

THE RUTHERFORD INSTITUTE

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September 2, 2025

Via Email: council@charlottesville.gov

Charlottesville City Council
P.O. Box 911
Charlottesville, VA 22902

Re: Constitutional Concerns Regarding Proposed Ordinance to Prohibit “Unpermitted Camping on City Property”

Dear Members of the Charlottesville City Council:

As a Charlottesville-based civil liberties organization that has defended the constitutional rights of citizens against government overreach for over 40 years, The Rutherford Institute¹ is deeply concerned that the proposed ordinance banning “unpermitted camping” and personal storage on city property risks criminalizing homelessness in ways that are both unconstitutional and counterproductive.

Although we recognize the difficulties before municipalities in managing public spaces, as an *amicus* that weighed in before the U.S. Supreme Court in *City of Grants Pass v. Johnson*,² we would caution the City of Charlottesville against interpreting the Court’s ruling as a green light to adopt blanket criminalization of homelessness.

As we argued to the Court, to punish individuals for sleeping in public when they have no alternative is to punish the status of homelessness itself, not criminal conduct. The Constitution does not permit government to make it a crime to be too poor to afford shelter. The Court’s ruling in *Grants Pass*, which upheld an Oregon city’s enforcement of anti-camping laws against Eighth Amendment challenges, may give cities leeway to penalize sleeping and camping in public, *but it does not require it*.

Moreover, the ruling leaves unresolved a host of constitutional and statutory issues that local governments must consider carefully. Municipalities remain bound by the Fourth and

¹ The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Virginia, defends those whose constitutional rights have been violated. For more than 40 years, The Rutherford Institute has defended the constitutional rights of individuals and organizations from government overreach. The Institute has also sought to protect the vulnerable and those seeking to help them.

² Available at https://www.supremecourt.gov/DocketPDF/23/23-175/306570/20240403113510072_23-175%20Amicus%20Brief.pdf.

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Fourteenth Amendments and Equal Protection principles, which prohibit government from destroying property without due process or from punishing people in ways that amount to criminalizing their status. They are also bound by state and federal statutory protections.

Charlottesville’s draft enforcement protocol is especially concerning. Indeed, this proposed ordinance closely mirrors the sweeping approach encouraged by the July 2025 White House Executive Order “Ending Crime and Disorder on America’s Streets,” which authorized federal agencies to clear homeless encampments in Washington, D.C. while also encouraging municipalities nationwide to adopt similar bans.³ Such top-down measures risk transforming social crises into law-and-order crackdowns, skating dangerously close to criminalizing poverty itself.

Charlottesville’s proposed ordinance would allow police to confiscate and even destroy personal belongings from encampments. Courts have restricted localities’ ability to do this because items like ID cards, medications, and survival gear are not contraband, and taking and discarding them without proper protections can violate the Fourth Amendment and due process.⁴

Under the draft ordinance, a violation would be a Class 4 misdemeanor—no jail time, but still a criminal offense—punishable by a fine of up to \$250 under Virginia law.⁵ Staff materials indicate that property deemed an “immediate hazard” may be removed without notice, while other encampments would receive 10 business days’ notice, with seized belongings stored for up to 60 days.⁶ Even low-level offenses such as Class 4 misdemeanors can carry lasting consequences: court debt, records that impede employment and housing, and the risk of further legal entanglement if a person misses a required court date.

We recognize the legitimate concerns that motivate ordinances of this kind: the need to ensure safe, sanitary, and accessible public spaces for all residents. However, experience from other cities shows that criminalizing homelessness does not make communities safer or cleaner. Instead, it drives people into more hidden, unsafe spaces, scatters them beyond the reach of outreach workers, and increases public costs by shifting the burden to police, courts, and jails.

Beyond the law, this is a matter of policy and community values.

³ White House, “Ending Crime and Disorder on America’s Streets,” Executive Order (July 24, 2025).

