

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th St. Boulder, CO 80302</p>	
<p>Plaintiffs: FEET FORWARD - PEER SUPPORTIVE SERVICES AND OUTREACH d/b/a FEET FORWARD, a nonprofit corporation; JENNIFER SHURLEY, JORDAN WHITTEN, SHAWN RHOADES, ERIC BUDD, MARY FALTYNSKI, and JOHN CARLSON, individuals;</p> <p>v.</p> <p>Defendants: CITY OF BOULDER and MARIS HEROLD, Chief of Police for the City of Boulder.</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Number: 2022CV30341</p> <p>Div: 2</p> <p>Ctrm:</p>
<p><i>Attorneys for Plaintiffs:</i></p> <p>Daniel D. Williams, # 38445 Meghan C. Hungate, #38183 Hutchinson Black and Cook, LLC 921 Walnut Street, Suite 200 Boulder, CO 80302 williams@hbcboulder.com hungate@hbcboulder.com P: (303) 442-6514 F: (303) 442-6593 In cooperation with the ACLU Foundation of Colorado</p> <p>Andy McNulty, #50546 NEWMAN MCNULTY 1490 N. Lafayette Street, Suite 304 Denver, Colorado 80218 andy@newman-mcnulty.com 720-850-5770 In cooperation with the ACLU Foundation of Colorado</p> <p>Timothy Macdonald, #29180 Mark Silverstein, #26979 Anna I. Kurtz, #51525 Emma McLean Riggs, #51307 American Civil Liberties Union Foundation of Colorado 303 E. 17th Ave., Suite 350 Denver, Colorado 80203 msilverstein@aclu-co.org akurtz@aclu-co.org tmacdonald@aclu-co.org P: (720) 402-3114 F: (303) 777-1773</p>	<p>AMENDED COMPLAINT</p>

Plaintiffs Feet Forward, Jennifer Shurley, Jordan Whitten, Shawn Rhoades, Eric Budd, Mary Faltynski, and John Carlson state as follows in support of their complaint against Defendants City of Boulder and Maris Herold, Chief of Police for the City of Boulder:

I. INTRODUCTION¹

1. The City of Boulder, Colorado (“the City”), prides itself for being ranked “the No. 1 place in America to call home,” and is known for its “natural beauty and abundance of opportunities for outdoor recreation, including parks, trails and open space.”²

2. But through a municipal ordinance, B.R.C. § 5-6-10 (the “Blanket Ban”)³, the City seeks to expel from its public spaces the growing number of its residents who call the City home but cannot afford to live indoors there. The Blanket Ban forbids living or sleeping outside while using “any cover or protection from the elements other than clothing.” B.R.C. § 5-6-10(d). The Blanket Ban penalizes Boulder’s houseless residents’ right to exist in *any* of the City’s public spaces at *any* time of day or night by targeting the unavoidable trappings of extreme poverty. Officers enforcing the Blanket Ban tell the houseless residents they displace to “get out of Boulder.”

3. The City fails to ensure that there is adequate and available indoor shelter for its houseless residents before enforcing the Blanket Ban against them. At night, indoor shelter capacity cannot support the size of the local population of people experiencing homelessness. And bed space aside, program rules, restrictions, and structural realities exclude many houseless residents from accessing the limited indoor shelter that exists. Meanwhile, during the day, for most houseless adults, Boulder has no indoor shelter option at all.

4. On any given day or night, many houseless residents are left with no way to live in Boulder without engaging in conduct the City makes a crime. When enforced against these individuals, the Blanket Ban punishes the unavoidable consequences of being homeless in Boulder, endanger lives, and seek to exclude an entire segment of the community from collective space.

¹ This lawsuit continues to challenge B.R.C. § 8-3-21(a) (the “Tent Ban”) as a violation of Colo. Const., art. II, § 20, as well as the Blanket Ban as a violation of Colo. Const., art. II, § 25, and Colo. Const., art. II, § 3. This Court, however, dismissed these claims on February 23, 2023, granting in part Defendants’ motion to dismiss. Solely to avoid confusion, Plaintiffs have removed from this Amended Complaint the dismissed claims and allegations pertaining to them, but Plaintiffs maintain those claims and allegations as a part of this lawsuit and reserve the right to appeal the dismissal order once there is final judgment in this matter.

² City of Boulder, *Boulder Named Best Place to Live in Nation by US News & World Report* (2021), <https://bouldercolorado.gov/news/boulder-named-best-place-live-nation-us-news-world-report>.

³ Section 5-6-10 is commonly known as the “Camping Ban.” This Complaint uses the more accurate label, “Blanket Ban,” because the ordinance does not target the recreational activity of camping; it targets the survival act of using shelter as minimal as a blanket to protect oneself from the elements.

5. Plaintiffs are a Boulder nonprofit, Boulder taxpayers, and formerly houseless residents of Boulder who face threats and imminent risk of citation, prosecution, and criminal penalties under the Blanket Ban. They bring this action because the City’s enforcement of the Blanket Ban violates the Colorado Constitution.

6. Plaintiffs challenge the City’s enforcement of the Blanket Ban against persons who cannot access indoor shelter. They seek a declaratory judgment and injunctive relief ordering Defendants to refrain from enforcing the Blanket Ban in these circumstances against individuals who lack a realistic and safe alternative to surviving outside, as well as nominal damages.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this case pursuant to Colo. Const. art. VI, § 9(1), C.R.S. §§ 13-51-105 and 13-21-131(1), and C.R.C.P. 57 and 65.

8. Venue is proper in this Court under C.R.C.P. 98(b)(2) and (c)(1).

III. PARTIES

9. Plaintiffs Jennifer “Jeni” Shurley, Shawn “Indigo” Rhoades, and Jordan Whitten (the “Individual Plaintiffs”) are all have been houseless⁴ residents of Boulder, Colorado. They have all been ticketed by law enforcement and been summoned to appear in Boulder Municipal Court for alleged violations of B.R.C. § 5-6-10. They all are at imminent risk of being subject to further enforcement under both criminal ordinances should they again experience houselessness in Boulder.

