

Outdated Berkeley loitering law repealed

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BERKELEY — The city has repealed a 1946 loitering ordinance after its constitutionality was challenged by a homeless and disabled woman who received a citation for sitting in a park.

Kim Nemirow was sitting on a blanket in Berkeley's Willard Park in April 2007 with her wheelchair nearby when a Berkeley police officer issued her a citation for loitering, according to a news release from the East Bay Community Law Center, which helped her win the case.

Although she began to gather her belongings, the officer issued Nemirow a citation for violating a Berkeley Municipal Code section, which states that it's "unlawful for any person to loiter about any school or public place at or near which schoolchildren attend."

Nemirow sought the legal assistance of attorney Osha Neumann at East Bay Community Law Center to challenge the citation in court and ask that the charges be dismissed on the grounds that the ordinance was unconstitutional.

In arguing the case, Neumann cited a 1990 opinion by the Berkeley Deputy City Attorney Matthew Orebic, in which he states such loitering laws are "void for vagueness" and "encourage arbitrary and discriminatory enforcement," the news release said.

The city did not oppose Nemirow's motion to dismiss the case and the court dismissed the charges against her. On July 8, the Berkeley City Council voted unanimously to pass an ordinance rescinding the loitering ordinance.

"It makes it a little more difficult to criminalize homeless people," Nemirow said about the repeal.

Neumann, who provides legal defense for people who are homeless, said the law is a prime example of one that remained on the "statute books long after (its) shelf life."

"This one just didn't make any sense at all. What the heck are parks for, if not for loitering? It's only poor people who loiter. The rich never loiter. They just engage in leisure time activities."

The East Bay Community Law Center was founded 20 years ago by UC Berkeley School of Law students.