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**OPEN LETTER TO COLUMBIA OFFICIALS REGARDING INEFFECTIVE,
INHUMANE, AND ILLEGAL RESPONSES TO HOMELESSNESS**

Mayor Rickenmann and Columbia City Council,

We urge you, the elected officials of Columbia, to rescind the following ordinances, which criminalize homelessness:

- Ordinance 2023-079, which authorizes police to arrest people for sleeping outside, even without giving them an oral or written warning.
- Ordinance 2023-080, which makes it illegal to possess shopping carts.
- Ordinance 2023-081, which criminalizes the possession of a wide range of drug “paraphernalia,” including balloons, bowls, spoons, syringes, and pipes that can be used to smoke tobacco.

Our city needs effective, legitimate, and legal solutions to housing insecurity and homelessness – and these ordinances don’t offer that. Instead they will perpetuate and worsen a cycle in which people are arrested and shuffled from the streets to jail cells and back.

Like air to breathe and food to eat, safe shelter is a basic human need, and all of us deserve a roof over our heads and a safe place to live. It’s difficult to see our neighbors sleeping outside on cold nights or spending days under the summer sun.

We all hope that those who are hungry will find food, that those who need healthcare will receive it. These ordinances aren't a solution to homelessness, they don't reflect our values, and they are deeply flawed, no matter your politics.

This letter explains three independent reasons why we believe the City should dramatically reimagine its response to homelessness:

1. Arrest-and-release is ineffective;
2. Arrest-and-release is expensive; and
3. Arrest-and-release is, in many cases, illegal.

We hope that after considering these shortcomings, the City will engage in a sincere and collaborative effort to develop effective solutions to a pressing and complex problem.

Criminalizing Homelessness is Ineffective at Reducing Homelessness

Many factors have contributed to the homelessness crisis in Columbia — poverty, addiction, mental illness, and beyond — but above all else, homelessness is a housing problem. There is simply not enough affordable and available housing for all members of our community, leaving some of us at risk of homelessness. Housing is the answer, not handcuffs.

One factor that is contributing to homelessness is eviction. Columbia has the 8th-highest eviction rate of all large cities in the U.S., with more than 6 households evicted every day, according to Princeton University's [Eviction Lab](#). Families with low incomes find themselves in an impossible cycle: It's inexpensive for landlords to file evictions, so they do it frequently, often every month when the rent is late. Renters aren't given legal counsel when an eviction is filed, so they have no one to help them navigate the rules and processes that will lead to the loss of their homes. After an eviction, renters struggle to find another home because their eviction record follows them. This cycle pushes families into homelessness, where the City's new policies will lead to their arrests for sleeping in public.

To address homelessness, the City should focus on effective evidence-based strategies, especially upstream solutions aimed at reducing evictions. Such solutions exist — even here in our own state. A pilot housing court program in Charleston County is already reporting a 95 percent success rate at avoiding displacement. Fewer displaced families means fewer people experiencing homelessness. In its first full year in operation, 410 eviction hearings were held in the Charleston County Housing Court Pilot Project, of which three out of four did not result in an eviction. In 2022, the program more than doubled the number of hearings it held and maintained its 95 percent success rate. Success means the tenant was not evicted.

Rather than shuttling people between the sidewalks and the jail (which is already dangerously overcrowded and understaffed), we implore Columbia to seek out real solutions such as expanding affordable housing, banning source-of-income discrimination, or piloting a housing court program that has been shown to keep people housed and off the streets.

Criminalizing Homelessness is Expensive

Many people experiencing homelessness have no other choice but to live outside. By punishing conduct like sleeping outside or pushing a shopping cart, Columbia is contributing to what some researchers call the “homelessness-jail cycle,” in which some members of a city’s population move back and forth from jail cells to the city streets. This is costly for all of us.

In 2016, the [Urban Institute](#) attempted to calculate the cost paid by a single city for shuffling people from the streets to jails and back again. This study looked at Denver, Colorado, and included the costs of citations, arrests, jail stays, and police contact. The study found that “providing services to 250 people experiencing long-term homelessness and cycling in and out of jail and other emergency services cost the city an average of \$7.3 million a year.”

To be clear, an investment of many millions of dollars by the City won’t reduce homelessness if it isn’t going toward what people experiencing homelessness truly need. These dollars aren’t building affordable housing, treating health conditions, creating job opportunities, or supporting people along their recovery journeys – they are simply paying for a cruel game of catch and release.

