



July 26, 2021

Mayor Nancy Bauder, nbauder@firstcity.org
Mayor Pro-Tem Camalla Leonhard, cleonhard@firstcity.org
Commissioner Myron Griswold, mgriswold@firstcity.org
Commissioner Mark Preisinger, mpreisinger@firstcity.org
Commissioner Jermaine Wilson, jwilson@firstcity.org

Via email

Dear Mayor Bauder, Mayor Pro-Tem Leonhard, and Commissioners:

We write on behalf of the National Homelessness Law Center (“Law Center”) and the ACLU of Kansas regarding the proposed camping ban recently discussed by Police Chief Pat Kitchens and reported on in the [Leavenworth Times](#). I understand that the city is evaluating expanding its prohibition on camping in parks to prohibit camping on public property more generally. Moreover, I understand that violators could be fined up to \$500 or sentenced to jail for up to 30 days. We are concerned that the proposed ordinance falls afoul of the 9th Circuit’s ruling in *Martin v. Boise* by criminalizing involuntary homelessness, and to the extent that the city again considers this proposed ordinance, we urge you to vote against the ordinance. Instead, we encourage Leavenworth to find solutions that provide all who are unsheltered access to adequate, alternative housing, including for example, through the Federal Emergency Management Agency’s 100% reimbursement for placing homeless individuals in non-congregate shelter during the COVID-19 pandemic. By doing so, Leavenworth can safely end the encampments by providing hotel rooms to those residing in the homeless encampments at *zero* cost to the local taxpayers.

The Law Center is the nation’s only legal advocacy organization dedicated solely to ending and preventing homelessness. In 2017, we published *Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding* (“Tent City Report”), collecting data on 187 cities’ policy responses to encampments, along with best practices, model policies, and case studies from across the country. The Tent City Report is available at https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf. Additionally, 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 proposed ordinance do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources.

We all share the goal of addressing homeless encampments—but the best, most cost-effective, and permanent way to achieve that is to ensure that they are able to access adequate, alternative housing. The proposed ordinance fails to address where these people will be able to seek shelter if not in the targeted encampments. The apparent lack of plan or requirement to house or adequately shelter the displaced persons means they are dispersed to different public spaces. Thus, we are concerned that the proposed ordinance

merely provides procedures and cover for pursuing ineffective and expensive punishment strategies, rather than constructive solutions that can actually end homelessness in the city.

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 ban in Boise, Leavenworth’s proposed ordinance “creates a costly revolving door.” *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 Americans Civil Liberties Union of Kansas previously addressed this issue in another Kansas municipality. In 2019, the ACLU sent a legal demand letter to the City of Lawrence on behalf of two homeless individuals whom the city arrested for violating its then-enacted anti-camping ordinance. The ACLU made clear that the arrests violated the Eighth Amendment, and Lawrence ultimately changed their anti-camping ordinance.

Providing Non-Congregate Housing is Reimbursable During the COVID Pandemic

Guidelines released by the Centers for Disease Control and Prevention (“CDC”) state “[i]f **individual housing** options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” See <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>. Individual housing is necessary to curb the spread of the COVID-19 pandemic and to protect against avoidable hospitalization and death among both housed and unhoused people.

While providing individual housing is necessary for the current crisis, it is also the best practice for the long term, from both a public health and fiscal policy perspective. The apparent lack of plan or requirement to house or adequately shelter the displaced homeless encampment residents means these people are merely dispersed to different public spaces, leading to the inevitable reappearance of outdoor encampments. Thus, we are concerned that the proposed ordinance merely provides procedures for pursuing ineffective and expensive punishment strategies, rather than constructive solutions that can actually end homelessness in Leavenworth.

Fortunately, the Federal Emergency Management Agency (“FEMA”) has recently approved waivers of both its 30-day renewal and 25% match requirements, offering 100% reimbursement funding for non-congregate shelter for the duration of the pandemic. See <https://www.fema.gov/press-release/20210203/fema-statement-100-cost-share>. First, FEMA will offer 100% reimbursement for “all work eligible under FEMA’s existing COVID-19 policies, including increasing medical capacity, non-congregate sheltering, and emergency feeding distribution.” Once FEMA approves a reimbursement request, it will fund the activity retroactively from January 2020 to September 30, 2021. Now is a perfect opportunity to apply to take advantage of FEMA’s expanded reimbursement policy to individually house all people experiencing homelessness for the duration of the pandemic at no local cost. Leavenworth has **no** excuse not to apply or reapply for this funding

so it can offer non-congregate shelter to people experiencing homelessness for the duration of the crisis. Leavenworth can use this opportunity to develop a long-term affordable housing plan, instead of promoting legislation like the proposed ordinance. *See also* <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>; <https://nlihc.org/resource/new-executive-order-addresses-urgent-health-and-housing-needs-people-experiencing>.

Leavenworth should apply for FEMA reimbursement so that it can address homeless encampments in public citywide by offering hotel rooms to people experiencing homelessness for the duration of the crisis at zero local cost. Rather than waste any more money enforcing and expanding camping prohibitions, Leavenworth owes it to its citizens, housed and unhoused alike, to exhaust every available funding channel and use this opportunity to secure housing for people experiencing homelessness. Leavenworth can look to states like Vermont and Connecticut when crafting its response, which have relied on FEMA reimbursement to support efforts for non-congregate housing. *See* <https://www.fema.gov/press-release/20210302/fema-awards-more-15-million-covid-19-non-congregate-sheltering-vermont>; <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/09-2020/Governor-Lamont-Coronavirus-Update-September-9>. Additionally, California relied on FEMA reimbursement when working to procure hotel and motel rooms to safely isolate people experiencing homelessness and reduce the risk of COVID-19 spread. *See* <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governornewsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protecthomeless-individuals-from-covid-19/>.

The Proposed Ordinance May Increase Fiscal Costs

If Leavenworth 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 proposed ordinance will incur significant costs for Leavenworth and its taxpayers—without solving the problem of homelessness. If the city’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.

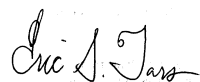
Additionally, these types of ordinances run afoul of the federal government’s policies to end homelessness, and may ultimately threaten the community’s access to federal funding to provide homeless services. For several years, the U.S. Department of Housing and Urban Development has asked questions on 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 proposed ordinance may spur litigation, which would be an additional fiscal cost. 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*, 902 F. 3rd 1031 (9th Cir. 2018). Boise ultimately settled its case with a close to \$2 million settlement package. *See* <https://www.latimes.com/world-nation/story/2021-02-08/boise-will-settle-controversial-homeless-camping-lawsuit-change-city-code>.

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 people living in homeless encampments—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 proposed ordinance misses the most significant feature of the policy—namely, where will those residing in the homeless encampments live otherwise? The best solution to the problem is to remove the need for people to shelter themselves in public in the first place, by providing adequate housing and services.

We urge you to vote against the proposed ordinance and immediately start working on more constructive solutions, including securing hotel rooms for and conducting outreach to those living in homeless encampments. 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 me at etars@nlchp.org or 202-638-2535 x. 120.

Sincerely,



Eric S. Tars
Legal Director, National Homelessness Law Center



Kendall Seal
Advocacy Director, ACLU of Kansas