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July 6, 2023

Via email

Mayor Rosalynn Bliss
Commissioner Jon O'Connor
Commissioner Drew Robbins
Commissioner Melinda Ysasi
Commissioner Lisa Knight
Commissioner Nathaniel Moody
Commissioner Kelsey Perdue
300 Monroe Avenue NW
Grand Rapids, MI 49503

Re: Proposed Amendments to Grand Rapids City Code Targeting the Unhoused

Dear Mayor Bliss and City Commissioners,

We write to express our concern and opposition to the proposed amendments to two city ordinances targeting behaviors associated with homelessness in downtown Grand Rapids. These measures further marginalize and penalize our most vulnerable community members, with significant implications and unintended consequences beyond the targeted conduct. We urge the City not to adopt the proposed amendments.

1. We Have Been Here Before: Choosing Compassion Over Cruelty Towards the Impoverished.

Grand Rapids has previously considered punitive measures to address poverty,¹ most recently rejecting ordinances that would punish those seeking charity. This decision reflected our City and City leaders' commitment to inclusivity and compassion. It is incumbent on this same group to maintain and push forward this sentiment.

Unfortunately, the City's recent proposals exacerbate the challenges facing our unhoused residents by narrowing the already limited spaces in which they can exist and depriving them of their few possessions, rather than genuinely addressing their needs. And, while not explicitly stating so, the

¹ Michael Kransz, *Grand Rapids Clearing Out Homeless Encampment at Heartside Park*, MLIVE (Dec. 22, 2020), <https://www.mlive.com/news/grand-rapids/2020/12/grand-rapids-clearing-out-homeless-encampment-at-heartside-park.html>; City Commission Meeting – December 13, 2022, City of Grand Rapids, pp. 44-50 (last accessed July 3, 2023), <http://grandrapidscitymi.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=5119&Inline=True>.

City again attempts to criminalize the act of panhandling in the proposed revisions to the “disorderly conduct” ordinance.

The amendments, while conveniently labeled “narrowly tailored” for public safety, disproportionately affect the unhoused, particularly those who find themselves without access to secure and legal resting spaces. The focus on property removal and imposing *more* restrictions serves to hide, rather than help, our unhoused population. Making homelessness less visible does not end homelessness, and packaging punitive measures with limited supportive services does not make those measures less harmful.

The proposed amendments criminalize behaviors fundamental to the experience of being unhoused: keeping personal property in public, using tents, and spending time (“loitering”) in public places. This approach only pushes our unhoused neighbors further into the margins of society, exacerbating their struggles. Indeed, we fear that may be the goal, because it is uncomfortable to be confronted with the reality that others have so much less.

Homelessness, far from being a criminal behavior, is a complex societal issue that demands empathy, understanding, and systemic action. Recognizing the inherent dignity of every person, regardless of their housing status, is vital. Marginalizing the unhoused contributes to a cycle of despair, making it harder for them to escape their circumstances. We must build bridges, not barriers and guide our action with compassion, understanding, and assistance. The City should invest in genuine solutions that address the root causes of homelessness: lack of affordable housing, insufficient mental health services, unemployment, substance abuse, and a lack of social support systems. Instead of passing ordinances that will increase what the City spends on jail beds, the City should invest more in real beds.

Homelessness is not a choice, but a circumstance often driven by factors beyond individual control. The moral fiber of a society is often measured by how it treats its most vulnerable members.

2. What Gaps?: The Proposed Ordinances Ostensibly Target Conduct That is Already Prohibited.

Addressing undesirable conduct associated with homelessness is best achieved through enforcing existing laws, not enacting new legislation. As Judge Jonker noted in *Speet v. Schuette*, 889 F. Supp. 2d 969, 977 (W.D. Mich. 2012), municipalities have an arsenal of existing ordinances at their disposal to combat conduct these amendments seek to penalize.

