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# No Rest for the Weary: Why Cities Should Embrace Homeless Encampments

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# NO REST FOR THE WEARY:

## Why Cities Should Embrace Homeless Encampments



**SEATTLEU**  
SCHOOL OF LAW

HOMELESS RIGHTS  
ADVOCACY PROJECT

# **No Rest for the Weary:**

## *Why Cities Should Embrace Homeless Encampments*

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## Executive Summary

This brief examines some of the key human, legal, and policy issues regarding homeless encampments. Homeless encampments, as used in this brief, refer to two or more people experiencing homelessness who are living outside, rather than in an emergency shelter. Most homeless encampments are prohibited by local ordinances that do not allow camping and sleeping in public places and zoning laws that bar camping and accessory dwellings. People living in these unsanctioned homeless encampments live in persistent fear of “sweeps”: clean-up actions by local authorities where encampment residents may lose the few valuables and possessions they have. Nevertheless, due to an acute shortage of affordable housing and even a lack of emergency shelters, homeless encampments not only exist but are also increasing in many cities.

This brief first explores key reasons why encampments exist, including looking at the inadequacies and inaccessibility of the shelter system. Second, it describes the various types of homeless encampments. Third, this brief identifies the benefits that people experiencing homelessness gain from living in encampments. Fourth, the brief examines the consequences of sweeps, which displace and often harm encampment residents. Sweeps, moreover, have legal implications; they can violate encampment residents’ Fourth, Eighth, and Fourteenth Amendment rights.

Based upon this analysis, this brief makes several recommendations. First, cities should not sweep or disrupt encampments unless the encampment poses true threats to the public health and safety of the residents, and the surrounding community. Second, until there is adequate permanent or transitional housing for people experiencing homelessness, cities should embrace encampments by providing essential services so that they are safe and healthy places to live. Third, cities that embrace encampments as an interim solution must develop plans and publicly announce their schedules for moving encampment residents and all people experiencing homelessness into permanent housing as quickly as possible. Encampments are merely a stopgap, desperate measure to provide shelter with some dignity to the unhoused; the only solution to homelessness is permanent housing.

## Introduction

A home provides many essential benefits that are easy to take for granted; safety, a place to sleep, storage for belongings, and protection from the weather are among the most important ones. People experiencing homelessness are, by definition, without a home, and so they lack all the benefits a home provides. While certainly not a substitute for proper, permanent homes, homeless encampments nevertheless can provide residents with some of the benefits that alleviate the stress and fear associated with experiencing homelessness and provide a path out of homelessness.<sup>1</sup> Rather than spending their days figuring out where to sleep that night, how to stay safe, or where to place their belongings, people who live in a well-run homeless encampment are able to focus on ending their homelessness. Moreover, local governments that allow and support encampments can more consistently provide services to residents than people living on the street and more easily connect residents with permanent housing.<sup>2</sup>

Unfortunately, too many local governments are focused on ending the visibility of homelessness rather than on ending homelessness itself.<sup>3</sup> This misplaced focus causes cities to disrupt homeless encampments by evicting their residents or enforcing anti-camping or anti-sleeping ordinances. These actions are futile and counterproductive. Breaking up encampments without offering residents adequate housing or shelter gives residents nowhere to go, while making their survival even more precarious. Disrupting encampments harms residents by taking away the safety of community, and forcing them into a daily nightmare of searching for security, shelter, and food, making it impossible to focus on longer-term measures to end their homelessness. The constant disruption send a message to people experiencing homelessness that they are not allowed anywhere.<sup>4</sup>

Homeless encampments are not and will never be a permanent solution to homelessness, but in many cities, homelessness has hit unprecedented levels—even prompting some to enact declarations of emergency.<sup>5</sup> While we should never accept that members of our community are living in camps, this brief argues that homeless encampments can be better for their residents than living on the street, until they can access proper transitional or permanent housing. Homeless encampments are a useful band-aid but certainly not a cure.

This brief is divided into six parts. Part I introduces why homeless encampments exist in the first place. Part II describes the differences between sanctioned and unsanctioned homeless encampments. Part III examines the benefits homeless encampments provide to their residents. Part IV demonstrates that disrupting homeless encampments is both ineffective in getting rid of encampments and detrimental to the livelihood of encampment residents. Part V argues that in

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<sup>1</sup> Georgia Perry, *In Portland, a Contested Tent City Offers the 'Right 2 Dream Too'*, CITYLAB (Nov. 27, 2014), <http://www.citylab.com/housing/2014/11/in-portland-a-contested-tent-city-offers-the-right-2-dream-too/383246/>.

<sup>2</sup> *Id.*

<sup>3</sup> Matier & Ross, *S.F. Mayor: Homeless 'have to leave the street' for Super Bowl*, SF GATE (Aug. 25, 2015), available at <http://www.sfgate.com/bayarea/matier-ross/article/S-F-mayor-Homeless-have-to-leave-the-6465209.php>.

<sup>4</sup> Interview with Yuriy Rudensky, Staff Attorney at Columbia Legal Services (Mar. 1, 2016).

<sup>5</sup> Kriston Capps, *What a State-of-Emergency Declaration Means for the Homeless*, CITYLAB (Sep. 23, 2015), <http://www.citylab.com/housing/2015/09/what-a-state-of-emergency-declaration-means-for-the-homeless/407014/>.

addition to being ineffective and traumatizing, disrupting homeless encampments can also deprive homeless individuals of their constitutional rights. Part VI concludes with several recommendations, including the core proposals that local governments recognize the benefits that homeless encampments provide to their residents and stop encampment disruptions when public health and safety is not truly at risk.

## I. Why Homeless Encampments Are Necessary

People experiencing homelessness lack many of the important benefits of having a home, like safety, storage, privacy, and stability; homeless shelters and encampments are both ways to provide some of those benefits. While homeless shelters can be a very important emergency resource for people experiencing homelessness, there is simply not enough shelter.<sup>6</sup> The latest One Night Count identified 578,000 people experiencing homelessness in the United States.<sup>7</sup> Advocates criticize the One Night Count undercounting the number of homeless people due to its narrow scope and variable methodology;<sup>8</sup> they peg a more realistic number to be as high as 3 million.<sup>9</sup>

Not only are people homeless, they are without any shelter whatsoever. Nationwide, 31 percent of people experiencing homelessness are unsheltered.<sup>10</sup> California is even worse; 62.7 percent of the homeless population lives unsheltered.<sup>11</sup>

The U.S. Department of Housing and Urban Development (HUD) defines sheltered homeless people as those staying in emergency shelters, transitional housing programs, or safe havens. HUD's one night count found that 425,000 beds are available in emergency shelters, transitional housing programs, and safe havens.<sup>12</sup> Using the very conservative estimate of homelessness captured by the point-in-time count,<sup>13</sup> the United States has a shortage of at least 153,000 beds. The shortage can also vary by season as shelters fill up especially fast when the temperature gets cold.<sup>14</sup> This shortfall underscores that even if every person who experienced homelessness were able to stay in a shelter every night, and as discussed in the next paragraph this is not the case for many people, a very large number of men, women, and children are without a safe and stable place to sleep at night. Again, it is important to emphasize that the real discrepancy is likely even higher because of the limitations of HUD's point-in-time count.<sup>15</sup>

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<sup>6</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE 2014 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS (Oct. 2014), available at <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>. [hereinafter 2014 AHAR]

<sup>7</sup> The One Night Count is an annual community-organized point-in-time count of visible homeless individuals on one night in January. *Id.*

<sup>8</sup> Maria Foscarinis, *Homeless Problem Bigger Than Our Leaders Think*, USA TODAY (Jan. 16, 2014), <http://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/>.

<sup>9</sup> NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, HOMELESSNESS IN AMERICA: OVERVIEW OF DATA AND CAUSES (Jan. 2015), available at [https://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>10</sup> 2014 AHAR, *supra* note 6, at 1.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.* at 58.

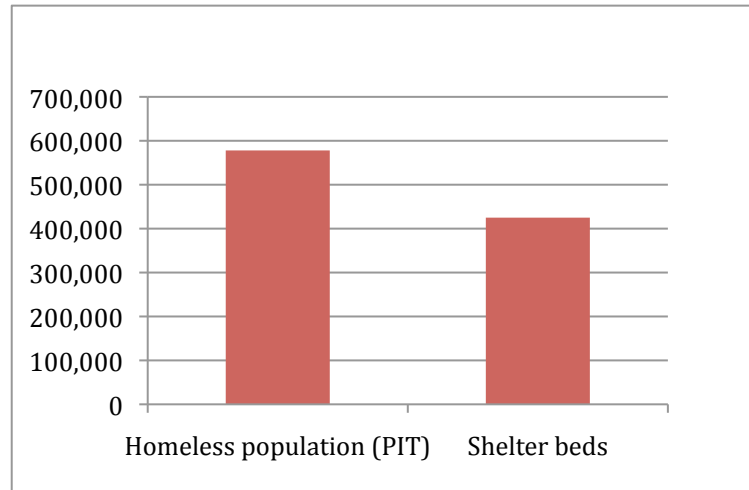
<sup>13</sup> Foscarinis, *supra* note 8.

<sup>14</sup> Telephone Interview with Sarah Steilen, Office Manager, Facing Homelessness (Nov. 4, 2015).

<sup>15</sup> The representation of the point-in-time count as the definitive number the population of people experiencing homelessness in the United States is a serious misnomer considering the various limitations of the count. Foscarinis,



**Comparison of shelter beds with homeless population as estimated by PIT count.**



The inadequacy of the shelter system is further exacerbated by the inaccessibility of shelters to many homeless individuals.<sup>16</sup> Shelters have strict rules and harsh conditions that can exclude groups of homeless individuals or make them an unappealing option.<sup>17</sup> For example, most shelters are separated by gender so heterosexual couples have a hard time staying together.<sup>18</sup> Similarly, families with children have a hard time staying together in shelters for the same reason.<sup>19</sup> People with a criminal history are also often shut out of from shelters, as are those who identify as transgender.<sup>20</sup>

Moreover, shelters' limited hours pose an additional barrier. Most shelters also only provide nighttime accommodation with strict curfews, which shuts out homeless individuals with irregular hours or nighttime shifts.<sup>21</sup> Due to limited hours and resources, many shelters have rules requiring homeless people to leave during the day along with their belongings, and even limit the amount of belongings that people can bring inside when they stay.<sup>22</sup>

Despite their significant limitations, shelters can offer many benefits. In addition to providing indoor refuge, they can sometimes provide access to service providers, support groups,

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*supra* note 8; Paul Boden, *Homeless Head Count Helps No One*, SF GATE (Feb. 5, 2013),

<http://www.sfgate.com/opinion/openforum/article/Homeless-head-counts-help-no-one-4254191.php>.

