

# Houselessness

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**Houselessness<sup>1</sup> has been a chronic problem in the United States since the 1870's**, and some readers may be surprised to learn that Vermont has the second highest per-capita rate of houselessness of the fifty states (at 43.1 out of every 10,000 Vermonters), behind only California.<sup>2</sup> This webpage attempts to address many of the myriad issues our communities face related to the houselessness crisis in Vermont, provide some helpful links for municipalities grappling with some of the associated policy considerations, and help municipalities understand the legal implications that must be considered when developing houselessness policies and regulations. (Note that the links provided here are solely to educate our members: they are not a VLCT statement for or against their positions.)

See [\*An Overview of Homelessness for City Leaders\*](#), National League of Cities (NLC)

A municipal policy can be used to set the bounds for acceptable behavior on municipal property and to ensure that municipal officials and employees do not inadvertently infringe on people's constitutional rights. However, because a policy will lack the enforcement mechanisms of an ordinance – i.e., the imposition of fines – an ordinance can be a more powerful tool. Yet the enforcement mechanisms of an ordinance mean an ordinance will also be subject to more legal scrutiny and potential liability exposure for the municipality.

## Municipal Concerns

The most obvious concern we hear from VLCT members on this topic is how they can respond to the increase in camping on public property in their municipality. Sometimes this is a single or several houseless campers setting up temporary shelter on public land or in an

undeveloped wooded area; sometimes it is a full-blown encampment with several or many individuals in more permanent, yet unpermitted and potentially dangerous, structures. The increase in houseless members of our community can also lead to an increase in panhandling, public drug use, and petty and sometimes violent crime, all of which can disrupt the serenity and public safety of our local communities and pose a public health risk. Below are some broad considerations to help municipalities begin the discussion of how to address this crisis.

### Policy Considerations

It's unlikely that the houselessness crisis can be addressed solely through reactive regulation of conduct such as restricting public camping or aggressive panhandling (i.e., "criminalizing houselessness"). Those mechanisms may also not make sense in municipalities that are not yet experiencing the negative effects of houselessness. Instead, municipalities may want to proactively address the undesired effects in their communities, either instead of or in concert with such reactive measures. This can mean:

- enabling increased housing opportunities in your community by updating your local zoning regulations, as advocated by the Vermont legislature, to incentivize affordable housing and to allow for more housing of all types (e.g., increased density, multifamily dwellings, accessory dwellings)<sup>3</sup>,
- empowering its own municipal housing authority,<sup>4</sup>
- using surplus or vacant municipal property to provide services to the houseless,<sup>5</sup>
- using grant funding and/or partnering with private organizations to promote housing stability and well-being, and/or
- installing signage that informs the houseless when and where camping/sheltering is or is not permitted (see "Anti-Camping/Anti-Sleeping" below for more information).

An emerging policy model in addressing the houselessness crisis is the Housing First approach. The Housing First approach prioritizes immediate, permanent housing based on the understanding that people's basic needs must be met before they can successfully address other life challenges like managing their mental health and tackling substance abuse issues.<sup>6</sup> (See the links below for more information on the Housing First approach.) Whether your municipality decides to pursue any of these potential policies, or any of the

numerous other ways to proactively address the houseless crisis, will depend on whether they actually address your community's needs (i.e., the problem you are trying to solve), satisfy the expectations of its voters, and can be supported by the resources of your municipality. In the absence of an actual or foreseeable problem in your municipality, it may not make sense to implement any of these measures. See the following links for more information on how to proactively address this crisis.

### **Policy Links:**

[\*Unlocking Homelessness, Part 1\*](#), National League of Cities (NLC)

[\*Caution is Needed When Considering "Sanctioned Encampments" or "Safe Zones"\*](#), U.S. Interagency Council on Homelessness (USICH)

[\*Resource Roundup for Addressing Encampments\*](#), USICH

[\*Lessons Learned from SAMHSA's Expert Panel on the Role of Outreach and Engagement\*](#), Substance Abuse and Mental Health Services (SAMHSA), USICH

[\*Case Studies: Ending Homelessness for People Living in Encampments\*](#), USICH

[\*Federal Funding Sources for Addressing Homelessness Tool\*](#), NLC

### **Housing First links:**

[\*An Overview of the Housing First Approach\*](#), NLC

[\*Housing First Checklist: Assessing Projects and Systems for a Housing First Orientation\*](#), USICH

