

I write on behalf of the National Law Center on Homeless & Poverty (“Law Center”) to oppose proposed changes to Tacoma Municipal Code 8.27.210 (governing the use of structures) in parks. It is ineffective, cruel, and expensive public policy to punish sheltering oneself in public space when there are not adequate alternative locations to meet the basic human need for shelter. Therefore, we urge the City of Tacoma to reject proposed changes to 8.27.210 or, at minimum, to delay adoption of the proposed changes until the City of Tacoma identifies adequate alternative locations where its homeless residents can shelter themselves during the daytime hours.

Background

The Law Center is based in Washington, D.C., and it is the only national legal organization dedicated solely to preventing and ending homelessness. We have 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 a series of widely read national reports. See e.g. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (2016) available at <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

In addition to raising awareness about the criminalization of homelessness, we have filed lawsuits to challenge the use of criminal laws to exclude homeless people from public space. One of our cases, *Martin v. City of Boise*, resulted in a recent decision from the Ninth Circuit, the highest federal court in the western United States, condemning the criminalization of homelessness. *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018).

Many homeless individuals in Tacoma have nowhere else to go but public space.

Tacoma lacks the affordable housing and emergency shelter capacity to meet the basic human needs of its homeless population, both during the day and at night. Moreover, neighboring cities like Puyallup rely on Tacoma emergency shelter space, further straining the City’s limited resources. Proposed changes to the Tacoma Municipal Code should be evaluated against that backdrop.

The proposed ordinances punish life-sustaining conduct.

Without the ability to access housing or temporary indoor shelter, homeless people are forced to shelter themselves outside, often in public space. Because human beings cannot permanently forego shelter, people living involuntarily in public space cannot reasonably avoid sheltering themselves, much as they cannot forego resting in public space. Despite this reality, proposed changes to Tacoma Municipal Code 8.27.210 would punish homeless individuals for attempting to meet their basic need for shelter even when they lack any other options.

The proposed ordinance would make it unlawful to “place any structure in a park” unless it has been “expressly authorized by the Director” or if the structure has, “only a roof and no walls.” See Tacoma Municipal Code 8.27.210. Structure is defined broadly to prohibit using any material as a temporary shelter, regardless of weather conditions and/or whether the person subject to penalty has access to any alternative shelter.

Punishing sheltering oneself in the absence of adequate alternatives is ineffective, cruel, and expensive public policy.

The proposed ordinance appears to be an attempt to revise the City's code to minimally comport with constitutional law as interpreted by the Ninth Circuit in *Martin v. City of Boise*. The proposed ordinance fails to do that.

A shelter ban as applied to unsheltered homeless people in Tacoma violates a bedrock Eighth Amendment principle: it is unconstitutionally cruel to criminalize a status, like homelessness, that may be contracted innocently or involuntarily. See, e.g., *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018). Tacoma cannot circumvent this principle by punishing the "act" of sheltering oneself in public as a proxy for criminalizing the status of homelessness outright. Yet, this is precisely what the City attempts to do by prohibiting homeless people from sheltering themselves, and then using violation of that prohibition as a basis to exclude homeless people from remaining in or re-entering the park under penalty of the City's criminal trespass laws.

The blanket prohibition on sheltering oneself in all "parks" at all times of day applies regardless of weather or outdoor conditions, such as when protection from rain, wind, sun exposure, cold, heat, rodents and pests, or poor air quality is necessary for rest, or even survival. The shelter ban also applies whether or not any alternative shelter is available to the person subject to enforcement. Moreover, while the penalty for sheltering in public is civil, not criminal, violation of the shelter ban lays the factual basis for enforcement of Tacoma's criminal trespass law. Thus, proposed changes to the City's municipal ordinance will ultimately subject homeless people to criminal penalty simply for sheltering themselves in public, even when they lack any shelter alternatives. In this way, the proposed shelter ban is substantially similar to the ordinances condemned by the Ninth Circuit and other federal courts when applied to homeless people. See e.g. *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) (holding 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"); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006) (holding that "the Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter"), *vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 2012) (holding that "arresting homeless individuals for the harmless acts they are forced to perform in public effectively punishes them for being homeless" in direct violation of the Eighth Amendment); *Cobine v. City of Eureka*, 2016 WL 1730084 at *7 (N.D. Cal. May 2, 2016) (enjoining the City from enforcing its camping ban until it provided plaintiffs with shelter); *Anderson v. City of Portland*, 2009 WL 2386056 at *7 (D. Or. Jul. 30, 2009) (unpublished disposition) (holding that plaintiffs' Eighth Amendment claim was adequately stated because "the City's enforcement of the anti-camping and temporary structure ordinances criminalizes them for being homeless and engaging in the involuntary and innocent conduct of sleeping on public property").

In addition to serious conflict with binding federal law in *Martin*, the proposed ordinance suffers from other legal infirmities. For example, enforcement of the shelter ban against people who

cannot access alternative shelter, but who face known or obvious risks from being rendered shelterless in the outdoor elements, risks violating homeless persons' substantive due process rights under the Fourteenth Amendment to the U.S. Constitution. The proposed ordinance also raises serious concerns about discrimination against people with disabilities, which is prohibited under federal statutory law.

Even if Tacoma chooses to gamble on the proposed ordinance's legality, we urge the City to consider the negative policy implications of a punitive approach to homelessness. Enforcement of the shelter ban will be ineffective at reducing the number of homeless people living in public space because it will not reduce the number of people without housing in Tacoma, nor will it alter their basic human need for shelter. Instead, enforcement of this policy will simply punish people who lack access to any reliable shelter beyond what they can cobble together in public space, and ultimately exclude those same people from public parks under criminal trespass law. This punitive approach makes homelessness harder to escape at the individual level. Critically, it also concentrates homeless people in fewer public spaces, leading to the rise of homeless encampments.

In addition, enforcement will be costly to taxpayers and unnecessarily burden scarce public resources available to meet legitimate public health and safety needs. In contrast, numerous studies have shown that housing improves community and individual well-being, including by keeping people from living in public space while saving millions in taxpayers dollars. See e.g. Seattle University School of Law Homeless Rights Advocacy Project, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (2019) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187. In an era of crisis level homelessness, it is critical that cities invest in proven, cost-effective solutions to the problem – not punitive approaches to homelessness that are ineffective, expensive, and often illegal.

Conclusion

We urge Tacoma to reject the proposed amendment to Tacoma Municipal Code 8.27.210 and to instead revise its park code to comply with federal law. At a minimum, we urge a delay on adoption of the proposed changes until the City of Tacoma identifies adequate alternative locations where its homeless residents can shelter themselves during daytime hours.