

**DOUGLAS COUNTY  
PUBLIC DEFENDER**

**THOMAS C. RILEY**  
1717 HARNEY STREET  
ROOM 500  
OMAHA, NEBRASKA 68183

Mr. Mayor and Members of the Omaha City Council,

I write you today to express my opposition to Proposed Ordinance 44395 entitled "Unauthorized Encampments on Public Property".

I was first made aware of this proposal through a phone call from City Attorney Matt Kuhse, for whom I have great respect. He asked me to think about this proposal as one possible method of addressing the thorny problem of homelessness in Omaha.

As I read the proposal, a violation of this ordinance can result in a fine and or a jail sentence of up to 30 days. As most of you know, if a person is arrested and charged with an offense that carries the possibility of a jail sentence, the accused has a Constitutional right to the assistance of counsel, and if indigent, Court appointed counsel, most frequently, a lawyer from the Douglas County Public Defender's Office.

While there likely will be Constitutionally based challenges to the proposed ordinance, I will address the practical realities that will result if this ordinance is passed.

When police charge someone with a violation of this proposed ordinance, they have the discretion to either issue a citation or to arrest the individual and book him/her into the County Jail.

If the individual receives a citation, the citation will include a court date for that person to appear for arraignment. Given that many of those who will be subject to prosecution under this proposal suffer from mental health and substance abuse issues, I suspect that a significant number will fail to appear for arraignment which will result in a warrant being issued for their arrest and possibly an additional charge of failure to appear, which carries the possibility of an additional jail sentence.

In cases where the individual is booked into jail, the accused will be brought to Court for arraignment at which time the accused can either plead guilty, without assistance of counsel, or plead not guilty at which time a lawyer will be appointed to represent him or her. The Court will also set a bond requiring either a cash bond or releasing the person on their own recognizance. Obviously, if a cash bond is required, the accused will likely not have the funds to post bond and remain in jail until the case is resolved.

In cases where the accused is not in jail, I foresee a significant problem for our staff to contact the individual as they likely have no cell phone, email, or home address. Once again there will be a considerable likelihood of a failure to appear for Court hearings, triggering an arrest warrant, and possible additional charge of failure to appear.

When I mention my concern of an accused not making it to a Court appearance, I am by no means implying that the accused would be thumbing his/her nose at the court. More likely, because of their life situation, their failure to appear will be caused by a lack of communication or follow up by our office in cases where we cannot reach or communicate with the individual.

Additionally, in cases that proceed to court and result in a conviction, it is possible that the Court could sentence the accused to a period of supervised probation. While at first blush this seems like a good result, the fact remains that any failure to comply with terms of probation, many of which could be nearly

impossible for this client demographic to successfully achieve, could result in a violation of probation and a possible jail sentence.

Even if the proposal were to eliminate the jail time provision, the imposition of a fine and subsequent failure to pay it could also result in a warrant and possible jail time.

Unfortunately, there is no simple solution to the problem of homelessness. I do not believe that the criminal justice system is the appropriate response to this problem. I firmly believe that no one is proposing or supporting this ordinance with a callous disregard for the humanity of the homeless population. That said, policy makers, and frankly all of us in the system, need to get our heads together and come up with some novel ideas on how to address this problem without criminal justice consequences.

Sincerely,

A handwritten signature in cursive script that reads "Thomas C. Riley". The signature is written in dark ink and is positioned above the printed name.

Thomas C. Riley