[\*Housing First\*](#), National Alliance to End Homelessness

### **Legal Considerations**

If your community is already experiencing some of these undesired effects brought on by our increasing unhoused population, your legislative body may want to consider what tools it

has to address them. The primary tool will be local ordinances or policies on camping or panhandling on public land. Drug use, petty crime, and violent crime are already addressed by state and federal criminal codes. A municipal policy can be used to set the bounds for acceptable behavior on municipal property and to ensure that municipal officials and employees do not inadvertently infringe on people’s constitutional rights.<sup>7</sup> However, because a policy will lack the enforcement mechanisms of an ordinance – i.e., the imposition of fines – an ordinance can be a more powerful tool.<sup>8</sup> See our [Municipal Policies and Ordinances](#) topic page for more information and resources on the contrast between policies and ordinances. Due to the enforcement mechanisms of an ordinance, though, an ordinance will also be subject to more legal scrutiny and potential liability exposure for the municipality. Legislative bodies must first consider whether any of these regulatory approaches will address your community’s needs, and, given the uncertain legal parameters of policing the houseless, it may not be prudent to implement these measures proactively. We strongly recommend that any policy or ordinance be reviewed by an attorney prior to its adoption.

Several constitutional considerations must be understood before a legislative body enacts an ordinance or policy. The most common approaches for addressing the negative effects of houselessness are related to camping on public property (e.g., anti-camping or anti-sleeping ordinances and encampment clearing policies), panhandling, and vagrancy. We’ll briefly discuss the concerns raised by the regulation of each below.

## ***Camping on Public Property***

**Anti-Camping/Anti-Sleeping.** Courts around the country have cited the Eighth Amendment to the U.S. Constitution (binding on the states by the Fourteenth Amendment) and its prohibition on cruel and unusual punishment to limit the enforcement of municipal anti-camping and anti-sleeping ordinances and criminal trespass laws against the houseless. Most notably, in the case *Martin v. City of Boise*, the Ninth Circuit Court of Appeals<sup>9</sup> held that the Eighth Amendment prohibited criminal enforcement of an ordinance for “conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets” or from using “rudimentary forms of protection from the elements” or the “articles necessary to facilitate sleep.”<sup>10</sup> In effect, the court held that the City of Boise’s ordinance punished the homeless for being homeless. (The *Martin* case and subsequent

case law does not control in Vermont, but their holdings may nonetheless be influential to other courts that consider houselessness issues.) It should be noted that the Eighth Amendment only deals with criminal punishment, not civil punishment. Some courts have determined that the *Martin* ruling doesn't extend to civil enforcement of anti-camping regulations,<sup>11,12</sup> while others have held that if the enforcement is considered punishment or if civil enforcement could later become a criminal offense, then Eighth Amendment scrutiny may still apply.<sup>13</sup> This leaves open the question of how to enforce such a prohibition, if at all. Ultimately, the uncertainty of houselessness legal issues will remain until the United States Supreme Court weighs in.

The *Martin* case, though, didn't outright prohibit ordinances that restrict camping or sleeping in public places as they can still be enforced against those who have a home, but it made clear that the enforcement of an ordinance against the houseless is unconstitutional when "no sleeping space is practically available in any shelter."<sup>14</sup> In other words, there must be a home or a shelter for that person to sleep in for a municipality to cite them under an anti-camping ordinance. Even when applied to the houseless, the *Martin* case was a narrow decision, and courts have interpreted it to not limit a municipality's ability to prohibit camping, sleeping, or obstructing public rights of way through regulations on time, place, and manner. For example, in *Gomes v. County of Kauai*, the U.S. District Court for the District of Hawaii noted that a prohibition on camping at a specific park is not the same as a prohibition on sleeping anywhere in public as was the case in *Boise*.<sup>15,16</sup>

The Ninth Circuit Court also evaluated the scope of what constitutes a "shelter" in the *Martin v. Boise* context.<sup>17</sup> It discounted the alternative shelters argued by the city in that case, such as warming shelters and recreational camping locations among other sites, because they either lacked beds and were temporary (warming shelters) or because emergency shelter was not a permitted use (recreational camping). Although it rejected the city's argument for shelter options, it did not set a clear line for what constitutes sufficient shelter in the *Martin v. Boise* context.

