

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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Carolyn G. Goodman, officeofthemayor@lasvegasnevada.gov
Michele Fiore, mfiore@lasvegasnevada.gov
Brian Knudsen, ward1@lasvegasnevada.gov
Victoria Seaman, ward2@lasvegasnevada.gov
Olivia Diaz, ward3@lasvegasnevada.gov
Stavros S. Anthony, ward4@lasvegasnevada.gov
Cedric Crear, ccrear@lasvegasnevada.gov
Via email

Dear Councilmembers:

I write on behalf of the National Law Center on Homelessness & Poverty (“Law Center”) to urge you to **oppose and reject proposed Bill No. 2019-36, prohibiting camping, lodging, and similar activities on public property**, and to express our concern that the city of Las Vegas may be pursuing ineffective, expensive, and likely illegal punishment strategies rather than constructive solutions to homelessness.

The Law Center is the nation’s only legal advocacy organization dedicated solely to ending and preventing homelessness. 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: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>. The Law Center’s recent reports demonstrate that laws such as the proposed ban on camping do not address the underlying causes of homelessness, and instead 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.

Punishing homelessness through tickets or arrests is an expensive and ineffective response to homelessness. 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*:

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.* To bring this home, a 2015 Vera Institute study estimated the monthly cost of incarcerating someone in Nevada is close to \$1500, but according to Rent Jungle, the average cost of a one-bedroom rental in Las Vegas is \$957 – less than two-thirds the cost. Vera Institute, *The Price of Prisons* (2015), <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>; Rent Jungle *Rent Trend data in Las Vegas, Nevada*, (Mar. 2018), <https://www.rentjungle.com/average-rent-in-las-vegas-rent-trends/>. Though it may hide the costs in the law enforcement and jail budget, passing the anti-camping ordinance at issue here will incur significant costs for the city and its taxpayers—without solving the problem of homelessness. If the city’s true interest is in the economic growth of downtown, it could make a much better investment in that growth by providing housing and services, rather than making it harder for people to exit homelessness due to criminal penalties and arrest records.

Additionally, this proposal 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 the past four 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 Continuums that have implemented constructive solutions to homelessness, and restrict funding from those that continue criminalization strategies.

Punishing Camping in the Absence of Adequate Alternatives is Unconstitutional. Just last September, 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.” Moreover, during the years leading up to the *Martin* decision between 2014 and 2017, 57% of lawsuits brought against municipalities for anti-sleeping or anti-camping ordinances resulted in decisions favorable to the homeless plaintiffs. See National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>. Litigation would be an additional fiscal cost to the city, as well as injuring the dignity and rights of its most vulnerable citizens.

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, forcing the county and cities to provide alternative housing before they could clear the encampment. See *Orange County Catholic Worker et. Al v. Orange County*, Order Granting Temporary Restraining Order, Case 8:18-cv-00155 (Feb. 6, 2018). Eventually, in a settlement agreement, the Orange County Sheriff’s Department was required to establish specific policies and procedures before enforcing certain provisions of the county’s ordinance, which was also required to comply with the *Martin* decision. See Part 4 of Settlement Agreement <https://voiceofoc.org/wp-content/uploads/2019/07/County-settlement-agreement-in-homelessness-lawsuit-July-2019.pdf>. In particular, the Sheriff’s Department was forbidden from transporting homeless individuals outside of the county’s predetermined “service planning areas.” See Exhibit 2 of Settlement

Agreement. Also, the Sherriff's Department was required to give homeless individuals "a warning and an opportunity to immediately relocate to a location where the person may lawfully be present before issuing a citation and/or effecting an arrest." *Id.* at Part 4.

While the sponsors' stated intent of ordinance is to help those in need, the proposal likely will do more harm than good. The Mayor's suggestion to retrofit a former state prison in Jean, Nevada, into a treatment facility for homeless individuals with severe mental illnesses does nothing more than exile the community's most vulnerable individuals from those available resources within the city Las Vegas, and may run afoul of the Americans with Disabilities Act's requirements to treat people with disabilities in community-based settings wherever possible. The facility in Jean is far away, and the individuals that would be committed to the facility would have no way to get back to see family and friends. Moreover, while some highly visible homeless persons may require the level of care that such a facility would provide, the vast majority of people experiencing homelessness in Las Vegas are homeless because of economic, not mental health, issues. The Law Center emphasizes that *Martin* requires an *adequate* alternative for each individual—and location is an important component of that adequacy, with the Orange County Settlement Agreement serving as valuable guidepost for what is required.

Similarly, while a low-barrier shelter like the Courtyard is a much needed element in a community's response, its congregate, outdoor sleeping facilities may not be appropriate for every homeless individual—nor does an outdoor facility necessarily satisfy *Martin*'s mandate for indoor alternatives—and forcing some to go there under threat of arrest will not help that person exit homelessness. Where services are truly in demand, we see lines around the block every time—for example, when the Section 8 voucher waitlist is opened. If the Courtyard had an environment and services that was truly suitable for everyone, there would be a similar line for it. The city would do better to follow national best practices such as those developed by the 100,000 Homes Campaign, that successfully housed more than 100,000 of the so-called most "service-resistant" homeless persons, which include developing a by-name list for each homeless individual with a record of what barriers they see to utilizing existing services, and then working to match individuals with appropriate housing. The city could also follow other cities that use temporarily vacant spaces as shelters, rotate shelters among different churches, allow residents to put tiny homes in backyards, or provide safe parking options for people living in vehicles.

In an era of record poverty, prolonged unemployment, 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 the Las Vegas City Commission to vote "no" on the proposed anti-camping ordinance No. 2019-36. If the city of Las Vegas is truly concerned about the existence of homeless campers on its streets, the best, and most cost-effective 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 nearby. Our reports document numerous case studies of constructive alternatives to criminalization; if the city 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 or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



Eric S. Tars
Legal Director