



March 9, 2021

Mayor Randy Sparacino, mayor@cityofmedford.org
Medford Oregon City Council, council@cityofmedford.org
Councilmember Alex Poythress
Councilmember Sarah Spansail
Councilmember Clay Bearnson
Councilmember Tim D'Alessandro
Councilmember Chad Miller
Councilmember Kevin Stine
Councilmember Eric Stark
Councilmember Michael Zarosinski
Principal Planner Angela Durant, angela.durant@cityofmedford.org

Via email

Dear Mayor Sparacino, Councilmembers, and Principal Planner Durant:

I write on behalf of the National Homelessness Law Center regarding Medford's proposed amendment to Chapter 5.257 "Prohibited Camping" of the City of Medford Municipal Code ("Proposed Ordinance"). The Proposed Ordinance, which would rename Chapter 5.257 to "Prohibited Camping, Lying, and Sleeping," prohibits 1) sleeping or lying on public property for over 24 hours; 2) camping on public property; and 3) camping, lying, sleeping, or using bedding material at various locations and times including on all of the Greenways and Prescott Park. Violations of the camping restrictions would constitute a criminal misdemeanor. We are concerned that this activity runs afoul of the 9th Circuit's ruling in *Martin v. Boise* by criminalizing involuntary homelessness, and **we urge you to vote against and reconsider the Proposed Ordinance**. I also share the good news that the Federal Emergency Management Agency has recently approved waivers of both its 30 day renewal and 25% match requirements for non-congregate shelter, offering *100% reimbursement funding for the duration of the pandemic*. **This means communities like Medford have no fiscal constraint to stop them from offering non-congregate shelter to people experiencing homelessness for the duration of the crisis**, a much more constructive solution to its encampment problem.

The National Homelessness Law Center ("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 National Homelessness

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 National Homelessness Law Center's 2019 Report addressing this issue, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* ("Housing Not Handcuffs Report"), is available at <https://www.nlchp.org/documents/Housing-Not-Handcuffs>. The National Homelessness Law Center's reports demonstrate that laws like the Proposed Ordinance do not address the underlying causes of homelessness, and instead injure homeless persons' rights and waste taxpayer resources.

The Law Center is also co-counsel *Martin v. Boise* in which the 9th Circuit ruled that punishing a person experiencing homelessness for sitting, sleeping, or lying on public property in the absence of adequate alternatives constitutes cruel and unusual punishment under the Eighth Amendment. *Martin v. City of Boise*, No. 15-35845, Opinion (2018). The Proposed Ordinance directly conflicts with *Martin* by making it a misdemeanor to camp in parks regardless of whether there are any accommodations available. The Court in *Blake v. Grants Pass* recognized the failing policies of criminalizing homelessness, stating:

As the League of Oregon Cities noted in its amicus brief, "Oregon's cities are obligated to provide safe and livable communities for all residents." [Citation Omitted]. Laws that punish people because they are unhoused and have no other place to go undermine cities' ability to fulfill this obligation. Indeed, enforcement of such "quality of life laws" do nothing to cure the homeless crisis in this country. *Arresting the homeless is almost never an adequate solution because, apart from the constitutional impediments, it is expensive, not rehabilitating, often a waste of limited public resources*, and does nothing to serve those homeless individuals who suffer from mental illness and substance abuse addiction.

Blake v. City of Grants Pass, No. 1:18-cv-01823-CL, 2020 U.S. Dist. LEXIS 129494, at *53 (D. Or. July 22, 2020) (emphasis added).

Here, the Proposed Ordinance ignores the Court's admonition to ensure all citizens have safe and livable communities and seeks to punish camping in tents and cars while allowing the limited use of "bedding material." This arbitrary limitation invites the expenses of litigation while returning to the failed strategies of attempting to punish homelessness out of existence.

Because unhoused people are not on the street by choice but because they lack choices, 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, a fine will 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*:

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).

Rather than punish people for using tents and vehicles for shelter, Medford can rely on funding from the Federal Emergency Management Agency to transition all people experiencing homelessness into individual hotel rooms for the duration of the COVID-19 crisis. FEMA has recently approved waivers of both its 30-day renewal and 25% match requirements, offering 100% reimbursement funding for the duration of the pandemic. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>, <https://nlihc.org/resource/new-executive-order-addresses-urgent-health-and-housing-needs-people-experiencing>. **This means communities can offer non-congregate shelter to people experiencing homelessness for the duration of the crisis.**

Recent reports project 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. 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. The CDC has advised that communities should not clear any encampments unless they can provide individual housing units for those displaced, and we hope that you follow these guidelines during the pandemic. See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. Transitioning people into individual housing units, such as the many vacant hotel rooms now available, is the best practice and would ensure they would be able to effectively socially distance themselves and have access to adequate sanitation, as well as be easily accessible to health care and other service providers. As noted above, FEMA will provide 100% reimbursement for communities providing non-congregate shelter.

We appreciate Medford's fire safety concerns and share the goal of not having homeless persons sleep in our streets and parks—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 else will those residing in the encampments go? The lack of plan or requirement to house or adequately shelter the people experiencing homelessness means unhoused people will merely be dispersed to different public spaces, and will inevitably find themselves subject to the Proposed Ordinance again. Enforcing an ordinance that further disperses people experiencing homelessness would increase the likelihood of individual fires occurring and make it less likely to identify the whereabouts of a person experiencing homelessness in the case of a fire.

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 Report*. 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. Though it may hide the costs in the law enforcement and jail budget, the Proposed Ordinance will incur significant costs for Medford and its taxpayers—without solving the problem of homelessness. If the city'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.

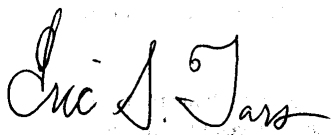
Additionally, legislation like the Proposed Ordinance run afoul of the federal government's policies to end homelessness, and may ultimately threaten the community's access to federal funding to provide homeless services. For several years, the U.S. Department of Housing and Urban Development has asked 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.

Finally, the Proposed Ordinance may spur litigation like the class action lawsuit in *Grants Pass* or other similarly situated municipalities, which would be an additional fiscal cost. 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, Medford 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), <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 City of Medford should not continue to amend problematic encampment ordinances so that they may further criminalize homelessness. Instead, 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, and Medford can do so currently entirely on the federal dollar. Our reports document numerous case studies of constructive alternatives. We urge you to vote against and reconsider the Proposed Ordinance. If Medford 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,



Eric S. Tars
Legal Director