December 19, 2020

Via email

Mayor Rosalynn Bliss
Grand Rapids City Commissioners
City Manager Mark Washington
Police Chief Eric Payne
300 Monroe Avenue NW
Grand Rapids, MI 49503

Re: Camp Heartside Encampment Evictions and Property Seizures

Dear Mayor Bliss, City Commissioners, Mr. Washington, and Chief Payne,

We have learned that residents of Camp Heartside have been informed that they must leave their encampment and that their property will be confiscated if they remain after December 21, 2020. We write to express our concern that this action will threaten public health and violate the rights of Camp Heartside members.

We ask that the City pause the evictions at least until plans can be made to offer safe single-occupancy accommodations, not just congregate shelter, to camp residents. We also write to alert the City that is legally required to ensure that Camp Heartside residents receive clear notice, including information about how to reclaim property, and that the City must inventory and store any seized property and provide owners a reasonable opportunity to claim it. The City should also be aware that it cannot make it a crime for people to engage in life-sustaining activities like camping unless there is sufficient housing available for those individuals.

Encampment Evictions Threaten Public Health
Recent guidelines released by both the U.S. Centers for Disease Control and Prevention (CDC) and the Michigan Department of Health and Human Services (MDHHS) state that an immediate moratorium on homeless encampment sweeps should be implemented during the COVID-19 pandemic unless the city can offer individual housing. The CDC and MDHHS guidelines are clear that communities should not clear outdoor encampments unless the people living in those locations are offered access to individual housing units because doing so increases the risk of infectious disease spread. Specifically, the CDC recommends:

If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.¹

MDDHS similarly recommends that cities:

Implement an immediate moratorium on sweeping encampment and seizing tents and other private property.²

By evicting the residents of Camp Heartside, the City is doing exactly what the CDC and MDHHS have said cities should not do.

We appreciate that the City and its partners have worked to increase shelter capacity in Grand Rapids by converting the former Purple East building into an emergency warming center and overnight shelter. But that is not the type of individual housing contemplated by the CDC. There are too few individual housing options available in Grand Rapids for unsheltered people, and congregate shelter settings can put this already highly vulnerable population at great risk for COVID-19 due to issues with physical distancing, air circulation, and sanitation. While we are sure the City and shelter providers are doing their best to provide a safe environment, congregate environments are inherently dangerous during the pandemic. Individual housing, as recommended by the CDC, is critically needed.

Even if a place of shelter is not optimal, such as a tent, a stable place to shelter-in-place is invaluable during the COVID-19 pandemic. A study by medical practitioners, public health professionals, and social scientists at University of California at Berkeley’s School of Public Health emphasized the critical need to stop sweeping homeless encampments and, instead, to


assist people to safely shelter in place in their tents.\textsuperscript{3} This systematic review concluded that helping unsheltered people to properly shelter-in-place – even if those shelters are tents or vehicles - will help to “flatten the curve” and decrease the demand for services from hospitals.

We recognize that COVID-19 is not the only threat that unsheltered people face. The winter is upon us, and the cold is a real danger for those sleeping outdoors. The Purple East building, along with existing services, will provide some options for individuals, and we are glad that it is being made available. Our understanding, however, is that approximately 50% of the residents of Camp Heartside have indicated that they do not intend to use the shelter system. There are many reasons some unsheltered people choose not to go to shelters, including now concerns about COVID-19. But the fundamental point is that this is their choice. Particularly during the pandemic, we must respect the choice of individuals who prefer the risks of living in a tent over the risks of living in a shelter, while simultaneously recognizing that that is not much of a choice at all.

The reality is that sweeping and closing Camp Heartside is going to drive some of those who are unsheltered to more remote, less safe camps, with less access to the critical services currently available at Camp Heartside and in the surrounding neighborhood. These more remote locations do not have the minimal sanitary facilities available at and near Camp Heartside. It is difficult for police, fire and other first responders to locate and contact individuals in the more remote encampment locations in emergency situations. Other than mere optics, there is very little reason to close Camp Heartside knowing that many individuals currently living there will simply take up urban camping elsewhere, where they are at even greater risk with less access to the supports needed to protect them from both the virus and the weather.

Moreover, every time an unsheltered individual is displaced, and their belongings are discarded, the person is forced to relocate to new parts of the City, elevating the risk of disease spread to those new areas. Sweeps sever connections with service providers by displacing people to areas where they cannot be found or from which they cannot access services – including needed medical services. Moreover, seizure of tents, tarps, medications, and other survival gear make unsheltered individuals, who are already more likely than members of the general public to be hospitalized, even more vulnerable to hospitalization due to COVID-19 or other illnesses. This can lead to strain on precious hospital resources and even loss of life.

We all share the goal of a Grand Rapids without homeless encampments—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who live in those encampments are able to access adequate housing. Numerous studies have shown that communities actually save money by providing housing and services to those in need, rather than

\textsuperscript{3} For the Good of Us All | Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic:

saddling them with fines, fees and arrest records and cycling them through expensive hospital and jail systems.⁴

The City should halt its plan to evict the residents of Camp Heartside, or at least pause the evictions until a plan can be put in place for safe single-occupancy housing. Our understanding is that there is still CARES Act funding available through Kent County which could be used to offer hotel rooms to individuals who do not wish to enter congregate shelter facilities. The City should also immediately develop plans for longer-term solutions to expand housing options for unsheltered people.

