

June 9, 2022

Via email

Mayor Tommy Battle, tommy.battle@huntsvilleal.gov
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Dear Mayor Battle and City Council Members,

We write on behalf of Love Huntsville, Vote Huntsville, Huntsville Bail Fund, Alabama Arise, the National Homelessness Law Center (“NHLC”), the Southern Poverty Law Center (“SPLC”), and the ACLU of Alabama (“ACLU”) to urge you to stop the planned closure of the Derrick North homeless encampment until individual housing units are available to displaced residents and the City establishes a sanctioned encampment policy consistent with the National Homelessness Law Center’s “Encampment Principles and Best Practices.”¹. Displacing encampment residents, confiscating their shelters, and destroying their personal property violate the latest guidelines released by the U.S. Center for Disease Control and Prevention (“CDC”) and the United States Interagency Council on Homelessness (“USICH”), and may violate the constitutional and statutory rights of encampment residents. As described in more detail below, Huntsville’s sister cities—like Montgomery—have started engaging in a more comprehensive planning process about how to end homelessness. Huntsville should pursue a similar approach to avoid the health and safety concerns associated with evicting encampment residents. We ask that Huntsville develop one year and five-year plans that provide rapid rehousing, transitional housing, permanent supportive housing, and affordable housing options for people experiencing—or at risk of—homelessness.

Who We Are

Love Huntsville is a local advocacy organization committed to ending homelessness and intergenerational poverty within the city of Huntsville, Alabama. Love Huntsville’s goal is to seek dignity, equality, and equity for those experiencing homelessness by mobilizing, advocating, and educating on the issues surrounding the city’s most vulnerable population. Although newly established, Love Huntsville has found much success in partnering with many organizations across the nation to raise awareness of the many barriers those experiencing homelessness are facing daily in Huntsville. The effectiveness of Love Huntsville’s advocacy can be attributed to its boots on the ground efforts building relationships and lifting the voices of many of its unhoused neighbors. Love Huntsville has been on the frontline locally, standing against unethical encampment closures and criminalization tactics of homelessness, while advocating for high quality permanent

¹ Encampment Principles and Best Practices, National Homelessness Law Center, <https://nhchc.org/wp-content/uploads/2019/08/encampment-principles-practices.pdf>, Exhibit A

supportive housing first implementations. Love Huntsville believes that housing is a human right and will be continuing its policy and advocacy efforts until housing solutions are established for all those that desire to have a place they call home.

Vote Huntsville is a grassroots, local focused, voter centric organization that strives to make voting simple and painless by being your one-stop-shop for anything and everything related to voting. We are committed to battling voter suppression and empowering every voter in our city.

Alabama Arise is a statewide, member-led organization advancing public policies to improve the lives of Alabamians who are marginalized by poverty. Our membership includes faith-based, community, nonprofit and civic groups, grassroots leaders and individuals from across Alabama.

Huntsville Bail Fund is dedicated to addressing the disproportionate harm of pretrial detention on marginalized communities in Madison County, Alabama. Huntsville Bail Fund helps our neighbors secure their freedom, by providing direct aid and advocacy to arrested individuals and their families. Our mission is to fight back against a system that criminalizes the marginalized, and promote solutions that reduce jail populations and improve community safety.

North Alabama Peace Network (NAPN) is a diverse and welcoming group of individuals who seek to create a peaceful, just and sustainable world through action and education by emphasizing our common humanity, promoting non-violence, and working to remove the root causes of war and injustice.

NHLC is a national legal advocacy organization dedicated solely to ending and preventing homelessness. NHLC has over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, NHLC has tracked laws criminalizing homelessness in 187 cities across the country and 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) and *Housing Not Handcuffs 2021: State Law Supplement* (2021). NHLC 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).

NHLC also litigates in federal courts to challenge policies that punish homeless people for living in public space when they lack adequate indoor options. One of NHLC's cases, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), resulted in an order from the United States Court of Appeals for the Ninth Circuit which held that the Eighth 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.