10. Plaintiff Feet Forward - Peer Supportive Services and Outreach d/b/a Feet Forward is a peer-led nonprofit corporation that provides low-barrier, housing-focused peer support and navigation services to individuals experiencing homelessness in Boulder. Built on a foundation of lived experience with homelessness, the organization increases service engagement and housing pathways by meeting people where they are and partnering with local helpers. Feet Forward is a crucial provider of outreach and services to people experiencing homelessness in Boulder.

11. Plaintiff Eric Budd brings this action to challenge the City’s enforcement of the Blanket Ban in his personal capacity as a Boulder taxpayer. Mr. Budd lives in the City and pays Boulder taxes.

⁴ This Complaint uses the terms “houseless” and “homeless” interchangeably. The U.S. Department of Housing and Urban Development (“HUD”) defines being “literally homeless” as “lack[ing] a fixed, regular, and adequate nighttime residence, . . . ha[ving] a primary nighttime residence that is a public or private place not meant for human habitation . . . [or] living in a publicly or privately operated shelter (including safe haven or transitional living program).” In addition to being houseless, the Individual Plaintiffs met HUD’s definition of being “unsheltered,” which means having “a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground.”

12. Plaintiff Mary Faltynski brings this action to challenge the Blanket Ban in her personal capacity as a Boulder taxpayer. Ms. Faltynski lives in the City and pays Boulder taxes.

13. Plaintiff John Carlson brings this action to challenge the Blanket Ban in his personal capacity as a Boulder taxpayer. Ms. Carlson lives in the City and pays Boulder taxes

14. Defendant City of Boulder has adopted the challenged ordinances and enforces them through its law enforcement officers in the Boulder Police Department (“BPD”) and Open Space and Mountain Parks Department (“OSMP”).

15. Defendant Maris Herold is the Chief of Police for the City of Boulder and a “peace officer” as defined in C.R.S. § 24-31-901(3). She has general charge and supervision of city police officers and is responsible for and establishes rules and regulations governing the administration of BPD. Chief Herold has directed all department members to enforce the Blanket Ban in a manner that criminalizes homelessness, violates the Colorado Constitution, and infringes on the Individual Plaintiffs’ constitutional rights.

IV. FACTUAL ALLEGATIONS

A. Available Shelter in the City Is Not Adequate to Support Its Houseless Population.

Boulder’s Houseless Population

16. The City of Boulder does not know the exact size of its houseless population. Based on the available but imperfect metrics, an approximate count of the houseless population in Boulder County is likely somewhere between 1,400-4,100 people. Roughly 75% of individuals experiencing homelessness in Boulder County reside in the City.

17. The 2021 regional Point in Time Count, an annual count of people experiencing homelessness on a single night in January, showed a 99% increase from the prior year in the number of those who reported being newly homeless.

18. Between November 2021 and April 2022 alone, Plaintiff Feet Forward served 590 different individuals experiencing homelessness in the City.

19. Point in time counts with respect to persons experiencing homelessness in the City of Boulder identified 124 unsheltered individuals experiencing homelessness on January 25th, 2023, and 171 unsheltered adults experiencing homelessness on July 26th, 2023. There is a profound disconnect between public perception of the causes of homelessness and its actual causes. Public perception wrongly fixates on individual choices and issues such as substance use, chronic health conditions, or mental health disorders as the leading causes of homelessness.

20. In fact, homelessness in the region is generally the direct result of economic conditions, including a lack of affordable housing; wages that do not keep pace with the cost of housing, cost of living, and gentrification; as well as systemic causes such as racial inequities and barriers in access to healthcare.

21. The need for affordable housing in the City far outweighs its supply. Hundreds of people experiencing homelessness in the City are on waitlists to get into stable housing.

22. Boulder’s already-inadequate housing stock was further diminished on the eve of 2022, when the Marshall Fire, the most destructive wildfire in Colorado history, burned about 6,000 acres of land in Boulder County, destroyed almost 1,000 homes, and displaced thousands of families. Although that fire swept through neighboring communities and not the City itself, it has created strains on the supply of housing and hotel rooms within the City.

23. The cost of renting or owning a home in the City is unaffordable for many of its residents. The median sales price of a single-family home in the City is more than \$1.5 million, and median gross rent is more than \$1,600 a month. About 40% of the City’s renters are severely rent-burdened, spending more than half their incomes on rent. About 20% of the City’s population lives in poverty.

24. Because of systemic racial inequities in the root causes of homelessness, there is a glaring overrepresentation of individuals who are Black, Indigenous, and/or people of color in Boulder’s houseless population.

Shelter Availability

25. The daytime and overnight shelter available in the City is woefully inadequate to meet the needs of its houseless residents. Not only does the size of the houseless population far exceed the available shelter space, but also program designs, rules, and restrictions exclude many people from accessing the limited shelter that does exist. As a result, on any given day or night, many houseless residents are left with no access to indoor shelter in the City.

26. The City is a member entity of Homeless Solutions for Boulder County (“HSBC”), an intergovernmental system that creates policy governing homelessness-related services in the region. HSBC includes the City, Boulder County, Longmont, local housing authorities, and participating nonprofits.

27. The City’s Housing and Human Services Department (“HHS”) is responsible for administering shelter programming for people experiencing homelessness in the City.

28. Prior to June 1, 2020, the City of Boulder had funded sheltering services at two local nonprofits—Bridge House and Boulder Shelter for the Homeless (“BSH”). On that date, the lease at the Bridge House sheltering location was terminated, the City consolidated its funded shelter services at BSH, and the number of emergency overnight shelter beds available in the City was cut nearly in half. HHS now has a sole source contract with BSH to provide HSBC-aligned single adult sheltering services in the City, including emergency sheltering services during inclement weather.

29. BSH is the only emergency overnight shelter option available to most adults experiencing homelessness in the City.⁵ BSH is located at the far tip of North Boulder, more than an hour's walk from downtown. There is a single free bus to the shelter that leaves at 5 p.m. each day from Walnut & 11th.

30. There are not nearly enough overnight shelter beds available for the number of people experiencing homelessness in the City. Between October 2021 and May 2022, BSH turned away at least 175 houseless people because it had reached capacity at the time they sought services. In the summer of 2022, 24 individuals were turned away due to capacity.

