



ACCESS • JUSTICE • IMPACT



June 17, 2021

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Via email

Dear Mayor James and West Palm Beach District Commissioners:

We write on behalf of Southern Legal Counsel, the ACLU of Florida, and the National Homelessness Law Center (“Law Center”) regarding Ordinance 4934-21, which amends Chapter 54 Sections 146 and 147 of the West Palm Beach Code of Ordinances to prohibit sleeping and camping in all public areas (“Sleeping/Camping Ban”). As indicated in the City Commission Agenda for May 3, 2021, the Sleeping/Camping Ban “regulates and prohibits sleeping and ‘camping’ in public areas, as well as in the entrances and exits of the City’s businesses.” The West Palm Beach Sleeping/Camping Ban closely follows legislation passed in December 2020 that prohibits “conduct threatening the aesthetic beauty and public health and safety,” including “panhandling and soliciting, camping/sleeping in public areas, and public indecency, urination, and defecation.” We are concerned that the Sleeping/Camping Ban falls afoul of established case law including the 9th Circuit’s ruling in *Martin v. Boise* by criminalizing involuntary homelessness, and we urge you to repeal or amend the ordinance and promote housing solutions in West Palm Beach instead.

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. 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 Sleeping/Camping Ban do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

## The Sleeping/Camping Ban Runs Afoul of Established Case Law

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). While the city has added some affordable housing in the past year, the Sleeping/Camping Ban still seeks to arrest and fine people experiencing homelessness in the event they cannot qualify for the limited housing options currently available or when shelter options are not practical alternatives.

Additionally, a recent district court decision further clarified the *Martin* ruling. In *Blake v. City of Grants Pass*, Grants Pass, OR maintained a similar ordinance that prohibited sleeping on any public sidewalks or streets, as well as camping on any public property. *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order (2020). 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.”

Several cases in Florida may also inform your obligations in West Palm Beach. In *McArdle v. City of Ocala*, three individuals experiencing homelessness were repeatedly arrested under the city’s open lodging ordinance that made it a crime for homeless persons to sleep outside. *McArdle v. City of Ocala*, 2021 WL 481015 (M.D. Fla., J. Moody, 2021). The Court ruled that the City violated the Eighth Amendment by arresting persons experiencing homelessness for sleeping outside when no shelter is available. The Court enjoined the city from “arresting, citing, or otherwise enforcing the open lodging ordinance against someone identifying as homeless” before inquiring about the availability of shelter space.

In *Catron, et al. v. City of St. Petersburg*, the 11th Circuit ruled that people have a constitutionally protected right to be in public places of their choosing. *Catron, et al. v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011). The 11th Circuit further ruled that if a government is going to take away that right, such as by issuing a trespass warning, then it must provide an opportunity for a hearing. This was in response to trespass laws St. Petersburg that often resulted in arrests of homeless people for their mere physical presence in a public place open to other members of the public.

Finally, in *Pottinger v. City of Miami*, a class of homeless plaintiffs challenged Miami’s policy of arresting homeless people for conduct such as sleeping, eating, and congregating in public, and of confiscating and destroying homeless people’s belongings. *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992). At trial, the U.S. District Court for the Southern District of Florida found that over 6000 people in Miami were homeless, but there were fewer than 700 shelter spaces. The Court found that criminalizing essential acts performed in public when there was no alternative violated the plaintiffs’ rights to travel and to due process under the Fourteenth Amendment and the plaintiffs’ right to be free from cruel and unusual punishment under the Eighth Amendment. In addition, the Court found that the city’s actions violated plaintiffs’ rights under the Fourth Amendment.

In a settlement known as the “Pottinger Agreement,” which has protected people experiencing homelessness in Miami for decades, Miami promised to dedicate resources to provide housing and services

to people experiencing homelessness. Miami agreed to train its law enforcement officers to interact with people experiencing homelessness humanely and compassionately, and to ensure their legal rights are protected. The Pottinger Agreement has since dissolved, but the legal principles remain in effect.

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 bans in Ocala and Boise, West Palm Beach’s Sleeping/Camping Ban “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.*

### **The Sleeping/Camping Ban is Ineffective and May Increase Fiscal Costs**

If West Palm Beach 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 Sleeping/Camping Ban will incur significant costs for West Palm Beach and its taxpayers—without solving the problem of homelessness. If the city’s interest is to promote public health, safety, and economic growth, it should prioritize housing people experiencing homelessness, rather than making it harder for people to exit homelessness due to criminal penalties and arrest records.

The Sleeping/Camping Ban emphasizes that the City’s obligation to people experiencing homelessness found in violation of the ordinance is satisfied with the offer of congregate shelter. However, congregate shelter facilities do not fully satisfy the needs of people experiencing homelessness and are no substitute for permanent housing solutions. Often, shelter facilities lack flexible options for families and couples experiencing homelessness, people experiencing homelessness who have pets, and for long-term storage of a person’s property. Additionally, shelters can lack sufficient daytime options, and shelter hours might not be feasible depending on work hours or other obligations. The Sleeping/Camping Ban will be expensive to enforce and will not serve to solve the homelessness crisis in West Palm Beach.

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 Sleeping/Camping Ban may spur litigation, which would be an additional fiscal cost. Litigation like which occurred in Ocala, St. Petersburg, and Miami are all potential costs associated with overturning or amending legislation like the Sleeping/Camping Ban. Settlements like the Pottinger Agreement, which included creating a separation compensation fund for members of the community injured by enforcement of sweeps, can increase this cost further.

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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 Sleeping/Camping Ban misses the most significant feature of an encampments policy—namely, where will those residing in the encampments live if not in the targeted encampments? Instead of continuing to propose costly and ineffective ordinances that serve to criminalize people experiencing homelessness, West Palm Beach should work to remove the need for people to shelter themselves in public in the first place, by providing adequate housing and services.

Our organizations urge you to repeal or amend the Sleeping/Camping Ban and immediately start working to secure hotel rooms and conduct outreach to unsheltered residents. 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 us at [tbauman@nlchp.org](mailto:tbauman@nlchp.org).

Sincerely,

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