



June 5, 2023

Mayor Shaun Adams, [s.adams@townofrobbinsville.com](mailto:s.adams@townofrobbinsville.com)  
Alderman Debbie Beasley  
Alderman Kenneth Hyde  
Alderman Brian “Taco” Johnson

Robbinsville Town Council  
PO Box 126  
Robbinsville, NC 28771

Via email and postal service

Dear Mayor Adams and Aldermen Beasley, Hyde, and Johnson:

I write on behalf of the National Homelessness Law Center (“Law Center”) regarding the proposed amendment to the Chapter 9 Disorderly Conduct and Public Nuisances ordinance (“Proposed Sleeping Ordinance”). The Proposed Sleeping Ordinance is intended to regulate loitering or sleeping on public sidewalks, streets and benches to allegedly address the general health, safety and welfare of citizens and other people utilizing Town of Robbinsville property within the Town limits. In particular, the Proposed Sleeping Ordinance states:

1. No person over the age of 18 years shall lie down and sleep on any public street, sidewalk, alley, right-of-way or on any bench or other structure located in or on a public street, sidewalk, alley or right-of-way between the hours of 10:00 p.m. and 7:00 a.m. daily.
2. Sleeping in a motor vehicle which is lawfully parked on any street, alley or right-of-way, or sleeping while in an upright seated position, does not constitute a violation of this section.
3. Upon observing a violation of this section, a police officer shall order the person violating the provisions of this section to discontinue the violation, and in case of neglect or refusal to obey such order, to arrest or cause to be arrested the person so refusing or neglecting to obey.
4. Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

See Proposed Town of Robbinsville Ordinance entitled “Section 10, Regulating Loitering or Sleeping on Public Sidewalks” revised March 29, 2023; and Kevin Hensley, *Loitering Ordinance Tabled*, THE GRAHAM JOURNAL, (May 15, 2023), <https://www.grahamstar.com/local-news-newsletter/loitering-ordinance-tabled>.

We are concerned that the Proposed Sleeping 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 at the upcoming Town Council meeting scheduled for June 7, 2023, and promote permanent and humane housing solutions in Robbinston instead.

### **Who We Are**

The Law Center is the national legal advocacy organization dedicated solely to ending and preventing homelessness. We have over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, the Law Center has tracked laws criminalizing homelessness in 187 cities across the country, and we have documented the failures and costs of those policies in numerous national reports, including [Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities](#) (2019). We have also published best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding](#) (2018). The Law Center’s reports demonstrate that laws like the Proposed Sleeping Ordinance do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

### **The Proposed Sleeping Ordinance 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 Proposed Sleeping Ordinance allows for a person to discontinue the loitering violation upon order from a police officer, this does not guarantee that any adequate alternatives must be available before an officer can find that person guilty of a misdemeanor for refusing or neglecting to obey.

Additionally, a recent district court decision further clarified the *Martin* ruling. Grants Pass, Oregon maintained an ordinance like the Proposed Sleeping 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). Under this ordinance, relying on any blanket or bedding to sleep anywhere in public would be prohibited. 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 the Grants Pass 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.” A law that leads to chronic sleep deprivation, like the ones that the Grants Pass Court found unconstitutional, is functionally no different from a law that facially bans sleep. Bans on sleeping, relying on bedding to sleep, sitting, and lying down severely limit the ability of homeless people to rest, leading to chronic sleep deprivation and a host of related harms.

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 Grants Pass and Boise, Robbinsville’s Proposed Sleeping Ordinance “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.*

In addition, the Proposed Sleeping Ordinance runs counter to guidance disseminated by federal agencies, including guidance released on June 7, 2021, by the CDC. *See* Interim Guidance on People Experiencing Unsheltered Homelessness, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html> (last updated Feb. 10, 2022). The CDC guidelines 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, even if just for certain hours, can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *Id.* As such, the CDC advises that communities should not clear any encampments unless and until they can provide individual housing units for those displaced. Specifically, the CDC states that “[e]ncampment disbursement should **only be conducted as part of a plan to rehouse people living in encampments,** developed in coordination with local homeless service providers and public health partners.” *Id.* Otherwise, the CDC recommends that encampment residents be allowed to remain where they are and be provided with necessary sanitation facilities.

