



April 14, 2021

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Via email

Dear Mayor Indya Kincannon, Deputy Mayor Swelch, Knoxville Office on Homelessness, Knoxville Members of City Council:

I write on behalf of the National Homelessness Law Center (“Law Center”) to oppose the planned eviction of an encampment where approximately 50 Knoxville residents, many with disabilities, currently live because they lack access to housing. It is our understanding that these Knoxville community members have been ordered to leave their outdoor homes by tomorrow or face arrest, yet they have not been given the benefit of 72-hours’ advance written notice nor told where they can go to obtain safe and stable housing or shelter. An encampment eviction under these circumstances is harmful, counter-productive policy and it raises serious legal concerns.

It also raises serious public health concerns given the ongoing COVID-19 pandemic. As you know, the U.S. Centers for Disease Control and Prevention (“CDC”) has advised that homeless encampments should not be evicted during the 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>. Funding to provide individual housing units has been made more flexible and easier to obtain, and we urge the City to take advantage of this funding opportunity in advance of evicting encampment residents.

### **Who We Are**

The Law Center, formerly known as the National Law Center on Homelessness & Poverty, is the only national legal advocacy organization dedicated solely to ending and preventing homelessness using the power of the law. We have over 30 years of experience in impact litigation, policy advocacy, and public education. Since 2006, the Law Center has tracked laws punishing homelessness in 187 cities across the country, and we have documented the failures, expense, and collateral consequences of those policies in a series of national reports. See e.g. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (2019) available at <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

In addition to raising awareness about ineffective, expensive, and harmful policies punishing homelessness, we litigate across the country to challenge these policies. *See e.g. Martin v. City of Boise*, 920 F.3d 584 (9<sup>th</sup> Cir. 2019)(Holding that municipal ordinances that punish sleeping in all public places when no alternative sleeping space is available violate the Eighth Amendment to the U.S. Constitution).

### **The Planned Encampment Eviction Raises Serious Policy and Legal Concerns**

Before conducting an encampment eviction, your Administration's policy calls for at least 72-hours of written notice. Providing fewer than 24-hours of strictly verbal notice makes it likely many encampment residents will not be adequately informed. There is no indication that individual housing has been arranged for each person living in the encampment. This amount of time is entirely inadequate for an encampment resident to even pack and store their personal belongings, let alone procure an alternative living situation. This is especially true for the encampment's many residents with physical and mental impairments, whom are particularly and disproportionately impacted by this insufficient notice.

It is likely that as result of this sweep, many personal belongings will be discarded or destroyed and residents will simply be displaced to different parts of Knoxville, and without access to their personal property. People experiencing homelessness retain a possessory interest to their property that is protected under the Fourth Amendment to the U.S Constitution. *See, e.g., Lavan v. City of Los Angeles*, 693 F.3d 1022 (9<sup>th</sup> Cir. 2012). That interest cannot be infringed upon without constitutionally adequate due process. *Id.* Here, less than 24-hour' advance notice was provided, and not in writing. Courts have not recognized such notice to be constitutionally adequate, which raises a serious risk that an ecampment eviction performed tomorrow resulting in the loss of encampment residents' unabandoned property will violate the Fourth and Fourteenth Amendments to the U.S. Constitution. We urge the City of Knoxville to protect the property rights of its most vulnerable residents and not seize or destroy their personal belongings without, at minimum, following local policy and constitutional requirements.

Additionally, residents of the encampment have reportedly been threatened with arrest if they remain at the encampment, yet there is no indication that the residents have access to alternative housing or adequate shelter. As you know, responding to homelessness with criminal sanctions is cruel and fails to address any of the reasons why people are homeless. Instead, arrests and possible criminal convictions for a poverty-related offense and the corresponding collateral consequences make it harder for people to escape homelessness. Arrest records, criminal convictions, and legal financial obligations make housing and employment harder to access. Indeed, these consequences can even make people ineligible for needed public services. Thus, criminal penalties imposed against people who are trying to meet their basic human needs for shelter and rest is harmful and counter-productive policy. It may also be unconstitutional punishment under the Eighth Amendment to the U.S. Constitution. *See e.g. Martin v. City of Boise*, 920 F.3d 584 (9<sup>th</sup> Cir. 2019).

These practices are especially cruel during the COVID-19 pandemic. We wish to remind you of CDC guidelines that state in part, “[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.” As such, the CDC advises that **communities should not clear any encampments unless they can provide individual housing units for those displaced**. Otherwise, the CDC recommends that individuals are allowed to remain where they are and provided with necessary sanitation facilities. Knoxville's policy regarding encampments, as outlined in the city's FAQs on Homelessness, is not in compliance with the CDC guidelines as it only selectively quotes the CDC and fails to uphold current public health directives by referring individuals living in encampments to congregate shelter. *See* [https://knoxvilletn.gov/government/city\\_departments\\_offices/housing\\_and\\_neighborhood\\_development/office\\_on\\_homelessness/homeless\\_faqs](https://knoxvilletn.gov/government/city_departments_offices/housing_and_neighborhood_development/office_on_homelessness/homeless_faqs)

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. 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. 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 as 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).

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. 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>.

Fortunately, the Federal Emergency Management Agency (“FEMA”) has recently approved waivers of both its 30-day renewal and 25% match requirements, offering **100% retroactive reimbursement funding for non-congregate 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>. Knoxville is urged to apply or reapply for this funding so it can offer non-congregate shelter to people experiencing homelessness for the duration of the crisis instead of conducting these sweeps.

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>. Here, 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, Knoxville 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. 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. This 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.

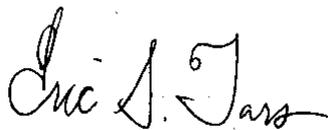
By definition, people experiencing homelessness are at an increased risk of contracting COVID-19 or experiencing worse COVID-19 outcomes because they are less able to self-isolate. Transitioning people into individual housing units, such as the many vacant hotel rooms now available, is the best practice 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 authorizing 100% reimbursement for communities providing non-congregate shelter.** Communities are encouraged to “make plans to maintain services for all people experiencing unsheltered homelessness.” See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

Knoxville can look to states like Vermont and Connecticut 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 urge the City of Knoxville to cease its plan to conduct this and other sweeps. Instead, we encourage you to follow the CDC recommendations as well as the Law Center’s Encampment Best Practices and Procedures found in Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding, through which the Law Center shares best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [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). If Knoxville would like, we would be happy to work with you to develop and implement solutions that work for everyone. Please feel free to contact us at [etars@nlchp.org](mailto:etars@nlchp.org) or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



Eric S. Tars  
Legal Director  
National Homelessness Law Center