



U.S. Department of Justice

Office for Access to Justice

950 Pennsylvania Avenue, NW, Room 3340
Washington, D.C. 20530

(202) 514-5312
www.justice.gov/atj

October 13, 2016

Councilmember Lisa Herbold
Councilmember Rob Johnson
Councilmember Mike O'Brien
Councilmember Kshama Sawant
Seattle City Council
City Hall
600 Fourth Ave., 2nd Floor
Seattle, WA 98104

Delivered via email to Jesse.Perrin@seattle.gov and Geri.Morris@seattle.gov

RE: Request for Comments on CB 118794

Dear Council Members Herbold, Johnson, O'Brien, and Sawant:

The Office for Access to Justice (ATJ) of the United States Department of Justice (Department or DOJ) is pleased to respond to your request for comment on Council Bill 118794. We understand that the Human Services & Public Health Committee will consider the proposed ordinance this week with the full City Council possibly considering it soon as well. The bill seeks to address homeless encampments in the City of Seattle, where according to a recent count, approximately 3,000 people are experiencing unsheltered homelessness.

In commenting on the bill, we recognize that people who are homeless and living on public property present myriad concerns both for their own health and safety and for the surrounding neighborhoods and communities. We also recognize that the goal of providing adequate and accessible permanent housing for people who are experiencing homelessness is difficult to achieve. At the same time, however, we have long observed that for many homeless people, finding a safe and legal place to sleep can be difficult or even impossible. In 2014, 42% of homeless individuals slept in unsheltered, public locations – under bridges, in cars, in parks, on the sidewalk, or in abandoned buildings.¹ Accordingly, the Department has long encouraged cities to adopt ordinances that protect the Constitutional rights of persons experiencing homelessness while attempting to implement policies that address legitimate public health and

¹ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 23 (2015), https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

safety concerns. Without question, the bill is consistent with the Constitutional principles the Department has previously articulated.

I. The Department of Justice’s Interest and Experience With Homelessness

The United States has a broad interest in ensuring that justice is applied fairly, regardless of wealth or status. In 2010, Attorney General Eric Holder launched ATJ to address the access-to-justice crisis in the criminal and civil justice systems. ATJ’s mission is to help the justice system deliver outcomes that are fair and accessible to all.² ATJ works with other federal agencies on a range of programs and policies affecting low-income and vulnerable people – including agencies that work to prevent and end homelessness. In August 2015, DOJ filed a Statement of Interest in *Bell v. City of Boise* (Civil Action No. 1:09-CV-540-REB) in the United States District Court for the District of Idaho. In our brief, we examined the Constitutional framework surrounding the criminalization of homelessness and concluded that ordinances that criminalize homelessness may violate the Eighth Amendment to the United States Constitution.

II. Council Bill 118794

CB 118794 limits the circumstances under which the City may remove people experiencing homelessness and their personal property from a public space. Unless the outdoor public living space is in an unsafe or unsuitable location or creates or contains a hazardous condition, the City would not be able to remove people living in public spaces unless “adequate and accessible housing” is available, the affected individuals have been engaged with sufficient outreach, and notice has been provided.³ Importantly, the bill covers four different scenarios where people experiencing homelessness and their belongings could be removed notwithstanding the failure to comply with those conditions, and sets out procedures for protecting personal property in that event. The bill would allow for removal of encampments when a location is (1) unsafe, (2) unsuitable, (3) has hazardous conditions (as those terms are defined in the bill), or (4) in an emergency. The bill acknowledges that some places are especially unsafe for encampments (for example, if it is too close to a road) or unsuitable (such as sidewalks and school grounds). Thus, the proposed ordinance would provide for fair notice and resources to those living in public spaces before being removed, while still allowing the City to address unsafe, unsuitable, hazardous, or emergency conditions.

III. Council Bill 118794 Is Consistent With Constitutional Principles

Too often, local jurisdictions have tried to simply move people experiencing homelessness to another area, without crafting more effective and systemic policy solutions that implement a Housing First response to addressing the problem of homelessness. Indeed, the history of vagrancy and loitering laws in the United States is long, dating back to colonial times.⁴ Those laws have sometimes been used to remove poor people from a particular location without adequate procedural protections, essentially criminalizing the status of being poor or homeless.

² See *Office for Access to Justice*, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/atj/> (last visited Oct. 11, 2016).

³ “Adequate and accessible housing” and the meaning of sufficient outreach and notice are all defined in the bill.

⁴ See Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 621 (1992).

DOJ recently reiterated its longstanding position on issues related to the criminalization of homelessness. The Department’s Statement of Interest in *Bell v. Boise* argued that making it a crime for people experiencing homelessness to sleep in public places, when there is insufficient shelter space in a city, unconstitutionally punished them for being homeless. We stated in the brief that “[i]t should be uncontroversial that punishing conduct that ‘is a universal and unavoidable consequence of being human’ violates the Eighth Amendment... Sleeping is a life-sustaining activity—*i.e.*, it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless.”⁵

We note that our legal position on an ordinance that essentially criminalized the status of being homeless should not be read as an endorsement of the view that allowing unfettered encampments is the appropriate policy response to homelessness. Rather, the legal position affirming the constitutional rights of people experiencing homelessness should be viewed as a starting point in crafting appropriate policy responses. Consistent with guidance provided by the United States Interagency Council on Homelessness (USICH), additional policy responses are needed to ensure a Housing First response to unsheltered homelessness in the City – to create low-barrier pathways for accessing and attaining permanent housing opportunities without focusing on relocating people to other encampment settings.

As we noted in our brief, quoting USICH, “[r]ather than helping people to regain housing, obtain employment, or access needed treatment and service, criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁶ Our brief concluded that “criminalizing homelessness is both unconstitutional and misguided public policy, leading to worse outcomes for people who are homeless and for their communities.”⁷ CB 118794 is drafted within this context, recognizing that encampments exist and that the rights of people experiencing homelessness must be respected.

IV. Conclusion

Although the enactment of CB 118794 would not solve the problem of homelessness in Seattle, the bill is consistent with the position we took in *Bell v. Boise* in its acknowledgement of the human rights of people experiencing homelessness. The Justice Department appreciates this

⁵ Statement of Interest of the United States at 11-12, *Bell v. City of Boise*, Case No. 1:09-cv-00540-REB (District of Idaho, Aug. 6, 2015), <https://www.justice.gov/opa/file/643766/download> (internal citations omitted). The brief advocated that the court adopt the reasoning of *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) (*vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007)), saying that “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 because a) there are inadequate beds for the entire population, or b) there are restrictions on those beds that disqualify certain groups of homeless individuals (e.g., because of disability access or exceeding maximum stay requirements), 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.” Statement of Interest of the United States at 4, *Bell v. City of Boise*, *supra*.

⁶ *Id.* at 15, citing U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO CRIMINALIZATION 7 (2012), http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

⁷ *Id.* at 16.

opportunity to present our views and would be pleased to address any questions or comments regarding homelessness and access to justice policies. Please feel free to call Mr. Bob Bullock, Senior Counsel at ATJ, at (202) 514-5324 with any questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Foster". The signature is cursive and somewhat stylized, with the first name "Lisa" written in a larger, more prominent script than the last name "Foster".

Lisa Foster
Director, Office for Access to Justice