31. Between October 2022 and April 2023, BSH turned away 278 individuals due to capacity, a 57% increase from the 2021-2022 winter season.

32. Beds available at BSH are prioritized for people in its "Reserved Bed Program." To qualify for a "reserved" bed, a person must agree to stay consistently at BSH, uphold its codes of conduct, and pre-arrange with BSH nights when they cannot stay there. If Reserved Bed participants on a given night exceed capacity, the shelter prioritizes bed placement based on "individual criteria." Thus, even people with "reserved" beds at BSH are not guaranteed shelter there on any given night.

33. The majority of beds on any given night at BSH are reserved. Everyone without a reserved bed is designated on "standby" status and subject to a nightly lottery system for the remaining non-reserved beds.

34. Thus, for every houseless person in the City, there is some risk on any given night that they will not be able to get a bed at BSH. The person will not know whether they will receive a bed prior to making the long journey to BSH's facility on the edge of town and waiting to see: (a) if they have a "reserved bed," whether there are enough beds for everyone with a "reserved bed," and if not, whether they will still receive a bed based on "individual criteria," or (b) if they do not have a "reserved bed," whether they win a spot through the lottery.

35. Because of the lack of beds, BSH even turns people away on days when exposure to the weather without shelter is dangerous to human health and safety.

36. When conditions outside meet the criteria for "critical weather," BSH tries to make additional beds available at the shelter by acquiring hotel rooms where residents can stay. "Critical weather" is not triggered unless the National Weather Service predicts that the temperature will fall below 10 degrees Fahrenheit or the City will experience 6 inches or more of snow.

37. There are many days during the year when houseless residents' exposure to the elements in the City is dangerous, but conditions do not meet the extreme "critical weather" criteria that can trigger extra bed availability.

⁵ Additional shelter options in Boulder serve only specific subpopulations of people experiencing homelessness. TGTHR, for example, serves houseless youth; the Lodge serves 15-20 ciswomen, trans, and nonbinary clients; and safe homes at undisclosed locations serve those fleeing domestic violence. The vast majority of the houseless community is only eligible for shelter at BSH.

38. On average, temperature in the City drops below 10 degrees only 15 days per year, while it drops below 20 degrees 50 days a year and below freezing (32 degrees) 138 days a year. Between October 2021 and May 2022, the shelter turned at least a total of 182 people away on days when temperatures dropped below freezing.

39. Similarly, on average, the City receives 6 inches or more of snowfall on only 4 days a year, but it receives some snowfall on almost 10 times as many days. The City experiences snowfall during nine of the twelve calendar months, and between November and April, snowfall typically ranges from 11 to 16 inches per month. Between October 2021 and May 2022, the shelter turned at least a total of 55 people away on days when it snowed.

40. Although the City has some of the highest peak winds of any city in the country, and the combination of wind and low temperature in winter can be deadly, wind speeds are not considered when evaluating whether “critical weather” conditions exist.

41. But even on the rare nights when “critical weather” is triggered, the maximum number of facility and hotel beds combined never exceeds 180 beds, and BSH’s ability to increase capacity at all is “contingent upon hotel bed availability.” Thus, even during the most extreme “critical weather,” there are not enough beds available to support the City’s houseless population. Between October 2021 and May 2022, the shelter turned away a total of almost 20 people on days when temperatures dropped below 10 degrees.

42. In addition to space limitations, other barriers to accessing BSH prevent many houseless residents from being able to stay there on any given night, including but not limited to a required screening process, work schedules, family makeup, mental and physical health needs, and capped annual shelter stays.

43. Because BSH participates in the HSBC system, people seeking to access a bed there must first go through HSBC’s centralized screening process for single adult homelessness-related services in the region. The screening process is called Coordinated Entry. Individuals who try to access the shelter are allowed only a single grace night if they have not gone through Coordinated Entry, after which they are turned away (except on rare “critical weather” nights, when space allows). Access to a Coordinated Entry screening is limited. Between August 2021 and May 2022, BSH has turned away at least 80 people for not having gone through Coordinated Entry.

44. For a chance to enter the lottery for a bed at BSH, individuals must arrive at the shelter between 5 p.m. and 7 p.m. Some individuals work night or swing shifts and have job schedules that prevent them from getting to BSH during the 5 p.m. to 7 p.m. window. Thus, individuals working in the late afternoon or evening without a reserved bed cannot access indoor shelter at BSH.

45. On any given day, about 30 individuals experiencing homelessness are suspended from BSH. These suspensions can range in length from a single night’s exclusion to a lifetime ban.

46. Suspension from BSH, which for most individuals experiencing homelessness in the City equates to suspension from all locally available indoor shelter, is often disproportionately punitive. For example, the following conduct can result in expulsion from the shelter for life: leaving the shelter after 7 p.m. without pre-approval; leaving after check-in and returning without

permission; loitering on shelter property or private property around the shelter; or having one's service dog be deemed "disruptive."

47. BSH does not allow individuals to shelter with their pets, including emotional support animals who are not formally service animals. Yet, forced abandonment of a companion animal can be traumatic and intensify existing trauma. The human-animal bond has existed for thousands of years and has major significance for the emotional, psychological, and physical health of both people and animals. Companion animals provide social-emotional support that facilitates coping and resilience.

48. BSH does not allow couples to shelter together, even if married. Keeping families intact is essential to their stability and well-being. Being forcibly separated from one's partner is harmful to one's physical and mental health.

49. BSH does not allow individuals to enter the shelter with more belongings than they can carry.

50. Some individuals experiencing homelessness in Boulder have mental health diagnoses that are incompatible with congregate living.

51. For all these reasons and more, there are houseless residents in the City for whom sheltering at BSH is not realistic or safe.

52. But even if they meet all other criteria for entry to BSH and can safely and realistically stay there without sacrificing relationships and possessions integral to their well-being, people on standby status are not permitted to spend more than 90 nights annually at BSH. Only nights that meet extreme "critical weather" thresholds are excluded from this 90-day maximum. Individuals on standby status who exceed their 90-day annual cap on stays at BSH will be unable to access an emergency shelter bed there for the remainder of the year.