The City’s justification memo supporting the amendments to the “Disorderly Conduct” and “Nuisances” ordinances argues these changes are needed to “address gaps” in existing laws. But, as demonstrated at the December Public Safety Committee meeting,² existing laws and ordinances already cover the targeted conduct. For instance, the proposed amendment to the Disorderly Conduct ordinance, Section 9.136(2)(c), targets “loitering” in public or private buildings after being asked to leave. Yet Section 9.133(1) already prohibits trespassing on the premises of another

² *Public Safety Committee – December 13, 2022*, YOUTUBE, <https://www.youtube.com/watch?v=sO31oHik4g0>.

or unlawfully remaining on the premises to the annoyance or disturbance of others.³ The proposed amendments in Sections 9.108a(2) and 9.136(2)(d) make it unlawful to leave property obstructing passage on public rights of ways and to “loiter” in a doorway in such a manner that interferes with the functioning of the door, or an individual’s ability to pass through the doorway. This mirrors the existing Grand Rapids City Code 9.132(4) which prohibits “willful obstruction of free or uninterrupted passage in any street, sidewalk, public place, or any place to which the public has access.”

The justification memo also professes concern about harassing conduct and proposes defining “accosting” as “repeated nonconsensual conduct directed towards another person in such a manner as would cause a reasonable person to feel harassed, intimidated, or that a commission of a criminal act was about to occur”—which would then be outlawed in specific areas. Section 9.132(2) already forbids people from “molest[ing] another person”, which would appear to forbid harassing others in an aggressive or persistent manner.⁴ Additionally, MCL 750.411i(h) already includes “repeated or continuing unconsented contact” in its definition of “harassment.” The same statute defines “stalking” as a willful course of conduct involving repeated or continuing harassment of another.

In short, if the true concern is dealing with inappropriate behaviors, existing laws provide a legal avenue for addressing them. This would ensure we are not singling out the unhoused for punishment.

3. Unconstitutional Language: The Proposals are Vague and Overbroad.

The proposals pose significant constitutional concerns. Central to due process is the “void-for-vagueness” doctrine, requiring laws to be unambiguous and unbiased in their enforcement. *Belle Maer Harbor v. Charter Twp. Of Harrison*, 170 F.3d 553, 556-57 (6th Cir. 1999). The “overbreadth” doctrine further prohibits laws that could penalize or chill constitutionally protected speech or conduct. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377 (6th Cir. 2001). These principles underscore the need for legislative clarity and precision to prevent misuse and protect fundamental rights.

A. The Vague Definition of “Loitering”

The proposal to Section 9.136(1) defines “loitering” as “lingering or hanging around in a public area without any apparent purpose for being there,” an alarmingly nebulous and arbitrary definition possessing such a degree of vagueness that it could potentially encapsulate an infinite variety of behaviors. Its ambiguity relinquishes a concerning amount of interpretative power to subjective judgment.

³ MCL 750.552(1)(b) similarly renders it unlawful to remain without authority on another’s property after being asked to leave.

⁴ While “molest” has two definitions: (1) to sexually assault, and (2) to annoy, disturb or persecute, the City does not include any other sexual offenses in the city code. See *Molest*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/molest> (last accessed July 3, 2023).

Most problematic with this definition is the term “apparent purpose.” It begs the questions: Who determines what an “apparent purpose” is? What is the criteria for such a decision? Is it up to police or anyone who perceives someone else’s behavior as aimless? This subjective interpretation invites misuse and selective enforcement that could disproportionately affect marginalized communities, specifically the unhoused.

The Due Process Clause protects an individual’s right to loiter for innocent purposes. *Williams v. Fears*, 179 U.S. 270, 274 (1900). The Supreme Court reiterated this in *City of Chicago v. Morales*, 527 U.S. 41, 57 (1999), striking down an ordinance criminalizing loitering (similarly defined as “remaining in any one place with no apparent purpose”) by perceived gang members. The Supreme Court noted the impracticability of establishing what someone’s “apparent purpose” is, underscoring the definition’s vagueness. The Court held the ordinance was unconstitutionally vague in its failure to provide fair notice of the prohibited conduct. *Id.* at 60. The proposed amendment suffers from the exact same defect.

It’s also important to consider the principle of fairness. All of us may linger publicly or unknowingly block a doorway. But for most, the consequence is a simple request to move, not legal penalties. Our unhoused neighbors deserve the same grace; the proposed ordinances could criminalize such everyday behaviors without offering them a fair chance to rectify or cure the situation.

