



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Hawai‘i

NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY

BY EMAIL

June 28, 2019

**Re: Letter to Mayors Attending the U.S. Conference of Mayors’ 87<sup>th</sup> Annual Meeting**

To those attending the 2019 U.S. Conference of Mayors’ 87<sup>th</sup> Annual Meeting:

Welcome to Honolulu! We hope you enjoy your stay, and that you will also leave your Annual Meeting with new policy ideas to bring to your own cities.

We understand that one major topic you will explore at the Annual Meeting is homelessness. To that end, Mayor Kirk Caldwell of the City and County of Honolulu (“City” or “Honolulu”) will be moderating a “best practices forum” on the issue.<sup>1</sup> The City will also be leading tours of new local projects addressing homelessness. As you see our City, the streets will likely be pristine, and the tents, tarps, and houseless people will likely be nowhere in sight. The conclusion the City wants you to draw from your visit is that its “war on homelessness”<sup>2</sup>—grounded in its strategy of “compassionate disruption”—is working.<sup>3</sup>

But the truth is that the City’s “war” is a disaster with mounting casualties. These casualties are our fellow island residents, who are targeted by the City simply because they do not currently have a solid roof over their heads. The only thing

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<sup>1</sup> This is consistent with a resolution Mayor Caldwell proposed, which resolves that the U.S. Conference of Mayors “will . . . invit[e] Mayors to convene, discuss and strategize on best practices . . . to address the crisis of homelessness . . .” U.S. Conference of Mayors, Proposed Resolution No. 16 (2019), [http://legacy.usmayors.org/resolutions/87th\\_Conference/proposedcommittee-preview.asp?committee=Community\\_Development\\_and\\_Housing](http://legacy.usmayors.org/resolutions/87th_Conference/proposedcommittee-preview.asp?committee=Community_Development_and_Housing).

<sup>2</sup> Kirk Caldwell, *Together We Can Resolve Problem of Homelessness in Honolulu*, HONOLULU STAR-ADVERTISER (June 1, 2014), available at <https://acluhawaii.files.wordpress.com/2017/03/appendix-e-honolulu-star-advertiser-articles.pdf> (“It’s time to declare a war on homelessness . . . . We cannot let homelessness ruin our economy and take over our city.”).

<sup>3</sup> See, e.g., Allyson Blair, *As Oahu’s Unsheltered Homeless Population Grows, Mayor Vows to Stick to Sweeps*, HAWAII NEWS NOW (Feb. 28, 2019), <https://www.hawaiinewsnow.com/2019/03/01/oahus-unsheltered-homeless-population-grows-mayor-vows-stick-sweeps> (Mayor Caldwell responding to 2019 Point-in-Time count statistics—showing that “the number of people living on the streets of Honolulu is the highest it’s been in at least a decade”—by “vowing not to waver from his long-standing policy of ‘compassionate disruption[,]’” which “strategy” he says is “working”).

needing “disruption” is the City’s failing model of using the police, arrests, and prosecution to coerce houseless people to magically find housing that simply does not exist. Indeed, the U.S. Conference of Mayors has itself recognized that “homelessness and severe housing cost burden are at crisis levels in cities across the country.”<sup>4</sup> This crisis can only be solved by increasing the supply of adequate, affordable housing. More spending on criminal justice-heavy approaches to homelessness—which studies show cost two- to three-times as much as housing—only takes us further from that goal.<sup>5</sup>

Indeed, over the last half decade,<sup>6</sup> Mayor Caldwell and the City have passed ordinance after ordinance criminalizing innocent, life-sustaining conduct that is the inevitable consequence of not having a place to live. This “war” started with an ordinance criminalizing “sitting” or “lying” on sidewalks,<sup>7</sup> the scope of which has been expanded several times.<sup>8</sup> Then, just last year, the City passed two new City-wide<sup>9</sup> ordinances (which means they are *island*-wide, covering all of Oahu)—one criminalizing “lodging” (defined to include “sleeping”) in public spaces, and the other criminalizing “obstructing” sidewalks—that expanded the web of criminal provisions in which people who are houseless can be trapped. And the City recently began paying for-profit corporations to provide private security guard services to

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<sup>4</sup> U.S. Conference of Mayors, *Homelessness and Housing Crisis*, Resolution, 84<sup>th</sup> Annual Meeting (2016), <https://www.usmayors.org/the-conference/resolutions/?category=a0F61000003rhdjEAA&meeting=84th%20Annual%20Meeting>.

