

Special Order 2018-0001

1200.1 PC 647(E) ENFORCEMENT AND 9TH CIRCUIT DECISION

The Ninth Circuit Court of Appeals recently held in *Martin v. City of Boise* that municipalities may not enforce general laws prohibiting sleeping on public property when there is nowhere else for a homeless individual to sleep. The Court noted that its decision did not address enforcement of ordinances "prohibiting sitting, lying, or sleeping outside at particular times or in particular locations."

Effective immediately and until further notice, officers shall not enforce PC § 647(e) (lodging on public property without the owner's consent) unless authorized to do so by the Chief of Police, such as when participating in a coordinated effort with City of Berkeley staff engaged in an encampment resolution activity.

This decision applies only to the enforcement of PC § 647(e). Officers shall enforce other provisions of Penal Code and Berkeley Municipal Codes using existing policy and discretion, including, but not limited to:

Laws relating to trespass on private property:

- 06.32.020 Park curfew violation 2200 - 0600 hrs;
- 06.32.030 No structures (including tents), large objects, or collection of objects covering over 10 square feet may be placed in city parks without a permit;
- 13.36.065 City building rules - remaining on curtilage without COB business; and
- 14.32.040 Standing in roadway, use of divisional islands; i.e., on the median

Comm Center personnel should dispatch officers to assess complaints called in by the public, and officers should evaluate calls on a case-by-case basis when attempting to address a complaint. Should a given incident have no other enforcement option (e.g. there is only a PC § 647(e) complaint) the officer should advise the reporting party of this issue.

This order is meant to clarify enforcement restrictions in light of the recent Ninth Circuit Court decision, and will be in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

Chief of Police