NHLC

NATIONAL HOMELESSNESS LAW CENTER

June 3, 2024

Council Member Gary Haile Gary.Haile@shelbyvilletn.org
Council Member Bobby Turnbow bobby.turnbow@shelbyvilletn.org
Council Member Henry Feldhaus Henry.Feldhaus@shelbyvilletn.org
Council Member Marilyn Ewing Marilyn.Ewing@shelbyvilletn.org
Council Member Stephanie Isaacs Stephanie.Isaacs@shelbyvilletn.org
Council Member William Christie William.Christie@shelbyvilletn.org
City Manager Scott Collins scott.collins@shelbyvilletn.org
City Attorney Ginger Bobo Shofner gbshofner@gmail.com, gshofner@bobohuntandwhite.com
Mayor Randy Carroll randy.carroll@shelbyvilletn.org
Via email

Re: Oppose proposed amendment to Shelbyville Municipal Code 10-213 on camping

Dear Mayor Carroll, Councilors, City Attorney & Manager,

I write on behalf of the National Homelessness Law Center ("Law Center") to urge you to **oppose the proposed amendment to Shelbyville Municipal Code 10-213**, which would criminalize the act of sheltering oneself, regardless of whether adequate alternative housing or shelter is available in the community. If enacted, this ordinance would do nothing to help solve Shelbyville's homelessness crisis. Moreover, it threatens the constitutional and human rights of unhoused Shelbyville residents. Indeed, the existing underlying ordinance criminalizing loafing and loitering is also likely unconstitutional and the Council should take this opportunity to repeal it as well.

Our choices define our community, and this Council has an important one to make. No matter your race or background, people don't choose to be homeless. Arresting unhoused people isn't the answer. Let's make sure everyone has a place to call home, so no one needs to live on public lands in the first place.

Lack of affordable housing causes homelessness. This bill ignores the true cause of homelessness, lack of affordable housing. More than one in four Shelbyville residents is rent-burdened, meaning they are paying more than they can afford in rent every month. Under the bill, one of those hardworking residents, or an elder on fixed income, who loses their housing because their rent is too high and there is nowhere else for them to rent, would likely be criminalized and thrown in jail just for trying to keep out of the weather. This approach does nothing to solve the structural housing crisis causing homelessness. Instead, it punishes the people who are already the victims of it.

The Law Center works to solve homelessness. The Law Center is a national legal advocacy organization dedicated solely to solving 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. We have documented the failures and costs of criminalization in more than 180 cities across the United States. *See, e.g.*, Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities (2019) and Housing Not Handcuffs 2021: State Law Supplement (2021). We have also published best practices

practices, model policies, and case studies on how to address homelessness constructively. *See, e.g.*, Tent City, USA: The Growth of America's Homeless Encampments, and How Communities are Responding (2017).

The Law Center also litigates to challenge policies that punish homeless people for living in public space when they lack adequate indoor options. One of our cases, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), resulted in a decision that the 8th Amendment to the U.S. Constitution prohibits enforcement of laws criminalizing sleeping, sitting, and lying down outside against people with no access to indoor shelter.

The proposed ordinance violates Shelbyville's constitutional obligations. The 8th Amendment to the U.S. Constitution prohibits enforcement of laws criminalizing sleeping outside against people with no access to indoor shelter. 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 alternative shelter or housing constitutes cruel and unusual punishment under the Eighth Amendment.[1] Although the Sixth Circuit has not yet addressed the issue, district courts in the Circuit have found it persuasive.[2] A recent district court decision also clarified *Martin*, holding that an ordinance in Oregon that prohibited sleeping on any public sidewalks or streets was unconstitutional 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." *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order (2020).

Moreover, the current ordinance, making it a crime to "loaf, loiter, wander or idle" is also unconstitutional. Similar to historical Jim Crow, Anti-Okie, and "Ugly" laws that discriminated against persons with disabilities, these modern-day ordinances grant police a broad tool for excluding visibly poor and homeless people from public places while giving discretion to ignore identical behavior from others. The Supreme Court has held that such ordinances are unconstitutionally vague when they do not give clear notice of the prohibited conduct or would allow for selective or arbitrary enforcement.[3] Not only should the council *not* pass the amended ordinance, it should use this opportunity to repeal the existing unconstitutional one.

The proposed displacement of existing encampments threatens resident lives. Displacing encampment residents and tearing down their makeshift housing, as encouraged by the bill, threatens the life and health of encampment residents in a very real (and unconstitutional) way. Research shows that for people experiencing homelessness, "their decisions about where to stay

---

[1] *See Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).

[2] Phillips v. City of Cincinnati, No. 1:18-cv-541, 2019 U.S. Dist. LEXIS 89421 (S.D. Ohio May 29, 2019), *at* FN. 6: "Although the Sixth Circuit has not addressed the issue, the Ninth Circuit has found that an "ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them." ***Martin v. City of Boise***, **920 F.3d 584**, **604** (9th Cir. 2019) (emphasis added). As this Court has recognized, "the County Court's August 7, 2018 TRO effectively made being homeless in most of Cincinnati illegal. If Plaintiff [or others similarly situated] can show that there is not a bed available for [them] in Cincinnati shelters, then [they] can likely succeed on [the] Eighth Amendment claim." (Doc. 19 at 5)."

