



Sent via email

March 17, 2023

To the City of Rolla Mayor and City Council,

I am writing to you on behalf of the National Homelessness Law Center (“the Law Center”) in support of the Rolla Mission (“the Mission”) and the recent verbal notice they were given to cease operation of their overnight shelter by April 1st, effectively displacing the 45 people currently in their care.

The Law Center is in the process of helping the Mission retain local counsel to defend their right to due process and their status operating the shelter as a legal nonconforming use. However, as a national organization dedicated to defending the constitutional rights of unhoused people, my concern is that the amendments enacted by Ordinance 4706 themselves violate the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution.

If the zoning rules or decisions of a city prohibit land uses that are similarly situated to others in that zone, it will not survive an Equal Protection claim unless there is a “rational basis” for the difference in treatment.¹ Any difference in zoning treatment must be based on a distinction between the proposed use and other permitted similarly situated uses.² Similarly situated uses for an overnight shelter include hotels, motels, multi-family housing, assisted living facilities, and fraternities and sororities.³ In the preamble to Ordinance 4706 regarding overnight shelters, soup kitchens, and transitional housing, it states that “such shelters uses may cause impacts to surrounding properties and use public safety services” [sic]. As such, the proper inquiry is not whether an overnight shelter is different in *any* way from similarly situated uses, but whether an overnight shelter is different in potential impacts to surrounding properties and potential use of public safety services. The answer here is no. The Mission is quite literally surrounded by fraternities and sororities that obviously “cause impacts to surrounding properties and use public safety services”, as well as multi-family housing that has the same effects. The city has not shown that the Mission has had or has the potential to have a higher impact than these other uses. As such, the special rules for overnight shelters under Ordinance 4706 can only stand if there is a rational basis for treating them differently than fraternities and sororities and multi-family housing.

The Supreme Court has made it clear that “negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding” is not a rational basis to treat one group

¹ See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989)

² See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) at 449

³ *Cleburne Living Ctr.*, 473 U.S. at 447



differently than another similarly situated one.⁴ In other words, while “[p]rivate biases may be outside the reach of the law, . . . the law cannot, directly or indirectly, give them effect.”⁵ Unfortunately, the city of Rolla has fallen into the trap of believing and perpetuating stereotypes⁶ about unhoused people – that they are mostly criminals, sexual predators⁷, and violent. Looking at the news coverage and meeting minutes surrounding the passage of Ordinance 4706, there has been plenty of negative attitudes, bias, and fear of unhoused people but there has been no facts to back it up, nor anything that would bring the discussion into the realm of the City’s actual zoning powers. Singling out and discriminating against a specific population of people, rather than rationally regulating different uses of land, opens the city up to legal liability under the Constitution.

Another potential issue is that the rational basis test for zoning regulations only applies if there is no disparate impact on a protected class. If a protected class is affected, the courts may apply a higher level of scrutiny, requiring that the proposed law be narrowly tailored to further a compelling government interest. The zoning regulations targeting overnight shelters, soup kitchens, and transitional housing will almost certainly have a disparate impact on people who are disabled, since over 50% of unhoused people in shelters have at least one disabling condition (compared to 18% of the general population).⁸ Even if not intentional, the effect of causing a disparate impact to people with disabilities will further open Rolla up to potential legal liability regarding the ordinance.

To be clear, our organization does not necessarily oppose specifically defining shelters, as well as transitional housing, in zoning laws, but the only rational basis to single out these projects for special treatment is if the special treatment is to remove red tape. There is a well-documented homelessness and housing crisis in our country and Missouri has a severe deficit of affordable homes⁹. Missouri also has a particularly high rate of homeless students and families – hovering at nearly 4% over the past 5 years (the national average is 2.5%)¹⁰. Many of these families are part of the “invisible” homeless population – doubled up or couch surfing because they can’t afford rent.¹¹ Rolla is not immune to these trends and homelessness will become much more visible and difficult to manage if the shelter at the Rolla Mission is zoned out of existence.

⁴ *Cleburne Living Ctr.*, 473 U.S. at 448

⁵ *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) at 433

⁶ [FACTS VS. MYTH | therollamission](#)

⁷ “The reason for the increase to 750 feet, council members said, is that sexually oriented businesses are prohibited from being that close to a school, playground or daycare.” See [Homeless ordinance could be voted on Monday | | phelpscountyfocus.com](#)

⁸ [The 2019-2020 Annual Homeless Assessment Report \(AHAR\) to Congress \(huduser.gov\)](#)

⁹ <https://nlihc.org/housing-needs-by-state/missouri>

¹⁰ <https://nche.ed.gov/wp-content/uploads/2021/12/Student-Homelessness-in-America-2021.pdf>

¹¹ <https://www.usich.gov/homelessness-statistics/mo>



As we continue our investigation and research into this matter, we urge you to reconsider this very problematic ordinance. It is unlikely to survive a constitutional challenge and directly impacts an organization addressing vital needs in your community. Litigation is never our first choice and we appreciate your consideration of these issues before it becomes necessary.

Sincerely,

A handwritten signature in black ink that reads "Katie Scott". The signature is written in a cursive style with a large, stylized "K" and "S".

Katie Meyer Scott, Senior Attorney
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