

**To: Members of the Community of Anchorage, Alaska**

The following is information and background for the proposed Resolution Urging the Municipality of Anchorage to Assure Adequate Emergency Shelter for Illegal Camp Abatement, Effective Prevention and Enforcement of Public

**Problem Presented:**

A considerable number of people are utilizing the Municipality's parks, trails, waterways and rights of way to pitch tents and establish large encampments. The byproduct of these activities impacts the public health and safety for campers and residents and decreases the accessibility of the parks, trails, waterways and rights of way for their intended uses. Municipal government has tried a number of approaches to solving homelessness and dedicated resources to camp abatements. Nevertheless, problems in the parks persist. Recent court rulings reduce the ability to use criminal trespass laws to prosecute those who continually illegally camp.

A subset of those people utilizing the Municipality's public lands to camp, however, does so not because there is no alternative indoor shelter available. They chose illegal camping in lieu of available alternative shelter and/or engaging in services or seeking other housing options. Municipal employees are frustrated with the ineffectiveness of the Municipality's current 'catch and release' abatement program. The community does not feel safe to use urban recreational set aside parks, trails, and waterways. Many do not feel safe or are impeded by those who camp on rights of way. These efforts also take considerable resources away from other governmental activities.

**Suggested Solutions:**

Specific civil and criminal laws govern the lawful use of Municipal parks, waterways, trails and rights of way. The Municipality must utilize those provisions to promote safe use of our parks for all residents to the fullest extent allowed by law to protect the rights of involuntary homeless persons as well as tax-paying residents.

Prevailing federal case law (Martin v. City of Boise, No. 15-35845 (9th Cir. 2018)) states “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in public.” That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter. The court further made clear that its opinion does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. (citations omitted.)

The law above is crystal clear that to legally eradicate public camping, and the constructive taking of our parks, trails, waterways and rights of way by unsheltered people, the Municipality of Anchorage must assure and/or establish sufficient shelter capacity. It should do this not least of all because no individual residing in the Municipality of Anchorage should be involuntarily forced to publically camp because they cannot afford a sleep alternative and a free one is not available. The Municipality of Anchorage must further assure, through its licensing, regulatory and/or enforcement powers, that unsheltered campers will chose to elect shelter as a sleep alternative to camping because it is clean, safe, regulated and responsive to the needs of people with serious mental health and/or substance abuse disorders. The co-occurring mental and substance disordered population comprises the vast majority of both voluntary and involuntary campers.

Taking into consideration the intent of the above court decision, the Municipality must assure that civil public nuisance abatement laws are followed when abating camps and that it does not subject individuals who are without alternative shelter to criminal punishment for conduct that is a universal and unavoidable consequence of being human, such as sleep.

At the same time, the Municipality has the same affirmative duty to its citizens to assure that unsheltered individuals who camp in parks, trails, waterways and rights of way and who have the means to locate other sleep alternatives or are offered free alternative shelter and decline that are held accountable to the law. To allow this subset of the unsheltered public camping population is essentially allowing de facto sanctioned camping on public lands with absolutely no regulation or control over behavior that seriously detracts from public health and safety. All residents of Anchorage deserve to have their rights protected and the Municipality follows the law as it applies to each population. Arresting this subset of unsheltered campers is not 'criminalizing homelessness,' it is criminalizing crime. Those campers with means or an alternative are indeed, pursuant to the law, criminally trespassing on public land.

Every person must be held to the law as it applies to their acts, their decisions and their circumstances. Those campers who the law holds accountable to criminal penalties have the alternative that those held to civil penalties are not: jail diversion into treatment or entry into one of Alaska's problem solving courts, the greatest number of which are located in Anchorage, to address the behavioral health issues underlying their criminal conduct and receive a positive resolution in their criminal case.

The Municipality must investigate and distinguish between those unsheltered public campers for whom no free indoor shelter alternative is available and those who willfully fail to avail themselves of the option and chose to desecrate the city's public recreational and other lands and charge them with trespass. Police making custodial arrests should do so as a last resort and only after public campers have been given warnings that they need to leave or be arrested and police have documented that the individual has been offered services and refused them.

Mayor Berkowitz has publically stated *“If you want to manage anything, you need to measure it. So that’s what we’re attempting to do.”* (Ethan Berkowitz, Mayor of Anchorage, on the HUD Point In Time Homeless Count, Anchorage Daily News, August 24, 2019). The Mayor’s Homeless Coordinator followed up with: *“It gives us an idea of the level of need in the community.”* (Nancy Burke, Municipal Homeless Coordinator, on the HUD Point in Time Homeless Count, Anchorage Daily News, August 24, 2019)

The Mayor and his staff are correct that to manage anything you first need to measure it – so that it gives an idea of the level of need in the community. The administration is not, in fact, measuring the problem. It is critical to consistently collect data on the number of unsheltered individuals. The measurements needed to manage the problem of unsheltered public campers involuntarily homeless and legally protected from abatement of their camps unless there is shelter space available as a sleep alternative requires substantially more than a semi-annual nose count.

To manage the problem, the Municipality must measure it by collecting, compiling, and analyzing data on all of those camping illegally, the all outreach and referral efforts made to them, and all enforcement activities. In no other way can the Municipality effectively: 1) count, identify, and define the demographic characteristics of persons camping illegally and the causes or reasons they assure doing so; 2) differentiate between those who need and accept shelter and those who refuse it; 3) define and quantify the contacts made, services offered, and results of Municipal action or those acting on behalf of or in concert with Municipal employees to prevent, eliminate, and mitigate the impacts of illegal camps; 4) define and quantify prevention and enforcement activities, both civil and criminal, undertaken by police, fire, and other Municipal employees so the Assembly and the public may be fully informed about: a) the nature and magnitude of the problem of illegal camping, b) actions taken to prevent, eliminate and mitigate the impacts of it, and c) the costs and results of both the problem and actions taken to address it.

Real measurement of the problem requires real data collection and analysis to understand actual need.

We are all committed to compassionate enforcement efforts. We also believe that the Municipality must take an approach to our parks that balance the needs of the entire community. Those who consistently choose camping when shelter is available and migrate from public camp to public camp should be documented and their multiple intentional trespasses prosecuted.

At the very least, appropriate enforcement of the criminal laws, if they apply in an individual camper's circumstances, should reduce some of the squalor and other criminal conduct in and around our parks, trails, waterways and rights of way perpetrated by voluntary public campers, even if there are insufficient sleep alternatives to abate all public camping.

Sincerely,

The Citizen's Coalition to Protect Our Public Spaces