First established in Montgomery, Alabama in April 1965, the **ACLU of Alabama** is the Yellowhammer state's constitutional watchdog. For over fifty years, the ACLU of Alabama has dared to seek a more perfect union — beyond one person, party, or side. Through our work in the courts, legislature, and communities, we defend the individual rights and personal freedoms guaranteed by the Constitution and the Bill of Rights. Our mission is to realize the promise of the United States Constitution for all and expand the reach of its guarantees.

The **Southern Poverty Law Center (“SPLC”)** is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. The Economic Justice Project at the SPLC works creatively alongside, and under the leadership of, directly impacted community members to provide legal advocacy, support, and education to dismantle exploitative systems that deprive people of wealth on account of their race and economic status and to support equitable systems of self-determination and economic reinvestment, particularly in historically marginalized Black and Brown communities. Alongside the NHLC and ACLU, we recently obtained a preliminary injunction against the Montgomery County Sheriff and Alabama Law Enforcement Agency prohibiting them from enforcing two state statutes that criminalize charitable solicitation (i.e., panhandling).

Discussion

I. Displacing encampment residents threatens their life and health

According to reports from residents of the Derrick North encampment, the City of Huntsville is planning to evict its current residents and close the encampment without first securing individual housing for all the encampment residents. As discussed more below, displacing encampment residents threatens their health and lives and may violate the encampment residents’ constitutional rights.

People experiencing homelessness are especially vulnerable to the loss of even temporary shelter because they have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population.² For many unsheltered people, property loss is “the greatest threat” to their survival.³ This is especially true during the COVID-19 pandemic.

“Makeshift housing”—such as tents—offers protection from outdoor elements. Criminalizing people who camp—or lay down bedding or sleeping bags—in public spaces deprives unhoused people of this protection and exposes them to serious potential physical harm. *See Jeremiah v. Sutter Cty.*, Case No. 2:18-cv-00522, 2018 WL 1367541, at *5 (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.”).

The proposed eviction is also inconsistent with CDC guidelines.⁴ The updated CDC guidelines warn cities not to clear any encampments unless they can provide individual housing units for those displaced. Specifically, the CDC states that “[e]ncampment disbursement should

² Nat’l Health Care for the Homeless Council, *Homelessness & Health: What’s the Connection?* 1–2 (2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

³ Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 Am. Socio. Rev. 769, 790 (2019).

⁴ *See* Interim Guidance on People Experiencing Unsheltered Homelessness (updated Feb. 10, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

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.”⁵ Otherwise, the CDC recommends that encampment residents be allowed to remain where they are and be provided with necessary sanitation facilities: “[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.”⁶

The proposed eviction also runs counter to the May 25, 2022, notice published by the USICH, the only federal agency with the sole mission of preventing and ending homelessness, which outlined forthcoming guiding principles on unsheltered homelessness,⁷ including that “**removing encampments without providing access to low-barrier shelter and a range of housing options does not work**”.⁸ In that notice, USICH emphasizes that shelter space alone is not an adequate solution to encampments and that cities must identify long-term, permanent housing solutions:

There are many reasons a person without a home may stay outside rather than in a shelter: Local shelters may be full, or the individual may not meet requirements for sobriety and other mandates. They may not want to be separated from family members, partners, or pets. Or they may fear having their belongings lost or stolen. Creating safe, inclusive indoor spaces that address these concerns is crucial. Forcing people to move into a shelter or moving them from place to place without a clear pathway to housing only dissolves trust and leads to personal setbacks.⁹

USICH emphasized the need for municipalities to have a comprehensive plan to address unsheltered homelessness in general and encampments specifically. Such planning requires “strong cross-department, all-of-government, cross-sector, community-wide communication and coordination.”¹⁰ And, most importantly, it noted that “[p]eople experiencing homelessness need to be at the table, developing sustainable solutions to unsheltered homelessness.”

