

Martin v. City of Boise, --
F.3d – 2019 WL 143404,
April 1, 2019

**Impact of Decision on City of Burien
Parks**



9TH CIRCUIT MAP



9th Circuit Federal Court of Appeals Decisions are binding within and throughout these states and territories

What does *Martin* say?

“The Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property on homeless individuals who could not obtain shelter.” *Martin, supra at 5*

8th Amendment to the U.S. Constitution

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Boise's No Camping Ordinance

Criminalizes using “any of the streets, sidewalks, parks or public places as a *camping* place at any time.”

“Camping includes either *sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).*”

Martin Plaintiffs



Martin



Humphrey



Anderson



Hawkes



Smith



Bell

“The City is quite right about the limited nature of the opinion. On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. *Martin*, 902 F.3d at 1035. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.”

- . The opinion clearly states that it is *not* outlawing ordinances “barring the obstruction of public rights of way or the erection of certain structures,” such as tents, [*id.* at 1048 n.8](#), and that the holding “in no way dictate[s] to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.”

8th Amendment Addresses only
the TYPE of punishment allowed



8th Amendment requires the
punishment fit the crime



Berzon - Majority

Bennet -Dissent

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Burien No Camping Ordinance BMC 7.10

No person shall camp in any park area
Civil Infraction

no person shall erect, maintain, use or occupy a temporary tent or shelter in any park area Nothing in this section shall be construed to authorize overnight camping. **Civil Infraction**

**No person shall enter or be present in a city park area during hours the park is closed except persons using park facilities as part of an event authorized by the parks director or city employees or authorized agents.
Misdemeanor**

Martin Takeaways

- Criminalizing Camping (no lying or sleeping) - not per se unconstitutional; unconstitutional *as applied* if individual has no alternative shelter (Burien does not have a “no sleeping or lying down” ordinance)
- Burien’s No Camping Ordinance does not fall within Martin ruling because it is not subject to a criminal citation See 7.30.110-.120
- Burien’s *criminal* prohibition against being in a park after hours may be unconstitutional *as applied* if an individual has no alternative shelter

Burien's Plan for the Annex and Parks

- Maintain a daily, verified, inventory of available services and overnight shelters; continue to encourage individuals to accept services;
- Prohibit erection of tents and shelters in parks (civil violation so not prohibited by Martin);
- Arrest individuals in parks after hours when individuals have been offered services and shelter and have refused such services and shelter.