<sup>16</sup> See generally SUZANNE SKINNER, Seattle University Homeless Rights Advocacy Project, SHUT OUT: HOW BARRIERS OFTEN PREVENT MEANINGFUL ACCESS TO EMERGENCY SHELTER (Sara K. Rankin ed., May 2016).

<sup>17</sup> See *Id.*

<sup>18</sup> Sara Bernard, *Tent cities: Seattle's unique approach to homelessness*, GRIST (June 10, 2015),

<http://grist.org/cities/tent-cities-seattles-unique-approach-to-homelessness/>.

<sup>19</sup> *Id.*

<sup>20</sup> See SKINNER, *supra* note 16

<sup>21</sup> NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES 20 (Mar. 2014) [hereinafter WELCOME HOME]

<sup>22</sup> Telephone Interview with Eric Ares, Community Organizer and Communications Coordinator at Los Angeles Community Action Network (Feb. 25, 2016).

and even nursing services for individuals recently discharged from a hospital.<sup>23</sup> But the shortfall of shelter beds and restrictive shelter rules means that encampments can sometimes be the only viable option for many men, women, and children experiencing homelessness.

## II. Types of Homeless Encampments

How a homeless encampment, and thus its residents, is treated is determined by whether a homeless encampment is allowed or prohibited on a particular piece of property. Property ownership and a local government's zoning laws, or lack thereof, determines that status.



**Types of Homeless Encampments:**

- **Authorized Homeless Encampments**
- **Private Property Homeless Encampments**
- **Unauthorized Homeless Encampments**

### A. Authorized Homeless Encampments

Some cities have passed legislation authorizing encampments on public property. These cities vary in the level of support they extend to authorized encampments. The continuum ranges from a city-sanctioned encampment with many rules and regulations to simply giving an encampment permission to exist with minimal rules.

On the heavily involved side of the continuum is Seattle.<sup>24</sup> Seattle gives city-sanctioned encampments city funds for their operations, access to public property, access to social services, and funding for case management services.<sup>25</sup> One city-sanctioned encampment in Seattle receives water, garbage collection, on-site counseling, and access to hot showers.<sup>26</sup> While Seattle sanctions a few encampments, it outsources management and services to a nonprofit organization.<sup>27</sup>

Seattle's authorized encampments, while less restrictive than many shelters, nonetheless have rules that ultimately govern who can enter and live there.<sup>28</sup> For example, Seattle encampments ban weapons, drugs, alcohol, and threatening behavior.<sup>29</sup> But in some other cities encampment governance has been much more restrictive than Seattle encampments.<sup>30</sup> Some city-

<sup>23</sup> Mark Furst and Helen Amos, *City shelter will be a real asset to community*, BALTIMORE SUN (July 4, 2011), [http://articles.baltimoresun.com/2011-07-04/news/bs-ed-homeless-shelter-20110701\\_1\\_housing-and-resource-center-city-shelter-new-shelter](http://articles.baltimoresun.com/2011-07-04/news/bs-ed-homeless-shelter-20110701_1_housing-and-resource-center-city-shelter-new-shelter); HOMELESS SHELTERS: COMMUNITY OUTREACH PROGRAMS AND SERVICES, available at <http://www.homelesssheltersusa.org/> (last visited Apr. 23, 2016).

<sup>24</sup> See, e.g., Seattle Ordinance No. 124747.

<sup>25</sup> Telephone Interview with Sola Plumacher, Seattle Human Services Department (Nov. 10, 2015).

<sup>26</sup> Josh Green and Jake Whittenberg, *Seattle's third homeless encampments opens Tuesday*, KING 5 (Mar. 8, 2016), <http://www.king5.com/news/othello-village-located-near-light-rail-stop-rainier-valley/87746610>

<sup>27</sup> *Tiny Houses/Encampments*, LOW INCOME HOUSING INSTITUTE, <https://lihi.org/tiny-houses/> (last visited Apr. 22, 2016).

<sup>28</sup> See, e.g., Jack Broom, *New city-sponsored homeless encampment opens in Interbay*, THE SEATTLE TIMES (Nov. 19, 2015), <http://www.seattletimes.com/seattle-news/new-city-sponsored-homeless-camp-opens-in-interbay/>; Daniel Demay, *Homeless camp in Ballard, a leg up from living on the street, a leg up from running*, SEATTLE PI (Dec. 8, 2015), <http://www.seattlepi.com/local/article/Homeless-camp-in-Ballard-up-and-running-a-leg-up-6682213.php>.

<sup>29</sup> Broom, *supra* note 28.

<sup>30</sup> Chris Herring, *The New Logic of Seclusion: Homeless Encampments in America's West Coast Cities*, 13 CITY & COMMUNITY 285, 301.

authorized encampments have resulted in governance styles that some residents describe as “authoritarian” due to strict behavioral rules requiring things like rehabilitation and employment in order stay in the site.<sup>31</sup> These stricter city-managed encampments, rather than those managed by non-profits like in Seattle, are relatively rare compared to other types of encampments, but they allow cities to have more control over the encampment residents.<sup>32</sup>

On the laissez-faire end of the continuum are cities that, by ordinance or zoning, allow encampments to exist without offering services or imposing a governance structure.<sup>33</sup> Portland is one example. The city issues permits for encampments tailored to a particular parcel of land without providing other services, thereby giving residents the ability to camp on the site without the fear of eviction through a clean up or sweep.<sup>34</sup> Portland-style authorized encampments are essentially self-governing and create their own rules and regulations without city interference; however, they are beholden to a city contract and can lose their legal status if the encampment does not comply with the terms of the permit.<sup>35</sup>

## B. Private Property Homeless Encampments

Unauthorized homeless encampments also exist on private property.<sup>36</sup> Some cities have strict land use codes that prohibit homeless encampment on private property,<sup>37</sup> but for those cities with more lax zoning, encampments on private property can be common.<sup>38</sup>

In both areas with lax zoning and restrictive zoning, religious organizations are uniquely positioned to host encampments on their property as a demonstration of their mission to serve the poor. The Free Exercise Clause of the First Amendment, federal law,<sup>39</sup> and state laws<sup>40</sup> that limit government interference with church activities can protect homeless encampments on church-owned land from zoning laws.<sup>41</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 298.

<sup>34</sup> *See, e.g.*, Dignity Village contract with the city of Portland, *available at* <https://dignityvillageportland.files.wordpress.com/2015/10/dignityvillage.pdf>; Coby Hutzler, *Hazelnut Grove Homeless Camp Can Stay in North Portland – But Its Neighboring Tent City Faces Eviction*, WILLAMETTE WEEK (Dec. 11, 2015), <http://www.wweek.com/2015/12/11/hazelnut-grove-homeless-camp-can-stay-in-north-portland-but-its-neighboring-tent-city-faces-eviction/>.

<sup>35</sup> *Id.*

<sup>36</sup> Examples include Camp Hope in Las Cruces, New Mexico and the Right 2 Dream 2 camp in Portland, Oregon.

<sup>37</sup> Kara McDermott and Jeannie Yandel, *This Shoreline Couple Lets Homeless Families Camp In Their Yard*, KUOW.ORG (Mar. 3, 2016), <http://kuow.org/post/shoreline-couple-lets-homeless-families-camp-their-yard>.

<sup>38</sup> U.S. DEPARTMENT OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PROBLEM-ORIENTED GUIDE FOR POLICE PROBLEM SPECIFIC GUIDES SERIES 29, *available at* [http://www.popcenter.org/problems/pdfs/homeless\\_encampments.pdf](http://www.popcenter.org/problems/pdfs/homeless_encampments.pdf).

<sup>39</sup> Marci Hamilton, *When Churches Seek to Host Tent Cities of Homeless Persons, Can Localities Deny a Permit? The Controversy in Washington State, and What State Legislators Should Do About It*, FINDLAW (Mar. 8, 2007), <http://writ.news.findlaw.com/hamilton/20070308.html>.

<sup>40</sup> *See, e.g.*, WASH. REV. CODE § 36.01.290 (2010).

<sup>41</sup> *See* WELCOME HOME, *supra* note 21, at 63.

Even in cities that have land use codes prohibiting encampments on private property, encampments can sometimes be allowed with temporary land use permits.<sup>42</sup> Some cities and counties with strict zoning have passed specific legislation that allows encampments on private property under certain conditions. For example, in Washington, state law explicitly allows religious organizations to host encampments and prevents local jurisdictions from imposing conditions on the host organization other than conditions that protect public health and safety and do not substantially burden the religious organization.<sup>43</sup> In response to the state law, many cities have set certain conditions on encampments, like the size of encampments, distance from services, and mandating neighborhood impact plans, in order for the host to be granted a temporary use permit.<sup>44</sup>

If landowners get a temporary use permit the residents of the encampment will be at minimal risk of eviction. If the private property owner knowingly hosts the encampment, local governments cannot easily remove encampment residents except for violations of public health or public safety standards,<sup>45</sup> and without a permit the city can cite the property owner for land use and building code violations. If encampments are on private property without the knowledge of the landowners, cities can remove the encampment with the consent of the landowner.<sup>46</sup> One private property owner avoided a confrontation with local zoning codes restricting camping on private property and hosted an encampment in his backyard by raising a host of potential constitutional and legal issues to convince the city to issue him a temporary use permit.<sup>47</sup>

### C. Unauthorized Homeless Encampments

Unauthorized homeless encampments are essentially everything that has not been described above. If on public property, they are not sanctioned by the government. And if on private property, they are neither sanctioned by the government nor the property owner. The residents of unauthorized encampments, which are often seen on greenbelts alongside highways or hidden in public parks and undeveloped land, are at high risk of eviction.<sup>48</sup> Most unauthorized encampments occur on surplus or open public property, such as public right of ways, though that makes unauthorized encampments vulnerable to enforcement actions or “sweeps” by local governments.