The City of Huntsville has announced no viable public plan for whether—and how—it will meet the housing needs of the Derrick North Encampment residents. However, prior evictions raise serious concerns and suggest a troubling pattern of disregarding unhoused residents’ health and safety. For instance, in previous evictions, the City threatened arrest for littering if unhoused

⁵ *Id.*

⁶ *Id.*

⁷ See Responding to the Growing Crisis of Unsheltered Homelessness and Encampments (May 25, 2022) <https://www.usich.gov/news/responding-to-the-growing-crisis-of-unsheltered-homelessness-and-encampments>.

⁸ *Id.* (emphasis added)

⁹ *Id.*

¹⁰ *Id.*

people left their belongings while providing little notice, and scant resources for residents to safeguard or transport their possessions to another secure location.¹¹

Moreover, without long-term, housing-oriented solutions, people often have nowhere to go after camps are disbanded, perpetuating concerning cycles of insecurity. When the City evicted residents from the Mill Street Camp, for example, some of its residents simply moved to the Cleveland Avenue Camp and were ultimately displaced again when that camp was cleared.¹² Evictions can exacerbate pre-existing health conditions and can even lead to death.¹³ The possibility of such devastating consequences highlight the need for long-term housing solutions.

Additionally, the Derrick North Camp currently has many disabled residents who have limited mobility and other special health needs, but the City has announced no special accommodations for assisting those residents with their move in the event that the Camp is closed. An eviction without a proper accommodation plan could result in the loss of critical medicine and devices upon which those disabled individuals rely for their day-to-day survival.

Existing shelter infrastructure in Huntsville falls short of the growing need of people without housing and cannot stand in for permanent, long-term housing. For instance, Huntsville's existing shelter infrastructure does not provide adequate resource for families and couples, often resulting in family separations for those who seek shelter.¹⁴ And individuals required to register as sex offenders often cannot access the City's existing shelter infrastructure, leaving them with no alternative shelter options.¹⁵ Without access to meaningful, safe alternatives, criminalization will only deepen the cycles of homelessness faced by Huntsville's least advantaged residents.

Huntsville should engage in a housing first approach rather than criminalizing homelessness. This is exactly the approach that the City of Montgomery has begun to explore following successful litigation challenging its anti-panhandling laws.¹⁶ Recently, for example, the City of Montgomery formed a Task Force on Homelessness that will generate a "strategic plan that will integrate and promote best practices across housing and service interventions; identify new partners to help seize critical opportunities in addressing homelessness in the city; and make specific administrative, policy, and funding recommendations that can alleviate and lift the

¹¹ See Homeless given notice to vacate Cleveland Avenue tent camp in Huntsville (May 26, 2021) <https://whnt.com/news/homeless-given-notice-to-vacate-cleveland-avenue-tent-camp-in-huntsville/>.

¹² *Id.*

¹³ Nat'l Health Care for the Homeless Council, *Homelessness & Health: What's the Connection?* 1–2 (2019), <https://nhhc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>; Sweeping Homeless Encampments is Cruel and Unacceptable, *The Nation* (April 14, 2022) <https://www.thenation.com/article/society/homeless-encampments-sweeps-adams/> (noting the rise in deaths among individuals whose encampments had been cleared in sweeps).

¹⁴ See Huntsville homeless shelter fights to keep families together (Nov. 21, 2018) <https://www.waff.com/2018/11/21/huntsville-homeless-shelter-fights-keep-families-together/>.

¹⁵ See Sex offenders at popular Huntsville homeless camp find it difficult to relocate (Mar. 22, 2021), <https://www.waff.com/2021/03/23/sex-offenders-popular-huntsville-homeless-camp-find-it-difficult-relocate/>

¹⁶ See *Singleton v. Taylor*, 2:2020-cv-00099 (M.D. Al. 2020).

housing, health, and holistic burdens of being houseless and homeless.”¹⁷ In conjunction with that Task Force, the City’s Department of Community Development has started drafting a 3-year Plan to Combat Homelessness.¹⁸ That plan emphasizes the importance of housing-first solutions. The Task Force also recognizes that “[n]o counsel is more important than that of impacted and at-risk persons,”¹⁹ and is therefore aspiring to include impacted and at-risk persons in an advisory role.