If the City wants to spend its resources wisely, it needs to address the root causes of homelessness instead of criminalizing community members.

Criminalizing Homelessness is Illegal

Municipalities across the country have long tried to criminalize people for sleeping, sitting, asking for money, playing music, or providing/accepting food in public places. These responses to poverty and homelessness – in addition to being expensive and ineffectual – have been routinely struck down as unconstitutional under the First, Eighth, and Fourteenth Amendments.¹

¹ A survey of litigation between 2014 and 2017 showed that plaintiffs were successful in 75% of cases challenging evictions of homeless encampments and/or seizure and destruction of homeless persons’ belongings, in 57% of cases challenging enforcement of camping and/or sleeping bans, and in 100% of cases challenging laws restricting begging and solicitation. See [Housing Not Handcuffs – Litigation Manual](#), National Law Center on Homelessness & Poverty (2017) (available at: <https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs-Litigation-Manual.pdf>).

The Eighth Amendment’s prohibition on cruel and unusual punishment “imposes substantive limits on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667-68 (1977). Under the Eighth Amendment, laws may only criminalize specific *conduct*; they may not be used to criminalize a person’s *status*. *Robinson v. California*, 370 U.S. 660 (1962). Applying this precedent to municipal anti-camping ordinances, several federal courts have held that the Eighth Amendment prohibits municipalities from criminalizing sleeping in a public place, especially when a person has no other place to sleep. The Ninth Circuit explained its reasoning in this way:

The conduct at issue here [urban camping by unhoused persons] is involuntary and inseparable from status – they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping. As a result, just as the state may not criminalize the state of being “homeless in public places,” the state may not criminalize conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping on the streets.

Martin v. City of Boise, 920 F.3d 584, 617 (9th Cir. 2019) (emphasis added).

The Fourth Circuit recently applied the same rationale in a different context. In *Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019), a group of plaintiffs challenged a Virginia law that allowed the state to brand a person as a “habitual drunkard.” Once declared a “habitual drunkard,” that person was then subject to incarceration for the mere possession of or attempt to possess alcohol, or for being drunk in public. The Fourth Circuit struck down the law on multiple grounds, including that it – like the anti-camping ordinance in *Martin*—unlawfully criminalized a person’s mere existence. In so doing, the court noted its agreement with the Ninth Circuit’s holding in *Martin* and concluded that the Eighth Amendment does not tolerate “special punishment for conduct that is both compelled by [a person’s] illness and is otherwise lawful for all those of legal drinking age.” *Id.* 281.

Columbia’s new criminal ordinances, particularly 2023-079, flout this well-established constitutional protection. By permitting arrest and prosecution for the mere act of sleeping in a public place – that is, for *existing* without shelter – the city is poised to trample on the Eighth Amendment rights of its residents. Unlike in *Martin*, there are no viable housing alternatives within walking distance of downtown Columbia. The shelter the city appears to prefer, Rapid Shelter Columbia, is (perhaps by design) well outside of the city center. As a result, enforcement of -079 against unhoused community members who are downtown is likely unconstitutional even if beds are available at that facility.

Columbia can learn from Boise. After years of fighting to enforce unquestionably bad public policy, the City of Boise ended up spending \$1.2M to improve homeless shelters, agreeing to amend its policy, training officers to avoid unlawful arrests,

and paying \$435,000 in attorneys' fees.² Columbia need not follow suit.

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In any discussion about policy, it's important to remember the people whose lives will be impacted by the decisions that are made. In this case, it's even more important that we remember the facts about people experiencing homelessness, not the unfounded and harmful stereotypes.

Many people experiencing homelessness live outside because they don't have other options. Many are working but still can't afford housing. Many have families they're supporting. Many do not abuse drugs or alcohol.

People who are experiencing homelessness are disproportionately people of color, many of whom have faced discrimination, unfair treatment, and other forms of injustice that have contributed to the challenges they're experiencing.

Homelessness can feel like an intractable problem, and the desire to do something, anything, is understandable. But the harm that these ordinances will cause to real people – to our neighbors and community members – is clear. Columbia is heading down an ineffective, expensive, and illegal path, and we urge you to change course.

s/

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² <https://www.latimes.com/world-nation/story/2021-02-08/boise-will-settle-controversial-homeless-camping-lawsuit-change-city-code>

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