



325 W. Main St.
Suite 2210
Louisville, KY 40202

(502) 581-9746
ACLU-KY.org
@ACLUofKY

January 10, 2024

Dear Deputy Mayor George:

We write to you concerning the Louisville-Jefferson County Metro Government’s (“the City”) sweep of an encampment of unhoused people scheduled for January 10, 2024. *See* Ex. 1. For the forgoing reasons, we believe that the City’s expected sweep is unconstitutional. We request that the City cancel any plans to sweep this camp, and to the extent the sweep has already happened today, we request that the City cancel any future plans to sweep camps during White Flag events.

Background

On Tuesday, 1/9/2024, the City sent notice that an encampment sweep on Kentucky Transportation Cabinet (“KYTC”) land between I-264, Preston, and Poplar Level, was set to occur on Wednesday, 1/10/2024. *See* Ex. 1. An hour later, the City issued a White Flag warning, indicating that the wind chill would drop below 35 degrees on Tuesday night, and further recommended staying indoors. *See* Ex. 2. A few hours later, unhoused folks were alerted that there were no remaining shelter beds available for Tuesday night, but singles and families could go inside two shelters where they nevertheless would likely not have a bed. *See* Ex. 3. The cold weather continued, and on Wednesday morning, the City issued another White Flag warning. *See* Ex. 4.

This clearing continues the City’s practice of aggressively sweeping encampments of unhoused people. In 2023, the City of Louisville (“City”) swept at least 30 encampments of unhoused people.

Legal Analysis

The city’s encampment sweeps are unconstitutional prohibitions on necessary, life-sustaining conduct essential to survival.

The City’s practices run afoul of the Eighth Amendment

In *Martin v. Boise*, the 9th Circuit ruled that punishing a person experiencing homelessness for sleeping on public property in the absence of adequate alternatives constitutes cruel and unusual punishment under the Eighth Amendment.¹ The court held that, as a general rule, “‘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

¹ *Martin v. City of Boise*, 920 F.3d 584, 617 (2019).



‘involuntarily sitting, lying, and sleeping in public.’”² Such shelter must be “adequate,” “realistically available for free,” and otherwise “practically available.”³ For example, barriers such as shelter rules regarding curfews or lengths of stay may make shelters unavailable.

Not only is the City of Louisville clearing camps when there is a well-documented dearth of sufficient housing for unhoused people, the City is choosing to clear camps in the midst of severe cold, which threatens the health and safety of its unhoused residents.

The City’s practices run afoul of the Fourteenth Amendment

In *Jeremiah v. Sutter Cty.*, a district court held that a state actor who clears a camp and seizes shelter during an inclement weather event, violates the Fourteenth Amendment’s protections against State-Created Dangers.⁴ The Fourteenth Amendment’s protections are violated where a state actor affirmatively places a person experiencing homelessness in danger and the state actor is deliberately indifferent to that danger.⁵

In Louisville, the City has itself acknowledged the severe, cold weather,⁶ but continually plans to sweep the encampments that unhoused people rely on for shelter and warmth, despite knowing that there are insufficient shelter beds.⁷ The City does not offer any realistic alternative to encampments and deliberately indifferent to the danger that unhoused people will face when they are unable to access shelters and unable to live within their camps.

Conclusion

For these reasons, we request that the City cancel any plans to sweep this camp. To the extent the sweep has already happened today, we request that the City cancel any future plans to sweep camps during White Flag events. We hope that we can resolve this matter collaboratively and without the need for further action. I look forward to your prompt response regarding whether your office will agree to implement our modest requests.

² *Id.* (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006)).

³ *Id.*

⁴ See *Jeremiah v. Sutter Cty.*, 2018 WL 1367541 at 5 (E.D. Cal. Mar. 16, 2018).

⁵ *Id.* (finding that Defendants would “knowingly place the homeless at increased risk of harm if it confiscates and seizes Plaintiffs’ shelters and possessions” during “the recent wind, rain, and cold weather”).

⁶ See Ex. 2 and 4.

⁷ See Ex. 3.



Please feel free to respond via email to [REDACTED]. You may also call me at [REDACTED]. Thank you in advance.

Kindly,

/s/ Kevin Muench
Kevin Muench, Legal Fellow
ACLU of Kentucky