Seizing Unsheltered Individuals’ Property Without Pre-Deprivation Notice Violates the Procedural Due Process Protections Required by the Fourteenth Amendment

Based on media reports, we are concerned that Grand Rapids police or other City employees will confiscate and throw away the property of Camp Heartside residents, including essential medications, identifications, family heirlooms, blankets, tents, coats, and other survival necessities, and leave residents with no recourse to recover their belongings. Although it is appropriate for the City to clean public areas, the seizure and destruction of unsheltered people’s personal property without adequate notice or other procedural protections likely violates their rights to be free from unreasonable searches and seizures and to due process under the Fourth and Fourteenth Amendments to the U.S. Constitution.⁵

⁴ See Housing Not Handcuffs 2019 Report. A study by the University of North Carolina Charlotte found putting people experiencing homelessness into permanent housing rather than leave them on the streets saved $1.8 million in its first year by drastically reducing the amount of time its tenants spent in emergency rooms (447 fewer visits) and admitted to hospitals (372 fewer days, with a 78 percent drop in arrests and 84 percent fewer days spent in jail. See https://www.charlotteobserver.com/news/local/article9106181.html. See also Lavena Staten and Sara Rankin, Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt (July 12, 2019), https://ssrn.com/abstract=3419187.

⁵ See e.g. Cash v. Hamilton County Department of Adult Probation, 388 F.3d 539, 542 (6th Cir. 2004) (“There can be little doubt that the plaintiffs have a protected property interest in their own items of value.”).
Under the Fourteenth Amendment, city officials cannot deprive an individual of their property without affording them “due process of law.”\(^6\) In other words, the City must provide procedural protections such as reasonable pre-seizure notifications and post-seizure reclamation opportunities to protect individuals from unjustified deprivations of property.\(^7\) To determine the specific process that is constitutionally required in any given situation, the City must look to the private interests, governmental interests and the value of the available procedure to minimize the risk of error.\(^8\)

Here, this analysis clearly shows that in order to comport with constitutional procedural due process requirements, the City must (1) provide adequate pre-deprivation notice that is reasonably calculated to inform members of Camp Heartside or other unsheltered individuals about the time, date and location of the seizures and how to retrieve any confiscated property, and (2) inventory and store seized property in a safe place for at least 30 days to provide the owners a reasonable opportunity to claim it.

The private interests here are significant. Unsheltered individuals retain full rights to property, even if unattended, while they perform necessary business such as eating, showering, using the restroom, or attending appointments. The loss of items such as identification, clothing, camping equipment and medicine can have dire affects upon the health and safety of unsheltered individuals. It is not difficult to hypothesize the consequences of an individual’s loss of insulin or heart medication when she does not have the disposable income to replace the prescription. And no matter how monetarily worthless the personal effects of unsheltered individuals appear to others, these items have great sentimental value for their owner and may represent “the last trace of privacy they have.”\(^9\) It is for these reasons that one court rightly urged, “the seriousness of the loss of such property cannot be overemphasized.”\(^10\) Compared to “the more immediate interests of [unsheltered individuals] in not having their personal belongings destroyed,” the City simply

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\(^6\) U.S. Const., Amm. XIV, § 1; Zinerman v. Burch, 494 U.S. 113, 127 (1990); see also Const 1963, art 6, § 32 (“No person shall be . . . be deprived of life, liberty or property, without due process of law.”).


\(^10\) Pottinger, 801 F. Supp. at 1559.
does not have an overwhelming interest in automatically seizing and destroying these possessions without adequate notice and an opportunity to reclaim items that have been taken.\footnote{Pottinger, 801 F. Supp. at 1573.}

We understand that a notice was posted on December 18, 2020, in the evening, informing residents of Camp Heartside that “[t]his area will be cleaned up and cleared of all Trash and Abandoned Property on: 12/21/20.” We are concerned that the language of the notice is not clear and that the amount of time given is not reasonable. Perhaps most importantly, there is not notice of how individuals can reclaim property that has been taken nor any information about how the City will determine whether property is “trash” or “abandoned”. The City may not immediately destroy unabandoned property. Rather, it must store that property and provide means for owners to reclaim it. Notice of where individuals can reclaim their property must be clear and easy for people to see and understand.

Finally, we note that the Constitution prohibits criminalization of involuntarily unsheltered individuals who are performing life-sustaining activities, such as sleeping, eating or sitting, which the courts acknowledge all humans must perform, if there is no adequate housing available.\footnote{See Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018) (“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”); Pottinger, 810 F. Supp. at 1565; Johnson v. City of Dallas, 860 F. Supp. 344, 350 (N.D. Tex. 1994), rev’d on other grounds 61 F.3d 442 (5th Cir. 1995).} While the opening of Purple East has increased shelter capacity (though not individual housing capacity), it is an open factual question whether there is sufficient capacity for all of those who lack shelter in Grand Rapids. It is also unclear to us whether some individuals may be barred from using the shelter system, and thus have no alternative but to sleep outdoors. It would be unconstitutional to arrest individuals for camping if there is insufficient shelter capacity or if they are barred from the shelter system.

Conclusion

The CDC and MDHHS guidelines are in place to protect public health during the deadly COVID-19 pandemic, and it is imperative that the City follow these guidelines for the good of all residents. Opening a warming center/overnight shelter at Purple East, which commendable, does not provide the individualized housing that would, under the public health guidelines, be
necessary before an encampment sweep. And, as set out above, the City’s proposed course of action raises serious legal questions.

Accordingly, we ask that the City:

• Halt the evictions at least until plans can be made to offer hotel accommodations as an additional alternative to Camp Heartside residents.

• Ensure that any actions take against Camp Heartside residents or their property comport with the Constitution, including clear notice that includes information about how to reclaim property, inventorying and storing any seized property in a safe place to provide owners a reasonable opportunity to claim it, and ensuring that life-sustaining activities like camping are not criminalized absent clear evidence that the City has adequate housing available for every Camp Heartside resident.

We appreciate your consideration of this information, and hope you will act to protect both public health and the legal rights of Camp Heartside residents.

Sincerely,

/s/ Miriam Aukerman
Senior Staff Attorney