

June 21, 2023

Re: Upholding the rights and dignity of unsheltered residents in Vermont cities and towns

To Vermont's municipal leaders and agencies:



PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

We write to you as our state faces an unfolding humanitarian crisis, triggered by the decision of Governor Scott and legislative leaders to end the state's emergency housing program without establishing sufficient alternatives. Communities across Vermont have called on Governor Scott and the legislature to find solutions to extend or replace that program, and to provide adequate support for people experiencing housing insecurity and homelessness amid an historic housing shortage. The state unquestionably has the resources to address these issues and an urgent responsibility to act.

We know many of you have already spoken out, calling on state leaders to act; we are grateful, and we hope you will continue those efforts.

At the same time, we are facing a dramatic increase in the number of unhoused residents in Vermont communities at a time when local systems and resources are already strained beyond capacity to address existing needs. The ACLU and our members appreciate the tireless efforts of the many individuals, organizations, and local officials who work daily to make life better for everyone in our communities and who show compassion and respect to all residents. We know that you take the legal rights of all community members seriously, including the rights of those who are unhoused.

For these reasons, we write to underscore some of the legal and policy considerations that cities and towns should take into account when acting in response to or, we hope, in support of unsheltered residents.

Sheltering on Public Land

The State's decision to end the hotel voucher program without providing adequate alternatives inevitably means that people will be forced to find shelter on public land. Local leaders should be aware that ordinances and policies that punish individuals for sleeping in public when they have nowhere else to go violate the Constitution's prohibition on cruel and unusual punishment. For this reason, while municipalities can prohibit sheltering at certain locations, they cannot ban people from sheltering on *all* public land.



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We urge municipalities across Vermont to take a humane and flexible approach to ordinance enforcement and refrain from relocating community members sheltering on public lands unless absolutely necessary. To the extent that municipalities must move community members from a specific location, the jurisdiction should, at a minimum, provide ample notice and time to relocate and identify spaces where people may shelter free from the fear of being forced to leave or losing their belongings and direct community members there. It is destabilizing and cruel to simply say “you cannot shelter in this location” without clearly communicating where someone *can* shelter.

Likewise, seizing and destroying personal property at sheltering sites without due process violates the constitutional protection against unreasonable search and seizure and the guarantee of due process. Municipalities should make every effort to avoid seizing individuals’ personal property, which includes necessities of life. And, in those rare instances where property must be seized, towns must provide clear and readily accessible processes to challenge the seizure and ensure the safe and secure storage of these belongings until they can be returned.

The ACLU has litigated these issues in Vermont and elsewhere in recent years. In December 2019, for example, ACLU of Vermont settled a lawsuit against the City of Burlington challenging the City’s policy of confiscating and destroying the property of unsheltered residents in violation of their constitutional rights. Under the terms of the settlement agreement, Burlington [agreed to policy changes](#)¹ that require it to advise individuals of the specific reason their sheltering site is being considered for removal, provide an opportunity to object to that removal, give adequate notice before taking property from sheltering sites, and store that property for at least 30 days.

Access to Public Spaces

While cities and towns may enforce constitutionally valid laws and ordinances regarding the use of public property, in recent years we have seen repeated examples of people being no-trespassed from public property in violation of their constitutional rights.

But public property is just that—public. Municipalities may not exclude people from public property without providing adequate procedural protections. This means, at a minimum, giving notice of the reason for the trespass notice and a meaningful opportunity to contest it before enforcement. Laws and ordinances outlining no-trespass procedures for private property do not contain these necessary protections and cannot be applied to public lands.

¹ https://www.acluvt.org/sites/default/files/2019-11-26_proposed_policy.pdf

For example, the ACLU recently [filed a lawsuit](#)² after City of Newport officials served our client with a notice against trespass, barring him from City property in violation of his due process rights. In 2019, the ACLU [resolved another lawsuit](#)³ challenging a no-trespass order prohibiting our client from entering City Hall Park in Burlington; that case settled after the city agreed to policy changes consistent with constitutional requirements.



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Criminalization of Poverty

We further urge municipalities to exercise discretion when enforcing so-called “quality of life” issues. Prosecution of unsheltered people for acts that are offenses solely because they are done in public—such as public urination or public drunkenness—effectively criminalizes the status of not having access to a private space. Such prosecutions create severe collateral consequences for the individuals and only exacerbate the root causes of poverty and homelessness. We have opposed proposals to target low-level offenses with enhanced enforcement and/or criminal penalties, and we will continue to do so.

Furthermore, we want to remind municipalities that it is unconstitutional for ordinances to regulate only certain types of speech, including panhandling, as the U.S. Supreme Court made clear in *Reed v. Town of Gilbert* in 2015. Subsequently, laws seeking to ban panhandling have consistently been struck down by state and federal courts.

In October 2018, the ACLU, along with the National Law Center on Homelessness & Poverty, persuaded several Vermont cities and towns—Bennington, Brattleboro, Montpelier, Rutland Town, and Winooski—to [repeal their anti-panhandling ordinances](#).⁴ Barre City placed theirs on indefinite moratorium. This effort was part of the nationwide Housing Not Handcuffs Campaign, which was launched to raise awareness of the fact that criminalization is the most expensive and least effective way to address homelessness. (See nlchp.org/panhandling for more information.)

In short, in the midst of this humanitarian crisis, we encourage you to follow the lead of cities and towns across the country that have found creative solutions to address low-level offenses. See [Letter from ACLU of](#)

² <https://www.acluvt.org/en/cases/cappello-v-city-newport>

³ <https://www.acluvt.org/en/press-releases/aclu-reaches-settlement-agreement-burlington-lawsuit-over-no-trespass-ordinance>

⁴ <https://www.acluvt.org/en/news/victory-vermont-cities-and-towns-repeal-unconstitutional-anti-panhandling-ordinances>

[Vermont and Vermont Legal Aid](#) to City of Burlington, Sept. 25, 2017.⁵
Providing increased access to basic human services like drinking water, restrooms, and showers will address many of these issues pre-emptively.

These are just a few examples of local policies that have affected the rights of unsheltered Vermonters in recent years. We share them to highlight some of the many complex legal and policy issues that cities and towns must consider before adopting new ordinances or taking actions that affect the rights of people who are unhoused.

We are mindful of the difficult circumstances facing municipalities amidst this crisis; cities and towns cannot be expected to shoulder the burdens of a statewide policy failure that originates in Montpelier. For that reason, just as we know you will center the rights and dignity of all residents in your work, we also hope you will join us in urging Governor Scott and the legislature to live up to Vermont's ideals and prioritize lasting solutions. We have the resources to end homelessness in Vermont – what we need is leadership.

Thank you for your leadership, and please do not hesitate to contact us if you have questions.

Sincerely,



Lia Ernst
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ACLU of Vermont

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⁵ <https://www.acluvt.org/sites/default/files/2017-09-25 - aclu- vt and vla letter to burlington cc re criminalization resolution.pdf>



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FOUNDATION

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