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<sup>42</sup> McDermott & Yandel, *supra* note 37.

<sup>43</sup> WASH. REV. CODE, *supra* note 40

<sup>44</sup> *E.g.*, LYNNWOOD, WASH, Code § 21.74; KIRKLAND, WASH, Code § 127; BOTHELL, WASH, Code § 12.06.160.

<sup>45</sup> *Police Powers*, LEGAL INFORMATION INSTITUTE (last visited on Dec. 7, 2015)

[https://www.law.cornell.edu/wex/police\\_powers](https://www.law.cornell.edu/wex/police_powers).

<sup>46</sup> *See, e.g.*, the R2D2 encampment in Portland exists with landowner knowledge. *See Perry supra* note 1; Camp Runamuck was an example of one without landowner knowledge. *See WELCOME HOME, supra* note 21, at 18.

<sup>47</sup> McDermott & Yandel, *supra* note 37.

<sup>48</sup> The desire to be “out of the way” has led to homeless encampments being located in dangerous locations. Which have led to situations like individuals falling off of freeway walls to their deaths. *See, e.g.*, Heidi Groover, *Another Person Has Died Falling Onto the Freeway from a Homeless Encampment*, THE STRANGER (Jan. 27, 2015), <http://slog.thestranger.com/slog/archives/2015/01/27/another-person-has-died-falling-onto-the-freeway-from-a-homeless-encampment>; *see also* Dominic Holden, *A Man Died Falling from This Homeless Encampment*, THE STRANGER (Sep. 17, 2014), <http://www.thestranger.com/seattle/a-man-died-falling-from-this-homeless-encampment/Content?oid=20608311>.

Residents in these encampments usually live in tents, or sometimes tiny houses, and vary greatly in size.<sup>49</sup> The unauthorized encampments will frequently be the focus of public outcry or simple fatigue with visible poverty, which can and has spurred local governments to enact anti-camping or sit-lie ordinances that they can enforce through “sweeps.”<sup>50</sup>

However, sometimes cities tolerate unauthorized encampments instead of sweeping them.<sup>51</sup> Rather than enforcing their anti-camping or zoning ordinances, some cities engage in “flexible enforcement” in only the most blatant or serious situations.<sup>52</sup> For example, the city of Portland, Oregon chose to deal with unauthorized encampments by simply not enforcing anti-camping ordinances after recognizing that sweeps were ineffective.<sup>53</sup> The city started a Safe Sleep Policy that, in addition to creating sanctioned encampment, also allows camping on city property without permits.<sup>54</sup> Local governments should recognize, like Portland has, that many residents of encampments have no place else to go and are simply looking for a place to sleep.<sup>55</sup> That is why it is essential to understand the benefits encampments provide to their residents.

### III. Benefits Provided by Homeless Encampments

The most important benefits of encampments over living in the street or in shelters are safety, community, autonomy, and stability.<sup>56</sup> Of course, not all encampments offer these benefits—they vary between encampments depending upon on factors like size, location, and services available. Authorized encampments, which receive government support and services, can offer their residents great benefits, but far more common are unauthorized encampments. These encampments and their benefits are the focus of this section.

**Benefits of homeless encampments – at a glance:**

- **Safety and security**
- **Community**
- **Autonomy**
- **Stability**
- **Visibility**

#### A. Safety and Security

Opponents of homeless encampments often cite public safety concerns for nearby residents and school children to keep encampments out of their neighborhoods.<sup>57</sup> Their public

<sup>49</sup> OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *supra* note 38.

<sup>50</sup> Herring, *supra* note 30, at 291.

<sup>51</sup> *Id.* at 294.

<sup>52</sup> *Id.* at 295.

<sup>53</sup> Brad Schmidt, *Homelessness: Portland mayor quietly tolerating tent camping*, THE OREGONIAN (Jan. 29, 2016), [http://www.oregonlive.com/portland/index.ssf/2016/01/portland\\_quietly\\_tolerates\\_ten.html](http://www.oregonlive.com/portland/index.ssf/2016/01/portland_quietly_tolerates_ten.html). A group made up of business groups and neighborhood associations is now suing the city of Portland for its approach to encampments.

Brad Schmidt, *Portland sued over homeless camping*, THE OREGONIAN (Apr. 20, 2016) [http://www.oregonlive.com/portland/index.ssf/2016/04/portland\\_sued\\_over\\_homeless\\_ca.html](http://www.oregonlive.com/portland/index.ssf/2016/04/portland_sued_over_homeless_ca.html).

<sup>54</sup> HOMELESSNESS TOOLKIT – CITY OF PORTLAND, SAFE SLEEP POLICY <https://www.portlandoregon.gov/toolkit/article/562215>.

<sup>55</sup> *Id.*

<sup>56</sup> Steilen, *supra* note 14.

<sup>57</sup> In 2005, members of a church in Bellevue, Washington voted not to host an encampment citing safety concerns for children who attend preschool at the church as well safety concerns for the general community. Jessica Blanchard, *Bellevue church says no to hosting next tent city*, SEATTLE PI (Jan. 30, 2005),

safety concerns often stem from isolated violent incidents rather than general trends.<sup>58</sup> One community even greeted a new encampment with surveillance cameras set up on homes around its perimeter.<sup>59</sup>

Since shelters are often beyond capacity or not accessible to many individuals,<sup>60</sup> many people experiencing homelessness often have to choose between living in an encampment or on the street. But living on the street is extremely dangerous, especially for individuals who are on their own.<sup>61</sup> To live outside and alone forces people experiencing homelessness into hiding just to stay safe.<sup>62</sup> People experiencing homelessness die much younger than the rest of the population.<sup>63</sup> For example, in Seattle, average life expectancy for a housed person is 81 years old,<sup>64</sup> but for a homeless person is only 48 years old.<sup>65</sup> Lower life expectancy among people experiencing homelessness is due to health disparities that stem from their homelessness but also from exposure to violence.<sup>66</sup>

Violence against people experiencing homelessness takes two forms. Violence erupts between people experiencing homelessness due to personal conflicts or territorial disputes.<sup>67</sup> But people experiencing homelessness are also attacked by the housed.

From 1999-2013, national crime statistics show 1,437 *reported* acts of violence against homeless individuals by non-homeless attackers.<sup>68</sup> The number of unreported attacks is likely to be far greater. The principal motives for predatory attacks against homeless individuals are personal bias and opportunity due to the fact that people living outside are easy targets and prosecutions for attacking the visibly poor are rare.<sup>69</sup> Indeed, predatory attacks against homeless

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<http://www.seattlepi.com/local/article/Bellevue-church-says-no-to-hosting-next-tent-city-1165311.php>; *see also* John Duval, *The issue is public safety, criminal behavior – not homelessness*, CONCORD MONITOR (May 19, 2013), <http://www.concordmonitor.com/home/6241445-95/the-issue-is-public-safety-criminal-behavior-not-homelessness>.

<sup>58</sup> OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *supra* note 38, at 7.

<sup>59</sup> *Neighbors using camera to watch tent city*, KING 5 (Jan. 24, 2011),

<http://www.king5.com/story/local/2015/11/10/12935782/>.

<sup>60</sup> SKINNER, *supra* note 16.

<sup>61</sup> Zoe Loftus-Farren, *Tent Cities: An Interim Solution Homelessness and Affordable Housing Shortages in the United States*, 99 CAL. L. REV. 1037, 1055 (2011)

<sup>62</sup> Ares, *supra* note 22.

<sup>63</sup> Maralyssa Bann, *The Impossibility of Managing a Chronic Disease While Homeless*, THE ATLANTIC (Mar. 29, 2016), <http://www.theatlantic.com/health/archive/2016/03/homeless-patients/475830/>.

<sup>64</sup> PUBLIC HEALTH- SEATTLE & KING COUNTY, KING COUNTY CITY HEALTH PROFILE: SEATTLE (Dec. 2012), *available at*

[http://www.kingcounty.gov/healthservices/health/data/~/\\_media/health/publichealth/documents/data/CityProfiles/CityHealthProfileSeattle.aspx](http://www.kingcounty.gov/healthservices/health/data/~/_media/health/publichealth/documents/data/CityProfiles/CityHealthProfileSeattle.aspx).

<sup>65</sup> Bann, *supra* note 63.

<sup>66</sup> NATIONAL HEALTHCARE FOR THE HOMELESS COUNCIL, THE HARD, COLD FACTS ABOUT THE DEATHS OF HOMELESS PEOPLE (2006), *available at* <http://www.nhchc.org/wp-content/uploads/2011/09/HardColdFacts.pdf>.

<sup>67</sup> Steilen, *supra* note 14.

<sup>68</sup> NATIONAL COALITION FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013 (2014) *available at* <http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf>.

<sup>69</sup> *Id.*

persons are so pervasive that several states passed laws making such attacks “hate crimes.”<sup>70</sup> In short, both violence perpetrated by other homeless individuals and violence by non-homeless people makes living on the street dangerous for people experiencing homelessness.

