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February 22, 2021

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Via email

Dear Mayor Meyers and Councilmembers:

I write on behalf of the National Homelessness Law Center (“Law Center”) regarding Santa Cruz’s proposed amendment to City Ordinance Chapter 6.36 (“Proposed Ordinance”). Specifically, the Proposed Ordinance, inter alia, prohibits camping on public property from 8 am to 8 pm, prohibits camping at all hours in certain locations, and permits the City Manager to designate additional areas where camps are prohibited during all hours “[f]or purposes of cleaning, maintenance, and/or addressing health or safety concerns.” See City Council Agenda Report for February 23 re Ordinance Amending Chapter 6.26 (“Summary Sheet”), at 25.9-25.10 (PDF pages 471-472 of Agenda Packet). 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, with the Federal Emergency Management Agency’s 100% reimbursement for placing homeless individuals in non-congregate shelter during the COVID-19 pandemic, Santa Cruz can *immediately end* unsheltered homelessness by offering hotel rooms to people experiencing homelessness for the duration of the crisis, entirely on federal dollars.

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](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.

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). The Summary Sheet notes that it “has been a challenge for municipalities with low shelter availability to draft legally permissible camping ordinances.” Summary Sheet at 25.2. Yet, the Proposed Ordinance attempts to comply with *Martin* by adding “various time, place, and manner restrictions related to outdoor living.” *Id.* at 25.6. Additionally, this proposed ordinance is being discussed after the Northern District of California issued a preliminary injunction preventing the clearing of certain encampments in Santa Cruz after acknowledging that “[t]here is no disagreement between Plaintiffs and Defendants that there are no alternative shelters or individual housing options available for the people residing in the Encampment.” *Santa Cruz Homeless Union v. City of Santa Cruz*, No. 5:20-cv-09425-SVK, at 9 (N.D. Cal. Jan. 20, 2021), ECF 27 (citing the Decl. of City Manager Martin Bernal ¶ 9 where he admits “[a]t this time, the City simply does not have the necessary funding or the appropriate real estate available to create a new large managed camp or another shelter within the City.”).

Indeed, while the Proposed Ordinance states that “City staff shall *consider* giving the person a verbal or written warning before an infraction citation is issued” (emphasis added) and that [t]he warning, if given, shall provide the person with information about legal indoor shelter and/or permissible nighttime sleeping options,” this does not guarantee that any adequate alternatives must be available before an officer can issue a fine for infraction, find that person guilty of a misdemeanor, and/or seizing items in their encampment “if deemed necessary to prevent the immediate re-establishment of an Outdoor Living Encampment that is violative of [the Proposed Ordinance].” 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*,<sup>1</sup> 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 criminalizes the use of “Outdoor Living Paraphernalia” on public property during the day and in some areas at all hours, which includes crucial items like sleeping bags 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. 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

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

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).

Furthermore, 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 than the general population. See [https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper\\_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf). 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 <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. This step is necessary to curb the spread of the virus and to protect against avoidable hospitalization and death among both housed and unhoused people. The good news is that the Federal Emergency Management Agency has recently approved waivers of both its 30 day renewal and 25% match requirements, offering 100% reimbursement funding for non-congregate (e.g. hotel or motel) shelter 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>. Santa Cruz and California have received significant other federal COVID relief grants, including HUD Emergency Service Grants (ESG) and Community Development Block Grants (CDBG) that can cover any services not covered by FEMA for those placed in non-congregate shelter. **In plain language, Santa Cruz 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.** If the Council wants to reject free federal money that could safely shelter its entire homeless population, and instead spend its own taxpayer dollars to put people experiencing homelessness into unsafe congregate shelters or jails, it should explain to its citizens why it believes that is a better choice.

While this approach 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. 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 encampments? 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. In fact, the Summary Sheet acknowledges that there is a “significant challenge” with finding “sufficient locations within the City to house those who currently reside (unsheltered) in the City.” Summary Sheet at 25.9. And while the ordinance, states that “the City Manager or City Council *may* establish such sites in the

future,” “[a]t this point in time, no additional sanctioned encampments are proposed.” *Id.* 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 Santa Cruz.

The Summary Sheet for the Proposed Ordinance states that “the presence of an enforceable ordinance with explicit ground rules has the potential to reduce both staff time and direct expenses.” Summary Sheet at 25.12. If Santa Cruz 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 Santa Cruz 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.

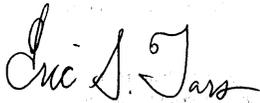
Finally, the Proposed Ordinance may spur even additional litigation on top of the ongoing class action lawsuit in *Santa Cruz Homeless Union v. City of Santa Cruz*, which would be an additional fiscal cost. When the city of Honolulu enforced similar camping bans, a certified class of “all homeless or 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). 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>.

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, Santa Cruz 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 Santa Cruz 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. The City of Santa Cruz should not continue to amend these 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. As noted above, **Santa Cruz can end unsheltered homelessness tomorrow by offering non-congregate shelter to people experiencing homelessness for the duration of the crisis, entirely on federal dollars.** We urge you to reject the Proposed Ordinance and immediately start working to secure hotel rooms and conduct outreach to unsheltered residents. If Santa Cruz 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,

A handwritten signature in black ink that reads "Eric S. Tars". The signature is written in a cursive style with a large initial "E".

Eric S. Tars  
Legal Director