Since 2017, there has been no day shelter option for most adults experiencing homelessness in the City.

53. BSH closes daily between 8 a.m. and 5 p.m. When critical weather conditions are expected to be reached during the daytime, the shelter remains open, but only to those who stayed there the night before.

B. The Challenged Ordinances Punish Conduct Necessary for Survival and Make it a Crime for Houseless Residents to Live in the City if they Cannot Access Indoor Shelter.

The Blanket Ban

54. The City’s Blanket Ban, B.R.C. § 5-6-10, prohibits “camping” in Boulder’s public spaces.⁶

55. Camping is defined under the ordinance to include sleeping outside with shelter as minimal as a blanket:

[C]amp means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. But the term does not include napping during the day or picnicking. The term shelter includes, without limitation, *any cover or protection from the elements other than clothing*. The phrase during the day means from one hour after sunrise until sunset

B.R.C. § 5-6-10(d) (emphasis added).

56. The Blanket Ban targets the use of Boulder’s public spaces by people experiencing homelessness. According to the City Attorney in 2001, when City Council approved revisions to the Blanket Ban, the ordinance’s exclusion of the recreational activities of “napping during the day or picnicking” was “carefully chosen to make sure that persons who doze off in a park on a nice warm day are not accounted criminals, while those who are residing in parks can be prosecuted.” The exclusion reflects the City’s position that “[n]o *legitimate* park or open space users are sleeping during the chill of the first hour after sunup.”

57. Violation of the Blanket Ban is punishable by up to a \$2,650 fine, 90 days in jail, or both. B.R.C. § 5-2-4(a).

Necessity of Sleep

58. The Blanket Ban prohibits conduct that is essential to being human, necessary for survival, and unavoidable for many of Boulder’s houseless residents.

59. Sleeping is an unavoidable consequence of being human. The need to sleep is so strong that at some point human beings will not be able to avoid sleep and will involuntarily fall asleep despite conscious efforts to stay awake.

60. Human beings have a sleep-wake rhythm that is repeated in a 24-hour cycle. While everyone’s sleep needs vary, most adults have 16 hours of productive wakefulness and need approximately 8 hours of sleep per night.

61. Sleep is critical to human survival and essential to physical health and mental well-being. One could survive for three times as long without food as one could without sleep.

62. Sleep helps human beings balance hormones and other vital brain and body chemicals, flush toxic waste from the brain, and consolidate memories.

⁶ Subsection 10(a) bans camping “within any park, parkway, recreation area, open space, or other city property,” while subsection 10(b)(1) bans camping “within any public property other than city property” without permission of an authorized officer.

63. Disruptions that impact the continuity of sleep have substantial adverse short- and long-term health consequences. Even a single night of poor sleep impairs memory, concentration, attention, and decision-making. In the long term, sleeping fewer than seven hours per night can cause wide-ranging damage to the cardiovascular, endocrine, immune, and nervous systems of human beings.

64. Consequences of sleep deprivation for human beings include mortality, morbidity, accidents and injuries, errors in judgment, decreases in functioning and quality of life, and health issues such as obesity, hypertension, diabetes, depression, heart attack, and stroke.

Necessity of Shelter

65. Shelter is a basic physiological human need, like food, water, air, and sleep. Without shelter, exposure to the elements can damage skin and other organs.

66. When people must sleep outdoors, blankets, sleeping bags, and other shelter is critical in supporting thermoregulation of body temperature. It is also critical to protecting the human body from the elements.

67. The City experiences extreme temperatures, both hot and cold, that can be harmful to human health. Having the proper shelter can mean the difference between life and death for people experiencing homelessness in Boulder.

68. Homeless residents who cannot access indoor shelter face average minimum temperatures that drop below freezing from November to April. They are exposed to precipitation on an average of 97 days each year.

69. In cold weather, staying dry and covered are important to human survival.

70. Homeless residents of the City who do not have access to indoor shelter spend a significant portion of the year at risk of exposure to cold, wet, and windy weather in the City that can cause hypothermia and frostbite.

71. Hypothermia is a condition that occurs when a person's core body temperature falls below 95 degrees. The symptoms of hypothermia include exhaustion, numbness, shivering, decreased hand coordination, slurred speech, and confusion, among other things. Hypothermia also commonly leads to heart, brain, and kidney malfunction, and sometimes death.

72. Hypothermia deaths can occur even with temperatures between 30 and 50 degrees. If a person or their clothing gets wet, hypothermia becomes even more likely because wet clothing results in much faster heat loss from the body. Treating hypothermia in the absence of medical attention requires slow warming using dry clothing and blankets.

73. Frostbite is the freezing of skin and the body tissue just beneath it. Because it first affects exposed body tissue, to minimize frostbite, a person must make sure all their body parts are well covered from the elements.

74. Thus, if they cannot be indoors, houseless residents of the City rely on shelter, including tents and other cover from the elements beyond their clothing, to stay dry and warm enough to survive.

75. On the other end of the extreme weather spectrum, average maximum temperatures in the City exceed 80 degrees during summer months, and the City also experiences extreme heat, or temperatures above 90 degrees, an average of 39 days per year. Over the last two years, that number has been higher, exceeding 50 days a year.

76. Extreme heat can cause people to suffer from heat-related illness, and even death. Heat-related illness is a spectrum of symptoms including heat exhaustion, heat stroke, and dehydration, which result from the direct and indirect effects of heat. Extreme heat is the leading cause of weather-related death for human beings in the United States.

77. People suffer heat-related illness when their bodies are unable to properly cool themselves. In order to stay cool, people rely on shade and shelter from the sun.

78. Houseless individuals who have been told that they cannot shelter themselves with anything but their clothing are substantially more likely to suffer from frostbite, dehydration, and heat stroke.

79. Accordingly, year-round, the City experiences weather that requires houseless residents who cannot access indoor shelter to rely for their survival on items whose use is prohibited by the Blanket Ban.