Unfortunately, homeless shelters are not necessarily a refuge from violence. Certain subgroups within the homeless population are at particular risk of violence in homeless shelters. Those who are physically weak or have health issues, for example, experience relatively more violence in shelters.<sup>71</sup> Disabled people are also at heightened risk of being harmed while staying in shelters.<sup>72</sup> Emblematic of the problem: two disabled homeless individuals reported that they dared not to go to single adult shelters because they feared that they could be knocked to the ground by other residents and left there—unable to get back up.<sup>74</sup> Homeless individuals who are physically weak, sick, or disabled are also at risk of theft within shelters due to their inability to defend themselves.<sup>75</sup>

**“I don’t want to go to a shelter and you rob me and punch me in the face and I can’t do nothing about it.”<sup>73</sup>**

Additionally, the limited times that shelters are open put homeless women at particular risk. Many shelters are not open until late at night,<sup>76</sup> so women do not have a safe place to stay during the day. For example, because one women’s shelter in Providence, Rhode Island is situated in a particularly dangerous part of town, homeless women waiting for the shelter to open are vulnerable to attack; shelter clients knew of at least 15 unreported rapes in the area.<sup>77</sup>

Providence is not unique. The need to serve a maximum number of homeless people with limited dollars, combined with some communities’ unwillingness to host shelters in their neighborhoods, often means that emergency shelters are located in or close to high-crime areas.<sup>78</sup> Thus, for many people experiencing homelessness, encampments can provide the sense of security they need. Safety comes in numbers.<sup>79</sup> Living together in a community they have chosen is generally safer than living individually on the street, and even more so for vulnerable subgroups.<sup>80</sup>

<sup>70</sup> Eleanor Goldberg, *States Classify Attacks Against Homeless as “Hate Crimes” To Curb Rising Violence*, THE HUFFINGTON POST (Aug. 29, 2014), [http://www.huffingtonpost.com/2014/08/29/homeless-hate-crimes\\_n\\_5732660.html](http://www.huffingtonpost.com/2014/08/29/homeless-hate-crimes_n_5732660.html).

<sup>71</sup> Steilen, *supra* note 14.

<sup>72</sup> See, e.g., Wilson Dizard, *New York City homeless advocates rally against closure of urban campsites*, AL JAZEERA AMERICA (Sept. 9, 2015), <http://america.aljazeera.com/articles/2015/9/9/protesters-rally-for-rights-of-nyc-homeless.html>.

<sup>73</sup> Angela Stark, a blind homeless woman in New York City. *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> WELCOME HOME, *supra* note 21, at 20.

<sup>77</sup> *Id.* at 21.

<sup>78</sup> Lisa Goodman, et al, *No Safe Place: Sexual Assault in the Lives of Homeless Women* (2011) [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=558](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=558) (citing studies that indicated 13% of homeless women reported having been raped in *the past 12 months* and half of these were raped at least twice, and that 9% of homeless women reported at least one experience of sexual victimization *in the last month*).

<sup>79</sup> Steilen, *supra* note 14; Daniel Anthony-Goodwin, *Many pledge support during meeting on contentious Market St. homeless camp*, MY BALLARD (October 20, 2015), <http://www.myballard.com/2015/10/20/many-pledge-support-during-meeting-on-contentious-market-st-homeless-camp/> (author attended meeting)

<sup>80</sup> Plumacher, *supra* note 25.

Organized encampments set the bar for providing security to their residents. Often self-governing encampments create 24-hour security systems where designated residents will keep watch over the encampment at all times.<sup>81</sup> Many self-organized encampments employ contracts that every resident must sign to prevent violence, alcohol, and drugs in the encampment to bar potential troublemakers for other encampment residents and surrounding neighbors.<sup>82</sup> Self-organized encampments, which can be unauthorized or authorized, use these measures to make the encampments secure for their residents.

Police also keep a close eye on permitted encampments because of the safety concerns expressed by the community, but the worries of the community are often unfounded.<sup>83</sup> In one neighborhood, the police conducted walkthroughs every day for the three months of the encampment's stay.<sup>84</sup> The police did not report a single problem during their walkthroughs.<sup>85</sup> In fact, almost every call that came from the encampment consisted of encampment organizers notifying police that someone with an outstanding warrant was at the site.<sup>86</sup>

Certainly, some encampments present public safety problems. Violent incidents have occurred at unauthorized encampments, like Seattle's "Jungle" where five people were shot in January 2016.<sup>87</sup> Seattle's Jungle is located in an isolated area under the interstate highway, leaving it without police surveillance or basic sanitation services.<sup>88</sup>

As tragic as the murders in the Jungle were, perspective is required. Violence and criminal activity are not exclusive to homeless encampments. Both the housed and the unhoused engage in criminal activity that can lead to violence. Just because criminal activity can occur at encampments does not make them inherently unsafe.<sup>89</sup> When a shooting or other violent incident happens in an apartment, the response is not to close down apartment buildings as being unsafe. That same logic applies to encampments.

Moreover, when we shut down encampments, the residents who were not engaging in criminal activity end up on the street once more, where some feel more vulnerable to violence. As one homeless advocate stated, "If [homeless encampments] were dangerous, no one would be living in them."<sup>90</sup> Rather than shutting down encampments when criminal activity occurs, cities

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<sup>81</sup> See, e.g., Nickelsville New Intake Form on reserve with the Seattle University Homeless Rights Advocacy Project; Anthony-Goodwin, *supra* note 79.

<sup>82</sup> See, e.g., Nickelsville, *supra* note 81; Loftus-Warren, *supra* note 61, at 1052 (mentioning Camp Runamuck and Camp Quixote as examples)

<sup>83</sup> See, e.g., MERCER ISLAND POLICE DEPARTMENT DIARY OF REPORTS FROM HOMELESS ENCAMPMENT, <http://www.mercergov.org/files/MI%20TC.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Michael E. Miller, *Slaying in "the Jungle": Deadly shooting at Seattle homeless camp deepens crisis*, THE WASH. POST (Jan. 27, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/01/27/murder-in-the-jungle-deadly-shooting-at-seattle-homeless-camp-deepens-crisis/>.

<sup>88</sup> See I-5 AND EAST DUWAMISH GREENBELT: CONDITIONS ASSESSMENT, CITY OF SEATTLE (Feb. 17, 2016), available at <http://www.seattle.gov/fire/publications/I5EastDuwamishEncampmentConditionsAssessment.pdf>.

<sup>89</sup> Rudensky, *supra* note 4.

<sup>90</sup> Telephone interview with Michael Maddux, Homeless Advocate (Mar. 8, 2016)



could improve public safety for both encampment residents and neighborhoods by providing encampments with services and police security.

## B. Community

Homeless encampments provide safety through a community, but the community in and of itself is a benefit as well. By living together, people experiencing homelessness create a community that does not occur in the transient circumstances of the street or in a homeless shelter. Neither offers a stable place for people to meet and interact.<sup>91</sup> Residents of homeless encampments gain neighbors, friends, and a support system.<sup>92</sup>

Indeed, many self-governing and organized homeless encampments require residents to sign contracts that contain provisions to foster a congenial, cooperative environment for residents.<sup>94</sup> For example, the contract at Camp Runamuck in Providence, Rhode Island require all residents to share in the labor of the camp and provide that “[n]o one person shall be greater than the will of the whole.”<sup>95</sup> Some self-governing encampments mandate that residents participate in camp activities or even activities in the surrounding neighborhood, like neighborhood clean ups.<sup>96</sup>

**“Often, tent cities are considered more for the impact they will have on nearby residential communities, rather than for the community generated within their bounds.”<sup>93</sup>**

Yet, another crucial advantage of encampments is that they provide shelter to couples and families.<sup>97</sup> Shelters are usually gender segregated so it becomes difficult for couples to stay together.<sup>98</sup> And the increase in family homelessness means that many family shelters are turning families away; by contrast, encampments can help to keep families intact.<sup>99</sup>

Pets are also frequently banned at shelters; yet, pets often provide great comfort to their homeless owners.<sup>100</sup> For many people experiencing homelessness their pet may be the only thing that provides them support in difficult times. One couple living in a homeless encampment in Los Angeles said that they could live in a shelter but that would mean that they would have to separate for the night and give away their dog.<sup>101</sup> “It doesn't matter what we go through so long

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<sup>91</sup> Loftus-Farren, *supra* note 61, at 1050.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 1037

<sup>94</sup> See, e.g., Dan Barry, *Living in tents, and by the rules, under a bridge*, N.Y. TIMES (July 30, 2009), <http://www.nytimes.com/2009/07/31/us/31land.html>.

<sup>95</sup> *Id.*

<sup>96</sup> See, e.g., Nickelsville, *supra* note 81

<sup>97</sup> Bernard, *supra* note 18.

<sup>98</sup> *Id.*

<sup>99</sup> U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY, STATUS REPORT 17 (Dec. 2015) available at <http://www.usmayors.org/pressreleases/uploads/2015/1221-report-hhreport.pdf>.

<sup>100</sup> See RUBY ALIMENT, Seattle University Homeless Rights Advocacy Project, NO PETS ALLOWED: DISCRIMINATION, HOMELESSNESS, & PET OWNERSHIP (Kaya Lurie & Sara K. Rankin eds., May 2016).

<sup>101</sup> Jeff Tyler, *Making a home without a house*, MARKETPLACE (May 19, 2015), <http://www.marketplace.org/topics/wealth-poverty/making-home-without-house>.

as we don't get pulled apart,” said one person. “We're all we have. We don't have anything else.”<sup>102</sup>

For homeless individuals who have lost so much, their family and friends are often one of the few things that remain. Encampments can help to keep families, friends, and pets together.

### C. Autonomy

Homeless encampments also offer residents more autonomy than emergency shelters. To handle constantly changing populations in small spaces and also, because they are not meant to function as long-term housing, shelters have many rules. For people experiencing homelessness, these rules can be paternalistic and deny them a sense of autonomy. Residents have described shelter environments as “oppressive, depressive, [and] repressive.”<sup>103</sup> One homeless encampment resident explained why she lived in an encampment instead of a shelter:

I think it's... feeling normal. In the shelter you don't feel normal. I mean, I'm 52 years old. And I have to be told what time to go to bed, what I can watch on TV, when I can eat, what time to go to the bathroom. Are you kidding me? I'd rather feel normal. And if that means sleeping in a tent that's my tent and I can go to bed when I want and do whatever I want ... just like regular people.<sup>104</sup>

To keep their autonomy, many people experiencing homelessness actually prefer to live on the streets rather than under the rules of a shelter.<sup>105</sup> That is not to say that encampments have no rules; many encampments organized by residents or by nonprofit organizations have rules. However, encampment rules are usually targeted towards safety and collaboration rather than controlling the movements of residents.<sup>106</sup>

Encampments also provide more autonomy because residents can store their belongings there. Shelters, by contrast, usually require homeless individuals to leave during the day and to take their belongings with them.<sup>107</sup> Obviously, hauling one's belongings along makes looking for work or housing very difficult, if not impossible.<sup>108</sup> Being able to store personal belongings gives encampment residents greater opportunities to escape homelessness, preserves their dignity, and supports their independence.

