



August 3, 2016

The Honorable Ethan Berkowitz
Mayor of Anchorage
632 W 6th Avenue, Suite 840
Anchorage, AK 99501

Sent via email: mayor@muni.org

Re: Homeless Encampment Evictions

Dear Mayor Berkowitz:

We hope that you are well. On Wednesday, July 27, the Alaska Dispatch News reported on a “crackdown” on Anchorage’s homeless camps.¹ The article noted that the municipality’s homeless shelters are currently full, leaving dozens of people without a place to sleep each night and creating what the municipality’s homeless coordinator, Nancy Burke, called a “bottleneck.”

We applaud the desire, publicly expressed by your Administration and the Assembly, to address Anchorage’s homelessness problem. We were pleased to read that Anchorage has long-term plans to provide vouchers to help more people find housing; we hope that the State’s budget crisis has not added any delays in making these vouchers available. And we were heartened by yesterday’s report that Anchorage awarded over \$1 million in matching grants to organizations providing essential services.²

But, while shelters are full, we ask Anchorage to stop evicting people from homeless camps. As we describe below, these evictions may violate the Constitution’s protection against cruel and unusual punishment.

As an organization with a long-term interest in promoting fair treatment of all Alaska residents—including, in particular, homeless people—the ACLU of Alaska appreciates that structural solutions to homelessness require focused and sustained attention and the commitment of significant resources. We applaud the Mayor’s Office for creating a Homeless Coordinator position and for providing housing vouchers to help people escape the streets. Similarly, the Assembly Committee on Homelessness chaired by Assembly

¹ Devin Kelly, *Homeless Shelter at Capacity as Evictions from Camps Continue*, Alaska Dispatch News (July 27, 2016), <http://www.adn.com/alaska-news/anchorage/2016/07/26/homeless-shelter-at-capacity-as-evictions-from-camps-continue>.

² *Agencies Providing Basic Human and Social Services Receive State Funding*, KTUU (Aug. 2, 2016), <http://www.ktuu.com/content/news/Agencies-providing-basic-human-and-social-services-receive-state-funding-388973272.html>.

Member Bill Evans has demonstrated the seriousness with which the Assembly is approaching the challenge.

While we appreciate that structural fixes take time, we are nevertheless concerned about evicting homeless people from camps on public land while there are not enough substitute places, such as shelters, for them to sleep. Besides being ineffective—forcing people to move when they have nowhere else to go—government action that makes it essentially impossible to be legally homeless in Anchorage may constitute cruel and unusual punishment in violation of the state and federal constitutions.

Jurisdictions enforcing criminal prohibitions against sitting, lying, or sleeping in public spaces have been sued when they did not provide sufficient substitute resting spaces for people without space of their own. This, it has been successfully argued, unconstitutionally punishes people for being homeless and having basic human needs. For example, in *Jones v. City of Los Angeles*, the Ninth Circuit concluded, “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 in the City of Los Angeles.”³

Although the *Jones* decision was vacated after the parties came to a settlement agreement, the United States Department of Justice has explicitly endorsed its reasoning. The DOJ submitted a statement of interest in an Idaho case that involved a camping and sleeping prohibition enacted by the city of Boise.⁴ The DOJ stated:

[T]he *Jones* framework is the appropriate legal framework for analyzing Plaintiffs’ Eighth Amendment claims. Under the *Jones* framework, the Court should consider whether conforming one’s conduct to the ordinance is possible for people who are homeless. If sufficient shelter space is unavailable . . . then it would be impossible for some homeless individuals to comply with these ordinances. . . . [I]n those circumstances enforcement of the ordinances amounts to the criminalization of homelessness, in violation of the Eighth Amendment.⁵

We urge Anchorage to stop evicting homeless people from camps on public property so long as the municipality’s shelters are full; public order is upset rather than furthered by uprooting people who have nowhere to go.

We respectfully ask for a response to this letter. We would appreciate your sharing any facts that shed further light on the nature of the reported “crackdown” and your clarifying any reasoning that you believe is incorrect. And we ask that you inform us of the

³ *Jones v. City of L.A.*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated following settlement*, 505 F.3d 1006 (9th Cir. 2007).

⁴ *Martin v. City of Boise*, Case No. 1:09-cv-00540-REB (D. Idaho), Statement of Interest of the United States, Doc. 276 (Sept. 28, 2015).

⁵ *Id.* at 4.

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municipality's present practices and plans regarding homeless-camp evictions. Because this issue is time-sensitive, we would appreciate a response by Monday, August 15.

Thank you for your attention and careful consideration of this urgent issue.

Sincerely,



Joshua A. Decker
Executive Director



Eric Glatt
Staff Attorney

cc: Governor Bill Walker, governor@alaska.gov
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