

IN THE ZONE

Current Trends in Land Use Law

Homelessness: Courts Scrutinize Anti-Camping Laws

By: [David Warner](#)

Oakland, California's latest attempt to provide temporary housing for homeless residents through its [Community Cabin program](#) reflects the growing quandary western cities face as they attempt to comply with federal court decisions requiring communities to do more for the homeless.

The program, promoted by the City as "an effective and compassionate intervention" to help end a resident's "unsheltered status," has met with mixed success since it was introduced last summer. It consists of several dozen insulated equipment sheds at each site, the type commonly found in residential backyards to house lawn mowers and tools, scattered throughout the City near locations where homeless encampments exist.

Much of the City's efforts stem from a recent federal [court](#) decision finding Boise, Idaho's anti-camping ordinance violated the Eighth Amendment's prohibition against cruel and unusual punishment. **For more information on the decision and what it may mean for municipalities click [HERE](#).**



Join us for the APA-CMS Bar Exam Planning Law Session!

Ancel Glink's Daniel Bolin, Greg Jones and Megan Mack will be hosting the fourth annual APA-CMS Bar Exam planning law session at Haymarket Pub and Brewery on February 20, 3:30 - 5pm. Join us for an engaging and realistic law school simulation for planning and land use professionals! Tickets available for purchase [HERE](#).



Cases to Know

[Church of our Lord Savior Jesus Christ v. City of Markham](#). The church has been operating out of a single family residence for over 15 years. The City learned of the church's use of the property and filed a lawsuit to enjoin the church's operation until it obtained a conditional use permit. The church then applied for a permit but was denied. As a result, the church filed a lawsuit against the City for alleged violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) as well as the Illinois Religious Freedom Restoration Act (RFRA). The City argued the church's lawsuit was not "ripe" because it did not apply for variance from applicable parking regulations. The district court ruled in favor of the City on the basis that the church's claims were not ripe when filed. On appeal, the Seventh Circuit determined the key question was whether operating a church on the property was a permitted or conditional use. It therefore remanded it back to the district court to address whether operating a church on the property is a permitted or conditional use under the City's zoning ordinance.

[Drury v. Village of Barrington Hills](#). The Village amended its zoning ordinance to allow residential horse boarding as a home occupation. The Village cited LeCompte, a resident, for failing to operate within the ordinance's restrictions and then amended the ordinance to allow for large scale boarding operations applying it retroactively. As a result, a lawsuit is filed by LeCompte's neighbors (Drury). Nine years later, the composition of the Village Board changes, the Village enters into a settlement agreement with the neighbors whereby the Village agrees that the zoning amendment was void when adopted. The circuit court refuses to enter the agreed settlement order between the Village and the neighbors and dismisses the neighbors' lawsuit challenging the zoning amendment. The Appellate Court agreed that the settlement agreement was improper as it failed to include LeCompte, who had filed a petition to intervene. However, the Appellate Court disagreed with the circuit court's dismissal of the underlying case. The neighbors had sufficiently pled the exclusivity of the zoning amendment based on the retroactivity language in the ordinance's amendment. The Court also noted the repeal of the ordinance less than a year after its adoption expressly disclaimed any rational basis for that ordinance. Based on the Appellate Court's ruling, the case will go back to the circuit court for further proceedings on the neighbor's challenge to the zoning amendment.

[Giannakopolous v. Adams](#). After being unsuccessful in getting the municipality to enforce its zoning regulations, a next door neighbor brought suit against an excavation business under the Adjoining Landowner Act, seeking to enjoin the operation of the illegal use. The First District broke from long-established precedent, holding that because the illegal use was "established" prior to annexation, it automatically became a legal nonconforming use "as-is" when the municipality annexed the property. In other words, the appellate court found that the annexation, in and of itself, can convert an illegal use into a legal use without the annexing authority needing to comply with state zoning laws.

[Cedarhurst of Bethalto Real Estate, LLC v. Village of Bethalto, Cedarhurst](#), a senior citizen facility, operating in the Bethalto, challenged the municipality's authority to approve a new senior citizen facility. The court held that Cedarhurst lacked standing to challenge the development's proposal as it failed to show how it would be directly injured by the Village's

approval. The court also rejected Cedarhurst's request for a court order to mandate the Village to follow its comprehensive plan, finding that the comprehensive plan is advisory only, and under state law shall not be construed to regulate or control the use of private property in any way.

[People For a Safer Society v. Village of Niles](#). Plaintiffs filed a lawsuit against a municipality for approving an ordinance granting a special use to allow a gun store and indoor firing range alleging it violated their substantive due process and that the approval would reduce the value of the neighboring properties. The Village argued the plaintiffs lacked standing because they did not own or reside in property adjacent to or adjoining the property. The Appellate Court found that the plaintiffs lacked standing to sue in their own right and upheld the lower court's dismissal.



Legislation to Love or Loathe

Legislation to Legalize Marijuana.

On January 9, 2019 Sen. Heather Steans filed [Senate Bill 007](#) which creates the Cannabis Regulation and Taxation Act. However, S.B.007 at this time contains nothing more beyond a short title provision.

While S.B.007 may not have any substantive language yet, Sen. Steans and Representative Kelly Cassidy filed similar bills (S.B.0316 and H.B.2353 respectively) in the Spring of 2017 which might be illustrative as to what we might expect to see in S.B.007 going forward. For a useful chart of the earlier proposed bills, [see here](#). In short, the earlier proposed legislation called for the legal possession of under 28 grams for Illinois residents; possession of under 14 grams for nonresidents; possession of five or fewer plants; and possession of cannabis paraphernalia.

It's never too early to start thinking about the potential impacts that marijuana legalization will have on local governments. Potential areas of interest include: changes to zoning codes, tax revenue, drug testing requirements for employees, impact on local law enforcement, changes to county jail population, licensing requirements, product labeling and testing facilities.



About Ancel Glink

For more information visit Ancel Glink's web-site at www.ancelglink.com or email us at inthezone@ancelglink.com. To stay up to date on pending legislation, recent cases, and other topics of interest to local governments, you can also visit our blog [Municipal Minute](#), and listen to Ancel Glink's [Quorum Forum](#) podcast. You can follow the Land Use Group on Twitter [@AncelGlinkLand](#), or like Ancel Glink: Land Use on [Facebook](#).

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"Homeless Encampment" Photograph by: [Bart Emerson](#)



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