

May 12, 2022

Dear President Reed and members of the Board of Alderman:

We are a coalition of local civil rights law firms and legal aid organizations whose work includes legal services and representation for unhoused St. Louisans. On April 29, 2022, Board Bill 14 was introduced to prohibit living in tents on public land and in right of ways in St. Louis. Beyond the concerns we have regarding the human toll of this legislation, we write to express our legal concerns with Board Bill 14 and its infringement upon our most vulnerable residents' civil rights.

As recently discussed in the May 4 Public Safety Committee Hearing, there are several legal implications regarding Board Bill 14 that counsel against enacting this proposed law. Prior decisions bearing on this issue include the consent decree in *Graham v. Schoemehl*, the Ninth Circuit's decision in *Boise v. Martin*, and a federal district court's recent opinion in *Frank, et al. v. City of St. Louis*.

In *Graham v. Schoemehl* (1985), the City of St. Louis entered into a consent decree with a class of unhoused residents.¹ The consent decree recognized that the City has a duty to "relieve, maintain and support homeless poor persons who inhabit the City of St. Louis[.]"² This is a continuing duty that exists 24 hours per day every day of the year.

This consent decree remains binding today and imposes obligations on the City to maintain and support unhoused individuals, rather than routinely displacing and criminalizing them. If passed into law and enforced consistent with the broad language of the ordinance, we believe that Board Bill 14 would run afoul of the consent decree and place the City in a precarious legal position.

In *Boise v. Martin*, the Ninth Circuit barred the City of Boise, Idaho from enforcing an ordinance that criminalized camping in the city.³ In its reasoning, the court held that it was a violation of the Eighth Amendment for a city to criminalize the use of "any of the streets, sidewalks, parks or public places as a camping place at any time[.]"⁴

The *Boise* court reasoned that "as long as there is no option of sleeping indoors, the government cannot criminalize indigent homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter."⁵ It held that it would be a violation of the Eighth Amendment to criminalize the state of being "homeless in public places" when such conduct was unavoidable.⁶ Importantly, when the City of Boise sought judicial review by the United States Supreme Court, the Court denied their request allowing the ruling to stand as binding and active law.⁷

¹ *Graham, et al. v. Schoemehl Jr., et al.*, No. 22854-00035 (Mo. Cir. Ct. Nov. 15, 2022)

² *Id.*

³ *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)

⁴ *Id.* at 603.

⁵ *Id.* at 617.

⁶ *Id.*

⁷ *City of Boise, Idaho v. Martin*, 140 S. Ct. 674 (2019)

This ruling is particularly on point here where Board Bill 14 attempts to prohibit camping in specific places throughout the entirety of the City of St. Louis. As advocates who have attempted to assist individuals with finding shelter beds, we remain skeptical of any claims that the City consistently has sufficient available shelter beds for all unhoused residents. Further, while the proposed board bill is silent on how exactly it will be enforced, prior experience suggests that those residents who refuse to leave these public spaces will be forcibly removed, under threat and use of criminal enforcement mechanisms, for merely engaging in the life-sustaining activity of residing and sleeping in a temporary tent shelter.

The United States District Court for the Eastern District of Missouri recently applied the *Boise* holding in *Frank, et al. v. City of St. Louis*.⁸ There, a group of unhoused residents living in a tent encampment in Poelker Park across from City Hall in downtown St. Louis sued to prevent the closure of that encampment arguing it violated their Eighth Amendment rights under a similar rationale as the one applied in *Boise*.

While the residents did not prevail in seeking injunctive relief to stop the sweep at that time, the court specifically applied the *Boise* holding to the City's plan to close the encampment. The Court explained why *Boise* would not apply to the City's actions in sweeping the Poelker Encampment on that occasion, holding, "it is not at all clear that the City is criminalizing homelessness anywhere, even at downtown encampments."⁹ The court also held it was unclear whether or not the City of St. Louis had enough available shelter beds at the time the lawsuit was filed.¹⁰ In part due to that uncertainty, and representations by the City that there were available shelter beds, the court did not grant emergency relief to the residents.

Board Bill 14 would drastically change the legal calculus used by the court in examining the Poelker Encampment closure. First, the proposed law specifically provides that tent camping would be prohibited throughout the entirety of the City. By comparison, the Court in *Frank* did not find the City was prohibiting tent camping at any location in the City, including Poelker Park, at the time of the litigation.

Secondly, because the language of the proposed law constitutes a prohibition on camping in the City but does not specify a punishment, any violation of the law would be punished under City of St. Louis Municipal Code Sec. 1.12.010. This general punishment section allows for both monetary fines and incarceration when any section of the code is violated.

If Board Bill 14 is passed, the City would be codifying a law that allows for unhoused residents living in tents to be criminally punished. This new law would be in direct contravention to the logic of the *Frank* holding, as well as other well-established federal precedent.

Lastly, as explained above, we remain skeptical that St. Louis has enough available shelter beds at any particular time for all of the unhoused residents living here. This problem will continue to be exacerbated by the increasing costs of housing and rise in evictions in St. Louis. Unlike the

⁸ *Frank v. City of St. Louis*, 458 F. Supp. 3d 1090 (E.D. Mo. 2020)

⁹ *Id* at 1094.

¹⁰ *Id* at 1095.

residents in *Frank* who were not able to persuade the court of the unavailability of shelter beds within a truncated timeframe in an emergency lawsuit, a minimal level of investigation will likely demonstrate there are not enough available and accessible shelter beds at any given time to accommodate all of St. Louis' unhoused residents.

We caution the Board of Alderman that if Board Bill 14 is passed, City residents will have their civil rights infringed upon and the City will open itself up to liability for such violations. As such, we urge the Board of Alderman to consult the legal sources cited in this letter and refrain from passing any law that further harms and criminalizes our unhoused neighbors.

Sincerely,

American Civil Liberties Union of Missouri
ArchCity Defenders, Inc.
Metropolitan St. Louis Equal Housing and Opportunities Council
Roderick & Solange MacArthur Justice Center
Saint Louis University Legal Clinics