



West Virginia

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April 19, 2020

Robert Herron  
Wheeling City Manager  
*Sent via email to:* citymanager@wheelingwv.gov

cc: Rose Humway-Warmuth  
Wheeling City Solicitor  
*Sent via email to:* rhwarmuth@wheelingwv.gov

**Re: Destruction of encampments in Wheeling**

Mr. Herron,

I am writing to address the City's actions relating to resident encampments in Wheeling.

Our understanding is that the City has not only torn down one encampment in the midst of the COVID-19 pandemic, but plans to move forward in tearing down more. It is also our understanding that the City has not provided to residents any alternatives for housing in the wake of the destruction of their homes.

In response to the ongoing public health crisis, the governor has issued a "shelter in place" order, which has been in effect since March 23.<sup>1</sup> The order, which requires individuals to stay at home or their place of residence unless performing an essential activity," was enacted to further "protect the health, safety, and welfare of the public, to disrupt the spread of the virus, and to mitigate the impact of COVID-19."<sup>2</sup> Instead of tearing down encampments, the City should instead consider providing alternative housing for individuals, including the use of vacant hotel rooms, which will allow residents to shelter in place and practice effective social distancing.

When the City tears down encampments, it makes it impossible for those who resided there to comply with the governor's order. The Centers for Disease Control and Prevention have provided the following guidance to municipalities for handling issues with encampments during this unprecedented public health crisis:

Unless individual housing units are available, do not clear encampments during community spread of COVID-19. **Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.**<sup>3</sup>

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<sup>1</sup> Executive Order No. 9-20, Office of the Governor, *available at* [https://coronavirus-wvgovstatus-cdn.azureedge.net/STAY\\_AT\\_HOME\\_ORDER.pdf](https://coronavirus-wvgovstatus-cdn.azureedge.net/STAY_AT_HOME_ORDER.pdf).

<sup>2</sup> *Id.* (emphasis added.)

<sup>3</sup> People Experiencing Homelessness and COVID-19—Interim Guidance, Centers for Disease Control and Prevention, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered->

A municipality's destruction of encampments presents multiple potential constitutional implications for residents. For example, tearing down an encampment without adequate notice of due process may violate the due process rights of residents as guaranteed under the 14th Amendment to the U.S. Constitution and article III, section 10 of the West Virginia constitution. *See, e.g., United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) ("Absent extraordinary circumstances, individuals generally at minimum receive notice and an opportunity to be heard before Government deprives them of property."). The destruction of personal property also threatens protections provided by the Fourth Amendment of the U.S. Constitution and article III, section 6 of the West Virginia Constitution against unreasonable searches and seizures. *See e.g., Pottinger v. City of Miami*, 810 F. Supp 1551, 1573 (S.D. Fla. 1992) (noting that "property of homeless individuals is due no less protection under the fourth amendment than that of the rest of society.").

Finally, particularly in light of the circumstances presented by the COVID-19 pandemic, if the City enforces any ordinance that would result in a criminal penalty for residents because they remain in an encampment, those actions may violate protections afforded by the Eighth Amendment of the U.S. Constitution and art. III, section V of the West Virginia Constitution against "cruel and unusual punishment." *See e.g., Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (holding that 'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public.' That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.").

ACLU-WV is prepared if necessary to move forward with litigation on behalf of those affected, including a request for a preliminary injunction to stop the City from further tearing down encampments. If the City will commit to (1) putting an immediate stop to the destruction of encampments and (2) providing alternative housing for those unhoused by City's actions this week, please inform me in writing at [lstark@acluwv.org](mailto:lstark@acluwv.org) by **5 p.m. Monday, April 20, 2020**.

Thanks,



Loree Stark  
Legal Director, ACLU-WV