<sup>5</sup> National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, at 14, 38 (Oct. 2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

<sup>6</sup> Even before then, the City passed ordinances authorizing the seizure and destruction of personal property belonging to houseless people. *See, e.g.*, Ramsay Wharton, *City Enforcing Stored Property Ordinance at 3 Oahu Parks*, HAWAII NEWS NOW (Jan. 10, 2012), <https://www.hawaiinewsnow.com/story/16488436/deadline-nearing-for-homeless-to-relocate>. In 2015, the ACLU of Hawai‘i challenged unconstitutional “sweeps” through a federal class-action lawsuit. *See Martin v. City and County of Honolulu*, Case No. 1:15-cv-00363-HG-KSC (D. Haw.). The City agreed to halt its unconstitutional practices via settlement. *See* Rui Kaneya, *City Agrees Not To Throw Out ‘Personal Property’ During Homeless Sweeps*, HONOLULU CIVIL BEAT (Nov. 19, 2015), <https://www.civilbeat.org/2015/11/city-agrees-not-to-throw-out-personal-property-during-homeless-sweeps>.

<sup>7</sup> *See* City Ordinance 14-26, *Relating to Public Sidewalks*, <http://www4.honolulu.gov/docushare/dsweb/Get/Document-152425/ORD14-26.PDF>.

<sup>8</sup> *See, e.g.*, *Full List: Sit-lie Law Includes 15 Oahu Communities*, HAWAII NEWS NOW (Aug. 21, 2017), <https://www.hawaiinewsnow.com/story/36185139/full-list-sit-lie-ban-extended-to-15-other-oahu-communities> (noting “sit-lie restrictions” extended “several times” in “urban Honolulu” since 2014).

<sup>9</sup> *See* City Ordinance 18-34, *Relating to Obstructions on Public Sidewalks*, [http://www4.honolulu.gov/docushare/dsweb/Get/Document-210691/DOC%20\(9\).PDF](http://www4.honolulu.gov/docushare/dsweb/Get/Document-210691/DOC%20(9).PDF); Ordinance 18-35, *Relating to Illegal Lodging*, <http://www4.honolulu.gov/docushare/dsweb/Get/Document-210692/DOC001.PDF>.

“reduce homeless-related complaints” and “clamp down on illegal homeless activity” in City parks, even though parks are open to, and should be shared by, all of the public equally.<sup>10</sup> Given this expanding web of anti-homeless laws, it is no wonder that the National Law Center on Homelessness & Poverty inducted Honolulu—alongside only three other cities—into the “Hall of Shame” for its “particularly bad laws” and its “aggressive enforcement of criminalization laws.”<sup>11</sup>

The woeful results speak for themselves. According to the most recent Point-in-Time count—the federally mandated, annual census of people experiencing homelessness—the *number of unsheltered homeless individuals in the City has risen by over 47%* since the “war” began in 2014.<sup>12</sup> Meanwhile, the number of shelter spaces has plummeted by over 33%.<sup>13</sup> Indeed, for the first time ever, Honolulu has more people experiencing homelessness *without shelter* than those lucky enough to find available space at an emergency or transitional shelter. In short, the City’s devotion, and diversion of resources, to anti-homeless laws has only worsened an already-dire situation.

Needless to say, each step the City has taken to expand its use of the criminal legal process to selectively target people of a particular status (that is, those who are houseless) brings it closer to being challenged in court and—though Mayor Caldwell may not admit it, or may dismiss it—the City knows it. In fact, just this spring, the federal Ninth Circuit Court of Appeals affirmed the well-established principle that, under the Eighth Amendment to the U.S. Constitution, cities “may not ‘criminalize conduct that is an unavoidable consequence of being homeless—namely *sitting, lying, or sleeping* on the streets.’”<sup>14</sup> Yet that’s exactly what the City’s laws do. Any municipality considering emulating Hawaii’s model should think twice.

The City’s model needs to change—on all fronts. Instead of wasting resources arresting and sweeping people from point A to point B and back again in an unending life-or-death game of musical chairs, the City should build shelters and,

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<sup>10</sup> See Dan Nakaso, *City Hires 24/7 Security Guards to Curtail Homeless in 9 Oahu Parks*, HONOLULU STAR-ADVERTISER (Nov. 16, 2018), <https://www.staradvertiser.com/2018/11/16/hawaii-news/security-to-curtailed-homeless-in-9-parks>.

<sup>11</sup> National Law Center on Homelessness & Poverty, *supra* note 5, at 11, 28.