Enforcement of the Blanket Ban

80. Three law enforcement agencies enforce the Blanket Ban in the City: Boulder Police Department, Open Space and Mountain Parks Rangers, and the University of Colorado Police Department. Most Blanket Ban cases originate from BPD.

81. The City enforces its Blanket Ban primarily and disproportionately against people experiencing homelessness..

82. Other cities in Colorado, including large cities, have adopted municipal ordinances that prohibit conduct similar to the City's Blanket Ban. The City of Boulder issues citations under its Blanket Ban more than all those other cities combined.

83. On January 19, 2021, Boulder's City Council voted to continue enforcing the Blanket Ban. It did so over some members' objections that enforcement should not move forward without meaningful discussion about additional services or spaces in the City where those experiencing homelessness could legally be.

84. The City has devoted significant taxpayer resources toward enforcement of the Blanket Ban against people experiencing homelessness. At a City Council meeting on April 29, 2021, Chief Herold told City Council: "If we want to enforce the [Blanket] [B]an, have clean and safe spaces, I need additional resources."

85. City Council voted to spend an additional \$2.7 million over 18 months to enforce the Blanket Ban, including creating two new urban park ranger positions, adding an additional BPD unit of six officers, and buying three new patrol SUVs. At that same meeting, Boulder City Council explicitly rejected spending any funds for alternatives for those living unsheltered, including expanding sheltering options.

86. Officers typically enforce the Blanket Ban between 11 p.m. and 8 a.m., sometimes aggressively waking people up in the middle of the night or early hours of the morning. Officers enforce the Blanket Ban by writing tickets, ordering houseless residents to move along, and threatening to confiscate their belongings if they do not.

87. On March 16, 2021, Chief Herold issued a “Directive on Camping Violations” to all members of BPD instructing officers to consider certain factors prior to issuing a camping ticket, with the goal of “focus[ing] . . . enforcement efforts to deal with the encampment problem.”

88. Importantly, Chief Herold’s March Directive failed to instruct officers to consider either a person’s ability to access indoor shelter or a person’s exposure to immediate danger absent “cover or protection from the elements” before enforcing the Blanket Ban against them.

89. Because of Chief Herold’s March Directive, BPD officers do not inquire into a person’s ability to access indoor shelter before enforcing the Blanket Ban against them.

90. Because of Chief Herold’s March Directive, BPD officers do not inquire into a person’s risk of immediate danger from the elements before enforcing the Blanket Ban against them.

91. Law enforcement officers at OSMP, BPD, and CUPD have enforced the Blanket Ban on many nights when, or mornings after, BSH had reached capacity and turned people away.

92. Law enforcement officers at OSMP, BPD, and CUPD have enforced the Blanket Ban on many days when the temperature was below freezing, when it was raining, and/or when it was snowing.

93. The March Directive is the most recent directive guiding BPD enforcement of the Blanket Ban and it remains in effect.

94. At least 5 houseless people died of hypothermia in Boulder in 2020.

95. One purpose of Blanket Ban enforcement is to keep houseless people out of the City. Officers enforcing the Blanket Ban have told the houseless residents they contact to “get out of Boulder.” If a person contacted assures the officer they are “just passing through,” an officer might decide to issue a warning rather than a ticket.

96. Frequent interactions with police are disruptive, stressful, and traumatic for persons experiencing homelessness and makes them less likely to seek help in an emergency.

97. Police enforcement of the Blanket Ban undermines houseless Boulder residents' physical health. Enforcement, including move-along orders, drives houseless individuals to more hidden, less safe locations in the City where it is more difficult for them to access services.

98. Individuals charged with a violation of the Blanket Ban are required either to pay a specified amount or to appear at a regular 8:30 a.m. session at the Boulder Municipal Court. Most individuals charged under either ordinance cannot afford to pay the set amount and must appear in court.

99. The City Summons & Complaint issued for alleged violations of the Blanket Ban indicates that failure to appear will result in forfeiture of an appearance bond and issuance of an arrest warrant and/or writ of execution.

C. Plaintiffs Are Injured by the City's Enforcement of the Blanket Ban.

Feet Forward

100. Plaintiff Feet Forward is a Boulder-based nonprofit that advocates for the overall health and wellness of Boulder's houseless community and provides outreach, resources, and services with the ultimate goal of ending local homelessness. The organization's work is led by people with current and prior lived experience with homelessness in Boulder.

101. Feet Forward's mission is to empower houseless individuals in Boulder by removing barriers to services, providing sustained peer-led advocacy and navigation, and meeting basic needs such as food and clothing. It amplifies the voices of those it serves and builds support networks in the community. Feet Forward uses direct street outreach and other channels to leverage, connect, and expand services and housing pathways for houseless people.

102. A centerpiece of Feet Forward's work is a weekly community outreach event at the Bandshell in Central Park. Every Tuesday afternoon, Feet Forward partners with volunteers, providers, and faith-based groups to provide a variety of needed services and resources for people experiencing homelessness in the City. The event serves an average of 100 houseless individuals each week. While some attendees simply show up each week, Feet Forward and its partners also make appointments with houseless individuals who use the reliably scheduled event as an opportunity to meet.

103. At the event, Feet Forward serves warm, high-nutritional-value meals that are different each week. It provides weather-appropriate clothing and gear, some of which it receives through donations, to try to keep people warm and dry. Staple items include socks, adult clothing, blankets and tarps, assorted hygiene products, and, when it's cold, hand, toe, and body warmers. It also provides charging stations for people's phones and other electronic devices to increase connectivity to loved ones, employers, and service providers. During the spring and summer months, Feet Forward offers professional haircuts on site to boost community morale and self-esteem.

104. A 2021 regional homelessness systems-mapping study conducted by the University of Colorado Denver and the Common Sense Institute identified Feet Forward as an "exemplar in building trust." It concluded that Feet Forward's model "helps build trust quickly and speeds up the

path to engagement[,] . . . helps to continue the continuity of community[,] and transitions . . . individuals out of homelessness with a built-in network of support.”

105. Feet Forward leverages this community trust to make their weekly gatherings a hub where other providers can reliably meet with their houseless clients, or engage with new ones, in a low-barrier setting. In addition to its weekly events, Feet Forward has hosted several larger community resource fairs where it has brought together about 20 service providers to increase service engagement and housing pathways for people experiencing homelessness.

