



January 23, 2017

The Honorable Ken Koelsch
Mayor
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Sent by email: mayor@juneau.org

**Re: Ordinance 2016–44: Outlawing Camping in Downtown Juneau
ACLU of Alaska’s Constitutional Concerns**

Dear Mayor Koelsch:

We hope that you are well. This evening the Juneau Assembly will consider Ordinance 2016–44, which will outlaw members of Juneau’s homeless community from being “[o]n any parcel or right-of-way within or abutting the Downtown Juneau Area unless authorized by the property owner,”¹ at anytime “between 12:00 midnight to 7:00 a.m.,”² and fine them up to \$500 per violation.³ We write to express our concerns about the constitutionality of this proposed ordinance.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. We engage in public advocacy and education to further those rights, and—when necessary—we litigate to defend them. We are concerned that this proposed ordinance is an unconstitutional abridgment of the prohibition of cruel and unusual punishment and we hope that, in light of these infirmities, the Assembly will refrain from passing it.

¹ Ordinance 2016–44, section 2, proposed addition to CBJ 53.09.340(a)(4).

² CBJ 53.09.340(b)(1).

³ A violation is an infraction, CBJ 53.09.340(d), and is punishable by a fine up to \$500, CBJ 01.40.010(b)(3).

The proposed ordinance likely violates the US Constitution’s Eighth Amendment.

Juneau has more than 200 people who are homeless: 50 live without shelter and 160 are in shelters and transitional housing.⁴ The Glory Hole, Juneau’s only short-term shelter that accepts men, women, and children, has 40 beds: while it will let more than 40 people spend the night, people who have a blood alcohol level or more than 0.1 percent or some who have had behavioral problems may not sleep there.⁵

The need to sleep is a “universal and unavoidable consequence[] of being human.”⁶ Juneau, however, does not provide shelter space for every homeless person, including those with alcohol or behavioral problems, to sleep indoors; for many, their only option is to sleep outside.

Sleeping outside would not be permitted if the Assembly passes this ordinance. Placed in the framework of existing camping prohibitions,⁷ this proposed ordinance would prevent Juneau’s homeless citizens from sleeping on any:

- Public or privately-owned place or right-of-way downtown;⁸
- Public right-of-way not officially designated for camping;⁹
- Public right-of-way officially designated for camping, if one stays for more than 48 hours;¹⁰
- All other public land, unless every 48 hours one moves to a new spot more than one-half mile away.¹¹

Under this ordinance, the only remaining place available to sleep would be on private property outside of the Downtown Juneau Area, and only if the owners of the land permitted them to do so.¹² This is not a viable option for Juneau’s homeless population. One can reasonably expect, then, that this ordinance will outlaw being homeless essentially throughout the entire City and Borough of Juneau.

⁴ Jacob Resneck, *Could ticketing the homeless help downtown Juneau?*, KTOO Public Media, Jan. 19, 2017, ktoo.org/2017/01/19/ticketing-homeless-help-downtown-juneau.

⁵ Quinton Chandler, *Winter has a different meaning for Juneau’s homeless*, KTOO Public Media, Dec. 12, 2016, ktoo.org/2016/12/12/winter-different-meaning-juneaus-homeless.

⁶ *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2006), *vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007).

⁷ CBJ 53.09.340.

⁸ Ordinance 2016–44, section 2, proposed addition to CBJ 53.09.340(a)(4).

⁹ CBJ 53.09.340(a)(1).

¹⁰ CBJ 53.09.340(a)(2).

¹¹ CBJ 53.09.340(a)(3).

¹² CBJ 42.15.015.

Under the Eighth Amendment, Juneau may neither “expressly criminalize the status of homelessness by making it a crime to be homeless . . . nor can it criminalize acts that are an integral aspect of that status,”¹³ including sleeping. And since “there is substantial and undisputed evidence that the number of homeless persons . . . far exceeds the number of available shelter beds at all times,” Juneau would violate the Eighth Amendment if it “criminaliz[ed] the unavoidable act of sitting, lying, or *sleeping* at night while being involuntarily homeless.”¹⁴

We are pleased that Juneau is taking steps to increase the housing options that are available to its homeless community: we look forward to seeing the Juneau Housing First Collaborative Project open its doors this year. Until there are sufficient housing options in Juneau for all of the homeless populations who need it, Juneau may not constitutionally prohibit its homeless citizens from sleeping outside when that is the only option left to them.

Police can’t assume that homeless people aren’t “authorized” to be downtown.

In Alaska, “the prosecution of traffic violations or infractions,” such as camping in violation of this proposed ordinance, “are quasi-criminal proceedings,”¹⁵ and “are to be enforced and adjudicated using criminal procedures.”¹⁶ Those criminal procedures include the requirement that police have probable cause to believe that someone has violated the ordinance before issuing a citation.¹⁷ In Juneau, police may issue citations under CBJ 53.09.340’s no-camping law only if they have probable cause to believe that someone has violated it.¹⁸ This probable cause may not be a simple assumption that someone sleeping downtown is not “authorized by the property owner” to be there. Rather, to establish probable cause, “an officer [must be] aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for *particularized* suspicion.”¹⁹ This creates a host of problems in fining people for trespass, without communicating with the actual property owner. In practical terms, police who are

¹³ *Jones*, 444 F.3d at 1132.

¹⁴ *Id.* (emphasis added).

¹⁵ *State v. Clayton*, 584 P.2d 1111, 1114 (Alaska 1978).

¹⁶ *State v. Dutch Harbor Seafoods, Ltd.*, 965 P.2d 738, 746 (Alaska 1998).

¹⁷ *See Waiste v. State*, 10 P.3d 1141, 1151–52 (Alaska 2000).

¹⁸ *Vigue v. State*, 987 P.2d 204, 206 (Alaska Ct. App. 1999); Alaska Stat. § 12.25.180(b).

¹⁹ *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000).

enforcing this ordinance will need to make broad profiles about a person's status, which does not amount to probable cause.²⁰

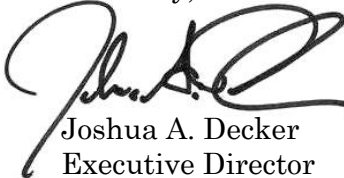
Conclusion

The problem of homelessness can be solved by building enough housing—so that everyone who wants a home has one—and by establishing the infrastructure of jobs, healthcare, counseling, drug and alcohol treatment, and other key social pillars—so that once people have a home, they can keep it.

Ordinance 2016-44 will not help the members of Juneau's homeless community find and keep homes, but it will likely violate the Constitution. The Assembly, rather than enacting this ordinance and committing Juneau to ineffectually spending its resources to enforce and defend it, should instead decline to pass this ordinance.

Thank you for considering our constitutional concerns. If you or your colleagues have any questions, please feel free to contact our Legal and Policy Director, Tara Rich, at 907.258.0044, ext. 2007, or at trich@acluak.org.

Sincerely,



Joshua A. Decker
Executive Director

cc: Deputy Mayor Jerry Nankervis, jerry.nankervis@juneau.org
Assembly Member Mary Becker, mary.becker@juneau.org
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²⁰ *Id.* at 1130 (internal quotation omitted) (holding that an officer may not use “broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped”).