



May 6, 2021

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Deputy Mayor Ryan Keim, rkeim@oceansideca.org
Councilmember Kori Jensen, kjensen@oceansideca.org
Councilmember Christopher Rodriguez, crodriguez@oceansideca.org
Councilmember Peter Weiss, pweiss@oceansideca.org

Via email

Dear Mayor Sanchez, Deputy Mayor Keim, and Oceanside City Council:

I write on behalf of the National Homelessness Law Center (“Law Center”) regarding a proposed ordinance and emergency ordinance which would amend Chapter 20 of the Oceanside City Code to Regulate Camping, Sleeping and Storage of Personal Property in Public Places (“Proposed Ordinance”). The Proposed Ordinance makes it unlawful to “camp, occupy camp facilities, or use camp paraphernalia in any public space,” to “sit or lie down upon a public sidewalk,” and to ever sleep in any “parcel or area of land or water which is essentially unimproved and devoted to open space use.” Additionally, the Proposed Ordinance makes it unlawful to store property in *any* public space, including (and explicitly forbidding) necessary medication, food, and clothes. We are concerned that the Proposed Ordinance falls afoul of the 9th Circuit’s ruling in *Martin v. Boise* by criminalizing involuntary homelessness, and we urge you to vote against the ordinance. Instead, we encourage Oceanside to take advantage of the Federal Emergency Management Agency’s 100% reimbursement for placing homeless individuals in non-congregate shelter during the COVID-19 pandemic. By doing so, Oceanside can safely end *all* encampments in its jurisdiction by providing hotel rooms to encampment residents at *zero* cost to the local taxpayers.

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 2019 Report addressing this issue, *Housing Not Handcuffs: 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 Proposed Ordinance do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

The Proposed Ordinance Runs Afoul of *Martin v. Boise*

In *Martin v. Boise*, 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). For example, while the Proposed Ordinance purports to comply with *Martin*, it does not guarantee that any adequate alternatives must be available before an officer can seize personal items and clear an encampment. Though the Proposed Ordinance includes reference to offering hotel and motel vouchers, there is no guarantee for multiple-night stays, and it is sufficient under the Proposed Ordinance to offer a single-night shelter stay. A person experiencing homelessness might be unable to accept these offers due to other restrictions or concerns, such as the potential loss of personal property. Thus, the Proposed Ordinance falls afoul of the 9th Circuit's ruling in *Martin v. Boise*.

Additionally, a recent district court decision further clarified the *Martin* ruling. In *Blake v. City of Grants Pass*,¹ Grants Pass, OR maintained a similar ordinance that prohibited sleeping on any public sidewalks or streets, as well as camping on any public property. 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 in a campsite and the ordinances only imposed a civil fine, not a jail sentence. The Court found that these ordinances were unconstitutional under *Martin*, 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.” As written, the Proposed Ordinance prohibits storage of personal property on public property at all hours, which includes crucial items like sleeping bags and bed rolls that constitute the minimal measures interpreted by the *Grants Pass* court to fall under the umbrella of *Martin* protections.

Because people experiencing homelessness are not on the street by choice but because they lack choices, punishment serves no constructive purpose. As stated by the United States Department of Justice, “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). Just like the camping ban in Boise, Oceanside's Proposed Ordinance “creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.” *Id.* (quoting the U.S. Interagency Council on Homelessness). Policies that create criminal records because someone is homeless “create barriers to employment and participation in permanent, supportive housing programs.” *Id.* Additionally, convictions 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.” Finally, “pursuing charges against individuals for sleeping in public imposes further burdens on scarce defender, judicial, and carceral resources.” *Id.*

Providing Non-Congregate Housing is Reimbursable During the COVID Pandemic

Guidelines released by the Centers for Disease Control and Prevention (“CDC”) state “[i]f **individual housing** options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *See*

¹ *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order (2020).

<https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. Individual housing is necessary to curb the spread of the COVID-19 pandemic and to protect against avoidable hospitalization and death among both housed and unhoused people.

While providing individual housing is necessary for the current crisis, it is also the best practice for the long term, from both a public health and fiscal policy perspective. 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 the Proposed Ordinance merely provides procedures for pursuing ineffective and expensive punishment strategies, rather than constructive solutions that can actually end homelessness in Oceanside.

Fortunately, the Federal Emergency Management Agency (“FEMA”) has recently approved waivers of both its 30-day renewal and 25% match requirements, offering 100% reimbursement funding for non-congregate shelter for the duration of the pandemic. See <https://www.fema.gov/press-release/20210203/fema-statement-100-cost-share>. First, 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.” Once FEMA approves a reimbursement request, it will fund the activity retroactively from January 2020 to September 30, 2021. Now is a perfect opportunity to apply to take advantage of FEMA’s expanded reimbursement policy to individually house all people experiencing homelessness for the duration of the pandemic at no local cost. Oceanside has **no** excuse not to apply or reapply for this funding so it can offer non-congregate shelter to people experiencing homelessness for the duration of the crisis. Oceanside can use this opportunity to develop a long-term affordable housing plan, instead of promoting legislation like the Proposed Ordinance. See also <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>.

Oceanside should apply or reapply for FEMA reimbursement so that it can 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 waste any more money conducting encampment sweeps and amending camping ordinances, Oceanside owes it to its citizens, housed and unhoused alike, to exhaust every available funding channel and use this opportunity to secure housing for people experiencing homelessness. Oceanside 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/>.

The Proposed Ordinance May Increase Fiscal Costs

If Oceanside is interested in reducing costs, 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 Oceanside 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.

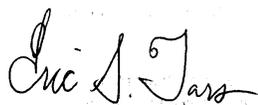
Additionally, these types of ordinances run afoul of the federal government’s policies to end homelessness, and may ultimately threaten the community’s access to federal funding to provide homeless services. For several years, the U.S. Department of Housing and Urban Development has asked questions on 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, which would be an additional fiscal cost. 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).

In an era of record poverty, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. 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 an encampments policy—namely, where will those residing in the encampments live if not in the targeted encampments? The best solution to the problem is to remove the need for people to shelter themselves in public in the first place, by providing adequate housing and services.

We urge you to vote against the Proposed Ordinance and prioritize solutions that lead to permanent housing for people experiencing homelessness in Oceanside. If you 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