



San Diego and
Imperial Counties

March 19, 2025

Calexico Mayor and City Council
Fernando “Nene” Torres Council Chambers
608 Heber Avenue
Calexico, CA 92231
Sent via email: cityclerk@calexico.ca.gov

**Re: March 19, 2025 City Council Meeting, Agenda Item No. 7
Opposition to Proposed Anti-Camping Ordinance**

Dear Honorable Mayor and Members of the City Council:

The ACLU of San Diego and Imperial Counties has serious concerns about the City’s proposed ordinance to prohibit individuals from camping on public and private property, occupying a vehicle or other temporary shelter after sunset and before sunrise, being in possession of items used to sleep, including blankets, and leaving such items unattended. The proposed ordinance is far-reaching, would impose hefty fines on and even imprisonment of individuals who already cannot afford housing, and would criminalize the very existence of unhoused people within Calexico’s city limits. We urge you to vote no on the second reading of the proposed ordinance to add Chapter 9.14 to the Calexico Municipal Code and urge you to carefully consider the potential impacts—including exposing the City to legal liability and creating devastating humanitarian conditions—of this and any future similar proposals.

I. The Proposed Camping and Property Ban Could Subject the City to Liability for Violating the California Constitution, the U.S. Constitution, and other State and Federal Laws.

The proposed ordinance¹ would make it unlawful for anyone to “camp” within the hours of sunset and sunrise on public and private property, with limited exceptions.² The prohibition extends to occupying tents, vehicles, or any temporary shelter, and to using blankets, sleeping bags, or any other items needed for sleep. Persons who “camp” would also be deemed to be trespassing on public property under Section 37359 of the California Government Code. In addition, the ordinance would make it unlawful and a public nuisance for anyone to leave camping materials, including tents, blankets, and sleeping bags, unattended on any public property or outside a structure of any private property without an owner’s consent.³ The ordinance would further impose a series of monetary penalties and even imprisonment, and may also be enforced as a public nuisance under Section 370 of the California Penal Code, a misdemeanor that carries harsher penalties of up to \$1,000 and up to six months in jail.⁴ This

¹ March 19, 2025 Calexico City Council Staff Report re Second Reading and Adoption of an Ordinance Regulating Camping on Public or Private Property, https://www.calexico.ca.gov/vertical/sites/%7B342ED706-1EBB-4FDE-BD1E-9543BAD44C09%7D/uploads/CC_Agenda_03-19-2025_Item_7.pdf.

² The ordinance makes an exception for people camping on private residential property with the consent of a property owner so long as the camping occurs in the backyard and is limited to no more than three consecutive nights and no more than fourteen total nights per calendar year.

³ Even with the consent of a property owner, under the proposed ordinance, leaving camping materials outside of a private structure would still be subject to the City’s nuisance ordinance.

⁴ Cal. Penal Code § 372 (it is a misdemeanor to commit a public nuisance); *id.* §19 (penalties for misdemeanors).

sweeping language would effectively make it a crime to be unsheltered in the City of Calexico. People who are unsheltered cannot avoid living outdoors when there is insufficient access to dignified interim or long-term housing; nor can they avoid storing their belongings in public places. As such, there is effectively no way for unsheltered individuals to comply with the proposal.

While the United States Supreme Court's recent ruling in *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520 (2024), eliminated one narrow legal protection for unhoused people, many other laws still protect the rights of these individuals. For example, the California Constitution remains unchanged by the *Grants Pass* decision, which only reviewed the applicability of the Eighth Amendment to camping bans. Indeed, the California Constitution provides greater protections for certain rights than the federal constitution. *See* Cal. Const., art. I, § 24 ("Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution"); *Gonzalez v. Super. Ct. (City of Santa Paula)*, 180 Cal. App. 3d 1116, 1122 (1986) (the state constitution "accords greater protection to the expression of free speech than does the United States Constitution"); *Vergara v. State of California*, 246 Cal. App. 4th 619, 648 n.13 (2016) (unlike its federal counterpart, California's equal protection clause proscribes policies that have a discriminatory effect, irrespective of intent). Calexico's proposed total ban on camping, which criminalizes life-sustaining conduct, may therefore still run afoul of the California Constitution's prohibition on "[c]ruel or unusual punishment." *See* Cal. Const., art. I, § 17.