The federal court of appeals in Vermont's jurisdiction, the Second Circuit,<sup>18</sup> did, however, uphold a New York City ordinance prohibiting the erection of structures in public places as applied to homeless persons using cardboard structures as shelter at a park.<sup>19</sup> The New York criminal court declined to extend that holding to the use of sleeping bags and flattened cardboard for "blankets" though, noting that their use was not an obstruction under the

ordinance like the shelter constructed in the prior case.<sup>20</sup> As these cases were decided in 2006 and 2011 respectively, before the Martin case, they do not address the underlying Eighth Amendment issues presented by the Ninth Circuit Court's decisions discussed above.

Because the majority of the cases revolving around the Eighth Amendment implications of enforcing against houseless persons came from the Ninth Circuit Court of Appeals, their effect is not binding here in Vermont, but they may carry persuasive authority because no comparable case has yet been decided in Vermont or in the Second Circuit. Still though, there is a petition for the Supreme Court to hear an appeal of the *Johnson v. City of Grants Pass* (cited above) ruling during their upcoming term. So more clarity is anticipated on the parameters of the Eighth Amendment implications such as whether it applies here or whether it will be limited in some way or overturned<sup>21</sup>. Until the Supreme Court weighs in, enforcing an anti-camping ordinance against the houseless will be difficult, and therefore calling on law enforcement to enforce the existing law to address any criminal behavior may be the most effective and legally conservative option. There is already a statewide prohibition on camping on undesignated State or municipal land, though we are unaware of its application in this context<sup>22</sup>? Its enforcement would also undoubtedly face the same constitutional hurdles.

**Clearing Encampments.** The Martin decision did not establish a right to occupy public property indefinitely,<sup>23</sup> and courts have declined to find Eighth Amendment violations for the closure of encampments when applied narrowly to specific encampments when other encampments were available<sup>24</sup> or when public health emergencies necessitated their removal.<sup>25,26</sup> Therefore, encampments could be cleared in certain circumstances (e.g. public health, emergencies, and when enforcing a narrowly tailored<sup>27</sup> ordinance or policy and other areas for camping or shelter beds are available), but the same Eighth Amendment concerns noted above regarding punishing the houseless for being houseless must be considered.

Even if clearing encampments avoids Eighth Amendment concerns, there are still Fourth Amendment due process concerns to be considered before the clearing can commence. This is exactly what happened in the City of Burlington in 2017 when the ACLU sued on behalf of a houseless resident whose belongings were confiscated and destroyed by the city during the clearing of an encampment. The resident had not been given advance notice or

an opportunity to be heard before the belongings were taken or the opportunity to retrieve the confiscated belongings afterwards. The case was settled in 2019, and the City agreed to amend its policy to provide due process to residents of houseless encampments.<sup>28,29</sup> The amended policy now includes notifying residents of the encampment that it will be cleared on a certain date, providing them with an opportunity for their objections to the clearing to be heard, and to hold any confiscated property for 30 days before it is disposed of or destroyed.<sup>30</sup> Affording the houseless notice, an opportunity to be heard, and an opportunity to retrieve their property is consistent with court precedent on the clearing of encampments.<sup>31</sup>

Due to these constitutional considerations, a municipality should consult their municipal attorney to ensure that any policy regarding clearing of houseless encampments is constitutionally sound prior to acting against an encampment to avoid potential liability exposure.

#### **Houseless Encampment Link:**

[\*Constitutional Limits to Abating Homeless Encampments, and Best Practices for a Cooperative Approach\*](#), Shute, Mihaly & Weinberger LLP (California)

### ***Panhandling***

Despite the First Amendment concerns, panhandling ordinances have historically gone unchallenged, but are now being challenged with increased frequency.<sup>32</sup> Courts have repeatedly held that “*begging, or the soliciting of alms, is a form of solicitation that the First Amendment protects.*”<sup>33</sup> Generally, content-based regulation of speech<sup>34</sup> that occurs in a public forum (e.g., sidewalk, street, or public park), such as the regulation of panhandling, will be subject to strict scrutiny (with the presumption being that the regulation is invalid) even if it has a content-neutral justification<sup>35</sup> (i.e., without regard to its message). In *Reed v. Town of Gilbert* (2015), the Supreme Court rearticulated the standard of when regulated speech is content-based: “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed”. In the wake of that decision, explicitly regulating panhandling – even if done in a narrowly tailored manner – is likely unconstitutional because it regulates based on the topic discussed, solicitation of charity.<sup>36</sup> Since *Reed*, courts have been viewing panhandling as

protected speech rather than conduct, and ordinances are being struck down more frequently.<sup>37</sup>

