CONCERNS.

1. It is the purpose of this Ordinance to prevent harm to the health or safety of the public and to promote the public health, safety and general welfare of all residents of the City of Aberdeen.

2. Therefore, in exercise of its police powers, and consistent with Resolution # 2019-02 and Ordinance 6641, and recognizing that any license for individuals to remain on the River Street property expire on May 1, 2019 and will not be extended, the City Council of the City of Aberdeen prohibits all public access to the River Street property as of the effective date of this Ordinance.

SECTION 4. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person of situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation.

SECTION 5. PUBLICATION BY SUMMARY. The Finance Director, or in his or her absence the Corporation Counsel, is authorized and directed to publish a summary in lieu of this Ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect upon its passage, signing, and publication, and not before June 10, 2019.

PASSED AND APPROVED this 8th day of May, 2019.

/s/
Erik Larson, Mayor

ATTEST:

/s/
M. Patrice Kent, City Clerk
(Corporation Counsel)

ORDINANCE NO. 6645

AN ORDINANCE PROHIBITING PUBLIC ACCESS TO RIVER STREET PROPERTY FOR LIFE SAFETY, PUBLIC SAFETY, AND PUBLIC WELFARE REASONS

PASSED AND **APPROVED** this 8th day of May, 2019.

/s/Erik Larson, Mayor
/s/Patrice Kent, City Clerk (Attest)

APPENDIX D

Map of Identified Camping Areas
(fold-out exhibit)

See next page for Fold-out Exhibit

DOWNTOWN ABERDEEN

Legend

- Downtown Business District
- Sit Lie Boundaries
- AMC 12.46 not enforce - 174,500 sf

3rd @ Michigan
3rd @ Jeffer
3rd @ H
3rd @ G
F @ Arnold
F @ 3rd
Ran...ll @ E
2nd @ Washington
2nd @ Park
2nd @ Alde
2nd @ Michigan
2nd @ Jefferson
2nd @ M
2nd @ L
2nd @ K
Broadway @ 2nd
2nd @ I
2nd @ H
2nd @ G
2nd @ F
2nd @ E
2nd@ E
1st @ Washington
1st @ Park
1st @ Alder
1st @ Michigan
1st @ Jefferson
1st @ M
1st @ L
1st @ K
1st @ Broadway
1st @ I
1st @ H
1st @ G
1st @ F
1st @ E
1st @ E
Market @ Washington
Market @ Park
Market @ Alder
Market @ Michigan
Market @ Jefferson
Market @ M
Market @ L
Market @ K
Broadway @ Market
Market @ I
Market @ H
Market @ G
Market @ F
Market @ Fuller Way
Market @ E
Wishkah @ Washington
Wishkah @ Park
Wishkah @ Alder
Wishkah @ Michigan
Wishkah @ Jefferson
Wishkah @ M
Wishkah @ L
Wishkah @ K
Wishkah @ Broadway
Wishkah @ I
Wishkah @H
Wishkah @ G
Wishkah @ F
Wishkah @ Fuller Way
Wishkah @ Kansas
Heron @ Washington
Heron @ Park
Heron @ Alder
Heron @ Michigan
Heron @ Jefferson
Heron @ M
Heron @ L
Heron @ K
Heron @ Broadway
Heron @ I
Heron @ H
Heron @ G
Heron @ F
Heron @ Kansas
State @ Washington
State @ Park
State @ Alder
State @ Michigan
State @ Jefferson
State @ M
State @ K
Broadway @ State
State @ I
State @ H
State @ G
State @ F
H North of River
Washington @ River
Park @ River
Alder @ River
Michigan @ River
Jefferson @ River
M @ River
L @ River
K @ River
Broadway @ River
River @ I
River @ H
River @ G
River @ F

290 145 0 290 Feet