B. The Vague Definition of “Accosting”

The proposed definition of “accosting” as “repeated nonconsensual conduct directed to another person in such a manner as would cause a reasonable person to feel harassed, intimidated, or that a commission of a criminal act was about to occur” is both overly broad and vague. *See* Sec. 9.136(1). The sweeping definition could arguably encompass a range of innocent or constitutionally protected interactions.

For example, business owners may feel harassed by protesters objecting to unfair labor practices, yet this protest is protected, regardless of the recipients’ annoyance or discomfort. This principle is well-established in First Amendment jurisprudence. The Sixth Circuit has refused to credit the idea that people should be protected from speech and ideas they find “disagreeable, uncomfortable, or annoying.” *Bays v. City of Fairborn*, 668 F.3d 814, 824 (6th Cir. 2012). The Supreme Court has affirmed this, holding that “outside the sanctuary of the home” the public is “subject to objectionable speech.” *Cohen v. California*, 403 U.S. 15, 21 (1971).⁵

Moreover, what might feel harassing or intimidating to one person may be a harmless or necessary interaction to another. The language of the definition offers excessive discretion to law enforcement as “repeated nonconsensual conduct” could be interpreted differently, making the law unpredictable in its application and susceptible to misuse.

⁵ *See also Texas v. Johnson*, 491 U.S. 397, 414 (1989) (holding the government cannot prohibit expression of an idea simply because society finds it offensive or uncomfortable).

The danger of such laws is not simply that they may be applied unfairly but that their very existence can deter constitutionally protected speech and behavior, creating a chilling effect. The proposed amendment, in its present form, could criminalize and chill lawful behavior by labeling it as “accosting.”

C. Lack of Definitions: Your Trash Could Be My Treasure.

The proposed amendments are further marred by other unclear terms and inadequate guidance, raising additional due process and fair notice concerns.

For instance, the proposals would allow the City to discard personal property considered “garbage or rubbish” without notice. *See* Sec. 9.109(2)(f)(i). Yet, the language provides no definition or criteria for what constitutes “garbage or rubbish,” creating uncertainty over what may be discarded, and increasing the risk of arbitrary disposal of personal belongings, which may hold significant value or importance to individuals. This lack of clarity makes it exceedingly difficult for individuals, particularly the unhoused, to know what items they can keep and what the City will deem “garbage.” One person’s “trash” could be another’s “treasure,” so who is the arbiter of what is objectively “garbage or rubbish” in this instance?

The amendments also lack a clear definition of public transportation. *See* Sec. 9.136(2)(d)(ii). It is unclear if rideshare services such as Uber or taxis are included or if this section solely refers to traditional public transportation like buses and trains. The absence of a precise definition leaves individuals, especially those without legal counsel or comprehensive legal knowledge, uncertain if their actions near public transportation could violate the statute.

In short, explicit definitions and clear guidelines are crucial to help individuals understand their legal rights and obligations and mitigate the risk of arbitrary or discriminatory enforcement. On this front, the proposed amendments fall woefully short.

4. Limitations on Property: Due Process and Property Protections.

The provisions governing how much property a person can have in a public place, and the subsequent seizure of personal property “stored” in a public place, run afoul of the Fourth, Fifth and Fourteenth Amendments.

A. Limitations on How Much Property Unhoused People Can Have.

One of the most concerning aspects of the proposals is that they limit how much property unhoused people can have and allow the City to seize and discard “excess personal property” defined as any property that cannot fit in a 32-gallon container—the equivalent of a large Hefty trash bag. The ordinance effectively caps the unhoused’s property to what they can fit in a trashcan. Anything more, and the City can seize and destroy it, even if the property owner is standing right there, and even if the owner moves the property to a different location. *See* Sec. 9.108a(1)(f), (2)(b).

These amendments are not about removing abandoned property; that’s already allowed under the current ordinance. If the City were concerned with property obstructing streets or sidewalks, it

would adopt measures narrowly tailored to these concerns. Instead, the proposal targets conduct specific to the unhoused by restricting how much a property a person can have with them.