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<sup>102</sup> *Id.*

<sup>103</sup> Sam Howe Verhovek, *In Oregon, a City Provides Public Land for Homeless*, N.Y. TIMES (Sept. 10, 2001), <http://www.nytimes.com/2001/09/10/us/in-oregon-a-city-provides-public-land-for-homeless.html>.

<sup>104</sup> WELCOME HOME, *supra* note 21, at 21.

<sup>105</sup> *Id.*

<sup>106</sup> *See* Nickelsville, *supra* note 81.

<sup>107</sup> *See, e.g., Shelter Rules*, ONSLOW COMMUNITY OUTREACH, <https://www.onslowco.org/shelter-rules> ((last visited Dec. 7, 2015).

<sup>108</sup> Nickelsville, *supra* note 81.

Related to autonomy is privacy.<sup>109</sup> Homeless shelters are often dormitory style; many people are commonly housed in one room, which leaves very little personal space.<sup>110</sup> Whether tents or tiny houses, encampments offer residents their own space and their own door.<sup>111</sup>

#### D. Stability

Having a stable place to stay can help encampment residents gain permanent housing.<sup>112</sup> The instability of not having a regular place to sleep and live negatively impacts men, women, and children experiencing homelessness.<sup>113</sup> Children, and school children in particular, are especially harmed by the instability caused by homelessness.<sup>114</sup> Instability in the lives of children experiencing homelessness is common; 68 percent of children experiencing homelessness moved at least twice and 21 percent moved at least five times.<sup>115</sup> Each time a child moves to a new school, he or she can lose 4–6 months of academic progress, so moving two to three times, which is common, can mean an entire year of academic progress lost.<sup>116</sup>

**“[The encampment] is a place where people just get a safe, dry, warm, place to sleep—that’s one less thing they have to worry about... with proper rest you can think clearly and then you can think about how to become productive.”<sup>117</sup>**

The instability of homelessness is not only bad for children but also adults as well, especially when it comes to finding a job and maintaining employment.<sup>118</sup> Homeless encampments can provide stability to men, women, and children experiencing homelessness who otherwise have to go from street to street, couch to couch, or shelter to shelter.

Some advocates worry that spending resources on homeless encampments distracts communities from building affordable housing.<sup>119</sup> Certainly, the only real

<sup>109</sup> See, e.g., Emily Matchar, *In Hawaii Old Buses Are Being Turned Into Homeless Shelters*, SMITHSONIAN (June 29, 2015), <http://www.smithsonianmag.com/innovation/hawaii-old-buses-are-being-turned-into-homeless-shelters-180955700/?no-ist>.

<sup>110</sup> For example, New Horizons shelter, <http://newhorizonsfornh.org/programs/shelter> and Big Sky Christian Homeless Shelter, <http://www.shelterlistings.org/details/36529/>.

<sup>111</sup> E-mail from Chris Herring, Ph.D. Candidate, University of California, Berkeley (Feb. 21, 2016, 07:48 PST).

<sup>112</sup> Perry, *supra* note 1.

<sup>113</sup> BILL & MELINDA GATES FOUNDATION, HOMELESSNESS AND FAMILY STABILITY *available at* <http://www.gatesfoundation.org/What-We-Do/US-Program/Washington-State/Homelessness-and-Family-Stability>.

<sup>114</sup> INSTITUTE FOR CHILDREN AND POVERTY, EXAMINATION OF RESIDENTIAL INSTABILITY AND HOMELESSNESS AMONG YOUNG CHILDREN (Fall 2009) *available at* [http://www.icphusa.org/PDF/reports/ICP%20Report\\_Examination%20of%20Residential%20Instability%20and%20Homelessness%20among%20Young%20Children.pdf](http://www.icphusa.org/PDF/reports/ICP%20Report_Examination%20of%20Residential%20Instability%20and%20Homelessness%20among%20Young%20Children.pdf).

<sup>115</sup> *Id.* at 2.

<sup>116</sup> Catherine Hinrichsen, *Schools Stabilize Families: What Back to School Means for Homeless Children*, FIRESTEEL (Sept. 4, 2012), <http://firesteelwa.org/2012/09/schools-stabilize-families-what-back-to-school-means-for-homeless-children/>.

<sup>117</sup> Ibrahim Mubarak, organizer of the Right 2 Dream 2 encampment in Portland, Oregon. Perry, *supra* note 1.

<sup>118</sup> GATES FOUNDATION, *supra* note 113.

<sup>119</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS (Aug. 2015) *available at* [http://usich.gov/resources/uploads/asset\\_library/Ending\\_Homelessness\\_for\\_People\\_Living\\_in\\_Encampments\\_Aug2015.pdf](http://usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf).

solutions to homelessness are those that result in permanent housing, but until and unless permanent housing can be realized, authorized homeless encampments provide an interim and emergency option.<sup>120</sup>

Encampments are increasingly recognized as a pathway to ending homelessness. An emergency taskforce convened by the City of Seattle found that “[e]ncampments can be a first step in the Housing First model, providing a safe place for people to go and a stable base from which to move on.”<sup>121</sup> Encampments can provide some degree of stability, helping to make it easier for people experiencing homelessness to find housing and jobs. Many people in encampments, particularly organized camps, have successfully been able to find employment and housing as a result of the respite that comes from living at an encampment.<sup>122</sup>

### E. Visibility

Encampments can also play a larger role in finding permanent solutions to homelessness. Simply by being visible, encampments bring the issue of homelessness to the attention of the community and policymakers.<sup>123</sup> Encampments are a form of advocacy for increased action on issues of homelessness.<sup>124</sup> The visibility of large, self-governing encampments draws media attention, which can lead, and has led, to increased funding and services for homeless individuals and legally recognized homeless encampments.<sup>125</sup>

Recognizing the action that stems from visibility, some homeless individuals and advocates have created encampments explicitly as a form of protest.<sup>126</sup> A protest encampment raised the visibility of the problem of homelessness in Providence, Rhode Island, which prompted the city to implement a Housing First program that ultimately provided permanent housing to many former encampment residents.<sup>127</sup>

Moreover, the visibility self-governing homeless encampments can empower and mobilize the encampment residents as well.<sup>128</sup> For example, in Seattle’s Nickelsville encampment, residents wrote letters to city officials lobbying for a permanent homeless

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<sup>120</sup> Loftus-Farren, *supra* note 61, at 1080.

<sup>121</sup> EMERGENCY TASK FORCE ON UNSHELTERED HOMELESSNESS, RECOMMENDATIONS TO MAYOR MURRAY 19 (Dec. 2014). Housing First is a model provides housing to homeless individuals without requiring them to overcome certain conditions such as addiction; services may be provided after housing. *What is Housing First*, NAT’L ALLIANCE TO END HOMELESSNESS (Nov. 27, 2006), <http://www.endhomelessness.org/library/entry/what-is-housing-first>.

<sup>122</sup> *See, e.g.*, Perry, *supra* note 1.

<sup>123</sup> *See* Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. (forthcoming 2016).

<sup>124</sup> Welcome Home, *supra* note 17 at 23.

<sup>125</sup> *See, e.g.*, NATIONAL COALITION FOR THE HOMELESS, TENT CITIES IN AMERICA: A PACIFIC COAST REPORT 37 (Mar. 2010) (In Sacramento, the increased media attention that came with a large tent city spurred action and led to a movement to establish permanent official encampments) [hereinafter TENT CITIES IN AMERICA]

<sup>126</sup> *See, e.g.*, Martin Espinoza, *Homeless camp set up in parking lot of Sonoma County Water Agency*, THE PRESS DEMOCRAT (Sept. 7, 2015), <http://www.pressdemocrat.com/news/4447958-181/homeless-camp-set-up-in?page=2>; Herring, *supra* note 30.

<sup>127</sup> WELCOME HOME, *supra* note 21, at 23.

<sup>128</sup> Loftus-Farren, *supra* note 61 at 1051.

encampment, which was ultimately successful.<sup>129</sup> When people experiencing homelessness are not worried about their day-to-day survival, they can better focus on creating a dialogue with their community and provide their hard-earned insights on what should be done to end homelessness overall.

#### IV. Government Disruptions of Homeless Encampments

The practice of disrupting or sweeping encampments ultimately stems from a lack of understanding and awareness about why homeless encampments can help those who live in them. During a sweep, local governments remove tents and other belongings, and force residents to leave the site. Cities that sweep the encampments often confiscate and destroy personal property of encampment residents as well.<sup>130</sup> In addition to enforcing zoning laws, sweeps are often done to enforce “quality of life” ordinances that prevent camping, sleeping in public, or sitting.<sup>131</sup>

The severity of the sweeps can vary, but some sweeps can be ruthless.<sup>132</sup> In 2007, police in St. Petersburg, Florida seized 20 tents in an encampment using scissors, box cutters, and other blades to cut them down.<sup>133</sup> “I was in the tent when they started cutting. It was very reckless of them,” said one of the residents, who was asleep when the police arrived.<sup>134</sup> In 2015, police in Honolulu, Hawaii cleared one of the largest encampments in the country.<sup>135</sup> The encampment was home to at least 278 people just before the sweep.<sup>136</sup>

Disruptions of encampments have a devastating impact on the residents. They lose a stable place to sleep and often lose their belongings. And more often than not, because they have no alternative, those kicked out of one encampment are forced to establish another simply to survive. The damage sweeps cause to homeless people must therefore be factored into any assessment of their effectiveness.

##### A. The Effectiveness of Sweeps

Not only do sweeps often harm encampment residents, they may not even accomplish the goal of getting rid of encampments. A common expectation is that sweeps will push encampment residents into shelters.<sup>137</sup> However, the limited data that exists shows this expectation is

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<sup>129</sup> TENT CITIES IN AMERICA, *supra* note 125, at 28.