Montgomery’s Task Force could serve as a useful alternative model to the criminalization and eviction of Huntsville’s unhoused residents.

II. The Proposed Eviction Violates the U.S. Constitution and Federal Statute

Not only is the proposed eviction bad public policy, it may also be unconstitutional and violate federal statute. For the reasons discussed below, the proposed eviction potentially violates the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, and it may also violate the Americans with Disabilities Act (“ADA”). We therefore urge you to halt the eviction and instead to invest in solutions that will meaningfully end—rather than simply further criminalize—homelessness.

The proposed eviction may violate the Fourth and Fourteenth Amendments to the extent it results in the unlawful seizure and destruction of an unhoused person’s property. Homeless people’s property, however meager it may seem to an outsider, often “represent[s] everything they own.” *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1016 (C.D. Cal. 2011). Homeless people “have a ‘compelling ownership interest in their personal property, especially given the vulnerability of [] homeless residents.’” *See v. City of Fort Wayne*, No. 1:16-cv-00105-JVBSLC, 2016 U.S. Dist. LEXIS 185598, at *27 (N.D. Ind. June 16, 2016) (alterations in original; quotations omitted), adopted 2017 U.S. Dist. LEXIS 49956 (N.D. Ind., Mar. 31, 2017). Unreasonable deprivation of homeless people’s property is unconstitutional under the Fourth Amendment, and a city’s interest in keeping an area clean is not sufficient to render reasonable the deprivation of personal property. *See, e.g., Lavan*, 797 F. Supp. 2d at 1015. Moreover, merely providing some advance notice, without any meaningful opportunity to dispute the seizure and destruction of homeless people’s property, does not satisfy due process requirements under the Fourteenth Amendment. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993) (pre-deprivation hearing and notice is required except in the “extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event”) (internal quotations removed).

Additionally, when sleeping outside is the only viable option for some individuals, criminalizing this behavior raises other serious constitutional concerns under the Fourteenth and Eighth Amendments. For instance, the Eleventh Circuit has suggested that it “may well” violate substantive due process “to outlaw sleeping” in public where—as is likely here—there are

¹⁷ *See* The Task Force on Addressing Homelessness, City of Montgomery, Attached as Exhibit B.

¹⁸ *See* The City of Montgomery, AL, Strategy for Developing a 3-Year Plan to Combat Homelessness, Department of Community Development, Attached as Exhibit C.

¹⁹ *Id.*

insufficient alternatives. *See Joel v. City of Orlando*, 232 F.3d 1353, 1359 n.3 (11th Cir. 2000); *see also McArdle v. City of Ocala*, 519 F. Supp. 3d 1045, 1053 (M.D. Fla. 2021) (denying City’s summary judgment motion as to plaintiffs’ substantive due process claim that the City was using its open lodging ordinance to arrest and incarcerate unhoused people for sleeping or resting while awake because they were homeless; also denying the City’s motion for summary judgment and concluding that it would violate equal protection “if no inquiry of the availability of shelter space is made prior to an individual’s arrest” for camping on public property).

Moreover, in *Martin v. City of Boise*, the Ninth Circuit held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” 920 F.3d 584, 616 (9th Cir. 2019). Importantly, the Court emphasized that the inquiry into shelter availability is not simply about the number of available beds but must take into account restrictions on access to certain shelters and whether “as a practical matter, no shelter is available.” *Id.* at 610 (finding that shelter may be practically unavailable, even if there is available space at the shelter, because of shelter policies that restrict admission for individuals who exhaust time limitations at the shelter, refuse to participate in religious services, voluntarily leave the shelter and return within 30 days, or arrives at the shelter after a certain hour of the day).

The eviction appears to be part of a pattern for the City: first with the forced closure of the Mill Street Camp, and then with the eviction of the Cleveland Avenue Camp, and now the proposed eviction of the Derrick North encampment. These closures have likely left some encampment residents with no place to go because, as in *Martin*, there are myriad practical barriers to accessing shelter in Huntsville for certain unhoused populations (such as couples or people convicted of sex offenses). Without alternative camping and long-term, permanent housing options, the eviction will likely be the functional equivalent of criminalizing sleeping outdoors for many of the encampment residents. This raises serious constitutional concerns.