Most of us could not imagine the government seizing everything we couldn't fit in a 32-gallon trash can. For unhoused people, a winter coat, a sleeping bag, or mementos from a time before life on the street may be even more precious due to their limited possessions. While some may suggest unhoused people store their property at Mel Trotter, most of us want to be able to access our things whenever we need them, not just Monday through Friday between 8 and 3:30.

B. Fourth Amendment – Property Rights

The U.S. Supreme Court has affirmed that the Fourth Amendment protects personal property in public places, *Soldal v. Cook County*, 506 U.S. 56, 68 (1992), particularly when the seized property is subsequently destroyed. *Lavan v. Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012). Courts often rule in favor of unhoused individuals when balancing their rights to retain their property against a city's justification for abruptly confiscating them. *See Pottinger v. City of Miami*, 810 F. Supp. 1551, 1573 (S.D. Fla. 1992).

Confiscations often rob unhoused individuals of essential items: IDs, benefits cards, medication, clothing, bedding—items crucial for survival and often their sole possessions. Such seizures can severely destabilize the precarious conditions of unhoused individuals. *Pottinger*, 810 F. Supp. at 1573. We fear the proposed amendments would allow for the destruction of any seized property, including identification, medication, durable medical equipment (e.g., walkers), public benefits information, and financial assets.

We are especially troubled by provisions permitting immediate property seizure, including attended property. If a person's property is in the way, the simple solution is to ask the person to move it, not seize what little an unhoused person may possess.

The proposed ban on storing unattended personal property in public spaces risks criminalizing a significant amount of innocent conduct. *See* Sec. 9.108a(2)(a). The ordinance defines “storing” so broadly that almost anyone could be in violation. *See* Sec. 9.108a(1)(f) (defining “storing” as “to put personal property aside or accumulate for use when needed, to put for safekeeping, and/or to place or leave in a public area”). What about the cyclists downtown who park their bike outside a store? Or a parent who leaves a stroller outside a cafe? Or a family leaving picnic items unattended in the park? Such actions seem to violate the proposed ordinance. Yet, it's hard to imagine a scenario where Grand Rapids police would impound bikes, strollers, and picnic baskets, even though leaving such items in public places is technically banned. It's more likely the police would use the law selectively against unhoused residents.

C. Fourteenth Amendment – Due Process Rights

Courts have consistently recognized that the government cannot seize property without due process, whether it be a “Cadillac or a cart.” *See Lavan*, 693 F.3d at 1022.⁶ Due process requires “reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.” *City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999).

Homeless individuals, like all citizens, have constitutionally protected property rights. Their possessions often represent all they have, are essential for survival, and are anchors of personal identity. Case law has affirmed that due process protections extend to the unhoused and their personal property. *See Lavan*, 693 F.3d at 1032-33 (holding the city could not seize and destroy temporarily unattended property belonging to the unhoused). By allowing for these items to be impounded and removed without clear pre- or post-deprivation notice, the City opens itself up to serious legal challenges and ultimately liability.

Section 9.108a(3)(a)-(b) of the proposals purport to set notice requirements for when the City removes personal property placed in public. However, they fail to specify how much advance notice is required before property seizure. Moreover, the amendments lack clear procedures for post-deprivation notice. These are not minor legal technicalities but core aspects of the fairness that the Due Process Clause seeks to guarantee. Without specific and fair notice periods, someone could lose their property with a day’s or even an hour’s notice. Such sudden losses—of shelter, bedding, or personal IDs—can have immediate and devastating impacts on an individual’s health and safety, ability to secure employment, or access social services, grossly violating the notion of fair notice under the due process clause.

D. Fifth Amendment – Protections from Government Takings

The Fifth Amendment of the U.S. Constitution, through its Takings Clause, protects individuals from the seizure of their private property for public use without just compensation, a safeguard that extends to personal property. *See Pottinger*, 810 F. Supp. at 1570 n.30.

