

June 14, 2018

The Department of Planning and Urban Development
Zoning Division
Municipal Building, Room 405
166 S. High Street
Akron, Ohio 44308-1654

RE: PC-2018-30-CU – Petition of Sage Lewis, LLC / Akron Homeless Charity / Second Chance Village

Dear Commissioners,

We are scholars of housing policy, urban planning, community development, sociology, and law. And we are nonprofit and advocacy organizations that work for justice for everyone. We write, together, to provide a unified voice in support of Second Chance Village. Second Chance Village is a last resort for people who have been pushed out of other parts of the City. Encampments such as Second Chance Village save lives. Disbanding this sanctuary would jeopardize the safety of its residents and would be illegal.

The City of Akron has spent far too much time over years attempting to criminalize and exclude people experiencing homelessness.¹ For several years, the City has descended on encampments, seizing everyone's belongings, including donated tents, blankets, personal mementos, legal documents, and other prized personal possessions. The Kramer Legal Clinic at Case Western Reserve Law School previously filed a suit, arguing that this practice violated the Constitution.² The City settled, paying for the damage it caused and agreeing to a protocol before disbanding encampments in the future.³

When harassing encampments in the past, the City argued they were unlawful because the property owner did not agree to house an encampment. But, now that a property owner has generously welcomed his neighbors -- providing facilities and trying to accommodate the concerns that neighbors and the City had -- the City concludes people seeking shelter are not welcome there, either. We write to change the City's view.

¹ Doug Livingston, A quarter-century of chronic homelessness in Akron, *Akron Beacon Journal* (Dec. 17, 2017), <https://www.ohio.com/akron/news/local/a-quarter-century-of-chronic-homelessness-in-akron>

² <https://law.case.edu/Alumni/In-Brief/Articles/ArtMID/1021/ArticleID/659>

³ Around the same time, the City was forced through litigation to repeal an unconstitutional law that made it a crime for people in poverty to ask for help. <https://www.ohio.com/akron/news/akron-repeals-its-panhandling-law>

Encampments such as Second Chance Village Save Lives.⁴

Second Chance Village is home to dozens of people who live together in community—many of whom previously lived in isolation and near-constant migration.⁵ If Second Chance Village did not exist, these residents would again be forced to find alternative shelter without the security of the community, placing themselves at a very real risk of death.

Every year, dozens of people are attacked – and many are killed – simply because they are without shelter.⁶ A few months ago, an Akron resident experiencing homelessness was brutally attacked by a stranger without provocation.⁷ Divorced from the safety of a community and without a secure place to sleep, homeless Akron residents are forced to spend nights without shelter, or seek refuge in less safe environments. Two years ago, a local man was crushed to death by a trash compactor after he tried to spend the night in a dumpster.⁸ Second Chance Village provides a relatively safe place for people with nowhere else to turn.

Beyond safety, Second Chance Village provides other benefits to its residents.⁹ It is run by the residents. It partners with other local organizations, provides food, training and volunteer opportunities, and works to further residents' efforts to obtain long-term stable housing. Homelessness is an incredibly isolating experience, but the encampment provides a community where residents can support and care for each other. Because people have individual tents, the encampment provides a measure of privacy lacking from large, open spaces often found in shelters. Encampments are welcoming, inclusive, and stable in a way some shelters are not.¹⁰ Unlike shelters, which often have strict limits on when and how often a person may visit, the encampment provides storage for resident's possessions, and the stability of not having to rotate

⁴ For more information about encampments, see, e.g., Evanie Parr and Sara Rankin, "It Takes a Village: Practical Guide for Authorized Encampments," SSRN Scholarly Paper (Seattle University Law School, May 3, 2018), <https://papers.ssrn.com/abstract=3173224>; Samir Junejo, Suzanne Skinner, and Sara Rankin, "No Rest for the Weary: Why Cities Should Embrace Homeless Encampments," SSRN Scholarly Paper (Seattle University Law School, May 9, 2016), <https://papers.ssrn.com/abstract=2776425.r>; National Law Center On Homelessness & Poverty, Tent City, USA, The Growth of America's Homeless Encampments and How Communities are Responding, https://www.nlchp.org/Tent_City_USA_2017; United States Department of Justice, Homeless Encampments, Problem-Oriented Guides for Police No. 56 (2010), available at http://www.popcenter.org/problems/PDFs/homeless_encampments.pdf

⁵ <https://www.ohio.com/akron/news/local/akrons-homeless-build-new-lives-at-second-chance-village>

⁶ <http://nationalhomeless.org/wp-content/uploads/2016/07/HCR-2014-151.pdf>

⁷ <http://thehomelesscharity.org/torture-abuse-homeless/>

⁸ https://www.cleveland.com/akron/index.ssf/2016/02/man_found_dead_in_garbage_truc.html

⁹ Parr and Rankin, "It Takes a Village," *supra*.