Courts in the Ninth Circuit have also enjoined policies and practices that displace unsheltered people and that allow the government to seize property in ways that unduly burden people with disabilities. *See Tyson v. City of San Bernardino*, No. EDCV 23-01539 TJH (KKX), 2024 WL 3468832, at *7-8 (C.D. Cal. Jan. 12, 2024) (preliminarily enjoining encampment sweeps after plaintiffs established a *prima facie* case that the city discriminated against people with disabilities during sweeps by failing to provide them with reasonable accommodations); *Alfred v. City of Vallejo*, No. 2:24-cv-03317-DC-SCR, 2025 WL 435900, at *7-8 (E.D. Cal. Feb. 7, 2025) (noting that the court had temporarily restrained the city from removing plaintiff's shelter and her possessions until the defendant city had provided plaintiff with reasonable accommodations, including an extension of time to move and assistance finding shelter and moving). The proposed ordinance would have the effect of pushing unsheltered people, including people with serious physical or mental health disabilities, into inaccessible areas to seek refuge from enforcement, demanding that they constantly move their bodies and carry all their belongings to avoid being punished under the law. Such actions place an undue burden on people with disabilities, in violation of state and federal disability laws, including Section 11135 of the California Government Code and provisions of the Americans with Disabilities Act ("ADA").⁵ These laws apply to all programs, services, and activities performed by the City, including to the enforcement of facially neutral ordinances. *See McGary v. City of Portland*, 386 F.3d 1259, 1265-66 (9th Cir. 2004) ("facially neutral policies may violate the ADA when such policies unduly burden disabled persons").

The City may also face liability under the state-created danger doctrine. Under that doctrine, a state actor violates the due process clause of the Fourteenth Amendment if it affirmatively subjects an individual to a known or obvious danger with "deliberate indifference" to that danger. *Kennedy v. City of Ridgefield, Wa.*, 439 F.3d 1055, 1062 (9th Cir. 2006). In a recent decision, a federal court preliminarily enjoined the City of Vallejo from enforcing its camping ban against an individual who did not have alternative housing because her removal and the removal of her possessions would "likely expose her to more dangerous conditions than she currently faces by depriving her of protection from the elements, hygiene facilities, and access to life essentials, creating a known and particularized danger to Plaintiff's safety and her welfare." *Alfred*, 2025 WL 435900, at *9. The proposed ordinance is completely silent on what, if any, efforts the City of Calexico will take to ensure that the individuals it displaces will have

⁵ Additionally, Section 504 of the Rehabilitation Act prohibits discrimination against individuals with disabilities in programs and activities that receive federal funding. 29 U.S.C. § 794.

housing alternatives. It is also silent on what efforts the City will take to avoid putting unsheltered individuals in a more dangerous situation. Instead, the ordinance outright outlaws being unsheltered in all instances, forcing people to leave city limits or face accumulating fines and imprisonment, and demonstrating a “deliberate indifference” to the obvious dangers displacement and dispossession will cause countless individuals, including seniors and people with disabilities.