The proposed amendments would allow the City to seize and discard personal property deemed “excess” or unable to fit inside of a 32-gallon closed-lid container. *See* Sec. 9.108a(1)(c). The City plans to impound certain property for 30 days and dispose of other property immediately. Regardless of the City’s plans—whether to dispose, keep, or use the property—each action is subject to the Taking Clause. *See Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 240, 244 (1984) (analyzing seizure of property pursuant to police power under the Takings Clause).

Similar conduct by the City of Miami—the seizure and destruction of personal property of unhoused individuals—was held to constitute a taking, despite the city neither using nor possessing the seized property. *See Pottinger*, 810 F. Supp. at 1570 n.30. The proposed amendments here

⁶ *Lavan*, 693 F.3d at 1022 (“[T]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking ... whether the property in question is ... a Cadillac or a cart.”).

resemble those in *Pottinger*, underscoring potential Fifth Amendment violations. If found in violation of the Takings Clause, the City could face significant legal liability, including potential damages for “just compensation” to restore the property owners to their position prior to the seizure. *United States v. Reynolds*, 397 U.S. 14, 16 (1970).

5. The Camping Ban Raises Eighth Amendment Concerns

As interpreted in the landmark case *Martin v. City of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019), The Eighth Amendment’s prohibition against cruel and unusual punishment encompasses punishing unhoused individuals for being in public when no reasonable alternative exists. Noting that “human beings are biologically compelled to rest,” the Court found a city law imposing criminal penalties for sitting, sleeping, or lying on public property was unconstitutional under the Eighth Amendment. *Id.* at 617.

Likewise, a total ban on tents in public effectively criminalizes being unhoused, leaving individuals with no legal place to exist. Section 9.108a(6) states, “Unless a permit is obtained, no person shall erect, configure, construct, maintain, use, occupy, or allow to remain erected any tent in any public area,” essentially banning tents in every public area of the city.

For the unhoused, tents often represent the most reasonable and accessible form of shelter. In a city that annually averages 40 inches of rain and 76 inches of snow, and has winter temperatures below 20 degrees, it is unreasonable to expect anyone to sleep outside without a form of shelter.

The tragic case of Thomas Pauli, an unhoused Grand Rapids man who was found dead in the snow in 2009, underscores the potential dangerous of the proposed ban.⁷ Pauli, who had nowhere to go after being turned away by homeless shelters, was one of three unhoused individuals who died in 2009 due to freezing cold temperatures. Reports as recent as January 2022 indicate unhoused individuals dying due to being trapped outside during the coldest season.⁸

We fear that, if passed, the camping ban could cause injury or death to our unhoused neighbors. A total tent ban leaves no reasonable means for unhoused individuals to legally exist in public and puts them in danger. At a minimum, tent restrictions should ensure ample opportunities for camping, limiting it only in specific locations.

Conclusion

Despite the discomfort that the visibility of poverty can bring, aspiring for a downtown free of visible homelessness should not supersede our moral, ethical, and legal duties to our unhoused community. Rather than criminalizing those grappling with homelessness, we ought to invest in comprehensive, compassionate, and effective solutions that address its underlying causes. We are

⁷ Darin Estep, *Grand Rapids Man Found Dead in Cold is Eighth in Michigan This Month*, MLIVE (Jan. 28, 2009), https://www.mlive.com/news/grand-rapids/2009/01/grand_rapids_to_those.html.

⁸ *Homeless Man Found Near UAW Building in Michigan*, MLIVE (Jan. 3, 2022), https://www.mlive.com/news/2022/01/homeless-man-found-dead-near-uaw-building-in-michigan.html?utm_source=facebook&utm_campaign=grandrapidspress_sf&utm_medium=social.

all Grand Rapids and should aim to address homelessness with understanding, compassion, and commitment to real, long-term solutions.

It is our collective responsibility to devise a strategy that addresses the systemic issues leading to homelessness, respects the rights and dignity of every citizen, and ultimately makes Grand Rapids a city where everyone can thrive.

Sincerely,

s/ Dayja Tilman
Attorney

s/ Miriam Aukerman
Senior Staff Attorney

s/ Liz Balck
West Michigan Advocacy Strategist

s/ Daniel Korobkin
Legal Director

cc: Anita Hitchcock, City Attorney
Mark Washington, City Manager