<sup>12</sup> Partners in Care, *The O’ahu 2019 Point-in-Time Count: Comprehensive Report*, at 11 (2019), <https://www.partnersincareoahu.org/sites/default/files/PIC%202019%20Oahu%20PIT%20Count%20Report%20-%20FINAL.pdf> (unsheltered population rose from 1,633 to 2,401 from 2014 to 2019).

<sup>13</sup> *Id.* (sheltered population dropped from 3,079 to 2,052 from 2014 to 2019).

<sup>14</sup> *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (emphases added) (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1137 (9th Cir. 2006), *vacated due to settlement*, 505 F.3d 1006 (9th Cir. 2007)).

crucially, more affordable housing. Moreover, the City should ensure that existing housing stock does not lay vacant.<sup>15</sup> This will mean hard conversations and bold solutions, but both are absolutely necessary.

Instead of providing houseless people jail cells, the City should work with the State to provide voluntary mental health and substance abuse treatment. While the Point-in-Time count confirms that “most of the individuals experiencing homelessness on O‘ahu are not experiencing mental illness or substance use issues,”<sup>16</sup> we also know that the City does not have adequate services to meet the needs of people who are dealing with these issues.

Instead of placing more barriers between houseless people and the housing and services they critically need, the City should remove barriers. The high usage of the newly opened Punawai Rest Stop<sup>17</sup>—a “zero barrier” hygiene center with free restrooms, showers, laundry machines, lockers, kennels, WiFi, and other services—shows that, when the City imposes fewer obstacles, people flourish.

The ACLU of Hawai‘i and National Law Center on Homelessness & Poverty approach the issues of homelessness and extreme poverty through the lenses of the U.S. and state constitutions, and also through our international human rights commitments. These are complex, weighty issues demanding answers from all cities: How do rich and poor coexist and thrive in our city? How can our city help those who get left behind by soaring housing costs to access decent, affordable housing in the long run? What solutions can we craft that are effective and that will honor constitutional requirements? We know that the easy path of otherizing and even demonizing the houseless fails the people and the law. The Law Center has a wealth of model policies and practices to help communities work within the rights guaranteed in the Constitution, and welcomes the opportunity to work with communities as they take on this worthy goal: to justly end homelessness.

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<sup>15</sup> See Stewart Yerton, *No One Knows How Many Homes Are Sitting Empty Despite Housing Shortage*, HONOLULU CIVIL BEAT (June 14, 2019), <https://www.civilbeat.org/2019/06/no-one-knows-how-many-homes-are-sitting-empty-despite-housing-shortage> (noting that “[d]espite thousands of new condo units built in Honolulu in recent years, many high rises . . . appear largely vacant at night” and that, according to the U.S. Census, “10.1% of housing units on Oahu were vacant”).

<sup>16</sup> Partners in Care, *supra* note 12, at 4 (showing 24% with mental health issues and 19% with serious substance abuse issues).

<sup>17</sup> *Oahu’s New Rest Stop for the Homeless Is Already Proving Its Value*, HAWAII NEWS NOW (Jan. 16, 2019), <https://www.hawaiinewsnow.com/2019/01/17/oahus-new-rest-stop-homeless-is-already-proving-its-value> (noting that “the facility logged 578 visits” during “the first week of its operation”).

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In 2013, the U.S. Conference of Mayors resolved to “incorporate international human rights into local policy and practice.” Since that time, numerous international human rights bodies have explicitly called for the abolition of the criminalization of homelessness, and for policies that instead guarantee housing as a basic human right.<sup>18</sup> We hope the mayors in attendance take this resolution to heart, and we hope that Honolulu’s failed “compassionate disruption” experiment will underscore for you that we need to try a different approach. We need housing, not handcuffs. Shelters, not sweeps. Compassion, not criminalization.

If you have any questions or comments regarding this letter, please contact the ACLU of Hawai‘i at 808-522-5905 or [wkim@acluhawaii.org](mailto:wkim@acluhawaii.org) or the National Law Center on Homelessness & Poverty at 202-638-2535 or [etars@nlchp.org](mailto:etars@nlchp.org).

Sincerely yours,



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cc: Honolulu Mayor Kirk Caldwell ([mayor@honolulu.gov](mailto:mayor@honolulu.gov))  
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<sup>18</sup> See National Law Center on Homelessness & Poverty, *Grading the U.S. Response to Homelessness: the 2016 Human Right to Housing Report Card*, at 16 (Dec. 2016), [https://nlchp.org/wp-content/uploads/2018/10/Right\\_to\\_Housing\\_Report\\_Card\\_2016-1.pdf](https://nlchp.org/wp-content/uploads/2018/10/Right_to_Housing_Report_Card_2016-1.pdf).