The U.S. Interagency Council on Homelessness (“USICH”) also released guidance on June 15, 2022 that includes principles for addressing unsheltered homelessness. USICH, “7 Principles for Addressing Encampments,” June 2022, available at [Principles\\_for\\_Addressing\\_Encampments.pdf](https://www.usich.gov/sites/default/files/2022-06/Principles_for_Addressing_Encampments.pdf) (usich.gov). The guidance specifically notes that approaches that use law enforcement to criminalize homelessness “Result in adverse health outcomes, exacerbate racial disparities, and create stress, loss of identification and belongings, and disconnection from much-needed services. While these efforts may have the short-term effect of clearing an encampment from public view, without connection to adequate shelter, housing, and supportive services, **they will not succeed.**” *Id.* Among other principles and suggestions, the guidance urges communities to engage encampment residents to develop solutions, conduct comprehensive and coordinated outreach, address basic needs of unhoused people and provide storage for personal belongings, ensure access to shelter, and develop pathways to permanent housing and supports. Given the number of unsheltered people living in Robbinsville and the Proposed Sleeping Ordinance, the Town Council for the Town of Robbinsville has not yet

efficiently engaged in these USICH suggestions.

USICH also released its Federal Strategic Plan to End Homelessness in December 2022, which notes that “Many communities have made it illegal for people to sit or sleep in public outdoor spaces or have instituted public space design that makes it impossible for people to lie down or even sit in those spaces,” and state clearly that “these ‘out of sight, out of mind’ policies can lead to lost belongings and identification which can set people back in their pathway to housing; breakdowns in connection with outreach teams, health care facilities, and housing providers; increased interactions with the criminal justice system; and significant traumatization – all of which can set people back in their pathway to housing and disrupt the work of ending homelessness.”<sup>1</sup>

### **The Proposed Sleeping Ordinance May Increase Fiscal Costs**

If Robbinsville is interested in reducing costs, numerous studies have shown that communities 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. For example, Los Angeles spends over \$100 million annually addressing homelessness, including \$50 million annually policing criminal and civil anti-homeless laws. *See* Homelessness and the City of Los Angeles, <https://s3.documentcloud.org/documents/1906452/losangeleshomelessnessreport.pdf> (2015). This is not only expensive, but exacerbates homelessness instead of solving it.

Though it may hide the costs in the law enforcement and jail budget, the Proposed Sleeping Ordinance will incur significant costs for Robbinsville and its taxpayers—without solving the problem of homelessness. Further, because “[o]nce housed, people can more easily and effectively work toward resolving issues such as alcoholism, drug addiction, and mental illness,” research shows that “[i]t costs far less for cities to invest in non-punitive alternatives that actually solve homelessness.” *See* Chris Herring et al., Pervasive Poverty: How the Criminalization of Poverty Perpetuates Homelessness, 67 *Social Problems* 131 (2019), [https://static1.squarespace.com/static/5b391e9cda02bc79baffebb9/t/5cc1c0569140b7fb43b1af44/1556201561950/Pervasive+Penalty+social+problems+\(1\)+\(1\).pdf](https://static1.squarespace.com/static/5b391e9cda02bc79baffebb9/t/5cc1c0569140b7fb43b1af44/1556201561950/Pervasive+Penalty+social+problems+(1)+(1).pdf). For example, 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. *See* Daniel Fleming et al., Where We Sleep: Costs When Homeless and Housed in Los Angeles, [https://economicrt.org/wp-content/uploads/2009/11/Where\\_We\\_Sleep\\_2009.pdf](https://economicrt.org/wp-content/uploads/2009/11/Where_We_Sleep_2009.pdf) (2015). If the town’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.

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<sup>1</sup> United States Interagency Council on Homelessness, “All In: The Federal Strategic Plan to Prevent and End Homelessness,” available at [http://www.usich.gov/All\\_In\\_The\\_Federal\\_Strategic\\_Plan\\_to\\_Prevent\\_and\\_End\\_Homelessness.pdf](http://www.usich.gov/All_In_The_Federal_Strategic_Plan_to_Prevent_and_End_Homelessness.pdf)

We all wish to end homelessness in our communities—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered can access adequate, alternative housing. We urge you to vote against the Proposed Sleeping Ordinance and instead divert the funding that would be spent enforcing the ordinance to investment in housing and services that would end homelessness in Robbinsville. We are happy to discuss this matter with you. Please feel free to contact us at [wknight@homelesslaw.org](mailto:wknight@homelesslaw.org) with any questions or concerns.

Sincerely,



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