This case law does not entirely foreclose the possibility of regulating panhandling. Instead, the regulating must be done indirectly and in a content-neutral manner by addressing conduct such as impeding traffic and public safety concerns like pedestrians in traffic islands. Yet even in those circumstances care must be taken to ensure that the regulation is based on a compelling government interest and is narrowly tailored to address that interest.<sup>38</sup> For example, the First Circuit Court<sup>39</sup> ruled unconstitutional a prohibition on all “standing, sitting, [or] staying ... on median strips” because it “bans virtually all expressive activity in all of the City's median strips and thus is not narrowly tailored to serve the City's interest in protecting public safety.”<sup>40</sup> This highlights the care municipalities must take to ensure their regulations do not infringe on protected speech such as soliciting charitable contributions by begging or panhandling. Given the free speech protections for panhandling, any ordinance regulating panhandling should be carefully crafted in consultation with your municipal attorney.

## ***Vagrancy***

Vagrancy or loitering laws and ordinances have consistently been ruled unconstitutional because they are vague and overbroad.<sup>41</sup> Attempts to criminalize vagrancy have been held not only unconstitutionally overbroad because they inherently prohibit a vast amount of conduct that was fundamentally innocent but also void for vagueness for failing to provide fair notice of what conduct is forbidden.<sup>42</sup> There were once statutes in Vermont criminalizing vagrancy, but the legislature repealed them by Act 105 of 2018<sup>43</sup> for these same constitutional considerations. As noted in the findings of Act 105, “Vermont’s vagrancy laws are very likely unconstitutional. Similar laws in other states have been struck down by the courts for vagueness because they failed to provide fair notice of what conduct is forbidden, and thus encouraging arbitrary and erratic arrests.”<sup>44</sup> The act further finds that “Any conduct prohibited in the vagrancy chapter is covered by other statutes in current law such as disorderly conduct, trespass, and assault.” Therefore, vagrancy or general loitering ordinances are not recommended due to their suspect constitutional validity, and it is better

to use ordinances that target and regulate specific conduct.

## Conclusion

While it is presumptively unconstitutional to regulate the status of a person such as through vagrancy or loitering ordinances, there is limited space for a municipality to regulate camping or sheltering, and panhandling, through municipal ordinances and policies. Any regulations adopted must be narrowly tailored, avoid being void for vagueness, and avoid implicitly targeting houselessness – focusing instead on targeting violations of conduct rather than the status of an individual.

Policies on the enforcement of these ordinances, particularly regarding an anti-camping ordinance, should be based on the availability of shelter beds or other indoor sleeping alternatives, or, when seeking to clear encampments, based on public safety and other encampments. Policies on the clearing of encampments also must include the provision for notice, an opportunity for the persons affected to be heard prior to commencement of any removal, and a reasonable amount of time given for persons affected to claim any confiscated belongings.

A municipality endeavoring to wade into this regulatory pool will have to weigh (a) the costs of drafting, adopting, and enforcing such an ordinance and any associated policies, along with the risk of litigation, against either (b) the cost of adopting proactive public policy measures or (c) the impact and cost to the community of simply managing the situation with its current tools (i.e. administering existing ordinances and policies and deferring to the police to enforce existing criminal codes).

The breadth of review of this resource page is limited and intended to provide municipal legislative bodies with the general legal overview and the background necessary to consider their options regarding how they can address the ongoing houselessness crisis in Vermont. It does not provide all policy options available to them, nor does it address in full detail all the legal implications of attempting to regulate those issues commonly associated with houselessness. There is also a lack of finality and clarity in the various court decisions

discussed and their scope, particularly relating to the Eighth Amendment’s prohibition on cruel and unusual punishment, as well as uncertainty regarding camping on public property and the applicability of those cases here in Vermont.

