



April 1, 2021

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Commissioner Kelly Castleberry, kcastleberry@adrianmi.gov

Via email

Dear Mayor Heath and Commissioners:

I write on behalf of the National Homelessness Law Center (“Law Center”) and the American Civil Liberties Union of Michigan (“ACLU”) regarding Section 62-44 (“Camping Ban”) of the Adrian, Michigan Code of Ordinances. Adrian’s Camping Ban makes it a civil infraction and a public nuisance for any person to “camp or establish shelter upon a public park” regardless of the availability of indoor shelter and/or any alternative place to sleep and safely store one’s belongings. This Camping Ban not only prohibits overnight camping in a public park but also activities “such as eating, sleeping, and/or the storage of personal property,” as well as using any “tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets or any other form of protection from the elements.” This overly broad Camping Ban is not consistent with the 9th Circuit’s ruling in *Martin v. Boise* because it punishes involuntary homelessness. Instead of enforcing this legally suspect ordinance, we urge you to repeal the Camping Ban and to instead pursue evidence-based strategies to end and prevent homelessness in Adrian.

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 2006, the Law Center has documented the dramatic increase in laws nationwide that punish homeless people for performing life-sustaining activities in public places, as well as the negative consequences of those policies. The 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 Law Center’s reports demonstrate that laws like the Camping Ban do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

In *Martin v. Boise* – a case brought by the Law Center and other counsel - the 9th Circuit ruled that punishing a person experiencing homelessness for engaging in universal and unavoidable resting activities 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 Camping Ban conflicts with that ruling by making it an infraction to camp in parks regardless of whether there are any indoor accommodations available.

The *Martin* decision applies not only to resting activities, but also to reasonable measures homeless people must take to stay warm and dry while resting. In *Blake v. City of Grants Pass*, 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 with bedding materials and the ordinances only imposed a civil fine or infraction, not a jail sentence. *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 U.S. Dist. LEXIS 129494 (D. Or. July 22, 2020). The Court found that these ordinances were unconstitutional under *Martin* and the Eighth Amendment, 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.” *Id.*

The Adrian Camping Ban also prohibits the use of camping paraphernalia on public parks, which includes crucial items like sleeping bags and blankets that constitute the minimal measures interpreted by the *Grants Pass* court to fall under the umbrella of *Martin* protections. The Camping Ban actually forbids more conduct than was considered unconstitutional in both *Martin* and *Blake*, as it also prohibits eating in public. The Camping Ban is clearly just a ban on being homeless and existing outside.

On February 8, 2021, the Law Center reached a settlement with the City of Boise in the *Martin* case. *See* <https://nlchp.org/settlement-martin-v-boise-case/>. Under the terms of the settlement, following twelve years of expensive litigation and negotiation, Boise is now compelled to ensure the availability of shelter space that would not restrict access on the basis of sex, sexual orientation, parental status, or disability status before enforcing its camping ban. Significantly, the City of Boise also promised to reserve \$1.3 million in funds to serve Boise’s homeless community, with at least 1/3 of this amount dedicated to expanding and rehabilitating available shelter space.

Maintaining the Camping Ban not only leaves Adrian vulnerable to litigation like *Martin v. Boise*, but it also runs afoul of the federal government’s policies to end homelessness, and it 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.

The federal government has made funding available for more constructive approaches to unsheltered homelessness during the COVID-19 pandemic. For example, funding from the Federal Emergency Management Agency to transition people experiencing homelessness into individual hotel rooms for the duration of the COVID-19 has recently been made more flexible. FEMA now offers 100% reimbursement funding for the duration of the pandemic, and it may be available for all people experiencing homelessness consistent with local public health orders. *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>.

Public health guidance from the Centers for Disease Control and Prevention state in part, “[i]f **individual housing** options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments by enforcing the Camping Ban can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” As such, the CDC advises that **communities should not clear any encampments unless they can provide individual housing units for those displaced**. Otherwise, the CDC recommends that these individuals be allowed to remain where they are and be provided with necessary sanitation facilities. For people experiencing homelessness, options for following CDC personal health recommendations are extremely limited since there are too few private housing and shelter options available, even as the pandemic persists. Enforcing the Adrian Camping Ban is particularly cruel and ineffective during this pandemic and falls afoul of CDC guidance.

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 Camping Ban will incur significant costs for Adrian and its taxpayers—without solving the problem of homelessness.

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, Adrian 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 Adrian 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. Adrian 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. We are 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,

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