



October 28, 2022

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Dear Mayor Dawson, Mr. Simmons, Mr. Shaw, Mr. Wade and members of the Sedalia City Council and Planning and Zoning Commission,

I am writing to you on behalf of the National Homelessness Law Center (the “Law Center”) about the proposed ordinance regarding special use permits in Sedalia for shelter and other services for unhoused and unstably housed people in your community. The Law Center is currently monitoring zoning and land use ordinances that affect unhoused people and homeless service providers across the country. We work with local advocates to improve zoning and land use policies that address homelessness and pursue litigation when zoning ordinances targeting homeless service providers violate federal, state, or local law. A member of the Transitional Services Committee reached out to us with questions about the Fair Housing Act, which led us to discover many aspects of the proposed ordinance that would not stand up to legal challenge. We are reaching out with the hope that you will reconsider the ordinance and avoid costly and unnecessary litigation in the future.

Even though services to address homelessness are not specifically addressed in Sedalia’s current zoning ordinances, it does not mean that they aren’t allowed to exist. While it is common for zoning laws to include a “catch all” provision, stating that any unlisted uses for that particular zone are presumed prohibited, the uses should not be so specific as to completely prohibit “similarly situated” land uses. The similarly situated analysis is not a search for identical uses but a search for uses that are alike for “all relevant purposes.” *Williams v. Vermont*, 472 U.S. 14, 23–24 (1985). Relevant purposes include things like traffic safety concerns, whether the project will overburden public utilities, or create an environmental hazard that can’t be mitigated. A zoning decision needs to be based on a distinction between the proposed use and other permitted similarly situated uses. See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) at 449.

If the zoning rules of a town prevent projects that are similarly situated to others in that zone from going forward, it will not survive an Equal Protection claim under the Fourteenth Amendment of the U.S. Constitution unless there is a “rational basis” for the difference in treatment. 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). However, the Supreme Court has made it clear that “[m]ere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding” is not a rational basis to treat one group differently than another similarly situated one. *Cleburne Living Ctr.*, 473 U.S. at 448. In other words, “[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) at 433.

In looking at a project like the one Mercy Rest Stop Coalition has proposed, it is clear that the proposed amendments and additions to the zoning ordinances in Sedalia would not pass the rational basis test. There are many similarly situated uses already covered by the current code – hotels, social services offices, retail businesses, and transient housing. I would argue that community and senior centers are also similarly situated, as well as laundromats and gyms. All would have a similar impact on traffic and public resources. To be clear, our organization does not necessarily oppose intentionally and purposefully addressing homeless shelters and services, as well as transitional, permanent supportive, and low-income housing, in zoning laws, but the only rational basis to single out these projects for special treatment is if the special treatment is to fast track these projects and remove red tape. There is a well-documented housing crisis and Missouri has a severe deficit of affordable homes¹. Missouri 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%)². Many of these families are part of the “invisible” homeless population – doubled up or couch surfing because they can’t afford rent.³

By contrast, there is no rational basis to require these types of projects to apply for a special use permit on a yearly basis or to provide data or meet requirements not required of community centers and

¹ <https://nlihc.org/housing-needs-by-state/missouri>

² <https://ncbe.ed.gov/wp-content/uploads/2021/12/Student-Homelessness-in-America-2021.pdf>

³ <https://www.usich.gov/homelessness-statistics/mo>



other similar entities. The proposed ordinance for services for unhoused people includes an overly broad definition of support services and would impact many local nonprofit entities including: CASA, Boys and Girls Club, Burrell Behavioral Health, Childsafe of Central Missouri, Center for Human Services, Compass Health, Pettis County Community Partnership, United Way of Pettis County, Job Finders Employment Services, Katy Trail Community Health, Legal Aid of Western Missouri, Missouri Job Center, and Pettis County Health Center. Negative attitudes and fear-based stereotypes about homelessness are not sufficient to pass the rational basis test. Predictions that opening a rest stop would attract more unhoused people to Sedalia or would result in increased crime remain unsubstantiated. In fact, in a recent *Sedalia Democrat* article, “Business owners express concerns over Mercy Rest Stop”⁴, the police chief confirms that the vandalism and other nuisance issues reported by a local business owner were perpetrated by people who lived at a nearby apartment building, not by unhoused residents.

Another potential issue is that the rational basis test for zoning regulations only applies if there is no disparate impact on a protected class. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). 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 social services in Sedalia 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) and the percentage of unsheltered people with disabilities is almost certainly higher.⁵ Even if not intentional, the effect of causing a disparate impact on people with disabilities will further open Sedalia up to potential legal liability as a result of the proposed ordinance.

As we continue our investigation and research into this matter, we urge you to reconsider this very problematic proposed ordinance. It is unlikely to survive a constitutional challenge and will directly impact a number of existing successful entities addressing vital needs in the community. The unintended consequence of this proposed ordinance may be to reduce or eliminate the services currently being provided by many citizen-supported non-profits. 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".

Katie Meyer Scott, Senior Attorney
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⁴ <https://www.sedaliademocrat.com/stories/business-owners-express-concerns-over-mercy-rest-stop,36604>

⁵ [The 2019-2020 Annual Homeless Assessment Report \(AHAR\) to Congress \(huduser.gov\)](#)