VLCT urges municipalities to

- have an open and thorough conversation with their community regarding what policy approaches or which form(s) of regulation, if any, make(s) the most sense for their situation,
- consult with their municipal attorney prior to enacting any ordinance seeking to regulate the houseless or any related policy, and,
- of course, have their attorney review any final draft prior to its adoption.

## **Additional Resources**

[\*Addressing and Preventing Unsheltered Homelessness\*](#), Vermont Department of Children and Families (DCF)

[\*Resource Roundup for Addressing Encampments\*](#), USICH

[\*Homelessness and Climate Change: A Roundup of Resources for Communities Before, During, and After Disasters\*](#), USICH

[\*Federal Funding Sources for Addressing Homelessness Tool\*](#), NLC

## **Endnotes**

1. “The word houseless is used in place of homeless because of the important distinction between a house and a home. Home is the word we use to describe the personal community in which we live. Naming people as homeless implies that they don’t have a place of belonging or a community. While houseless people may be temporarily, or chronically, without housing, they can still have a home. The term “houseless” can also

help to restore a sense of dignity to people struggling with housing.”

<https://www.tedxmilehigh.com/houseless-people/>

2. “Vermont’s Rates of Homelessness Are (Almost) The Worst In The Country”, Lola Duffort, VTDigger <https://vtdigger.org/2023/02/07/vermonts-rates-of-homelessness-are-almost-the-worst-in-the-country/>
3. Act 47 of 2023,  
<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT047/ACT047%20As%20Enacted>
4. See 24 V.S.A. § 4003 at <https://legislature.vermont.gov/statutes/section/24/113/04003>  
.
5. Housing not Handcuffs: Ending Criminalization of Homelessness in U.S. Cities, National Law Center on Homelessness & Poverty, 2018. Pgs. 48-49.  
<https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>  
. (Note that the National Law Center on Homelessness & Poverty is an advocacy organization, and its inclusion here is solely to educate VLCT’s members and not a VLCT statement in support or against their position.)
6. An Overview of the Housing First Approach, <https://www.nlc.org/resource/an-overview-of-the-housing-first-approach/>
7. See Montpelier’s Camping Policy,  
<https://public.powerdms.com/MontpelierPD/documents/1692118>
8. Although municipalities could impose fines for ordinance violations, fining people who have no money or any means of contesting tickets can result in the accumulation of uncollectable default judgments and impose yet another barrier to accessing affordable housing.
9. The Ninth Circuit Court of Appeals is the U.S. federal court of appeals for the U.S. district courts of the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.
10. Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019)
11. O’Callaghan v. City of Portland, No. 3:21-CV-812-AC, 2021 WL 2292344, at \*4 (D. Or. June 4, 2021); Fitzpatrick v. Little, No. 1:22-CV-00162-DCN, 2023 WL 129815, at \*13 (D. Idaho Jan. 9, 2023)
12. Johnson v. City of Dallas, Tex., 61 F.3d 442 (5th Cir. 1995)
13. Johnson v. City of Grants Pass, 72 F.4th 868 (9th Cir. 2023)
14. Martin v. City of Boise
15. Gomes v. Cnty. of Kauai, 481 F. Supp. 3d 1104, 1109 (D. Haw. 2020)

