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Maris Herold, Chief of Police
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

December 23, 2021

SENT VIA ELECTRONIC MAIL: heroldm@bouldercolorado.gov

Re: Moratorium on Enforcement of Boulder Revised Code §§ 5-6-10 & 8-3-21

Dear Chief Herold:

It has come to the attention of the ACLU of Colorado ("ACLU") that as temperatures have dropped, Boulder Shelter for the Homeless ("BSH") has hit capacity night after night and has needed to turn away unhoused Boulder residents looking for a place to escape the cold.¹ The alarming figures show that in the last week alone, BSH "has turned away more people due to capacity than in all of last winter."² And those numbers were last updated before this winter had even started.³ Now that the year's coldest season is officially underway, and the City can have no doubt that many of its residents will be forced to sleep outside on a nightly basis, the ACLU calls on the Boulder Police Department ("BPD") to implement a moratorium on enforcement of the so-called "camping" ban, B.R.C. § 5-6-10, and the ban on tents on city property, B.R.C. § 8-3-21, at least until the end of winter. Using these measures to criminalize people for surviving outside when they have nowhere else to go is cruel, dangerous, and unconstitutional.

As you know, this summer, the ACLU cautioned the City of Boulder that it plainly violates the Constitution to punish people for sleeping outside when they lack

¹ John Herrick, *As Winter Arrives, Boulder's Largest Shelter Hits Capacity*, Boulder Reporting Lab (Dec. 22, 2021), https://boulderreportinglab.org/2021/12/22/as-winter-arrives-boulders-largest-shelter-hits-capacity/?utm_medium=email&mc_cid=dc43de691&mc_eid=a373c2d941.

² *Id.*

³ Shelter Utilization Dashboard, City of Boulder (last updated December 16, 2021), <https://bouldercolorado.gov/shelter-utilization-dashboard>.

meaningful access to indoor shelter.⁴ We repeat that warning here: “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

In the past, the City has defended aggressive enforcement of its camping ban by citing the persistence of unused beds at BSH, leveraging that data to advance a harmful narrative that the people on Boulder’s streets are “service resistant” and voluntarily unhoused.⁶ But as we pointed out last summer, empty shelter beds were a product of Boulder’s policies of exclusion, not the personal choices of its unhoused residents. Indeed, Homeless Solutions for Boulder County (“HSBC”) had been unconstitutionally conditioning access to shelter on six months’ prior residency in Boulder County until it received the ACLU’s cautionary letter and reversed course.⁷ No longer skewed by HSBC’s discriminatory policy, the City’s data on BSH turn-aways now reflects what has long been true: shelter capacity in Boulder is woefully inadequate to meet community need.

Wielding the criminal law to punish people for acts of survival, like sleeping under a tent⁸ or deploying shelter as minimal as a blanket or sleeping bag,⁹ will do nothing to alleviate houselessness in Boulder. We know the opposite is true: these failed practices have been shown to funnel people deeper into the cycle of criminalization that traps people living in poverty, and to isolate already-vulnerable individuals from service providers, community, and safety.

This week began with National Homeless Person’s Memorial Day, when Boulder community members gathered at the bandshell to mourn their unhoused neighbors who died this year. On the same day, the community finally received answers regarding the

⁴ Press Release, ACLU of Colorado, *ACLU of Colorado Cautions Boulder: Stop Mistreating Unhoused Residents* (July 29, 2021), <https://www.aclu-co.org/en/press-releases/aclu-colorado-cautions-boulder-stop-mistreating-unhoused-residents>.

⁵ *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 674 (2019); *accord Warren v. Chico*, No. 2:21-CV-00640, 2021 U.S. Dist. LEXIS 128471 (E.D. Cal. July 8, 2021); *McArdle v. City of Ocala*, No. 5:19-cv-461, 2021 U.S. Dist. LEXIS 26849 (M.D. Fla. Feb. 8, 2021); *People v. Wiemold*, 19CV30889 (Larimer Dist. Ct. Feb. 4, 2021); *Phillips v. City of Cincinnati*, 479 F. Supp. 3d 611 (S.D. Ohio Aug. 13, 2020); *Cobine v. City of Eureka*, 250 F. Supp.3d 423 (N.D. Cal. April 25, 2017); *Anderson v. City of Portland*, No. 08-1447-AA, 2009 U.S. Dist. LEXIS 67519 (D. Or. July 31, 2009); *Pottinger v. Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

⁶ Shay Castle, *Boulder’s Homelessness Language to Get Critical Look*, Boulder Beat (Jan. 23, 2021), <https://boulderbeat.news/2021/01/23/a-look-at-boulders-language-on-homelessness/>.

⁷ Deborah Swearingen, *Homeless Solutions for Boulder County Backtracks on Six-Month Residency Requirement*, Boulder Daily Camera (July 29, 2021), <https://www.dailycamera.com/2021/07/29/aclu-argues-boulders-treatment-of-unhoused-is-unconstitutional/>.

⁸ B.R.C. § 8-3-21.

⁹ B.R.C. § 5-6-10.

heartbreaking and horrifying deaths of Jessica Aldama and her baby—during childbirth, in an isolated encampment, just one month after BPD cited Jessica under B.R.C. §§ 5-6-10 and 8-3-21 for sheltering in a tent.¹⁰ If any good can come of tragedy, then these unacceptable losses must be a wake-up call to the City that treating our unhoused neighbors as criminals can be deadly.

The ACLU of Colorado calls on you immediately to declare a moratorium on the unconstitutional, dangerous, and morally untenable enforcement of B.R.C. §§ 5-6-10 and 8-3-21 against those who will be forced to survive outside this winter in Boulder's cold. I would appreciate your response to this urgent matter no later than close of business tomorrow, December 24, 2021.

Sincerely,



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¹⁰ Shay Castle, *Report: Jessica Aldama Died After Stillborn Delivery in Homeless Encampment*, Colorado Newslane (Dec. 22, 2021), <https://coloradonewslane.com/2021/12/22/report-jessica-aldama-died-after-stillborn-delivery-in-homeless-encampment/>.