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September 25, 2020

Mayor Gary Wheeler  
Councilmember Dick Gordon  
Councilmember Alex Poythress  
Councilmember Clay Bearnson  
Councilmember Tim D'Alessandro  
Councilmember Kay Brooks  
Councilmember Kevin Stine  
Councilmember Eric Stark  
Councilmember Michael Zarosinski

Via email [council@cityofmedford.org](mailto:council@cityofmedford.org)

Dear Mayor Wheeler and Medford Councilmembers,

I write on behalf of the National Law Center on Homelessness & Poverty (“Law Center”) to express concern regarding Medford’s clearance of the homeless encampments in Hawthorne Park and the Greenway. The Law Center understands that on Sunday, September 20, 2020, individuals living in those encampments, approximately half made homeless by the recent wildfires and half pre-disaster homeless, were given one week notice to vacate the premises by the police, despite the fact that local shelters are full or have denied access to many camp residents. However, the police returned the next morning with new notices and immediately began evicting people, destroying their belongings, preventing volunteers from helping gather belongings or clean up the camp, and ultimately, arresting many individuals and taking them to jail where they were unnecessarily stripped searched, left without blankets in cold cells, denied access to necessary medications, and repeatedly interacted with without COVID-preventing face masks. This approach is contrary to CDC guidance and likely unconstitutional according to the precedent set in *Martin v. Boise*, and recently reaffirmed in *Blake v. Grants Pass*, and we call on the city to immediately cease evictions of homeless encampments and instead put its resources to getting people into housing.

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*, collecting data on 187 cities’ policy responses to encampments, and best practices, model policies, and case studies from across the country. See National Law Center on Homelessness and Poverty, [TENT CITY, USA: THE GROWTH OF AMERICA’S HOMELESS ENCAMPMENTS, AND HOW COMMUNITIES ARE RESPONDING \(2017\)](#). Additionally, since 1991, the Law Center has documented a dramatic increase in laws that criminally punish homeless people for performing harmless, life-sustaining activities in public places, as well as the negative consequences of these discriminatory measures nationwide. See National Law Center on Homelessness and Poverty, [HOUSING NOT HANDCUFFS: Ending THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES \(2019\)](#). The Law Center’s recent reports demonstrate that encampment evictions such as Medford’s which do not provide adequate alternatives for those who are displaced do not address the underlying causes of homelessness. Instead, such evictions injure homeless

persons' rights and waste taxpayer resources by temporarily cycling people through the costly criminal justice system only to have them return to the streets, now with criminal records that make it more difficult for them to access needed employment, housing, and benefits.

**CDC guidance requires no evictions of encampments unless individual housing alternatives are made available.**

Evicting encampments without ensuring each individual has access to adequate alternative housing is literally a matter of life-or-death for both camp residents and those in the community during the COVID-19 pandemic. Recent reports indicate that homeless individuals infected by COVID-19 would be twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general population. See [https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper\\_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf).

Displacing encampment residents from their private tents and vehicles – where they can self-isolate – to crowded congregate shelters will create a breeding ground for COVID-19 and rapidly increase the number of people requiring hospitalization and intensive care. Alternatively, displacing people without a plan for where they can safely go forces them to mix further in the community as they seek alternative places to stay while disrupting any connections they have to service providers puts the entire community at risk. For exactly these reasons, recent guidelines released by the Centers for Disease Control and Prevention (“CDC”) state that homeless encampments should not be evicted during the pandemic unless the city can offer individual housing units to people experiencing homelessness. See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. Guidance on Governor Brown’s Executive Order 20-12 explicitly exempts unsheltered persons from enforcement of its directives because they are living in public and unable to “stay home.” [https://www.oregon.gov/gov/admin/Pages/eo\\_20-12-homelessness-guidance.aspx](https://www.oregon.gov/gov/admin/Pages/eo_20-12-homelessness-guidance.aspx) Oregon Health Authority guidance gives additional recommendations for enabling people to maintain their health as best possible in encampments, rather than recommending evicting them. <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2278.pdf> Every homeless person who gets sick as a result of these repeated evictions may end up filling a hospital bed that might be needed by a housed resident of the community, so this harms both the housed and unhoused residents of Medford. We truly are all in this together.

We all share the goal of a Medford without homeless encampments—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who live in those encampments are able to access adequate, alternative housing. Evicting encampments without ensuring adequate alternatives misses the most significant feature of a homeless encampments policy—where will those residing in the encampments live if not in the targeted encampment? We are deeply concerned that the current procedure is an ineffective, and likely illegal punishment strategy, rather than a constructive solution that can actually end homelessness in the city.

**Encampment policies must provide enough time, and resources, to ensure encampments are ended through housing the individuals residing in them.**

Our Tent City report found a 1342% growth in reported encampments between 2007 and 2017, but only 11% of the 187 cities we surveyed required any notice before clearing encampments or storage of property collected during sweeps, and only 3% required alternative housing be offered. Not only do we advocate that Medford provide clear procedures for camp clearance, but the current notice period does not provide enough time for service providers to build relationships with camp residents, determine their housing needs, and get the residents housed.

