



ACCESS • JUSTICE • IMPACT



March 18, 2021

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Via email

Dear Mayor Anderson, Fort Myers City Council, and Lee County Board of County Commissioners:

We write on behalf of the Southern Legal Counsel, ACLU of Florida, and the National Homelessness Law Center (“Law Center”) regarding Fort Myers’ and Lee County’s intended city-wide sweeps of homeless encampments including at Lions Park, Schandler Hall, and the Fort Myers Regional Library starting on March 19, 2021, as well as the intended enforcement of ordinances that would criminalize people experiencing homelessness found camping on public property. People found in violation of the ordinance in Fort Myers would be subject to fines up to \$250, criminal citations, and are likely to lose significant personal property during the sweep. We are concerned with the city’s plan to conduct sweeps without ensuring access to individual housing. We are also writing to inform you that recent guidelines released by the Centers for Disease Control and Prevention (“CDC”) state that homeless encampments should not be evicted during the COVID-19 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>.

Southern Legal Counsel is a statewide non-profit public interest law firm based in Gainesville, FL that regularly represents persons experiencing homelessness to stop criminalization of life-sustaining activities that they do to survive such as sleeping, having personal property, physically occupying public spaces, or asking for help. The ACLU-FL is the Florida affiliate of the national American Civil Liberties Union, which works daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. The National Homelessness Law Center is the only national legal organization dedicated solely to ending and preventing homelessness.

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. Instead, Fort Myers and Lee County 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 have no fiscal constraint to stop them from offering non-congregate shelter to people experiencing homelessness for the duration of the crisis.**

According to the CDC, COVID-19 primarily spreads from person-to-person, between people within six feet of each other, and from droplets that are expelled when a person infected with COVID-19 coughs or sneezes. 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 of COVID-19 than the general population. See https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf. To prevent contracting and transmitting COVID-19, people are encouraged to wash their hands properly and frequently, avoid close contact with others, and to stay home if they are feeling sick.

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 worldwide. Congregate shelters are not necessarily equipped to truly safeguard against the spread of the virus. This is because congregate shelter settings do not allow for the recommended social distancing, air circulation, and sanitation necessary to stem the spread of the virus. In San Francisco, 144 residents in a single shelter were tested and five were found positive for COVID-19. Less than one week later, 92 of those residents tested positive for COVID-19, along with 10 shelter staff workers. See Colette Auerswald et al., *For the Good of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* (2020), <https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf>.

On March 31, 2020, FEMA first issued a press release recognizing non-congregate sheltering as an important tool to combat COVID-19. See <https://www.fema.gov/news-release/20200722/coronavirus-covid-19-pandemic-non-congregate-sheltering>. There, FEMA provided a non-exhaustive list of examples of appropriate instances to rely on non-congregate sheltering. **FEMA will reimburse for non-congregate sheltering like hotels and motels beyond just these instances.** While FEMA indicated a path for state-wide approval of non-congregate shelter, Fort Myers and Lee County can request additional reimbursement at the guidance of local public health declarations because providing non-congregate shelter and individual housing for all people experiencing homelessness is necessary to reduce the spread of COVID-19.

On February 3, 2021, FEMA issued a press release which expanded its previously issued support for communities using non-congregate housing to combat COVID-19. Now, FEMA will offer 100% reimbursement for “all work eligible under FEMA’s existing COVID-19 policies, including increasing medical capacity, non-congregate sheltering, and emergency feeding distribution.” See <https://www.fema.gov/press-release/20210203/fema-statement-100-cost-share>. Once FEMA approves a reimbursement request, it will fund the activity retroactively from January 2020 to September 30, 2021. This is a perfect opportunity to apply to take advantage of FEMA’s expanded reimbursement policy so as to open funds to individually house all people experiencing homelessness for the duration of the pandemic at no local cost.

By definition, people experiencing homelessness are at an increased risk of contracting COVID-19 or experiencing worse COVID-19 outcomes because they are less able to self-isolate. 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 is now providing 100% reimbursement for communities providing non-congregate shelter.** Communities are recommended to coordinate with local partners and “continue activities that protect people experiencing homelessness, including supporting continuity of homeless services, healthcare, behavioral health services, food pantries, and linkages to permanent housing.” The guidelines also specify that any individual experiencing homelessness who is diagnosed with COVID-19 should be provided with isolation housing so they can recover and not infect others.

Fort Myers and Lee County can immediately address all encampments in the city by offering hotel rooms to people experiencing homelessness for the duration of the crisis at zero local cost. Rather than spend any more money conducting sweeps, Fort Myers and Lee County should work to secure hotel rooms for people experiencing housing for the duration of the pandemic at no local cost and transition people experiencing homelessness to permanent housing. Fort Myers and Lee County can look to states like Vermont and Connecticut when crafting its response, which have relied on FEMA reimbursement to support efforts for non-congregate housing. *See* <https://www.fema.gov/press-release/20210302/fema-awards-more-15-million-covid-19-non-congregate-sheltering-vermont>; <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/09-2020/Governor-Lamont-Coronavirus-Update-September-9>. Additionally, California relied on FEMA reimbursement when working to procure hotel and motel rooms to safely isolate people experiencing homelessness and reduce the risk of COVID-19 spread. *See* <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governornewsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protect-homeless-individuals-from-covid-19/>.

We appreciate Fort Myers’ and Lee County’s 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. Conducting sweeps without a plan for individual housing 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 found camping means these people are merely dispersed to different public spaces, and will inevitably find themselves subject to sweeps again. Thus, we are concerned conducting these sweeps and enforcing these ordinances merely provide procedures for pursuing ineffective and expensive punishment strategies, rather than constructive solutions that can actually end homelessness in Fort Myers and Lee County.

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* <https://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>. 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, conducting sweeps and enforcing criminal ordinances will incur significant costs for Fort Myers and Lee County and their 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.

In an era of record poverty, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. 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, Fort Myers and Lee County will not like those solutions any more than they like the current ones. 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. If Fort Myers and Lee County would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact if you have any questions.

Sincerely,

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