[3] *Chicago v. Morales*, 527 U.S. 41 (1999); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time" and thus "[e]ncampments form in response to the absence of other, desirable options for shelter." Because people experiencing homelessness have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harms flowing from loss of their shelters and other property. For many unsheltered homeless people, property loss is "the greatest threat" to their survival. Makeshift housing, like tents, offer protection, however rudimentary, from outdoor elements and allows the homeless citizens to seek shelter in locations where they feel most safe (relatively speaking). The destruction and removal of their tents and other temporary structures exposes already vulnerable individuals to increased risk of serious physical harm.[4]

The bill undermines "Housing First" efforts, and criminalizing homelessness makes obtaining housing harder. The bill criminalizes homelessness on local, state, and federal lands. This approach is contrary to the evidence-based strategies identified by the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Interagency Council on Homelessness. *See* ALL IN: The Federal Strategic Plan to Prevent and End Homelessness. "[C]riminalization of homelessness . . . makes it harder for unsheltered people to get housing." *Id.* at 52.

The only way to permanently end encampments is to end the need for encampments. "Housing First" programs, however are effective. For example, while Milwaukee County's housing first initiative costs $2 million annually, it reduces annual Medicare costs by $2.1 million, mental health costs to the county by $715,000, and legal system costs by $600,000—a net savings to Milwaukee County of $1.4 million annually. Through this approach, Milwaukee has reduced its homeless population by 70 percent, down to only 17 unsheltered persons at the last count. As another example, Gainesville, Florida, adopted a planned phase out of an unregulated 222-person encampment which, through a process with deep involvement of the directly impacted encampment residents, was moved to a temporary site adjacent to the main shelter and service provider, who then worked to house every person living in the encampment, eventually closing the camp altogether. This program was closely monitored and succeeded in closing the encampment without a single arrest, less than a 10% dispersal rate into the community, and 150 successful placements into permanent housing in less than two years. A 2017 study concluded that given "striking cost discrepancies and savings," it is "fiscally irresponsible, as well as inhumane" not to provide permanent housing for people experiencing homelessness.

The bill is based on the false assumption, also known as the myth of "service resistance," that people choose homelessness and treatment aversion over appropriate services that are available. People cannot reject non-existent services, and the bill does nothing to fund much-needed services. The "service resistance" myth, and the rhetoric that accompanies it, are born from harmful stereotypes, false narratives, and incomplete or misconstrued information about the realities in which unhoused individuals live. To the extent that services exist, many people with mental disabilities who are living unsheltered have had have experienced invasions of their privacy in unsanitary congregate shelter settings or have been disappointed by unfulfilled promises of overworked case managers in an underfunded social services system. These

[4] *See Jeremiah v. Sutter Cty.*, No. 2:18–cv–00522-TLN-KJN, 2018 WL 1367541, at *4, *12 (E.D. Cal. Mar. 16, 2018) ("[T]he Court finds that Sutter County would knowingly place the homeless at increased risk of harm if it confiscates and seizes Plaintiffs' shelters and possessions").

experiences provide legitimate justifications for wariness to engage with ineffective or inaccessible programs labeled as "services." The perpetuation of the "service resistance" myth allows systems and institutions to evade critical review, while shifting the blame for homelessness and mental health crises to those most affected.

The bill is inherently discriminatory. This bill will have a discriminatory impact on the state's most marginalized populations. Homelessness disproportionately impacts persons of color, the LGBTQ+ community, and persons with disabilities. For example, Black Americans represent 40% of people experiencing homelessness nationally, despite constituting less than 13% of the overall population. Moreover, laws criminalizing homelessness are inequitably enforced. Unhoused Black and Latinx people are 9.7 and 5.7 times more likely to be cited under laws criminalizing homelessness than white people. This bill's criminalization of homelessness will exacerbate the inequality in arrests, incarceration, fines and fees and other collateral consequences of criminal justice involvement.

***

Given the lack of affordable housing, communities need sensible and cost-effective strategies to solve homelessness. The best, most cost-effective and permanent strategy is to ensure that all who are unsheltered have access to a safe place to live. Criminalizing being unsheltered without providing housing just displaces people experiencing homelessness and inevitably leads to subsequent encampments. Instead, we urge you to follow best practices and controlling federal precedent and not enact the proposed amendment to Code 10-213, and in fact to repeal the existing code. Permanent housing, with adequate supports, if needed, is the proven best way to help people exit homelessness. In contrast, criminalization will only exacerbate and prolong homelessness.

Please contact me at etars@homelesslaw.com to further discuss this bill or related issues.

Sincerely,

Eric S. Tars
Senior Policy Director
National Homelessness Law Center