16. See the ACLU of Vermont's publication *Know Your Rights – Unsheltered in Vermont* (2023), ("2. Can police or government officials ask me to go elsewhere? Yes, cities and towns may designate certain areas as no-camping locations. However, they cannot forbid people from camping on public land entirely.")  
<https://www.acluvt.org/en/news/know-your-rights-unsheltered-vermont>
17. Johnson v. City of Grants Pass
18. The Second Circuit Court of Appeals is the U.S. federal court of appeals for the U.S. district courts of the states of Connecticut, New York, and Vermont.
19. Betancourt v. Bloomberg, 448 F.3d 547, 533 (2d Cir. 2006)
20. People v. Bounville, 32 Misc. 3d 194, 921 N.Y.S.2d 502 (Crim. Ct. 2011)
21. Cities are asking the Supreme Court for more power to clear homeless encampments, Vox, 10/10/23: <https://www.vox.com/2023/10/10/23905951/homeless-tent-encampments-grants-pass-martin-boise-unsheltered-housing>
22. 19 V.S.A. § 1106, "A person shall not use any part of a public highway right-of-way, a public rest area associated with a public highway, or any public land not so designated by the agency, department, or municipality having control of same as an overnight camping area for the purpose of overnight camping. A person who violates this section shall be fined not more than \$50.00 for each day he or she is in violation."  
<https://legislature.vermont.gov/statutes/section/19/011/01106>
23. Carlos-Kahalekomo v. Cnty. of Kauai, No. CV 20-00320 JMS-WRP, 2020 WL 4455101 (D. Haw. Aug. 3, 2020)
24. Butcher v. City of Marysville, No. 218CV02765JAMCKD, 2019 WL 918203 (E.D. Cal. Feb. 25, 2019)
25. La All. for Hum. Rts. v. City of Los Angeles, No. LACV2002291DOCKES, 2020 WL 2615741 (C.D. Cal. May 22, 2020),?vacated,?No. CV2002291DOCKES, 2020 WL 3421782 (C.D. Cal. June 18, 2020)
26. Butcher v. City of Marysville, No. 218CV02765JAMCKD, 2019 WL 918203 (E.D. Cal. Feb. 25, 2019)
27. See McCullen v. Coakley, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014) ("For a content-neutral time, place, or manner regulation to be **narrowly tailored**, it must not 'burden substantially more speech than is necessary to further the government's legitimate interests.' Ward, 491 U.S., at 799, 109 S.Ct. 2746. Such a regulation, unlike a content-based restriction of speech, 'need not be the least restrictive or least intrusive means of' serving the government's interests. Id., at 798, 109 S.Ct. 2746. But the government still 'may not regulate expression in such a

manner that a substantial portion of the burden on speech does not serve to advance its goals.”)(emphasis added)

28. <https://vtdigger.org/2019/12/04/burlington-settles-with-aclu-over-destruction-of-homeless-mans-property/>
29. <https://www.burlingtonfreepress.com/story/news/local/2019/12/05/aclu-vermont-case-against-city-burlington-awards-rights-homeless-residents/2617160001/>
30. *Id.*
31. Kincaid v. City of Fresno, No. 1:06-cv-1445, 2006 WL 3542732, at \*37 (E.D. Cal. Dec. 8, 2006)
32. 7 A.L.R.5th 455 (Originally published in 1992)
33. Speet v. Schuette, 726 F.3d 867 (6th Cir. 2013), citing Loper v. New York City Police Dep't, 999 F.2d 699 (2d Cir. 1993)
34. Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015) (“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”)
35. Sorrell v. IMS Health Inc., 564 U.S. 552, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011)
36. Anthony D. Lauriello, Panhandling Regulation After Reed v. Town of Gilbert, 116 Colum. L. Rev. 1105 (2016) (“Justice Thomas's new two-step test in Reed v. Town of Gilbert . . . , creating a [new] definition for content-based laws that will likely result in many panhandling regulations being ruled content based and therefore struck down under the exacting requirements of strict scrutiny.”)
37. Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015); McLaughlin v. City of Lowell, No. 14-10270-DPW, 2015 WL 6453144, at \*4 (D. Mass. Oct. 23, 2015); Norton v. City of Springfield, 768 F.3d 713, 714 (7th Cir. 2014); Browne v. City of Grand Junction, No. 14-cv-00809-CMA-KLM, 2015 WL 5728755, at \*7-11 (D. Colo. Sept. 30, 2015)
38. R.A.V. v. City of St. Paul, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992); Loper v. New York City Police Dep't, 999 F.2d 699 (2d Cir. 1993)
39. The First Circuit Court of Appeals is the U.S. federal court of appeals for the U.S. district courts of the states of Maine, Massachusetts, New Hampshire, and Rhode Island and the Commonwealth of Puerto Rico.
40. Cutting v. City of Portland, Maine, 802 F.3d 79 (1st Cir. 2015)
41. City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999)
42. Davis v. City of New York, 902 F. Supp. 2d 405 (S.D. N.Y. 2012)

43. Act 105 (H.563), 2018,

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT105/ACT105%20As%20Enacted>

44. *Id.*

***Researched and written by***

Kail Romanoff

Staff Attorney I, VLCT Municipal Assistance Center

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