<sup>130</sup> See, e.g., Rui Kaneya, *City Agrees Not to Throw Out ‘Personal Property’ During Homeless Sweeps*, HONOLULU CIVIL BEAT (Nov. 19, 2015), <http://www.civilbeat.com/2015/11/city-agrees-not-to-throw-out-personal-property-during-homeless-sweeps/>.

<sup>131</sup> WELCOME HOME, *supra* note 21, at 59.

<sup>132</sup> See, e.g., Abhi Raghunathan and Alisa Ulferts, *Police slash open tents to roust the homeless*, TAMPA BAY TIMES (Jan. 20, 2007), [http://www.sptimes.com/2007/01/20/Southpinellas/Police\\_slash\\_open\\_ten.shtml](http://www.sptimes.com/2007/01/20/Southpinellas/Police_slash_open_ten.shtml).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

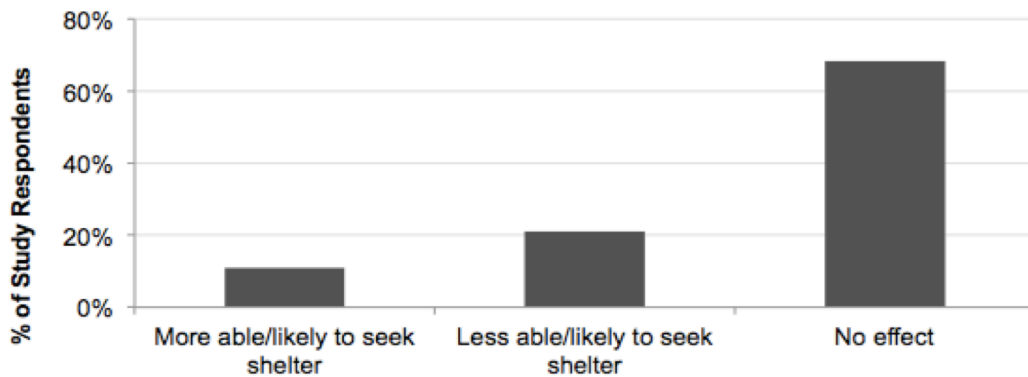
<sup>135</sup> *Homeless camp ‘swept’ in Hawaii one of nation’s largest*, CBS NEWS (Oct. 8, 2015), <http://www.cbsnews.com/news/homeless-camp-swept-in-hawaii-one-of-nations-largest/>.

<sup>136</sup> *Id.*

<sup>137</sup> See, e.g., Joshua Sabatini, *Mayor Lee plans to eliminate tents as shelter option for homeless in SF*, SAN FRANCISCO EXAMINER (April 12, 2016), <http://www.sfexaminer.com/mayor-lee-plans-eliminate-tents-shelter->

misplaced.<sup>138</sup> A survey of encampment residents in Honolulu, Hawaii found that 68 percent of respondents said that the sweeps had no effect on whether or not they sought shelter.<sup>139</sup> Even after being swept, many respondents stayed out of shelters due to the inadequacy and inaccessibility of these shelters, citing reasons like the lack of privacy, lack of storage space in the daytime, and lack of autonomy.<sup>140</sup> These survey results may reveal a common trend. In Seattle, only one-third of encampment residents accepted offers of alternative shelter after a sweep for the same reasons cited by the encampment residents in Honolulu.<sup>141</sup>

**Likelihood of Honolulu survey respondents to seek shelter due to sweeps<sup>142</sup>**



Sweeping encampments only to give rise to new ones is common. In San Francisco, for example, California’s state transportation agency “closed” 217 homeless encampments from July 2014 to February 2015, only for many of them to re-open, sometimes the same day.<sup>143</sup> The resilience of encampments suggests that cities do not, in fact, sweep encampments but only

**“Everybody just goes across the street, and waits until morning time and then moves right back.”<sup>144</sup>**

disrupt them. When a city disrupts an encampment, the residents do not disappear along with it. The residents have to go somewhere, and thus the sweep only disrupts the encampments, not a permanent removal. Moreover, these disruptions may make encampments less safe since residents are forced to move their camps to more remote locations, further away from services and police presence.<sup>145</sup>

option-homeless-sf/ (San Francisco expects maxed-out shelters to handle most of the people are forced to leave their encampment).

<sup>138</sup> TAI DUNSON-STRANE AND SARAH SOAKAI, THE EFFECT OF CITY SWEEPS AND SIT-LIE POLICIES ON HONOLULU’S HOMELESS, DEPARTMENT OF URBAN AND REGIONAL PLANNING 19 (Univ. of Hawaii at Manoa, June 2015).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Kevin Schofield, *City Staff Get Grilled Over Homeless Encampment Sweeps*, SEATTLE CITY COUNCIL INSIGHT (Jan. 19, 2016), <http://sccinsight.com/2016/01/19/city-staff-get-homeless-encampment-removal/>.

<sup>142</sup> DUNSON-STRANE AND SOAKAI, *supra* note 138, at 19.

<sup>143</sup> Eve Batey, *Clearing SF’s Homeless Encampments, By the Numbers*, SFIST (Mar. 9, 2015), [http://sfist.com/2015/03/09/clearing\\_sfs\\_homeless\\_encampments\\_b.php](http://sfist.com/2015/03/09/clearing_sfs_homeless_encampments_b.php).

<sup>144</sup> Hawaii encampment resident describing what residents do after a “clean-up” notice is put up. Dan Nakaso, *Homeless Sweeps Turn Into Ritual of Moving and Returning*, HONOLULU STAR-ADVERTISER (Mar. 8, 2016), <http://www.staradvertiser.com/hawaii-news/homeless-sweeps-turn-into-ritual-of-moving-and-returning/>.

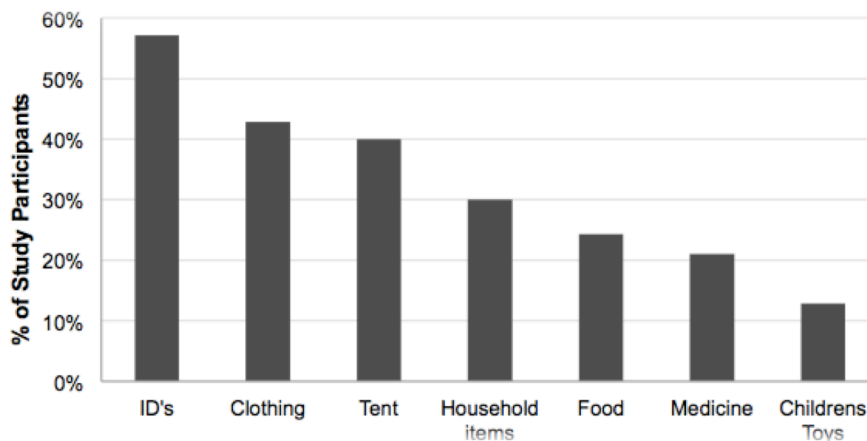
<sup>145</sup> Maddux, *supra* note 90.

These ineffective and temporary closures of encampments are also expensive, as the experience of several local governments demonstrates. Sweeping 272 encampments cost San Francisco \$186,000 over the course of 10 months,<sup>146</sup> even though many of the encampments reopened. In Honolulu, the city spends \$750,000 a year to sweep camps on sidewalks and in parks just for them to reopen and for the cycle to start over again.<sup>147</sup> Honolulu City Councilman Joey Manahan says of the sweeps, “At this point, I’d say that they are not working. They’ve just become part of the process that homeless folks routinely go through in this cat-and-mouse game that we’ve been playing.”<sup>148</sup>

#### A. The Effect of Sweeps on Homeless Encampment Residents

Not only is disrupting encampments expensive and often futile, but sweeps have a very detrimental impact on residents of encampments. Governments often destroy or confiscate personal property during sweeps, and they often destroy valuables that are critical for people experiencing homelessness to rebuild their lives.<sup>149</sup> A survey of homeless encampment residents in Hawaii found that 57 percent of people lost their personal identification, 43 percent lost clothing, 40 percent lost their tents, 30 percent lost household items, 24 percent lost food, 21 percent lost medicine, and 13 percent lost children’s toys.<sup>150</sup> One woman reported that her child’s schoolbooks were taken and she had no money to replace them.<sup>151</sup>

**Property lost by Honolulu survey respondents<sup>152</sup>**



<sup>146</sup> Batey, *supra* note 143.

<sup>147</sup> Rui Kaneya, *Endless Sweep: City Keeps Rousting Homeless at a Cost of \$750,000 a year*, HONOLULU CIVIL BEAT (July 22, 2015), <http://www.civilbeat.com/2015/07/swept-away-city-keeps-rousting-homeless-at-a-cost-of-750000-a-year/>.

<sup>148</sup> *Id.*

<sup>149</sup> See, e.g., DUNSON-STRANE AND SOAKAI, *supra* note 138, at 6 (telling a story of a homeless woman who lost a certificate that was required for employment and replacing it will cost \$300).

<sup>150</sup> *Id.* at 22.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

The most significant loss for many people is the loss of personal identification, such as state identification cards, social security cards, passports, and birth certificates.<sup>153</sup> Personal identification cards are needed to qualify for countless services and are difficult to replace.<sup>154</sup> Eighty-one percent of survey respondents in Honolulu reported that they were not able to retrieve the confiscated personal identification from authorities.<sup>155</sup>

Getting personal identification documents reissued is a difficult and expensive process.<sup>157</sup> It can require a mailing address, which a homeless individual does not have.<sup>158</sup> It can also require additional identification for verification, which could have also been taken.<sup>159</sup> Moreover, in

**“I don’t have ID. [They] took ID and phone. I had to work so hard for that. How do I go to work if I gotta be scared I come back and my stuff be gone? I don’t have ID to cash my check even if I did work.”<sup>156</sup>**

some cases homeless individuals are unable to navigate the process for replacing lost personal identification, including being simply unable to enter the appropriate government offices due to their homelessness.<sup>160</sup>

In addition, sweeps can wreak an emotional and psychological toll on encampment residents.<sup>161</sup> People experiencing homelessness already have high rates of mental illness and substance abuse issues.<sup>162</sup>

They “face daily instability, insecurity, fear, subjection to degradation, and constant and intense exposure to trauma.”<sup>163</sup> Many homeless individuals report feeling degraded, scared, anxious, and angry as a result of the sweeps. Thus, disrupting encampments—the home of many emotionally and mentally unstable people experiencing homelessness—may actually end up exacerbating their suffering.<sup>164</sup> Sweeps take away the stability, security, community, and autonomy of encampment residents. A sweep not only decimates an encampment but also the positive benefits an encampment may bring to its residents. Thus, it is not surprising that the sweeps result in increased fear, degradation, anger, and trauma.