Finally, the proposed ordinance allows the city to seize unattended property without prior notice if the property causes “an immediate health and safety risk,” and uses impeding pedestrian passage on a public right of way as an example of such a risk. This broad language is concerning given that encampments that pose no immediate health and safety risk are sometimes located on city sidewalks, alleys, and other public rights of way. Such seizures could deprive unhoused individuals of critical personal items, such as medication, identification documents, benefits cards, clothing, and bedding. Yet the proposed ordinance provides no procedural protections for the initial removal of these encampments on public rights of way. Further, the proposed ordinance contains a broad exception allowing for the summary destruction of unattended property that is merely “soiled,” without defining this term. Therefore, enforcement of this code may lead to liability under the Fourth Amendment’s prohibition of unreasonable seizures. In particular, courts in the Ninth Circuit have made clear that Fourth Amendment protections apply to the seizure of unhoused people’s unattended property on sidewalks and other public rights of way and that unhoused individuals are entitled to pre-deprivation notice. *See, e.g., Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1017 (C.D. Cal. 2011) (enjoining the city from confiscating unattended property, even where the city already had signs notifying the public that it would conduct sweeps of sidewalks during certain times of the week); *Lavan v. City of Los Angeles*, 693 F.2d. 1022, 1032-33 (9th Cir. 2012) (city must provide pre- and post-deprivation notices and opportunities to be heard). Given this and other legal infirmities with the proposed ordinance, we urge you to vote no and avoid violating peoples’ rights and potentially costly litigation.

II. The Proposed Ordinance is Cruel and Contravenes Best Practices

In addition to the legal problems with the proposed ordinance, deploying code enforcement officials and police as first responders to unhoused encampments is costly and cruel. Effective outreach instead requires the development of rapport and trust, as well as a trauma-informed approach that is low-barrier, person-centered, and voluntary.⁶ Outreach should focus on connecting individuals to permanent housing options and basic needs, including mental health, treatment services, and healthcare.⁷ Deploying law enforcement is inconsistent with these basic outreach principles.⁸

When unhoused people are penalized for offenses associated with their unhoused status, these negative interactions with law enforcement can lead to long-lasting mental health effects and result in avoidance of social services and increased tension between law enforcement and unsheltered community members. Criminalizing and displacing unsheltered people wastes limited public funds citing, arresting, and moving people from block to block—traumatizing people who are already experiencing trauma; fostering mistrust of service providers; creating a cycle of fines, fees, and jail time; promoting police encounters which disparately lead to violent use of force; and making it harder to gain access to housing.⁹

⁶ *See, e.g.,* United States Interagency Council on Homelessness, *19 Strategies for Communities to Address Encampments Humanely and Effectively* at 13-14 (2024), https://www.usich.gov/sites/default/files/document/19%20Strategies%20for%20Communities%20to%20Address%20Encampments%20Humanely%20and%20Effectively_1.pdf.

⁷ *Id.* at 6, 13-15

⁸ *Id.* at 8.

⁹ *See id.* at 3, 8.

Moreover, the proposed ordinance does nothing to address the reasons people are living outside. The causes of Calexico's housing crisis mirror those of the state and nation. The lack of affordable housing, paired with stagnating wages, is the primary reason that people in the City have no choice but to live on the street. According to HUD's most recent Point-In-Time ("PIT") data, in 2024 Imperial County had 1,508 people experiencing houselessness and 1,375 of these individuals were unsheltered—a stark indicator that the number of unhoused people is outpacing the availability of housing solutions.¹⁰

Research is clear about how to solve this problem. The Housing First model—which gets people off the streets and into their own affordable, permanent housing as quickly as possible—is the state's official policy; it is a proven solution based on decades of empirical studies demonstrating that houselessness is most effectively solved by providing low-barrier access to permanent, stable housing. Rather than dedicating its resources to harmful law enforcement approaches, the City should focus on expanding affordable and permanent supportive housing options while passing protections to keep precariously housed renters in their homes.

We urge you to vote no on the proposed camping ban ordinance. Not only do we have serious legal concerns about the ordinance, but the ordinance is also a cruel approach that does nothing to address the root cause of houselessness. If you have any questions or would like to discuss further, you can reach Julia Gomez at jagomez@aclu-sdic.org or Daniela Vega at dvega@aclu-sdic.org.

Sincerely,



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Crystal Quezada
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¹⁰ HUD 2024 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations, U.S. Dep't of Housing & Urban Development (Dec. 9, 2024), https://www.imperialvalleycontinuumofcare.org/files/ugd/2e55db_afbcf03740004c5cb45f1ee30672441c.pdf.