Finally, the proposed eviction may also violate the American with Disabilities Act. A number of the residents of the camp are persons with disabilities. Courts have found that cities violate the Americans with Disabilities Act and other disability rights statutes when they carry out sweeps and property seizures because persons with mental and physical disabilities are likely to suffer from disproportionate impacts. *See, e.g., Where Do We Go Berkeley*, No. 21-cv-04435, 2021 WL 5964594, at *8–11 (N.D. Cal. Dec. 16, 2021) (denying motion to dismiss ADA claim where defendant failed to give reasonable accommodation to disabled persons to relocate or find housing before removing homeless encampments). This is especially true here, where it does not appear that the City has provided reasonable accommodations to allow persons with disabilities additional time or assistance to relocate, nor has it provided access to sufficient housing services.

III. Conclusion

Although Huntsville was recently named the best City in the United States to live, it needs to be a place that everyone can live, including its unhoused residents. Doing so will require the City to develop a plan to address the needs of its unhoused community. The most effective way to achieve that goal is not to criminalize homelessness, but to provide access to adequate, affordable housing.

Huntsville should follow in the footsteps of its sister city, Montgomery, and focus on a housing-first approach to homelessness that prioritizes long-term solutions. Myriad models offer strong initial guideposts for such an approach. For instance, advocates at NHLHC have established six key principles and best practices for municipalities considering this exact constellation of policy concerns.²⁰ Those principles and best practices include, in part, that

- (1) All people need safe, accessible, legal place to be, both at night and during the day, and a place to securely store belongings—until permanent housing is found;
- (2) Delivery of services must respect the experience, human dignity, and human rights of those receiving them;
- (3) Adequate alternative housing must be a decent alternative; and
- (4) Law enforcement should serve and protect all members of the community.

Until it can fully realize those principles, Huntsville should place a moratorium on evicting the encampment residents of the Derrick North encampment. It is our understanding that the City owns the majority of the land that this camp is on, and this camp location should remain an open and safe option for our citizens who are experiencing homelessness until unconditional permanent supportive housing is provided. This is the last large camp in Huntsville on publicly owned land. By closing this camp, the City will leave no option for many residents but to camp illegally, which furthers the criminalization of homelessness. At least two other camps on City-owned land have been closed in the last year, with people permanently displaced, and yet the vacated land remains open and unused. These closures resulted in the unhoused people with whom we work reporting an increase in negative health consequences, losing the progress they had made towards getting housed, and further destabilized a vulnerable community.

We urge the City to cancel the eviction of the Derrick North camp until suitable, ethical, and permanent solutions are provided to our unhoused community. We ask that the City develop and publish short term and long-term plans that provide rapid rehousing, transitional housing, permanent supportive housing, and affordable housing. These camp closures do not help end homelessness and instead stack up more barriers that this community must face. Huntsville should develop a proactive approach to support its vulnerable citizens that are struggling to secure stable housing, instead of continuing the pattern of punishing and criminalizing these citizens.

Criminalizing unhoused people who sleep in tents, sleeping bags, or bedding on public property without providing individual housing units just displaces people experiencing homelessness, risks the destruction of property, and inevitably leads to subsequent encampments.²¹ We urge you to follow CDC and USICH guidance, controlling federal precedent, and the recent model of one of your sister cities to halt this eviction and invest in longer-term, housing-first solutions.

²⁰ Encampment Principles and Best Practices, National Homelessness Law Center, <https://nhchc.org/wp-content/uploads/2019/08/encampment-principles-practices.pdf>.

²¹ See Sara K. Rankin, *Punishing Homelessness*, 22 New Crim. L. Rev. 99, 114 (2019).

We are happy to discuss this matter with you further. Please feel free to contact us at tia@lovehsv.org or 256-337-3015.

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