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<sup>153</sup> Another very significant loss can be a monetary one in the form of citations, which were given out to half of encampment residents in one study of Honolulu. *Id.* at 16. For a broader look at the detrimental impact of citations, see generally COALITION ON HOMELESSNESS – SAN FRANCISCO, PUNISHING THE POOREST: HOW THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES POVERTY IN SAN FRANCISCO, available at <http://www.cohsf.org/Punishing.pdf>.

<sup>154</sup> DUNSON-STRANE AND SOAKAI, *supra* note 138, at 22.

<sup>155</sup> *Id.* at 23.

<sup>156</sup> *Id.* at 25.

<sup>157</sup> *Id.* at 24.

<sup>158</sup> *Id.* at 23.

<sup>159</sup> *Id.*

<sup>160</sup> See, e.g., *id.* at 24–25.

<sup>161</sup> *Id.* at 25.

<sup>162</sup> Dr. E. Fuller Torry, *250,000 Mentally Ill are Homeless. The number is increasing*, MENTAL ILLNESS POLICY ORG <http://mentalillnesspolicy.org/consequences/homeless-mentally-ill.html> (last visited April 28, 2016)

<sup>163</sup> KAYA LURIE & BREANNE SCHUSTER, Seattle University Homeless Rights Advocacy Project, THE INTERSECTIONALITY OF HOMELESSNESS & OTHER MARGINALIZED GROUPS 33 (Sara K. Rankin ed., May 2015)

<sup>164</sup> DUNSON-STRANE AND SOAKAI, *supra* note 135, at 26.



In sum, encampment sweeps are ineffective and a waste of taxpayer dollars. They are disastrous for encampment residents, not just in terms of the potential loss or destruction of personal property but also in terms of lasting traumatic psychological and emotional effects.

## V. Constitutionality of Homeless Encampment Sweeps

Cities that sweep homeless encampments open themselves up to lawsuits challenging the legality of the city's actions for violating the constitutional rights of encampment residents.<sup>165</sup> Disruptions of homeless encampments can violate core constitutional rights of residents: the Fourth Amendment protection against unreasonable search and seizures, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Eighth Amendment protection against cruel and unusual punishment.<sup>166</sup>

### A. Personal Property Rights

Litigants have successfully raised Fourth and Fourteenth Amendment claims when police or city workers destroyed or confiscated personal property during sweeps of homeless encampments.<sup>167</sup> In *Lavan v. City of Los Angeles*, the city enforced an ordinance banning personal belongings on city sidewalks by confiscating and destroying possessions of homeless individuals who had temporarily left them on the sidewalk while they performed essential daily tasks, such as eating, showering, or using the restroom.<sup>168</sup> By confiscating and destroying personal property, which the city knew had not been abandoned, the city violated the Fourth Amendment's protection against unreasonable seizures.<sup>169</sup>

The *Lavan* court also found that the city had violated the Fourteenth Amendment's due process clause,<sup>171</sup> rejecting the city's contention that unattended belongings on a public sidewalk did not warrant constitutional protection as property.<sup>172</sup> Because the city had failed to provide notice to the homeless individuals before confiscating their property, due process was violated.<sup>173</sup> As the court stated, "The City's decision to forego any process before permanently depriving Appellees of protected property interests is especially troubling given the vulnerability of Skid Row's homeless residents: 'For many of us, the loss of our

**"Although Plaintiffs were not given prior notice that their property would be seized, prior notice would not have mattered. Because they were homeless, they had no place to take their property that would not violate the law."<sup>170</sup>**

<sup>165</sup> See generally WELCOME HOME, *supra* note 21, at 60; DUNSON-STRANE AND SOAKAI *supra* note 135.

<sup>166</sup> WELCOME HOME, *supra* note 21, at 60.

<sup>167</sup> *Id.*

<sup>168</sup> *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1025-1027 (9th Cir. 2012).

<sup>169</sup> *Id.* at 1030.

<sup>170</sup> Complaint, *Martin v. City of Honolulu*, available at [https://acluhawaii.files.wordpress.com/2015/09/martinvcc\\_complaint.pdf](https://acluhawaii.files.wordpress.com/2015/09/martinvcc_complaint.pdf);

<sup>171</sup> "[N]or shall any state deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

<sup>172</sup> *Lavan*, 693 F.3d at 1032.

<sup>173</sup> *Id.*

personal effects may pose a minor inconvenience. However ... the loss can be devastating for the homeless.”<sup>174</sup>

Similarly, the Sixth Circuit Court of Appeals ruled that the destruction of property, especially without notice and without ability to reclaim belongings, violated the right to due process.<sup>175</sup> In another case challenging sweeps of encampments, a District Court in California ruled that seizing property during sweeps, without a pre- or post-deprivation process, violated the Fourth Amendment and the Due Process Clause.<sup>176</sup>

Other cities face ongoing constitutional challenges to encampment sweeps.<sup>177</sup> In response, some local governments have revised their procedures, but constitutional violations may still occur in practice.<sup>178</sup> In addition, advocates have successfully relied upon constitutional arguments to convince local governments to table planned sweeps in the first place.<sup>179</sup>

## B. Cruel and Unusual Punishment

The Eighth Amendment of the U.S. Constitution prohibits the government from imposing cruel and unusual punishment.<sup>180</sup> Advocates successfully raised Eighth Amendment claims in the context of homelessness in the landmark case of *Pottinger v. Miami*.<sup>181</sup> In that case, the district court found that ordinances that ban sleeping in public and/or the confiscation and destruction of homeless individuals’ property violate the Eighth Amendment.<sup>182</sup> The court stated that being arrested for “harmless, involuntary, and life-sustaining acts such as sleeping, sitting, or eating in public” is cruel and unusual.<sup>183</sup> The court emphasized that people who are experiencing homelessness are not doing so by choice and that not letting people sleep in public, for instance, is cruel and unusual because there is no reasonable alternative.<sup>184</sup>

More recently, the Ninth Circuit relied on similar reasoning to *Pottinger* in *Jones v. the City of Los Angeles*. The court held that the enforcement of ordinances that ban involuntary activities like sleeping in public was cruel and unusual in violation of the Eighth Amendment because homeless individuals had no choice but to sleep in public.<sup>185</sup>

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<sup>174</sup> *Id.* (quoting *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992)).

<sup>175</sup> *Cash v. Hamilton Cty. Dep’t of Adult Prob.*, 388 F.3d 539 (6th Cir. 2004).

<sup>176</sup> *Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, (E.D. Cal. Dec. 8, 2006).

<sup>177</sup> Complaint, *supra* note 169; Dave Nethers, *Lawsuit filed by homeless claims rights violated during raids on camps*, FOX 8 CLEVELAND (Oct. 6, 2014), <http://fox8.com/2014/10/06/lawsuit-filed-by-homeless-claims-rights-violated-during-raids-on-camps/>; Joanne Zuhl, *Homeless campers sue ODOT over sweeps*, STREETROOTS NEWS (Dec. 18, 2013), <http://news.streetroots.org/2013/12/18/homeless-campers-sue-odot-over-sweeps>.

<sup>178</sup> Seattle has a set of administrative rules, but even under the rules sweeps are unpredictable and the required type of notice is not specified. Ansel Herz, *How the City of Seattle Trashes Homeless People’s Belongings and Chases Them Around Town*, THE STRANGER (April 6, 2016), <http://www.thestranger.com/slog/2016/04/06/23909768/how-the-city-of-seattle-trashes-homeless-peoples-belongings-and-chases-them-around-town>.

<sup>179</sup> Telephone Interview with Nancy Talner, Staff Attorney, ACLU-WA (Nov. 17, 2015).

<sup>180</sup> See generally U.S. CONST. amend. VIII.

<sup>181</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 1564.

<sup>184</sup> *Id.*

<sup>185</sup> *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) *vacated by settlement*, 505 F.3d 1006 (9th Cir. 2007)

The Eighth Amendment’s application to homeless individuals who are at risk of being cited for violating criminalization ordinances that prohibit conducting necessary life activities, like sleeping in public, drew national attention when the U.S. Department of Justice (DOJ) filed a Statement of Interest in a recent Idaho case.<sup>186</sup> *Bell v. Boise* arose out of a challenge by homeless individuals to the enforcement of Boise’s anti-camping and anti-sleeping ordinances.<sup>187</sup> In its Statement of Interest, the DOJ urged the court in *Bell v. Boise* to adopt the Ninth Circuit’s reasoning in *Jones*.<sup>188</sup> In its defense, Boise argued that its criminalization ordinances penalized the conduct of homeless individuals, not their status of being homeless. However, the DOJ persuasively pointed out that the practical effect of criminalization ordinances like Boise’s is to penalize the status of homelessness since arresting someone for sleeping in public, when no shelter space is available, is tantamount to arresting that person for her homelessness.<sup>189</sup>

**“[T]he state may not make it an offense to be idle, indigent, or homeless in public places. Nor may the state criminalize conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping on the streets of Los Angeles’s Skid Row.”<sup>190</sup>**

The reasoning of *Bell* and *Jones* applies very well to sweeps of homeless encampments. Many cities use criminalization ordinances, such as bans on sleeping in public or the storage of personal property on public property, along with their general police powers, to justify disrupting homeless encampments. But all too often the residents of encampments on the streets, public parks, and greenbelts have no other place to go. Enforcing these ordinances and sweeping unauthorized encampments, when encampment residents have no

alternative, effectively punishes them for being homelessness.