⁴ *See, e.g., Lavan v. Los Angeles*, 693 F. 3d 1022, 1029 (9th Cir. 2012) (holding that a city violated homeless plaintiffs’ Fourth Amendment rights by seizing and destroying property in an encampment, because “[v]iolation of a City ordinance does not vitiate the Fourth Amendment’s protection of one’s property”).

⁵ Va. Code § 18.2-11(d) (Class 4 misdemeanors punishable by a fine of not more than \$250; no jail).

⁶ Sean Tubbs, “CPD chief wants City Council to pass ordinance to remove homeless encampments,” *C-VILLE Weekly* (Aug. 30, 2025) (reporting Class 4 misdemeanor classification; 10-business-day notice for non-immediate hazards; property storage up to 60 days; no jail time).

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Criminalizing homelessness doesn’t solve the problem — it just cycles people through arrests, fines, and displacement, likely costing the city more in litigation and policing than it would cost to invest in alternatives. Other cities have found better solutions: safe camping zones with sanitation, storage facilities for personal property, rapid re-housing programs, and partnerships with local churches and nonprofits.

Charlottesville has long prided itself on respecting civil liberties and human dignity. Unfortunately, passing this ordinance as written would put us in step with a national trend toward criminalization, rather than leadership in humane solutions.

For the reasons laid out herein, we therefore respectfully urge you to reconsider or substantially amend this ordinance. Charlottesville risks both constitutional violations and costly litigation if it proceeds without narrowly tailoring its approach.⁷

1. The *Grants Pass* ruling does not authorize criminalization of homelessness.

In *City of Grants Pass v. Johnson*, the U.S. Supreme Court held 6–3 that the Eighth Amendment’s ban on cruel and unusual punishment does not categorically bar civil fines and penalties for sleeping in public spaces.

While the Court emphasized that local governments retain broad discretion in how they regulate homelessness, the Court did not mandate criminalization, nor did it foreclose challenges under the **Fourth and Fourteenth Amendments** or under state constitutional protections.

Indeed, multiple federal courts have recognized that the seizure and destruction of unhoused individuals’ belongings without due process violates the Fourth Amendment’s protection against unreasonable seizures and the Fourteenth Amendment’s guarantee of procedural due process.⁸

⁷ *City of Grants Pass v. Johnson*, 144 S. Ct. 2202, 2243 (2024) (Sotomayor, J., dissenting) (noting that because the majority’s opinion is “confined” to the Eighth Amendment’s prohibition against cruel and unusual punishments, similar “[o]rdinances might also implicate other legal issues” and therefore “[i]t is quite possible, indeed likely, that...similar ordinances will face more days in court.”); *see also id.* at 2242 (Sotomayor, J., dissenting) (“The Court today also does not decide whether the Ordinances violate the Eighth Amendment’s Excessive Fines Clause,” though the district court had concluded that even the relatively small fines were “punitive” and “grossly disproportionate to the gravity of the offense and thus excessive.”).

⁸ *See, e.g., Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012).

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2. Justice Sotomayor’s dissent underscores the constitutional peril.

Writing for the dissent in *Grants Pass*, Justice Sotomayor warned that punishing people for the being homeless criminalizes status, not conduct, and is inconsistent with the Eighth Amendment as it inflicts further cruelty on those who have no safe shelter.⁹ As her dissent explained, “[t]he status of being homeless (lacking available shelter) is defined by the very behavior singled out for punishment (sleeping outside),” and thus “[f]or someone with no available shelter, the only way to comply with the Ordinances is to leave Grants Pass altogether.”¹⁰

The dissent highlights the danger of enacting local laws that blur the line between regulating public space and criminalizing status, and echoes earlier Supreme Court warnings that laws punishing a person’s status run afoul of constitutional protections.¹¹

Charlottesville should heed this caution—a punitive approach risks sweeping vulnerable individuals into cycles of arrest, fines, and property loss that neither reduce homelessness nor advance public safety—and avoid adopting measures that, in effect, penalize individuals simply for existing in public while homeless.

