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Delivered via email to City Council members and City Staff:

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Re: Opposition to Ordinance amending Sections 102-8, 102-615, and 3-23 of the Municipal Code relating to abandoned property and the removal of encroachments

Dear Members of the Des Moines City Council:

The ACLU of Iowa writes in opposition to the proposed amendment to Ordinance Sections 102-8, 102-615, and 3-23 of the Municipal Code relating to abandoned property and the removal of encroachments on the Council agenda for July 22, 2024. This proposed amendment is likely to violate the rights of residents of Des Moines who lack housing while doing nothing to reduce homelessness.

The proposed amendment would prevent persons from sleeping in public places and would result in a misdemeanor and a fine of \$120 for violations. It would allow the city to remove the campsite and all personal property after a 24-hour waiting notification period. It would reduce the time owners have to remove their items to three days; seized property would be stored for 30 days; and the amendment would require people to go through an arduous and unjustifiable application process to get their confiscated property back. It also allows the city to discard any items “having no apparent utility or monetary value and items in an unsanitary condition.” This loophole is entirely subjective and it allows officials to simply throw away the few personal possessions of vulnerable people.

Punishing homeless people with fines for sleeping is ineffective and inhumane. It only prolongs people’s homelessness. Issuing fines that unhoused people couldn’t possibly afford, or “removing” them¹ for sleeping outside when they have nowhere else to go is cruel. It runs afoul

¹ Forcibly “removing” someone, the language dictated by the ordinance, constitutes a seizure and use of force under the Fourth Amendment. While the ordinance authorizes a fine and/or “removal” expressly, it does not prohibit arrest or the imposition of the normally applicable 30-day maximum jail sentence for violators, and seems to implicitly authorize an arrest for refusing removal, either directly or through attempting to trespassing a person found sleeping from a public place.

of basic human dignity. It does not help homeless persons get access to the resources they need to find housing and will only raise further barriers to housing by criminalizing and fining persons for simply sleeping in public. While homelessness is a real issue in Des Moines, simply trying to remove people from public view is not the solution.

In carrying out the proposed amendment, Des Moines police officers also risk violating the constitutional rights to due process and to be free from unreasonable searches and seizures under the United States Constitution and the Iowa Constitution. Just because the Court in *Grants Pass v. Johnson* recently found that a similar ordinance did not violate the Eighth Amendment, it does not mean the enforcement of like ordinances is not subject to other legal challenges. The decision is certainly not blanket permission for similar ordinances.

We call on the Council to reject the amendment to the Ordinance and instead consider more constructive alternatives. We appreciate that Council members have articulated an intention to assist homeless persons and break down obstacles to get to a shelter. However, this amendment does not address that issue. A stated intention to help homeless people in Des Moines is meaningless when the actual policy hurts them. Instead of creating accessible housing options, the amendment only exacerbates the current issue by just removing unhoused persons from public view while further saddling unhoused persons, who already lack financial resources, with debt, “removal” (and/or arrest related to interactions with law enforcement seeking to force their removal) for simply sleeping in a public place. In practice, this will only cause more barriers to finding housing and further contribute to the current housing crisis by completely avoiding actual solutions to the issues.

A study by the [Homelessness System Needs Assessment and Centralized Intake Evaluation](#) showed that Polk County needs about three times the funding it currently gives to housing, emergency shelter, and other resources for people experiencing homelessness. The city must focus its resources on addressing the issues around homelessness. The only true solution to homelessness is better access to housing and services in our communities.

Finally, the Council should not grant the waiver of further readings requested by the city manager. There is no impending urgency to pass this ordinance that would require a waiver of further readings. Surprising the public with this ill-considered plan only compounds the harm that will result from its adoption. This proposed amendment has numerous problems—both practical and legal. It requires careful deliberation by the Council of outcomes and other alternatives to address the issues before reaching a decision. The Council’s consideration of this proposal should not be rushed.

The Des Moines City Council should not approve the amendment to the ordinance, and in the meantime, the Council should carefully consider the implications of this amendment and not waive further readings of the amendment.

Thank you for your attention to this important matter.

Please contact me with any questions about this matter by phone or email at shefali.aurora@aclu-ia.org.

Sincerely,

/s/ Shefali Aurora

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/s/Rita Bettis Austen

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