106. Outside of scheduled events, Feet Forward engages in regular outreach and communication, including over social media, to stay connected with particular houseless clients and the larger community the organization serves.

107. In its first year, Feet Forward served more than 5,200 hot meals, distributed more than 3,000 pairs of socks, created more than 350 connections to service providers, and helped 150 people sign up for housing lotteries and waitlists.

108. Feet Forward also plays a critical role identifying people who qualify for housing priority but slip through the cracks and cannot be located by other providers. It has helped connect partners with 36 such individuals, 11 of whom were ultimately housed.

109. Between November 2021 and April 2022, Feet Forward served 590 different individuals experiencing homelessness.

110. The City’s Blanket Ban and criminalization of its houseless residents perceptibly impairs Feet Forward’s work, frustrate its mission, and cause it to divert resources that it would otherwise use to further its mission.

111. Enforcement of the Blanket Ban causes Feet Forward’s clients to shuffle around the City, making them much more difficult to find and impeding Feet Forward’s ability to connect them with services and pathways to housing.

112. A core tenet of Feet Forward is that “when you feel better, you do better.” Enforcement of the Blanket Ban has a perceptible negative effect on client morale that hinders Feet Forward’s work to improve the overall health and wellness of its clients. Feet Forward volunteers spend so much time listening to accounts of the stress, anger, fear, and trauma people experience when BPD wakes them in the middle of the night, orders them to move, tickets them, and threatens to confiscate their belongings, that it reduces the time Feet Forward can spend on tangible steps to connect clients with services and housing.

113. By making it a crime for houseless individuals to use tents and other cover to shelter themselves, the Blanket Ban also prevent Feet Forward from distributing the life-saving gear it would otherwise provide. If Feet Forward’s clients could lawfully shelter themselves in tents, it would be distributing tents, particularly in winter months or when the weather is bad. Indeed, Feet Forward would like to be able to distribute an inclement weather care package to event attendees that would include a good sleeping bag for cold weather, a tent, and a backpack. But given Feet Forward’s small operating budget, the organization cannot afford to continually supply resources that it reasonably fears will be confiscated by BPD.

114. In October 2021, to address the huge number of tickets, failures to appear (“FTAs”), and warrants houseless people receive because of the Blanket Ban, Feet Forward chose to begin inviting the Boulder Municipal Court’s Community Court program to its events biweekly. Feet Forward received the warrant list and helps track people down to attend Feet Forward events so they can participate in Community Court. Feet Forward has devoted significant resources to hosting the Community Court program to address the impacts of criminalization. The Blanket Ban frustrates Feet Forward’s mission by causing it to divert resources from getting people into housing to keeping them out of jail.

Taxpayers

115. Plaintiffs Budd, Faltynski, and Carlson each pay substantial amounts of taxes to the City. They all pay sales and use taxes in the City, along with paying property taxes.

116. Sales & Use Tax and Property Tax revenue is spent across several City departments involved in enforcing the Blanket Ban.

117. Enforcement of the Blanket Ban involves significant expenditures of taxpayer dollars across multiple City departments, including BPD, Parks & Recreation, Open Space & Mountain Parks, the City Attorney’s Office, and Boulder Municipal Court.

118. The approved 2022 Budget dedicates 25% of General Fund expenditures, or \$40,342,484 taxpayer dollars, toward funding BPD. More than \$2 million taxpayer dollars are allocated for spending on Ranger Services within OSMP.

119. In May 2021, the City allocated \$2.7 million in taxpayer money specifically to fund further enforcement of anti-homeless criminal ordinances and encampment removal.

120. Of the \$2.7 million, approximately \$186,000 was allocated to fund a pilot program adding two urban park rangers, whose job responsibilities include issuing warnings and citations for violations of the Blanket Ban.

121. Of the \$2.7 million, approximately \$1.5 million was allocated to add an additional unit of 6 BPD officers and their vehicles to ensure “a more effective approach to enforcing Boulder’s [Blanket] ban.”

122. Plaintiffs Budd, Faltynski, and Carlson pay municipal taxes that are used in part to fund the City’s enforcement of the challenged Blanket Ban.

123. Plaintiffs Budd, Faltynski, and Carlson object to their tax dollars being spent on enforcement of the Blanket Ban in a manner that violates the Colorado Constitution.

Individual Plaintiffs

Jennifer Shurley

124. Plaintiff Jennifer Shurley was an involuntarily houseless resident of Boulder, Colorado at the time of the filing of the Complaint in this matter.

125. Ms. Shurley has experienced several periods of homelessness in her life. The first came after she fled an abusive relationship in 1996 and had nowhere to turn but Boulder’s streets.

126. After exiting homelessness for a time, Ms. Shurley was again displaced—this time by natural disaster—when her home in Kathmandu, Nepal, was destroyed in the Gorkha Earthquake of 2015.

127. After returning to the States, Ms. Shurley spent years staying in congregate shelters, unable to find permanent housing despite her engagement with services. Ms. Shurley most recently returned to Boulder on or about April 2021. Ms. Shurley has been screened through Coordinated Entry.

128. Ms. Shurley was unable to stay at BSH because she has four dogs, only one of whom is a service animal trained to help her manage her lupus. For even a chance to stay at the shelter, Ms. Shurley would need to abandon her non-service dogs to the Boulder Valley Humane Society, an action that would cause her to suffer severe emotional harm.

129. It was impracticable and unreasonable for Plaintiff Shurley to have to abandon three of her companion animals in order to access indoor shelter in the City.

130. Most nights, Ms. Shurley slept with her four dogs in a van that she parked on City streets. She tried to stay out of central spaces in town.

131. Before she moved into her van, Ms. Shurley slept in a bike-drawn tiny home that she built. She has also spent significant time sleeping outside in the City in a tent and other forms of shelter prohibited under the Blanket Ban.

132. Ms. Shurley was contacted by a BPD officer on December 21, 2021, who warned her that she was violating the Blanket Ban and that her bike-drawn tiny home was a prohibited item. That day, the temperature outside reached a low of 25 degrees Fahrenheit.

