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October 10, 2019

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Dear Mayor Adler and Councilors,

We write again in connection with the City of Austin's ongoing consideration of how best to address the issue of homelessness. In particular, we wish to comment on the City Council's pending agenda for its October 17 meeting. As noted in our letter of June 20, 2019, the National Law Center on Homelessness & Poverty is the only national legal organization dedicated to ending and preventing homelessness, with thirty years of experience in outreach and education, policy advocacy, and impact litigation. This experience shows us that Austin is headed in the right direction with the work it has undertaken since June to address the root causes of homelessness through positive, non-punitive policies. On October 17 the City will consider draft legislation to modify City Code Sections 9-4-11 and 9-4-14 directed to camping and obstruction (Agenda Item No. 29 ("Draft Ordinance")), as well as two substantively related resolutions (Agenda Items Nos. 30 and 32). We encourage the City to stay the course rather than backtracking, and we thus respectfully urge the Council *not to enact the Draft Ordinance*.

Since the Council's June modification of the City Code, Austin's policies have generated robust public discussion regarding the need for further clarity in enforcement. We agree. Greater clarity aids both those enforcing the laws and those subject to them. But no more laws are needed to achieve this clarity, and the City does not need to take a step back toward the old, failed status quo of criminalization. The City and the State of Texas already have laws on the books to promote safety and health standards, all of which can be successfully addressed under enforcement protocols such as those contemplated in the City's Action Plan to End Homelessness and A.P.D. Chief Manley's October 4 comments on updated police training bulletins. The City should be mindful of the progress Austin has made this year in becoming a leader in homelessness policy. This progress includes the City's Action Plan and unprecedented funding of nearly \$63 million for homelessness initiatives. In stark contrast, the Draft Ordinance would provide no marginal benefit relative to existing, available non-punitive measures.

Austin can achieve its law-enforcement goals through non-punitive measures.

The City already has law enforcement tools available to address legitimate public safety and health concerns. The June revisions to Austin’s City Code appropriately require that enforcement occur only in connection with a bona fide safety or health issue. *See, e.g.*, § 9-4-11(B). Enforcement protocols that provide needed clarity regarding when these thresholds are met will complement the City’s Action Plan and move the City forward. Indeed, at his October 4 press conference, Chief Manley updated the City’s enforcement protocols. Chief Manley demonstrated that existing laws already permit enforcement against “obstruction” occurring when a person’s camping presence: requires a member of the public, including those using a wheelchair or stroller, to step off a sidewalk to get around an individual or their property; or blocks business entryways or places that police have closed off for public safety purposes. Such updates from Chief Manley reasonably refine and clarify existing laws, and specify when enforcement may be appropriate.

With that said, one area where clarity should be heightened is the existing language relating to a “reasonable opportunity . . . to correct the violating conduct”¹—as indeed A.P.D. Chief of Staff Gay made clear in his comments during the Council’s September 20 meeting²—for the following reasons:

- First, the “reasonable opportunity” standard ignores the very people it criminalizes. The City’s enforcement protocol should require that an adequate housing alternative to camping (including low-barrier options consistent with the City’s Action Plan) be made available, *and refused*, prior to enforcement.
- Second, there is no explanation of how “compliance” may be achieved when the accused lacks a home anywhere.
- Third, any law relating to compliance and enforcement should contemplate reasonable accommodation requests by persons with disabilities—e.g., people who need assistance or additional time to take down tents, or medically appropriate alternatives for people whose disabilities cannot be accommodated in congregate shelters.

Similarly, both the existing law and Draft Ordinance define “camping” to include “storing personal belongings.” *E.g.*, § 9-4-11(A)(1)(a). Without further clarity, a respite on a bench could thus be considered criminal if personal belongings were “stored” on or around the bench—raising legal concerns under the U.S. Constitution and Americans with Disabilities Act.

The Law Center encourages the City—consistent with Mayor Adler’s September 26 posting to the City Council message board³—to continue to pursue appropriate clarity in enforcement based on existing legislation, rather than rushing to enact the Draft Ordinance.

Austin can achieve its public-health goals through non-punitive measures.

Austin can address public health concerns without returning to misguided, punitive policies that punish people for living outside when they have nowhere else to go. Indeed, Governor

¹ *See, e.g.*, § 9-4-11(B). This standard is mirrored in the Draft Ordinance’s “reasonable opportunity to comply.” *See, e.g.*, Proposed Ordinance No. 20191017-029 § 9-4-11(4)(A)(2).

² *See generally* Sept. 20 Tr. at 9:43:30 AM (discussing lack of clarity).