¹⁰ See, e.g., Zoe Loftus-Farren, "Tent Cities: An Interim Solution to Homelessness and Affordable Housing Shortages in the United States," *California Law Review* 99, no. 4 (2011): 1037–81.

between shelters. And, also unlike some shelters, it is open to everyone, regardless of religious affiliation or gender identity.¹¹

All of these factors increase the well-being and health of the residents, and benefit the City at large.¹² And this costs the city nothing to allow these residents to empower themselves and find a way to provide the housing and public safety needs that the City itself is failing to meet.

Given the clear benefits of secure encampments over the alternative – dispersed, unsafe camping or sleeping – cities throughout the country allow homeless encampments.¹³ In Cleveland, for example, the City considers people living in encampments to be residents of the neighborhood and is under a federal court order not to harass or disrupt people experiencing homelessness for “innocent, harmless, inoffensive acts such as sleeping.”¹⁴ In Indianapolis, Indiana, the city is not allowed to attack an encampment unless the city is able to provide housing to every resident.¹⁵

We urge Akron to join these cities. The alternative is to continue its ineffective and litigation-laden history of targeting people experiencing homelessness for simply trying to survive.

The Administration’s Recommended Denial of the Conditional Use is Misguided.

We are particularly disappointed that the Administration has recommended Second Chance Village be disbanded. In defense of its position, the Administration points to a confusing hodgepodge of rationales, stereotypes, and innuendo – none of which survives scrutiny.

First, the Administration relies on a view that tents should not be permitted anywhere in the City -- even when they are the sole, life-saving device – because it believes that people should not live in tents. For example, the Administration declares: “Tents are not a safe or healthy form of long term housing.” In a public statement, the City of Akron states that the decision before the Planning Commission is whether “tents are the right type of dwelling” to help people experiencing homelessness.¹⁶ This is a false choice, and it is not the one put to the

¹¹ Suzanne Skinner and Sara Rankin, “Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter,” SSRN Scholarly Paper (Seattle University Law School May 9, 2016), <https://papers.ssrn.com/abstract=2776421>.

¹² Parr and Rankin, “It Takes a Village,” *supra*.

¹³ Loftus-Farren, “Tent Cities,” *supra*.

¹⁴ Key v. City of Cleveland, 99-3143 (N.D. Ohio).

¹⁵ Indianapolis Code § 231-503.

¹⁶ <https://twitter.com/AkronOhioMayor/status/1005849952478785536>; see also Doug Livingston, “Many neighbors of tent city say they have few complaints,” *Akron Beacon Journal* (June 13, 2018), <https://www.ohio.com/akron/news/many-neighbors-of-tent-city-say-they-have-few-complaints> (“The mayor’s office says ‘housing people outdoors in tents is not an appropriate use in a single-family area, adjacent to residences ... [and] may simply not be appropriate anywhere in Akron.’”).

Commission. Tents may not be the perfect housing solution, but they are better than nothing. Making it illegal to live safely in a tent does not magically lead to better housing options. The Administration's dislike of encampments is not a valid legal basis to exclude them from the City.

Second, ignoring the harm that would result if people were evicted from their last refuge, the Administration instead emphasizes at length the supposed negative effects of the encampment on the neighbors. In support, it relies entirely on Not In My BackYard (NIMBY) complaints and unverified reports, embracing the spurious premise that the mere existence of people experiencing homelessness nearby puts neighbors in danger.¹⁷ This is a vicious and unfounded stereotype.¹⁸ In fact, a recent study found that crime rates decline rather than increase around authorized encampments.¹⁹ If allowed, the Administration's reactionary echoing of NIMBY objections would effectively preclude a wide range of social service organizations from the entire city, despite the tremendous value they provide to the City as a whole.

The Administration's response uses verbal gymnastics to reach a predetermined outcome in favor of a few neighbors. For example, the Administration incredibly claims that the charity is not "harmonious with and in accordance with the general objectives of the City's Comprehensive Plan," § 153.474(A), because it supposedly wouldn't protect "single-family residential neighborhoods." The response ignores the City's obligation to "address[] the housing needs of low-income families [and] homeless families,"²⁰ and the reality that the Village is located amidst commercial, office, and apartment uses – *not* a single family neighborhood. Similarly, the Administration concludes that the Village is not "harmonious and appropriate in appearance," *see* § 153.474(B), even though the Village is not even visible from the street, creating no change whatsoever to the appearance of the area. To reach its conclusion, the Administration argues that the problem actually comes from a "bird's eye' view" of the Village, literally seeking out any angle on which to disallow the community. These arbitrary and distorted interpretations of the standards for conditional use highlights how precarious the Administration's position is.