133. She received tickets on December 23, 2021 at 7:39 a.m. and the next morning, on Christmas Eve, at 6:34 a.m. During each encounter with BPD, an officer told her to “get out of Boulder.” Each time, Ms. Shurley was ordered to appear at Boulder Municipal Court or else face issuance of a warrant for her arrest.

134. Even if Ms. Shurley were to part with her companion animals and try to enter BSH’s lottery, she was at risk of being turned away because of insufficient shelter beds.

135. Ms. Shurley was at credible risk of enforcement of the Blanket Ban when she cannot access indoor shelter.

136. Ms. Shurley was at credible risk of enforcement of the Blanket Ban for sheltering herself with items that are necessary to protect her from the elements.

137. Ms. Shurley is at a credible risk of losing her current housing, and being again subject to enforcement of the Blanket Ban when she cannot access indoor shelter.

Jordan Whitten

138. Plaintiff Jordan Whitten is a 26-year-old Navy veteran, a coding engineer, and was an involuntarily houseless resident of Boulder, Colorado at the time of the filing of the Complaint in this matter.

139. Mr. Whitten was houseless in Boulder from December 2021 until some time after the filing of the Complaint in this matter.

140. Prior to coming to Colorado, Mr. Whitten served in the Navy as a Sonar Technician from 2016 through 2018. He left the military for reasons related to his mental health and received a general discharge under honorable conditions.

141. Mr. Whitten works at the Good Times Burgers & Frozen Custards in Boulder, where his schedule is generally 3 p.m. to 11 p.m.

142. When Mr. Whitten got his job at Good Times and moved to Boulder, he looked up the available indoor shelter in the City and learned that, to enter the lottery for a bed at BSH, he had to arrive between 5 p.m. and 7 p.m.

143. Mr. Whitten's work schedule prevented him from arriving at BSH at the required time, making him ineligible to enter the lottery for a shelter bed.

144. Mr. Whitten's mental health and military service history also make him uncomfortable sleeping in congregate settings.

145. Because he could not stay at the only shelter in the City for which he would be eligible, Mr. Whitten slept outside every night. His only cover from the elements beyond his clothing was a sleeping bag, a sleeping pad, and his tent. All of his belongings fit into a single backpack.

146. Mr. Whitten slept with a tent to protect himself from rain and snow.

147. Mr. Whitten was at credible risk of enforcement of the Blanket Ban when he cannot access indoor shelter.

148. Mr. Whitten was at credible risk of enforcement of the Blanket Ban for sheltering himself with items that are necessary to protect him from the elements.

149. Mr. Whitten is at a credible risk of losing his current housing, and being again subject to enforcement of the Blanket Ban when he cannot access indoor shelter.

Shawn Rhoades

150. Plaintiff Shawn "Indigo" Rhoades is a 56-year-old member of the Mescalero people. He is a Navy veteran and was an involuntarily houseless resident of Boulder, Colorado at the time of the filing of the Complaint in this matter.

151. Mr. Rhoades has been homeless on and off for about 15 years. He most recently became homeless in the fall of 2020.

152. Mr. Rhoades sought out Coordinated Entry and a bed at BSH. But at the time, the shelter had a 6-month durational residency requirement in place that reserved beds only for longer-term residents of Boulder. (HSBC and BSH rescinded the 6-month residency requirement in August 2021 after the ACLU of Colorado warned that the policy was unconstitutional.)

153. As a result, Mr. Rhoades only qualified for what BSH calls “Diversion” services—lighter-touch homelessness interventions intended to prevent the need for shelter in the first place. In his case, “Diversion” meant a bus ticket back to Idaho, where he was born. Compared to other houseless residents who access Coordinated Entry, individuals who are Black, Indigenous and/or people of color, like Mr. Rhoades, are disproportionately referred to Diversion services and thus bussed out of Boulder.

154. Mr. Rhoades had difficulty navigating his Medicaid benefits after switching states, so he returned to Boulder. Again, Mr. Rhoades sought out indoor shelter. This time, he was able to stay at BSH on those nights when the weather was bad enough that the shelter made “severe weather shelter beds” available even for those who did not otherwise qualify for an overnight stay under the unconstitutional 6-month residency requirement.⁷

155. After the unconstitutional 6-month residency requirement was lifted, Mr. Rhoades again sought to stay at BSH. He slept at the shelter for several nights in September 2021, until he was banned for a code of conduct violation. Mr. Rhoades’ suspension came just before the onset of the coldest months of the year. Mr. Rhoades is still banned from staying at BSH. He therefore has no meaningful available indoor shelter in Boulder should he become houseless again.

156. On some nights when the weather was extreme, Mr. Rhoades still sought access to BSH and was turned away. For example, Mr. Rhoades made the difficult trek to BSH seeking a bed on New Year’s Eve—December 31, 2021—when the City experienced more than 4 inches of snowfall and the temperature dropped below freezing. He was turned away. At that time, Mr. Rhoades had just undergone surgery to have his finger amputated after he developed an infection while living outside.

157. Even if Mr. Rhoades were not banned from the shelter, on any given night, he would risk being denied a bed space in BSH’s lottery.

158. When Mr. Rhoades was unable to stay at the shelter, he slept in a tent on Boulder public property.

159. Mr. Rhoades has received multiple tickets under the Blanket Ban since September 2021. He received multiple of these tickets in the height of winter, and all while he was banned from BSH and ineligible to participate in the lottery for a possible indoor shelter bed. Each time

⁷ Eligibility requirements and program rules at BSH have changed since then. Severe weather shelter as Mr. Rhoades accessed it in March of 2021 is no longer available.

he was ticketed, Mr. Rhoades was ordered to appear at Boulder Municipal Court or else face issuance of a warrant for his arrest.

160. On or about January 25, 2022, Mr. Rhoades received a ticket for sheltering himself in a tent on a day when 5 inches of new snow had fallen and the temperature dropped to 21 degrees. On the same day, BSH turned at least two people away because it reached capacity.

