

San Jose Law Opens 'Pandori's Box'

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aren't exactly a "solution" to Jewishness, but they do send a strong message.) But for the merchants, it is exactly that — a way of pushing an unwanted group away from downtown stores and businesses.

After proclaiming how wonderful San Jose is in providing low-cost housing, shelters, recovery programs, and job training for the homeless, Pandori protested that the ordinance "has nothing to do with homelessness." Though sitting has nothing to do with camping, Pandori intoned: "Allowing people to sit and camp on the sidewalks all day long won't help them..." The help that Pandori prescribes is apparently a \$1000 fine and/or 6 months in jail. Continued Pandori: "This ordinance is a fair balancing of the rights of business people while putting fair responsibility on anyone that it is not proper to use our sidewalks downtown (to sit on)."

But even Robert Teir, general counsel for the American Alliance for Rights and Responsibilities (the Washington, D.C. think tank that thought up these sitting bans), acknowledged "a balanced approach would protect public spaces and those who use them and would take into consideration the legitimate needs of people who are down and out." San Jose's sitting ban gives the homeless nothing but a directive to leave the downtown.

Who exactly do the sidewalks belong to? Pandori seems to be saying, "no one poor enough or tired enough to have to sit down." Who supports this law? Merchants, politicians, but certainly no homeless people that day. Activist Robert Norse predicted future protests. "This law doesn't ban all-day loitering; it bans sitting down," Norse pointed out. "With penalties up to six months in jail. This is a misdemeanor offense. That means jury trials, folks."

One homeless man opposing the ban said, "Most of the places where the homeless can be are in the 66-block area (affected by the ban). This will leave absolutely nowhere where the homeless can go." Roy Stevens, a homeless man, said, "I find it hard to believe I'm in America today." He disputed statements made by Pandori and merchants about homeless people blocking doorways to businesses. "I never have seen

anyone hanging out in doorways other than going in or going out," Stevens said. Indeed, Pandori has no meaningful specific police statistics showing a practice of blocking doorways.

Mayor Susan Hammer decreed: "This is not an anti-homeless ordinance." Why, then, did councilmembers, police attorneys and the public use the word "homeless" 62 times that afternoon?

A heavy-set downtown florist testified to the need for the ordinance. She complained of homeless people breaking her windows after she had called the cops on them for failing to disperse. She claimed they were urinating in public. When homeless advocates pointed out that breaking windows and urinating in public are already illegal, Pandori, rumored to be planning a run for mayor in '98, explained the dilemma. "It is a waste of police resources to have them stand and wait for someone to urinate in front of them or to vandalize a house or business," he said. His rationale is simple and chilling: it is easier for the police to catch someone sitting, and citations can more easily be issued. The logical solution of putting in public bathrooms was not even raised.

Mayor Hammer thanked the authors of *Broken Windows*, criminologists James Q. Wilson and George Kelling, for sending a reprint from their book, *Fixing Broken Windows 1996*. In it, they argue that symbols of disorder, e.g., unchecked panhandlers, are, in effect, the first broken windows, and present a loss of public control.

Did Hammer read in their 1982 article that the authors concede that "none of this is easily reconciled with any conception of due process or fair treatment"? Did she also read that the authors claim that law enforcement is not the only, or even an appropriate means of solving homelessness? The authors state that the provision of adequate housing, public restrooms, and substance abuse treatment would reduce symptoms of disorder in a more constructive and long-lasting way.

But these arguments were missing from the text of their 1996 book considered by the council. Instead, Mayor Hammer read of Seattle Mayor Norman

Rice, under whose leadership the Seattle City Council read into the record their city's efforts to care for the needy so the council "could incorporate into its records a history of generous provision for Seattle's poor and troubled citizens." These same Seattle City Council minutes were later used as "proof" that Seattle's sit/lie ordinance was not targeted at the homeless. No wonder Pandori took such pains to elaborate on all the services that San Jose provides for the homeless while introducing an ordinance that "has nothing to do with homelessness."

Unlike the debate by the Palo Alto City Council about their recently passed sit/lie ban, San Jose councilmembers were darker and more direct in their reasoning on the need for the sitting ordinance. According to City Attorney Joan Gallo, "This is more than a safety issue. This is an economic development issue."

A man speaking against the ordinance was not impressed. "This is a capricious and arbitrary ordinance in a capricious and arbitrary district. Should we shepherd the masses in San Jose with canine and horse patrols? Now we have royal privileges for the fiefdom of Pandori." With a sentence of jail for the very first citation, it appears that San Jose has joined Seattle, Palo Alto, and Santa Cruz in a bizarre farce in which city officials brag about how much they do to provide low-cost housing, job training, recovery programs, food, and shelter services, while they are actively involved in attempts to drive the poor and homeless from public spaces.

As Maria Foscarinis of the National Law Center on Homelessness and Poverty

wrote in *Mean Sweeps* (a December, 1996, study of anti-homeless legislation in cities across the nation): "When (laws banning sitting, or sleeping) are used as a justification for forcing certain people out of particular city areas, it serves, perhaps unconsciously, as a pretext for rationalizing biases against a certain group of people, or as an excuse for excluding certain people from public spaces based on stereotypes and stigmas... These policies are usually counterproductive in that they create barriers for people on the path toward self-sufficiency and undermine individual efforts to escape poverty."

Councilmember Frank Fiscalini defied logic and blatantly denied the ban made anything illegal. "We're not criminalizing anything." Only Councilmember Manny Dias spoke out strongly against the ordinance. "I can't see it not increasing the impact on the homeless and the poor," he said. "I can't support this today."