



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

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SENT VIA EMAIL:

Mayor Wade Troxell: wtroxell@fcgov.com

Members of Fort Collins City Council: boverbeck@fcgov.com; raymartinez@fcgov.com;
gcampana@fcgov.com; kstephens@fcgov.com; rcunniff@fcgov.com; ghorak@fcgov.com

Dear Mayor Troxell, Fort Collins City Council, and other City officials:

The ACLU of Colorado has opposed attempts to criminalize the existence of people experiencing homelessness all across Colorado, but the proposed “disruptive behavior” ordinance in Fort Collins is one of the most outrageous, cruel and absurd examples that we have seen yet of a proposed ordinance clearly targeting unhoused persons.

The proposed Fort Collins ordinance is clearly designed to give police tools to harass, arrest, and remove people who are homeless from the downtown area. It cruelly denies rest to people who need it, subjects unhoused persons to penalties of up to 6 months in jail and \$2,650 in fines just for sitting in the wrong place or for sitting too long. It assumes that people who don’t have a place to live have no right to own more possessions than they can carry in their hands.

It is all but certain that the ordinance would be enforced in a discriminatory manner, ignoring the actions of people who appear to have money while harassing individuals who appear to be homeless, poor, or of an undesired ethnicity, opening the city to potential liability as a result. *See, e.g., Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

Beyond the obviously cruel and discriminatory treatment of people who are homeless, some portions of the ordinance may also violate the First Amendment as it applies to street musicians who need to sit as they play music or to people who sit at tables distributing literature in ways that have been protected by the courts. *See Berger v. City of Seattle*, 569 F.3d 1029, 1036 n.4 (9th Cir. 2009) (en banc) (street musicians); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784,790 (9th Cir. 2006) (tabling).

Other portions of the ordinance are simply absurd. How would time that people have been sitting be measured? Will police chalk people’s feet the way they chalk tires? What counts as unattended property? How close to personal property does a person need to be, and how long does it take for unattended property to be considered a criminal offense? The sit-lie portion of the ordinance includes a restriction on sitting, kneeling, or lying down “within 20 feet of any commercial property or pedestrian walkway,” which would rule out a wide range of places

people might normally sit or rest. It makes it a crime to lie down or even recline on a chair or bench or to use it for “any purpose other than sitting.” Equal enforcement of such a vague, broad, and incomprehensible law would be impossible, leading to the natural conclusion that the only functional purpose is to target and harass people who appear to be poor or homeless.

Perhaps most instructive of the ill-conceived nature of this proposed ordinance is a concurrent proposal being considered by the Council to spend up to \$150,000 a year to purchase Larimer County jail beds to house “repeat municipal offenders.” Making it a jailable offense to sit too long or to have too many possessions is not just cruel and absurd, it would also be costly to enforce.

Further, sit-lie ordinances are one of the worst ways to make a downtown area more welcoming. What could be less welcoming than signs informing the public that sitting in the wrong place or for too long breaks the law?

People do not lose their fundamental rights when they lose a home, and all cities should address the underlying problems of homelessness rather than attempting to sweep it out of sight, as if people without a home have no right to live. This ordinance is a hysterical overreaction to the presence of people who are simply trying to survive with no place to call home. For all of these reasons, the ACLU of Colorado calls upon the City of Fort Collins to immediately abandon this ill-conceived ordinance.

Sincerely,

A handwritten signature in black ink that reads "Nathan Woodliff-Stanley". The signature is written in a cursive, flowing style.

Nathan Woodliff-Stanley
Executive Director, ACLU of Colorado

Cc: Jeff Mihelich, Deputy City Manager – jmihelich@fcgov.com