Indeed, the Administration's strained recommendation is particularly disappointing because city planners have ethical obligations *not* to reinforce prejudiced concerns of NIMBY

¹⁷ *But see* Doug Livingston, Many neighbors of tent city say they have few complaints, *Akron Beacon Journal* (June 13, 2018), <https://www.ohio.com/akron/news/many-neighbors-of-tent-city-say-they-have-few-complaints>

¹⁸ Lois M. Takahashi, "The Socio-Spatial Stigmatization of Homelessness and HIV/AIDS: Toward an Explanation of the NIMBY Syndrome," *Social Science & Medicine* 45, no. 6 (1997): 903–14, [https://doi.org/10.1016/S0277-9536\(96\)00432-7](https://doi.org/10.1016/S0277-9536(96)00432-7).

¹⁹ "No link between homeless villages and crime rates, Guardian review suggests," *The Guardian* (May 23, 2018), <https://www.theguardian.com/us-news/2018/may/23/homeless-villages-crime-rate-seattle-portland>; *see also, e.g.*, George Galster et al., "The Impact Of Supportive Housing On Neighborhood Crime Rates," *Journal of Urban Affairs* 24, no. 3 (2002): 289–315, <https://doi.org/10.1111/1467-9906.00128>.

²⁰ 2017 Consolidated Action Plan for Housing and Community Development Programs (August 2017), http://www.akronohio.gov/cms/2017ConsolidatedActionPlan/consolidated_plan_action_plan_2017.pdf

neighbors. Planners have “a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration,” which includes the obligation to “urge the alteration of policies, institutions, and decisions that oppose such needs.”²¹ Here, however, the Planning Department chose to singularly credit the fears of neighbors over the safety of residents.

Instead of threatening litigation and opposing the property’s owners every effort to help his neighbors, the City should praise him for his charitable sacrifices to look out for people neglected by the rest of the city.

Denying Safety and Shelter to the Residents of Second Chance Village is Illegal

Depriving people of their shelter and safety raises serious Constitutional and legal concerns. It is unconstitutional to make it illegal for people to camp when they have no other options.²² It is unconstitutional to penalize a property owner because residents called the police to seek life-saving emergency services.²³ The law must give way when necessary to prevent loss of life.²⁴ And, given Mr. Lewis’s spiritual inspiration for helping others,²⁵ it would likely deny federal and state laws protecting religious freedom for the City to shut down this Village.²⁶

As the one Court noted in a similar situation, depriving people of their shelter is not only illegal, it is also cruel and gratuitously harmful:

The harm here is obvious, imminent and severe. If the shelter is closed its occupants will be left without food or shelter... St. John's represents the only bulwark these homeless people have. To tear that bulwark away would be a travesty of justice and compassion. Any inconvenience to the City of Hoboken and its other residents pales into insignificance when contrasted with what the occupants of the shelter would have to face if turned out into the city streets in winter weather.²⁷

Akron must do better, and we urge the City to allow this charity to continue to provide a safe, secure place for residents who have nowhere else to go.

²¹ AICP Code of Ethics and Professional Conduct.

²² *See, e.g.*, Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006) vacated by settlement, 505 F.3d 1006 (9th Cir. 2007).

²³ <https://www.aclu.org/cases/board-trustees-village-groton-v-pirro>

²⁴ *See, e.g.*, Massachusetts v. Magadini, 474 Mass. 593, 601 (2016) (necessity defense could be applied when person experiencing homelessness committed trespass).

²⁵ <http://thehomelesscharity.org/who-are-the-ones-that-love-us/>

²⁶ *See, e.g.*, City of Woodinville v. Northshore United Church of Christ, 166 Wash.2d 633 (Wash. 2009). In a similar vein, forcing residents to choose between attending church services at a local shelter or living illegally and without shelter would violate their individual religious freedom rights and run afoul of the Establishment Clause.

²⁷ St. John's Evangelical Lutheran Church v. City of Hoboken, 479 A.2d 935, 939, 195 N.J.Super. 414, 420–21 (N.J.Super.L.,1983).

Respectfully Submitted,

J. Bennett Guess, Executive Director
American Civil Liberties Union of Ohio

Chris Knestrick, Executive Director
Northeast Ohio Coalition for the Homeless

Joseph H. May, Founder/Chairman
Peter Maurin Center of Akron

Jim Orega, Executive Director
Peter Maurin Center of Akron

Paul Sherlock, Chair of the Board
Metanoia Project

Erin Victor, Founder
Akron Snow Angels

William K. Young, Manager
Matthew 8:20, Homeless Outreach
Peter Maurin Center of Akron

Dr. Kathryn Feltey
Associate Professor

Dr. Thomas Hilde
Assistant Professor

Prof. Doron Kalir
Clinical Professor of Law

Prof. Joseph Mead
Assistant Professor

Dr. Beth Nagy
Assistant Lecturer of Planning Practice

Dr. Ashley Nickels
Assistant Professor

Dr. Stephanie Ryberg-Webster
Associate Professor & Program Director,
Master of Urban Planning and Development

Dr. J. Rosie Tighe
Associate Professor