Pursing a sweep without adequate notice or housing plans means the city will only be destabilizing the encampment residents, removing their survival materials, scattering them and disrupting their safety networks and connections to service providers, potentially criminally charging them, all of which only serve to prolong their homelessness and ensure the city will have to do the same procedure again, only with more barriers to those individuals accessing housing.

We hope that Medford will draw on our experience and utilize our [Encampment Best Practices and Procedures](#), which can also be found in Section 3 of our *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 to meet those needs, and most likely, the Medford city council 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 Medford stop this wasteful and harmful cycle. In 2019, 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 \(2019\)](#).

### **Punishing homelessness through sweeps is an expensive and ineffective response to homelessness.**

As stated by the Department of Justice in the context of its argument regarding an anti-camping ordinance in *Bell v. Boise*:

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).

Numerous studies have shown that communities actually save money by providing housing and services to those in need, rather saddling them with fines, fees and arrest records and cycling them through expensive hospital and jail systems. *See* HOUSING NOT HANDCUFFS, *supra*. 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 savings included a 95% reduction in jail facilities and services costs.* Premature sweeps without sufficient notice incur significant costs for the city and its taxpayers—without solving the problem of homelessness. If Medford’s true interest is in public health, safety, and

economic growth, it could make a much better investment by providing housing and services, rather than making it harder for people to exit homelessness due to criminal penalties and arrest records.

**Punishing camping through sweeps in the absence of adequate alternatives is unconstitutional.**

In September 2018, the Ninth Circuit Court of Appeals held in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) 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.” It ruled that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” The Supreme Court refused to review the 9<sup>th</sup> Circuit’s decision, denying writ of cert on December 16, 2019.

Additionally, a recent district court decision from just down the road in Grants Pass further clarified the *Martin* ruling. In *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order (2020), Grants Pass, OR maintained similar ordinances that prohibited trespassing or sleeping on any public sidewalks or streets as well as camping on any public property. The City of Grants Pass argued that its anti-camping ordinances complied with *Martin* because it did not criminalize the act of sleeping, but instead prohibited sleeping in a campsite and the ordinances only imposed a civil fine, not a jail sentence. The Court found that these ordinances were unconstitutional under *Martin*, because “it is not enough under the Eighth Amendment to simply allow sleeping in public spaces; the Eighth Amendment also prohibits a City from punishing homeless people for taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.” The decision states:

Here, the decisive consideration is that Plaintiffs are being punished for engaging in the unavoidable, biological, life-sustaining acts of sleeping and resting while also trying to stay warm and dry. Plaintiffs do not have enough money to obtain shelter, so they likely cannot pay these fines. . . . Fining a homeless person in Grants Pass who must sleep outside beneath a blanket because they cannot find shelter \$295 (\$537.60 after collection fees are inevitably assessed) is grossly disproportionate to the "gravity of the offense." Any fine is excessive if it is imposed on the basis of status and not conduct. *For Plaintiffs, the conduct for which they face punishment is inseparable from their status as homeless individuals, and therefore, beyond what the City may constitutionally punish.* The fines associated with violating the ordinances at issue, as applied to Plaintiffs, are unconstitutionally excessive.

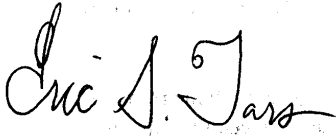
*See Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order, 22-23 (2020) (*emphasis added*).

Furthermore, based in part on *Martin*, a federal judge in California enjoined enforcement of an anti-camping ordinance against a group of close to 1,000 homeless campers in Orange County until the county and cities provided alternative housing. *See Orange County Catholic Worker et. Al v. Orange County*, Order Granting Temporary Restraining Order, Case 8:18-cv-00155 (Feb. 6, 2018). In all, close to 60% of lawsuits brought against municipalities for anti-sleeping or anti-camping ordinances over 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 \(2017\)](#).*

**Litigation would be an additional fiscal cost to the city, also injuring the dignity and rights of its most vulnerable citizens.**

In an era of record poverty, prolonged unemployment, natural disasters, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed—not ineffective measures that waste precious taxpayer dollars. The Law Center urges you to reconsider encampment sweep policies and work with local advocates to develop a long term solution to address homeless encampments within Medford. If the city is truly concerned about the existence of homeless campers, such as those formerly residing in Hawthorne Park, 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 to criminalization; if the Medford city council would like, we would be happy to work with you to implement solutions that work for everyone. Please feel free to contact me at [etars@nlchp.org](mailto:etars@nlchp.org) or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Eric S. Tars". The signature is written in a cursive style with a large, stylized "E" and "T".

Eric S. Tars  
Legal Director