3. The Fourth Amendment protects against unreasonable seizure of property.

The proposed ordinance and draft enforcement protocol envision the seizure and disposal of personal belongings found in encampments. Courts have held that such practices without proper safeguards violate the Fourth Amendment:

- *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012): Court ruled that summary seizure and destruction of homeless individuals’ possessions was an unconstitutional seizure.
- *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1570-73, 1584 (S.D. Fla. 1992): Police practice of arresting homeless individuals and destroying their belongings violated the Fourth Amendment.

According to the City’s proposed Ordinance Sec. 17-30(b)(1), personal property found in encampments may be deemed “abandoned” and confiscated. Personal property such as identification documents, medication, bedding, and survival gear are not contraband, and their seizure compounds hardship and risks violating the Fourth Amendment.

⁹ See *id.* at 2236-37 (Sotomayor, J., dissenting).

¹⁰ *Id.* at 2234 (Sotomayor, J., dissenting).

¹¹ See *Robinson v. California*, 370 U.S. 660 (1962) (striking down a statute criminalizing the status of drug addiction).

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4. Equal Protection and Disparate Impact

Beyond the Eighth and Fourth Amendments, ordinances of this kind risk running afoul of equal protection principles where enforcement disproportionately targets unhoused persons. Indeed, even the majority in *Grants Pass* noted that “[t]he Equal Protection Clause of the Fourteenth Amendment prevents governments from adopting laws that invidiously discriminate between persons,”¹² and acknowledged that if “some cities selectively ‘enforce’ their public-camping laws only against homeless persons..., it may implicate due process and our precedents regarding selective prosecution.”¹³

Equally troubling, once the government establishes a practice of punishing people for unavoidable conditions, the precedent rarely stops with the homeless.

This is the same logic that once undergirded vague vagrancy laws — tools that were historically used to suppress not only the poor, but racial minorities, immigrants, and political dissenters. Such measures have historically been extended to target day laborers, street vendors, and even protesters who assemble in public spaces. The risk is that an ordinance meant to address one issue will become a template for eroding civil liberties more broadly.

Even facially neutral ordinances can violate the Fourteenth Amendment’s Equal Protection Clause if applied in a discriminatory manner.¹⁴ Criminalizing acts that are inseparable from the condition of being unhoused—such as sleeping in public or “camping” in public spaces when no shelter is available—raises substantial constitutional questions.

The risk is that the ordinance will essentially function as a “status crime” against homelessness, raising Equal Protection and vagueness concerns.

5. Policy and Fiscal Considerations

Cities have faced costly litigation over encampment sweeps and ordinances. Charlottesville could similarly face litigation costs outweighing any savings from enforcement.

¹² *Grants Pass*, 144 S. Ct. at 2215; *see also id.* at 2220 (“For its part, the Constitution provides many additional limits on state prosecutorial power, promising fair notice of the laws and equal treatment under them, forbidding selective prosecutions, and much more besides.”)

¹³ *Id.* at 2218 n.5.

¹⁴ *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (striking down vagrancy ordinance that permitted arbitrary enforcement against marginalized groups); *Kolender v. Lawson*, 461 U.S. 352 (1983) (invalidating a vague loitering and identification law that enabled arbitrary police enforcement).

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Additionally, studies consistently show that punitive approaches to homelessness increase costs through repeated arrests, emergency services, and incarceration, whereas supportive housing and service-based interventions reduce both human suffering and municipal expenditure.

6. Alternatives to Criminalization

As the Supreme Court acknowledged, localities retain discretion to adopt humane and constitutional solutions. Many cities have developed safe camping zones with sanitation, invested in rapid re-housing, and partnered with faith-based organizations to expand shelter capacity.

Such approaches cost less than repeated enforcement, reduce community conflict, and uphold the dignity and constitutional rights of all residents.