³ *See* <http://assets.austintexas.gov/austincouncilforum/57-20190926150204.pdf>.

Abbott's October 2 letter to Mayor Adler described the "*remedies* available to the State to ensure the safety and welfare of people in Austin," not *punishments* for people based on their housing status. Moreover, Austin already prohibits bad conduct of all kinds—harassment, drug use, theft, violence, littering, public urination—under existing criminal and civil laws. Other problems can be addressed through civic and infrastructure investment, such as:

- To address reported urination or defecation in public, increase toilet access.
- To alleviate concerns about communicable diseases, increase access to clean water.
- To reduce trash or hazardous property in public space, increase trash services and litter pick-up, such as Austin's Violet Bag program.⁴
- To restrict access and use of areas that are sensitive (e.g., adjacent to water sources) or dangerous (e.g., too close to roadways), give clear notice of where people can or cannot be in advance of enforcement activity.
- To move people from where they are, when necessary, craft tailored solutions in cooperation with experts such as Homeless Strategy Officer Pampilo Harris, as well as persons experiencing homelessness. If alternatives are truly adequate and accessible, people will use them. Best practices are available in our Tent City, USA report.⁵

None of these problems require defining a new class of criminal violations in order to solve them, leaving the Draft Ordinance ill-advised.

Executing the City's Homelessness Action Plan is the most appropriate solution.

Rejecting the Draft Ordinance's unnecessary creation of new punitive conduct is consistent with the City's Homelessness Action Plan.⁶ The following "non-criminal strategies for enforcement" highlighted in October 17 Agenda Item No. 32 are positive areas to develop in order to effectuate the Action Plan:

- "A homeless encampment response strategy that directly outreaches to individuals experiencing homeless."
- "Options and strategies for addressing racial disparities in Austin's homeless response system."
- "[A]cquisition of available properties that may be used or adapted for shelter or supportive housing."
- "[A] regional Continuum of Care approach, including for service coordination, data tracking, applications for funding, and other related activities."
- Building community commitment from both the public and private sectors.

⁴ See <http://austintexas.gov/news/homeless-people-clean-city-austin's-violet-bags> (Oct. 9, 2019).

⁵ See https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf.

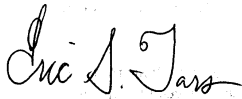
⁶ The Law Center does not oppose the proposals outlined in the October 17 Agenda Item No. 32 Draft Resolution. We have no opinion on the October 17 Agenda Item No. 30 Draft Resolution.

The City's Action Plan does not include punitive approaches to homelessness as any of its five components to end homelessness—which is as it should be. *See* Action Plan at 10. No aspects of an effective action plan to end homelessness should be punitive. Indeed, decriminalizing survival activities is better for public safety, and criminalization laws fail to reduce homelessness all over the country because these laws fail to address the causes of homelessness.⁷ This is why the Federal Plan to End Homelessness explicitly calls for ending the criminalization of homelessness in order to end homelessness itself.⁸

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As the City seriously considers various proposals to improve life for both Austin's people experiencing homelessness and Austin's housed population, the most important thing to remember is not to revert to a policy that failed—i.e., criminalization. Instead, we strongly encourage Austin to continue to follow solutions to homelessness set forth in the Action Plan. Whether considering the issue from a legal, policy, fiscal, or moral standpoint, criminalizing any aspect of homelessness is not the best way to achieve this goal. The Draft Ordinance would be a step in the wrong direction, as its goals can be better achieved through clarification of existing laws. We encourage the City to work with local advocates and the Law Center to develop approaches that will lead to the best outcomes for all residents of Austin, housed and unhoused alike. Should you have further questions, please do not hesitate to contact me at etars@nlchp.org or 202-464-0034.

Sincerely,



Eric S. Tars
Legal Director

⁷ *See, e.g.,* John Dixon and Eric Tars, *Police chiefs and advocates for the homeless agree: Housing, not handcuffs, is the right way to deal with poverty*, Sept. 12, 2019, <https://www.washingtonpost.com/opinions/2019/09/12/police-chiefs-advocates-homeless-agree-housing-not-handcuffs-is-right-way-deal-with-poverty/>; *see also* Jake Lilly, *Op-ed: As a Prosecutor, I Believe Denver Should Stop Criminalizing Homelessness*, May 5, 2019, <https://www.westword.com/news/prosecutor-jake-lilly-argues-in-favor-of-denvers-initiative-300-11332945>; National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homeless in U.S. Cities* (2016), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

⁸ <https://www.usich.gov/home-together/>; <https://www.usich.gov/solutions/criminal-justice/>.