

NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY

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November 19, 2019

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Vice Mayor Stephanie McKenzie, smckenzie@marysville.ca.us  
Councilmember Bill Simmons, bsimmons@marysville.ca.us  
Councilmember Brad Hudson, bhudson@marysville.ca.us  
Councilmember Bruce Buttacavoli, bbuttacavoli@marysville.ca.us

Via email

Dear Mayor and Councilors:

I write on behalf of the National Law Center on Homelessness & Poverty (“Law Center”) to share our concerns with the proposed Marysville Municipal Code Chapter 9.65 regarding camping on public or private property (“Proposed Ordinance”). The Proposed Ordinance bans camping on certain city property including levees, sidewalks and parks, and barring encampments during the day on city property, making violation a misdemeanor. It requires that law enforcement provide a 48-hour notice before conducting a sweep. We understand that Sutter County, Yuba County, and the cities of Live Oak, Yuba City, Marysville and Wheatland are working together to issue similar camping ordinances. **We urge you to vote “no” on the proposed ordinance and instead implement national best practices in addressing homeless encampments.**

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 like 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 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 will those residing in the encampments live if not in the targeted encampment? 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 Marysville.

Because people experiencing homelessness 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, 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 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 the city 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, this type of ordinance 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, the Proposed Ordinance may spur litigation, which would be an additional fiscal cost. For example, when the city of Honolulu enforced similar camping bans, a certified class of “all homeless or formerly homeless individuals, whose property was seized and destroyed by the city and county of Honolulu officials,” filed suit against the city alleging violations of the Fourth and Fourteenth Amendments of the U.S. Constitution. *See Martin v. City and County of Honolulu*, 15-cv-00363 (D. Haw. Aug. 15, 2016). More recently, sweeps of encampments in Oakland, California have triggered litigation resulting in an order mandating 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

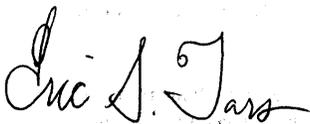
ordinances between 2014 and 2017 resulted in decisions favorable to the homeless plaintiffs. *See* National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: A Litigation Manual* (2017) available at <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>.

While we appreciate your efforts to create clear procedures for camp clearance, the 48-hours-notice provided for in the Proposed Ordinance is insufficient for service providers to build relationships with camp residents, determine their housing needs, and get the residents housed. By contrast, Charleston, WV, and Indianapolis, IN, both provide at least 14-days-notice by law, require coordination with local service providers to make housing plans for affected individuals, and, crucially, allow the residents to remain until adequate alternative housing is actually available. As another example, a recent settlement agreement mandates working with specially trained system of care personnel to locate and offer an appropriate shelter placement prior to enforcement of anti-camping ordinances. *See* Section 4 of the settlement agreement available at <https://voiceofoc.org/wp-content/uploads/2019/07/County-settlement-agreement-in-homelessness-lawsuit-July-2019.pdf>. Pursuing a sweep without adequate notice or housing plans means destabilizing the encampment residents, removing their survival materials, scattering them and disrupting their safety networks and connections to service providers — all of which only serve to prolong residents’ 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, 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. 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. We urge you to vote “no” on the proposed ordinance, and 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](mailto:etars@nlchp.org) or 202-638-2535 x. 120.

Sincerely,



Eric S. Tars  
Legal Director