As Justice Sotomayor emphasized, cities are not compelled to choose punishment when humane and constitutional alternatives remain available.¹⁵ Rather than punitive measures, Charlottesville could:

- Establish **safe camping zones** with sanitation and oversight.
- Expand **rapid re-housing** and voucher programs.
- Partner with local churches and nonprofits to provide emergency shelter.
- Adopt **storage facilities or lockers** for personal property.

These alternatives uphold constitutional protections, reduce community tensions, and avoid the cycle of criminalization.

As the district court in *Grants Pass* summarized and explained:

Laws that punish people because they are unhoused and have no other place to go undermine cities' ability to fulfill this obligation [to provide safe and livable communities for all residents]. Indeed, enforcement of such 'quality of life laws' do nothing to cure the homeless crisis in this country. Arresting [or criminally charging] the homeless is almost never an adequate solution because, apart from the constitutional impediments, it is expensive, not rehabilitating, often a waste of limited public resources, and does nothing to serve those homeless individuals who suffer from mental illness and substance abuse addiction.

¹⁵ See *Grants Pass*, 144 S. Ct. at 2238-39 (Sotomayor, J., dissenting).

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Quality of life laws erode the little trust that remains between homeless individuals and law enforcement officials. This erosion of trust not only increases the risk of confrontations between law enforcement and homeless individuals, but it also makes it less likely that homeless individuals will cooperate with law enforcement. Moreover, quality of life laws, even civil citations, contribute to a cycle of incarceration and recidivism. Indeed, civil citations requiring appearance in court can lead to warrants for failure to appear when homeless people, who lack a physical address or phone number, do not receive notice of relevant hearings and wind up incarcerated as a result. Moreover, unpaid civil citations can impact a person's credit history and be a direct bar to housing access in competitive rental markets where credit history is a factor in tenant selection. In this way, civil penalties can prevent homeless people from accessing the very housing that they need to move from outdoor public spaces to indoor private ones.

There are many options available to Grants Pass to prevent the erection of encampments that cause public health and safety concerns.... The Court reminds governing bodies of the importance of empathy and thinking outside the box. We must try harder to protect our most vulnerable citizens. Let us not forget that homeless individuals are citizens just as much as those fortunate enough to have a secure living space.¹⁶

Conclusion

As both our amicus brief and Justice Sotomayor’s dissent in *Grants Pass* made clear, nothing in the Constitution requires localities to criminalize homelessness, and the City should reject policies that inflict punishment where compassion and constitutionally sound alternatives exist.

To this end, the City of Charlottesville should not rush to adopt an ordinance that risks criminalizing homelessness.

While *Grants Pass* narrowed the scope of Eighth Amendment protections, it left intact substantial Fourth, Fourteenth, and Equal Protection guarantees. Enforcement protocols that permit property seizure and punishment of unavoidable conduct are constitutionally vulnerable and fiscally imprudent.

¹⁶ *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL (D. Or. Jul 22, 2020) (slip op., at 34-35), *rev’d sub nom. City of Grants Pass v. Johnson*, 144 S. Ct. 2202 (2024).

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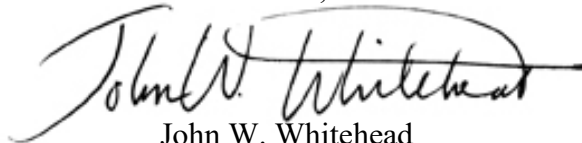
Charlottesville has an opportunity to demonstrate that constitutional rights, public health, and community safety are not mutually exclusive. By rejecting punitive approaches in favor of humane solutions, the City can address residents’ concerns without setting dangerous precedents that erode liberty for all.

For these reasons, we respectfully urge the Council to reject or substantially revise the proposed ordinance.

True public safety is not achieved by moving vulnerable people out of sight, but by addressing root causes, protecting civil liberties, and ensuring that no one is punished simply for the unavoidable reality of being unhoused.

We would be pleased to discuss these constitutional concerns further as the City hopefully considers humane, lawful alternatives that respect the rights and dignity of all Charlottesville residents.

For freedom,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

John W. Whitehead
President

The Rutherford Institute