## Recommendations

Local governments must respond appropriately to homeless encampments. Knowing that there are some benefits to encampments and that encampment disruptions are ineffective, cities must adopt measures that will enable encampment residents in the short term and the long term. This brief recommends that cities embrace encampments by taking serious action on increasing affordable housing, addressing the inadequacy of the shelter system, limiting encampment disruptions, and providing essential services to encampments.

### A. Embrace Encampments While Increasing Affordable Housing

This brief encourages cities to accommodate encampments but only as a temporary solution. Critics of encampments rightly worry that encampments could become permanent. If

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<sup>186</sup> Talner, *supra* note 179.

<sup>187</sup> *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014) (dismissed on standing); see generally, Statement of Interest of the United States Department of Justice, *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (2014) (No. 1:09-cv-540-REB) (hereinafter “Statement of Interest”), available at <https://www.documentcloud.org/documents/2261447-bell-v-boise-statement-of-interest.html> (last visited Apr. 16, 2016)

<sup>188</sup> *Id.* at 10.

<sup>189</sup> *Id.* at 11.

<sup>190</sup> *Jones*, 444 F.3d at 1137

cities do not feel compelled to invest in appropriate permanent solutions, the temporary solution may become, by default, the permanent solution. Encampments are not a solution to homelessness; they are a temporary and inadequate response. But the depth of the homelessness crisis in some areas of the country requires cities to embrace encampments as an interim measure to provide some degree of stability to people experiencing homelessness, but those cities should simultaneously redouble efforts to provide permanent housing.

Housing is the only solution to homelessness.<sup>191</sup> The reasons for a person's homelessness can vary widely, but housing is the one thing all people experiencing homelessness need. Therefore, federal, state, and local governments must adequately invest in and increase permanent supportive housing as well as meaningful access to mental health and social services. Such investments are better for people experiencing homelessness and cheaper for cities than maintaining the status quo.<sup>192</sup>

To ensure cities strike this balance, cities must be held accountable for interim and long-term solutions to homelessness. For example, cities that embrace encampments should also publicly announce a plan and a reasonable schedule to provide long-term solutions to address the problems of homelessness. Cities should also release regular progress reports that show they are making aggressive progress and meeting specific benchmarks toward permanent solutions to homelessness. While cities should embrace homeless encampments, they must also make real and lasting progress on affordable, permanent housing.

## **B. Increase Shelter Accessibility**

Many areas simply do not have sufficient shelter beds to meet the immense need. The inadequacies of the shelter system, coupled with the shortage of affordable housing, are primary reasons that homeless encampments exist. Not only must cities increase the number of beds available, but they must make shelter facilities more accessible to everyone, including people with health issues, people who work at night, and families.<sup>193</sup> Rather than express surprise and frustration that empty shelter beds sometimes exist at the same time as homeless encampments, policymakers should address the reasons why some people experiencing homelessness are choosing not to stay in shelters.<sup>194</sup>

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<sup>191</sup> The reasons for a person's homelessness can vary widely. Substance abuse and mental illness can be causes of homelessness, but so can unemployment, housing affordability, healthcare costs, and domestic violence, NATIONAL COALITION FOR THE HOMELESS, *WHY ARE PEOPLE HOMELESS?* (July 2009), *available at* <http://www.nationalhomeless.org/factsheets/why.html>.

<sup>192</sup> Matthew Yglesias, *Giving housing to the homeless is three times cheaper than leaving them on the street*, VOX (Feb. 4, 2015), <http://www.vox.com/2014/5/30/5764096/its-three-times-cheaper-to-give-housing-to-the-homeless-than-to-keep>; JOSHUA HOWARD & DAVID TRAN, Seattle University Homeless Rights Advocacy Project, *AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE AND SPOKANE* (Sara K. Rankin ed, May 6, 2015).

<sup>193</sup> See SKINNER, *supra* note 16.

<sup>194</sup> Danny Westneat, *Some shelter beds go empty – even right next to Seattle's Jungle encampment*, THE SEATTLE TIMES (Feb. 23, 2016), <http://www.seattletimes.com/seattle-news/some-shelter-beds-go-empty-even-right-next-to-seattles-jungle-encampment/>.

### C. Limit encampment disruptions

Cities must severely restrict sweeps or any other kind of encampment disruptions. As one homeless advocate said, “Sweeps do not accomplish anything except destabilizing the residents.”<sup>195</sup> Indeed, what sweeps do is effectively punish people experiencing homelessness for being homeless and potentially violate their constitutional rights.<sup>196</sup> Until cities provide meaningful emergency shelter and permanent housing solutions, encampment sweeps merely punish residents who have no reasonable alternative. Certainly, to the extent cities persist in sweeping encampments due to considerable public health concerns, they should first provide encampments with essential sanitation services to protect both encampment residents and surrounding neighborhoods. In other words, cities should construe public health to include the experience and perspectives of encampment residents.

One city that has established strict protocols limiting sweeps and solid protections for encampment residents is Indianapolis.<sup>197</sup> The Indianapolis ordinance requires at least 15 days notice to residents before any encampment disruptions.<sup>198</sup> In comparison, the city of Seattle requires only 72 hours notice; even then, the requirement is not consistently followed.<sup>199</sup> In isolation, the 15 day notice rule would give residents more time to move to another encampment, but if implemented simultaneously with the other parts of the ordinance, this notice rule should give residents more time to work with social service and housing providers to find alternative shelter that is right for them.

Second, Indianapolis’ legislation prohibits the destruction of any personal property during any encampment removal.<sup>200</sup> This can help avoid the loss of essential items like medicine and items that help them end their homelessness, including personal identification.<sup>201</sup>

Last, and perhaps most important, Indianapolis does not permit the dismantling of any encampments if the city lacks sufficient housing and social services to meet the needs of the displaced residents.<sup>202</sup> This provision recognizes that evicting encampment residents when the city fails to provide adequate shelter is bad public policy and potentially a violation of the Eighth Amendment’s prohibition of cruel and unusual punishment.

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<sup>195</sup> Rudensky, *supra* note 4.

<sup>196</sup> Inherent in this recommendation is the fact that local governments should repeal anti-camping, anti-sleeping, and other laws and policies that criminalize encampment residents for experiencing homelessness. In addition to legal ramifications, recently the U.S. Department of Housing and Urban Development announced that cities that enact or enforce laws that criminalize life-sustaining activities of people experiencing homelessness may possibly lose out on federal funding. Scott Keyes, *Criminalizing Homelessness Can Now Cost Cities Federal Money*, THINKPROGRESS (Sep. 22, 2015), <http://thinkprogress.org/economy/2015/09/22/3704274/hud-homelessness-criminalization-funding/>

<sup>197</sup> Alan Pyke, *City Takes a Stand Against Treating Homeless Camps like Crime Rings*, THINKPROGRESS (Mar. 4, 2016), <http://thinkprogress.org/economy/2016/03/04/3756638/indianapolis-homelessness-federal-funding/>. The complete ordinance is available at <http://cms.indygov.org/proposals/2016/PROP16-012.PDF> (last visited Apr. 29, 2016).

<sup>198</sup> *Id.*

<sup>199</sup> Herz, *supra* note 178.

<sup>200</sup> Pyke, *supra* note 197.

<sup>201</sup> See Dunson-Strane, *supra* note 138

<sup>202</sup> *Id.*

Adoption of reforms like the Indianapolis ordinance, if implemented fairly under an overarching policy of embracing encampments, can help a city approach homeless encampments in a practical and effective manner that gives residents more stability and security, and better protects their rights and property.

#### **D. Provide services to homeless encampments**

Finally, rather than ignore homeless encampments, local governments should provide encampments with essential public services, like public toilets, hygiene facilities, and trash collection. This will help ensure that residents are living in a safe and dignified environment that helps them obtain permanent housing.

Homeless encampments frequently come under fire due to legitimate public health concerns, but policymakers can address these concerns. The absence of toilet facilities, garbage pick-up, and food storage at encampments leads to public health hazards,<sup>203</sup> which are sometimes caused by city action or inaction.<sup>204</sup> The more sanitation services provided the better, but even nominal services, such as city-provided trash bags and trash-pick up can improve conditions at unsanctioned encampments.<sup>205</sup> The kinds of services that help ensure encampments are in a livable condition provide a benefit to both encampment residents and the neighboring communities.

Sanitation services should be coupled with outreach that offers substance abuse and mental health treatment. Disrupting encampments with residents who face these serious issues neither solves their substance abuse or mental health problems nor their homelessness. There are better ways to deal with those afflicted with substance abuse disorders than destroying whatever shelter they have constructed, taking their possessions, and arresting them. It is more humane and cost-effective for cities to provide the supportive services and treatment that these individuals need to emerge from homelessness.<sup>206</sup>

### **Conclusion**

While most people do not want to live in an encampment, for many it is a better choice than living on the street or daily endurance of a lottery for the chance to spend an evening in degrading shelter conditions with strangers. Rather than criminalize homeless encampments, cities should embrace them as a stopgap measure and simultaneously be accountable for aggressively pursuing adequate long-term solutions to homelessness. Otherwise, cities continue to contribute to the circumstances that force encampments to exist.

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<sup>203</sup> OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *supra* note 38, at 6

<sup>204</sup> WELCOME HOME, *supra* note 21, at 38 (New Orleans removed the camp's portable toilets); *City won't pay Nickelsville trash bill*, KING 5 (Nov. 19, 2015), <http://www.king5.com/videos/news/local/seattle/2015/11/19/76036042/> (reporting that the city of Seattle would not cover costs of encampment trash despite an agreement).

<sup>205</sup> *Seattle to begin new homeless camp trash clean-up*, KING 5 (Mar. 30, 2016), <http://www.king5.com/news/local/seattle/seattle-to-begin-new-homeless-trash-clean-up/109091317>.

<sup>206</sup> *Substance Abuse*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS [http://usich.gov/issue/substance\\_abuse](http://usich.gov/issue/substance_abuse) (last visited Dec. 7, 2015).

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