161. When threatening or actually enforcing the Blanket Ban against him, law enforcement officers have told Mr. Rhoades to “get out of Boulder.” Mr. Rhoades feels residents experiencing homelessness are being pushed out of Boulder to protect the City’s image. He believes the City is trying to send a message that “they don’t want us here.”

162. Mr. Rhoades was at credible risk of enforcement of the Blanket Ban when he cannot access indoor shelter.

163. Mr. Rhoades was at credible risk of enforcement of the Blanket Ban for sheltering himself with items that are necessary to protect him from the elements.

164. Mr. Rhoades is at a credible risk of losing his current housing, and being again subject to enforcement of the Blanket Ban when he cannot access indoor shelter.

D. ACLU of Colorado Put the City on Notice of its Ongoing Constitutional Violations and the City Failed to Act

165. In the summer of 2021, the ACLU of Colorado (“ACLU”) cautioned the City that it was unconstitutional to enforce the Blanket Ban against its houseless residents who lack meaningful access to indoor shelter.⁸ The ACLU specifically brought to the City’s attention Chief Herold’s March BPD Directive and failure to instruct officers to consider a person’s ability to access indoor shelter before issuing a Blanket Ban ticket. The ACLU urged the City to clarify that BPD would not enforce the Blanket Ban against those unable to access shelter indoors. The City did not respond to these raised concerns.

166. On December 23, 2021, just two days before Christmas, when temperatures were beginning to drop, the ACLU again wrote to the City, this time addressing Chief Herold directly. The ACLU informed Chief Herold that BSH had reached capacity, turning more people away into the cold in a single week than it had during the entirety of the prior winter. The ACLU called on BPD to implement a moratorium on enforcement of the Blanket Ban at least until the end of winter. Rather than engage with any of the concerns raised in the letter, City Attorney Teresa Tate responded by pointing out that the Blanket Ban had not yet fallen to a constitutional challenge.

167. A representative from the ACLU then testified before City Council calling on that body to direct BPD to cease enforcement of the Blanket Ban in a manner that was actively and unconstitutionally endangering the lives of Boulder’s houseless residents.

⁸ Letter from Anna I. Kurtz, ACLU of Colorado, to Nuria Rivera-Vandermyde, City of Boulder & HSBC Executive Board, *Re: Unconstitutional Treatment of Unhoused Boulder Residents* (July 29, 2021), <https://www.aclu-co.org/sites/default/files/2021-07-29-boulder-letter.pdf>.

168. Despite ample notice of the danger, cruelty, and unlawfulness of their Blanket Ban enforcement practices, Defendants continue to enforce the challenged ordinances against houseless residents in a manner that violates the Colorado Constitution.

V. CLAIMS FOR RELIEF

FIRST CLAIM⁹

Cruel & Unusual Punishment

**Asserted by all Plaintiffs under Colo. Const., art. II, § 20 against all Defendants
and by all Plaintiffs under C.R.S. § 13-21-131(1) against Defendant Heold**

169. All paragraphs in this Complaint are incorporated herein by reference.

170. Article II, section 20 of the Colorado Constitution prohibits the infliction of cruel and unusual punishments.

171. The indoor shelter available in the City is inadequate to support the population of people experiencing unsheltered homelessness in the City, including the Individual Plaintiffs.

172. The indoor overnight shelter available in the City does not have enough beds to accommodate the number of people experiencing unsheltered homelessness in the City. Rules, restrictions, and structural realities at the shelter make it impossible, impracticable, unreasonable, and and/or unsafe for many houseless residents, including the Individual Plaintiffs, to stay there.

173. The City has extremely limited capacity for indoor daytime sheltering even on the coldest and windiest days of the year, when being outside during the day unsheltered for lengthy periods of time is unsafe.

174. A portion of the City's houseless residents, including the Individual Plaintiffs, therefore have no choice but to sleep and spend their days outdoors in the City's public spaces.

175. The Blanket Ban makes it a crime for these residents to carry out the most basic functions of survival, including sleeping and staying dry and warm.

176. When enforced by the City against houseless individuals, including the Individual Plaintiffs, when they cannot obtain indoor shelter, B.R.C. § 5-6-10 punishes houseless individuals, including the Individual Plaintiffs, by virtue of their homelessness.

177. Defendants have subjected or caused Plaintiffs to be subjected to the deprivation of their rights secured under article II of the Colorado Constitution to be free from cruel and unusual

⁹ This Court dismissed Plaintiffs claims under Colo. Const., art. II, § 20 as to the Tent Ban, Colo. Const., art. II, § 25, and Colo. Const., art. II, § 3 in an order on Defendants motion to dismiss which was entered on February 23, 2023. Plaintiffs reserve the right to appeal that order once there is final judgment in this matter, but have removed those claims from this Amended Complaint to avoid unnecessary confusion and delay going forward.

punishments. Without this Court’s intervention, Defendants will continue to subject or cause the Plaintiffs to be subjected to the deprivation of their article II rights.

178. Plaintiffs Budd, Faltynski, and Carlson are injured by the use of their taxes on the enforcement of B.R.C. § 5-6-10 in a manner that violates article II, section 20 of the Colorado Constitution.

179. Defendants’ violations of the Colorado Constitution injure Plaintiff Feet Forward.

180. Wherefore, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. To declare that, as applied to houseless individuals in Boulder when they cannot access indoor shelter, the Blanket Ban, B.R.C. § 5-6-10, amounts to cruel and unusual punishment prohibited by article II, section 20 of the Colorado Constitution;

B. To declare that Defendants, under color of law, subjected or caused Plaintiffs to be subjected to the deprivation of individual rights secured by article II of the Colorado Constitution;

C. To enter a permanent injunction prohibiting Defendants, and all persons and entities acting under their direction or on their behalf, from enforcing the Blanket Ban against houseless individuals in Boulder when they cannot access indoor shelter;

D. To award the Individual Plaintiffs nominal damages pursuant to C.R.S. § 13-21-131(1);

E. To award reasonable attorney fees and costs pursuant to C.R.S. § 13-21-131(1); and

F. To award such further and different relief as the Court may deem just and proper.

Respectfully submitted this 13th day of October 2023.

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