



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

West Virginia

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January 12, 2022

Kim Haws
Morgantown City Manager
Sent via email to: khaws@morgantownwv.gov

cc: Ryan Simonton, Esq.
Morgantown City attorney
Sent via email to: rsimonton@morgantownwv.gov

Re: Destruction of tent encampments in Morgantown and request under the West Virginia Freedom of Information Act for policies and procedures pertaining to housing insecure residents

Mr. Haws,

I am writing on behalf of the American Civil Liberties Union of West Virginia. It has come to our attention that in the past two months, the City of Morgantown and its agents have enabled the following:

- (1) The destruction of personal property belonging to one or more residents of tent encampments
- (2) A failure to provide low- or no-barrier shelter for people displaced by the City's actions
- (3) A failure to consistently maintain an operable warming center for people displaced by the City's actions
- (4) A failure to comply with the Center of Disease Control and Prevention's guidelines with regards to displacing individuals from tent encampments or other group environments in the midst of a pandemic

This letter is (1) a request that the City immediately put a halt to the destruction of outdoor shelters, including tent encampments, and (2) a request under the West Virginia Freedom of Information Act regarding policies, procedures, and the City's recent actions taken with regard to people who are unhoused, reside in a tent encampment, or are otherwise housing insecure.

The COVID-19 Pandemic and CDC Guidance

As of this writing, the state is reporting more than 13,000 active cases of COVID-19, with a daily percent positivity rate of almost 20 percent.¹ The New York Times currently assesses the risk for the *entire state*,

¹ Coronavirus 2019 (COVID 19) Dashboard, W. VA. DEP'T HEALTH HUM. RES., <https://dhhr.wv.gov/COVID-19/Pages/default.aspx> (last visited Jan. 12, 2022).

including Monongalia County, as “extremely high risk” for unvaccinated people, based on reported cases and testing data.²

The destruction of tent encampments furthers the risk of spread of COVID-19. The Centers for Disease Control and Prevention notes that “closing encampments can lead people to disperse and result in increased crowding at other encampments or in shelters, which can increase the risk of spreading infectious disease, including COVID-19.”³

The CDC’s guidance further provides that, if individual housing options are not available, then a municipality *not destroy or tear down tent encampments* or displace otherwise unsheltered individuals because to do so would increase the risk of transmission and spread of COVID-19 within the community.⁴

The CDC recommends that, to ensure the safety of those who are unsheltered or reside in tent encampments, a municipality should provide *support* to individuals who reside in tent encampments or other outdoor shelter to decrease the risk of transmission of COVID-19. The CDC recommends local governments take the following actions:

- Work together with community organizations and offices to improve sanitation in encampments
- Ensure nearby restroom facilities have functional water taps, are stocked with hand hygiene materials (soap, drying materials) and bath tissue, and remain open 24 hours per day
- Provide access to portable latrines with handwashing facilities for encampments of more than 10 people if toilets and handwashing facilities are not nearby. These facilities should be equipped with hand sanitizer (containing at least 60% alcohol)⁵

Constitutional Concerns

Protection of Due Process Rights

Additionally, a municipality’s destruction of encampments and other personal property presents multiple potential constitutional implications for residents. For example, tearing down an encampment without adequate notice of due process may violate the due process rights of residents as guaranteed under the 14th Amendment to the U.S. Constitution and article III, section 10 of the West Virginia constitution. *See, e.g., United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) (“Absent extraordinary circumstances, individuals generally at minimum receive notice and an opportunity to be heard before Government deprives them of property.”).

Protection Against Unlawful Search and Seizure

The destruction of personal property also threatens protections provided by the Fourth Amendment of the U.S. Constitution and article III, section 6 of the West Virginia Constitution against unreasonable searches and seizures. *See e.g., Pottinger v. City of Miami*, 810 F. Supp 1551, 1573 (S.D. Fla. 1992) (noting that

² Tracking Coronavirus in West Virginia: Latest Map and Case Count, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/west-virginia-covid-cases.html> (last visited Jan. 12, 2022).

³ Interim Guidance on People Experiencing Unsheltered Homelessness, CTNS. DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#facility-layout> (last visited Jan. 12, 2022).

⁴ *Id.*

⁵ *Id.*

“property of homeless individuals is due no less protection under the fourth amendment than that of the rest of society.”).

Protection Against Cruel and Unusual Punishment

Finally, particularly in light of the circumstances presented by the COVID-19 pandemic, if the City takes any action that would result in a criminal penalty for residents because they remain in an encampment, those actions may violate protections afforded by the Eighth Amendment of the U.S. Constitution and art. III, section V of the West Virginia Constitution against “cruel and unusual punishment.” See e.g., *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (holding that ‘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.”).

Request for Documents Under the West Virginia Freedom of Information Act

Pursuant to West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.*, ACLU-WV requests the following materials and any related records:

- Current policies relating to City procedures with regards to the destruction of tent encampments or other outdoor shelter maintained by residents, including policies relating to the destruction and/or storage of personal property
- Any documentation of personal property following the destruction of a tent encampment or other outdoor shelter that is being held by the City, including the location of where the items are stored.
- Copies of documentation, including reports and emails, sent to by City departments relating to the destruction or removal of personal property at tent encampments or other outdoor shelter from November 1, 2021 to present
- Copies of citations issued by City departments to individuals residing in tent encampments or other outdoor shelter on or around the days of the destruction and/or dismantling of tent encampments or other outdoor shelter from November 1, 2021 to present
- Copies of any notices posted by the City prior to the destruction of any tent encampment or outdoor shelter from November 1, 2021 to present
- Current City policies on connecting people who are housing insecure, including people displaced by the destruction of tent encampments or other outdoor shelter, to low- or no-barrier housing.
- Current City policies on the operation of warming centers

Please note that West Virginia Code Section 29B-1-3 requires agencies to respond to requests for public records within **five business days**.

We request that **as soon as possible** the City make transparent—via social media, the City’s website, and by providing information directly to impacted people—a commitment to immediately stop the displacement of tent encampment residents and other housing insecure people.

We also request that the City make transparent **by no later than Tuesday, December, 18 2022**, its plans and policies moving forward with regards to facilitating access to housing, social services, and transportation for housing insecure residents.

Please provide the materials requested under WV-FOIA and any other communications to me via email at lstark@acluwv.org.

Thanks,

A handwritten signature in blue ink that reads "Loree Stark". The signature is fluid and cursive, with the first name "Loree" being more prominent than the last name "Stark".

Loree Stark
Legal Director, ACLU-WV