

## NEWS

# Court slams Ocala's 'Open Lodging' ordinance

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Published 1:44 p.m. ET Feb. 9, 2021 | Updated 4:15 p.m. ET Feb. 9, 2021

The City of Ocala can no longer arrest or cite homeless people for simply sleeping outside without first checking on the availability of emergency shelter beds, according to a U.S. District Court ruling issued on Monday.

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The ruling stems from a federal case filed by the ACLU of Florida, Southern Legal Counsel and pro bono attorney Andy Pozzuto in September 2019 on behalf of Patrick McArdle, Courtney Ramsey and Anthony Cummings. They said the city ordinance violated their Eighth and 14th Amendment rights.

An email and phone call to Ocala Mayor Kent Guinn seeking comment on the court ruling were not immediately returned.

The plaintiffs were arrested, pursuant to the city's Open Lodging ordinance, because they were sleeping outside, according to a news release from the ACLU. They also had been issued trespass warnings that banned them from city parks.

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McArdle served 219 nights in jail and has been charged with 10 counts of open lodging. He has accrued \$4,186 in fines, the press release indicates. In arguing their case, attorneys for the three plaintiffs submitted evidence showing that 264 people have been arrested pursuant to the ordinance, resulting in 5,393 nights spent in jail and more than \$300,000 in court costs.

A federal judge in Ocala, citing a recent court ruling in Boise, Idaho, found this pattern to constitute cruel and unusual punishment, a violation of the Eighth Amendment.

"As long as there are a greater number of homeless individuals than the number of available beds in shelters, cities are prohibited from prosecuting individuals for involuntarily sleeping in public. Courts across the country have recognized this and cities should immediately conform their practices to adhere to these basic constitutional principles," said Jackie Azis, staff attorney at the ACLU of Florida, in prepared remarks.

The court also noted a violation of the plaintiffs' 14th Amendment rights, because they were not given a process to appeal the trespass warnings.

The ruling held, in part, that the city is "enjoined from arresting, citing or otherwise enforcing the open lodging ordinance against people who are identifying as homeless" for sleeping outside "prior to inquiring about the availability of shelter space."

it also rescinds the three plaintiffs' trespass warnings and orders the city to refrain from issuing trespass warning "without due process of law," according to a copy of the order that was provided with the press release.

"We are pleased that the court entered an injunction to protect individuals experiencing homelessness from being criminalized for the life-sustaining conduct of sleeping," stated Kirsten Anderson, lead counsel and litigation director for Southern Legal Counsel, in the news release.

In a July 18, 2019 Star-Banner article, Guinn said citizens including downtown business people had complained of "people sleeping on private property or engaging in illegal or unsanitary behavior." He said the Open Lodging ordinance "is one way to help cut down on such activity."

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"This is a social services problem that is not being addressed," said Guinn. "We would rather not arrest, but we have no other option," he is quoted as saying.

Guinn said help for the homeless is "available for those who need it, seek it, and are willing to "do what is necessary" to get their lives on track through local Continuum of Care partners and charitable outreaches," the article stated.

Guinn has explored the idea of a low-barrier shelter in Ocala for the homeless as an alternative to jail.

The case documents note that, at the time the case was filed, "a minimum" of 150 homeless people were sleeping unsheltered in areas in Ocala/Marion County and two local emergency ,

shelters had only about 65 beds available.

Angela Juaristic, executive director of the Marion County Homeless Council, said she felt "great joy in my heart" when she heard about the ruling.

"Shelters work very hard to provide a place to sleep and food for homeless but continue to have less beds than bodies. Homelessness is a complex issue, resulting from any number of causes to include job loss, medical or mental health issues, breakdown of the family and in many cases low wages," Juaristic wrote in an email.

The council supports the safety and mission of law enforcement in protecting the community, but resources used in arrests and jailing could be used to help in homelessness reduction strategies, Juaristic wrote.

Karla Grimsley, executive director of Interfaith Emergency Services, stated in an email she was pleased to hear about the ruling.

"I'm glad that this additional burden on those experiencing homelessness has been lifted. They have enough barriers without adding fines that they will never be able to pay. I pray that our community becomes more committed to finding real solutions for this population. For too long we've been addressing the issue with Band-Aids. It's time to work on a cure that will benefit both the homeless and the City," she wrote.