

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

November 26, 2019

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Via email

Dear Mayor Michelle De La Isla and Councilors:

I write on behalf of the National Law Center on Homelessness & Poverty (“Law Center”) to share our concern about a proposed anti-camping ordinance introduced by Councilmember Sylvia Ortiz and that would create Article III of 5 Chapter 9.45 of the Topeka Municipal Code. To address homeless encampment in various parts of the city, the Law Center understands that on Tuesday, December 3, 2019, the City of Topeka plans to vote on the proposed ordinance, which would create “a new Article III of Chapter 9.45 of the TMC to include restrictions on camping . . . (1) in, on or under public infrastructure (bus shelters, bridges, overpasses and flood controls works); (2) within ten feet of any doorway, loading dock, stairway or fire escape; and/or (3) within specified zones (downtown and NOTO),” and provides for fines and/or possible jail time. We understand that the city council wants what is best for its citizens, and we encourage you to look at national best practices in developing your approach.

The Law Center is the nation’s only legal advocacy organization dedicated solely to ending and preventing homelessness. In 2017, we published *Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding* (“Tent City Report”), collecting data on 187 cities’ policy responses to encampments, along with best practices, model policies, and case studies from across the country. The Tent City Report is available at https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf. Additionally, since 1991, the Law Center has documented the dramatic increase in laws nationwide that punish homeless people for performing harmless, life-sustaining activities in public places, as well as the negative consequences of those discriminatory measures. The Law Center’s 2016 Report addressing this issue, *Housing Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* (“Housing Not Handcuffs Report”), is available at <https://www.nlchp.org/documents/Housing-Not-Handcuffs>. The Law Center’s reports demonstrate that laws such as the proposed ordinance do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

We all share the goal of not having homeless persons sleep in our streets, sidewalks, and other public places—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered are able to access adequate, alternative housing. The proposed ordinance misses the most

significant feature of a homeless encampments policy—namely, where will those residing in the encampments live? The lack of plan or requirement to house or adequately shelter the displaced encampment residents means these people are merely dispersed to different public spaces, leading to the inevitable reappearance of outdoor encampments. Thus, we are concerned that this type of ordinance merely provides procedures for pursuing ineffective and expensive punishment strategies, rather than constructive solutions that can actually end homelessness in Topeka, Kansas.

People experiencing homelessness are not on the street by choice. Rather, it is because they lack meaningful alternatives, and punishment serves no constructive purpose. Whether punished through civil fines or immediate incarceration, homeless persons usually cannot pay fines, and because they often miss notices to appear in court due to a lack of permanent address, those fines frequently turn into a bench warrant and a criminal arrest. As stated by the Department of Justice in the context of its argument regarding an anti-camping ordinance in *Bell v. Boise*, but equally applicable here:

Criminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness... Issuing citations for public sleeping forces individuals into the criminal justice system and creates additional obstacles to overcoming homelessness. Criminal records can create barriers to employment and participation in permanent, supportive housing programs. Convictions under these municipal ordinances can also lead to lengthy jail sentences based on the ordinance violation itself, or the inability to pay fines and fees associated with the ordinance violation... Finally, pursuing charges against individuals for sleeping in public imposes further burdens on scarce public defender, judicial, and carceral resources. Thus, criminalizing homelessness is both unconstitutional and misguided public policy, leading to worse outcomes for people who are homeless and for their communities.

Bell v. Boise, et. al., 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015).

While the cost of this type of ordinance can be easily overlooked, each person fined under the ordinance will burden the city's law enforcement system. Numerous studies have shown that communities actually save money by providing housing and services to those in need, rather than saddling them with fines, fees and arrest records and cycling them through the expensive jail system. *See Housing Not Handcuffs Report* above. The Economic Roundtable of Homelessness in Los Angeles found that housing reduced average monthly spending by 41% per person, even after including the cost of providing housing.

This type of ordinance also runs afoul of the federal government's policies to end homelessness, and may ultimately threaten the community's access to federal funding to provide homeless services. For several years, the U.S. Department of Housing and Urban Development has asked questions on its funding application for its \$2.5 billion Continuum of Care funding stream to reward communities that have implemented constructive solutions to homelessness, and restrict funding for those that continue punishment strategies.

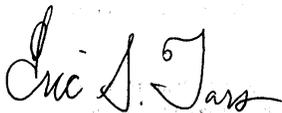
Further, this type of ordinance may spur litigation, which incurs additional fiscal expenses. Last September, the Ninth Circuit held that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018). More recently, encampments sweeps in Oakland, California have triggered litigation, leading to an order requiring the city to provide a new notice to vacate at least 72 hours in advance, offer shelter beds for the evicted and provide notice and storage of any property collected. *See Le Van Hung v. Schaaf*, No. 19-CV-01436-CRB, 2019 WL

1779584, at *1 (N.D. Cal. Apr. 23, 2019). Based on our observations, 57% of lawsuits brought against municipalities for anti-sleeping or anti-camping ordinances between 2014 and 2017 resulted in decisions favorable to the homeless plaintiffs. *See* National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: A Litigation Manual* (2017) available at <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>.

We hope you will draw on our experience and make use of the Law Center’s Encampment Best Practices and Procedures found in the appendix to the Tent City Report. Any “solution” which does not meet the actual needs of those living in the encampments—including where they can find a safe place to be, day and night, with their belongings—will result in those individuals needing to improvise their own solutions, and most likely, the city will not like those solutions any more than they like the current ones. Only by providing a better alternative for these individuals that actually meets their needs will the city stop this wasteful and harmful cycle. In February, Los Angeles adopted our best practices into their own official guidance, which we consider the best model to date. *See* Los Angeles Homeless Services Authority, *Guiding Principles and Practices for Unsheltered Homelessness* (2019), <https://www.lahsa.org/documents?id=2951-guiding-principles-and-practices-for-unsheltered-homelessness.pdf>).

In an era of record poverty, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. The Law Center urges the council to review the best practices and model ordinances in our reports before voting on the proposed ordinance next Tuesday. We suggest the best way to address the problem is by removing the need for people to shelter themselves in public in the first place, by providing adequate housing and services. Our reports document numerous case studies of constructive alternatives. If the city would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact me at etars@nlchp.org or 202-638-2535 x. 120.

Sincerely,

A handwritten signature in black ink that reads "Eric S. Tars". The signature is written in a cursive, slightly slanted style.

Eric S. Tars
Legal Director