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April 16, 2012

Members, Denver City Council

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Re: Ordinance to prohibit unauthorized camping

Dear Council members:

On behalf of the ACLU of Colorado, I write in opposition to the proposed city-wide ordinance to prohibit unauthorized camping ("the Ordinance"). The hearing before City Council's Land Use, Transportation and Infrastructure Committee on April 3, 2012 was very informative.

Specifically, we learned that at any one point in time, there simply are not enough beds to accommodate the total number of homeless individuals sleeping on Denver's streets or other public areas. For this reason and others, as more fully explained below, ACLU of Colorado believes the Ordinance is ill-advised. The Ordinance is unwise, mean-spirited and potentially unconstitutional.

A review of key provisions of the Ordinance is in order. The Ordinance's explicit language provides that "it shall be unlawful for any person to camp upon private property without the express consent of the property owner" and it shall also be unlawful to camp upon public property without proper permission. "Camping" includes sleeping with protections as minimal as a blanket or a sleeping bag. Thus, the Ordinance prohibits homeless people sleeping in public with any protection against the elements. Finally, the Ordinance provides that a citation be given to those in violation of the Ordinance.

The Ordinance is unwise because it frustrates the work of service providers and is a costly investment of City dollars. The ban on camping would force some of those without shelter into our neighborhoods and further out of sight. This frustrates the work of service providers and it also shifts the problem into other areas of the City as people without shelter will hide in alleys, dumpsters, abandoned buildings and other places throughout the City. We must not kid ourselves that the Ordinance will rid of homeless people. It merely moves the homeless elsewhere.

Also, the Ordinance is likely to produce counterproductive results by perpetuating the cycle of homelessness. Those without shelter risk citations, warrants, arrests and convictions. The consequences that result from such citations, arrests or convictions are that it becomes increasingly more difficult for the homeless to re-enter the work force or access housing. As a result, the Ordinance perpetuates a cycle that keeps people unemployed and homeless.

The Ordinance is also unwise because it is costly and resolves nothing. The Ordinance burdens police and the criminal justice system and will result in higher law enforcement costs, jail costs and court costs. As you know, Boulder enacted a similar ordinance to that now considered by you. Boulder's Daily Camera recently reported that the average cost of prosecuting one camping ticket is \$1,100. Significantly, Boulder does not report any fewer "unlawful campers" in the City or fewer homeless individuals. The costs associated with criminalizing homelessness are high and can be higher than the costs associated with providing both temporary and permanent housing alternatives.

The ACLU of Colorado finds the Ordinance mean spirited. Simply put, the Ordinance criminalizes homelessness in open view. Arguments to the contrary are simply false and statements to effect that the Ordinance does "not endorse arrests" ignore the plain language of the Ordinance. The Ordinance clearly provides for enforcement through citations and arrest and even permits the arrest of someone on private property camping "without the express written consent of the owner." This provision places the burden of showing the owner's consent on the individual accused of unlawful sleeping on private property.

Since the recession in 2007, family homelessness nationwide has increased 20%. In Denver, the percentage of homeless families has increased 9% since 2009. Almost one-fourth of Denver's homeless are newly homeless. The economic crisis in general and the numbers of people being evicted from their homes have contributed to the growing number of homeless individuals. It is troubling that the Ordinance will criminalize homelessness at a time when there simply are not enough beds to accommodate the greater number of homeless individuals. Moreover, as Bennie Milliner acknowledged, there are many who cannot be housed at the available shelters due to mental illness, physical disabilities or other reasons.

Also troubling is rhetoric to the effect that the City will provide additional beds "after" the Ordinance is passed. When asked for specifics on this point, Councilman Albus Brooks has said that Crossroads and the Salvation Army will provide additional beds. This statement is disingenuous. Crossroads and the Salvation Army close their beds on April 30. The City will simply allow them to stay open through the summer and perhaps longer. This is not providing

additional beds to meet an additional need. This is simply allowing those already in those beds to stay a little longer.

The Ordinance is also inhumane in that it makes it unlawful to sleep with something as minimal as a blanket or a sleeping bag. Thus, one risks a citation and arrest for sleeping in public with any protection to guard against the elements.

The Ordinance calls for consultation with a human service outreach worker. This does not soften the Ordinance's result or approach. First, the lack of adequate shelter space makes this consultation meaningless. Also, consultation with an outreach worker is not a precondition to a citation or arrest. Indeed, law enforcement may cite or arrest a homeless person even if an outreach worker is unavailable.

The ACLU of Colorado believes the Ordinance may violate the constitutional rights of persons who have no choice but to sleep outside as well those protected by the First Amendment. To claim that the Ordinance is intended to target behavior rather than the status of being homeless does not make it so. The information provided on Tuesday indisputably affirms that there are not enough beds to address the City-wide homeless problem. Yet, City Council is providing the Ordinance full consideration and, in fact, has been preparing for its adoption even before the public had an opportunity to review it.

Ordinances that penalize homeless persons for performing activities necessary for life, such as eating or sleeping, may violate the Eighth Amendment right to be free from cruel and unusual punishment. *See Anderson v. Portland*, 2009 U.S. Dist. LEXIS 67519 (D. Or. 2009); *Catron v. City of St. Petersburg*, 2009 U.S. Dist. LEXIS 112268 (M.D. Fla. 2009). In addition, forcing homeless people to either leave the City or face arrest due to lack of shelter space could violate their constitutional right to travel. *See Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

Finally, the ACLU of Colorado is well aware of the frustration that Occupy Denver has caused the City and the nearby business community. However, Denver cannot adopt an ordinance that creates restrictive policies on speech just because it does not like how people are using a public space. Recently, in an unreported case, the ACLU of Tennessee was successful in enjoining an ordinance that the City of Nashville adopted that regulated activity that could take place in public spaces. Like here, the rules Nashville intended to implement were adopted after the Occupy protests began and after a great deal of frustration was expressed about the Occupy protests and the protestors themselves. *Occupy Nashville v. Haslam, et al.* (M.D. Tenn. 2011). The federal judge enjoined the rules because they violated the free speech rights of the Occupy protestors.

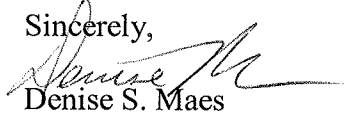
ACLU of Colorado underscores that it shares the goals of the City, the downtown Denver business community and Denver residents generally to reduce homelessness and sleeping in our public right-of-ways and streets. Councilman Brooks has repeatedly stated his willingness to look at alternatives to an enforcement approach that will reduce the number of homeless individuals sleeping in public.

There are several alternatives and they have proven successful in the cities where they have been implemented. For example, Portland, Oregon initiated the development of an innovative bathroom that remains open 24 hours a day. Other cities allow religious organizations and other

willing organizations to set up temporary encampments for the homeless up to a certain occupancy rate. In Minneapolis, criminalization cost the City \$1,440,807 in one year alone. Facing these high costs, the County developed a plan that emphasized all but enforcement. In each of these cities, homelessness has decreased, long term solutions are implemented and the public has supported city's efforts.

Denver can do better than a criminalization approach. This Ordinance is not the proper means to solve any homeless problem. The ACLU of Colorado asks that you reject this Ordinance, re-evaluate its terms and work with all relevant stakeholders to address the true crisis of homelessness in our City.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise S. Maes", written over the printed name.

Denise S. Maes

Public Policy Director, ACLU of Colorado