



October 17, 2025

Dear Council Members,

We are writing to supplement our testimony regarding the proposed amendments to Ordinance 44395. There was discussion at the meeting that is now reflected in press coverage indicating that an amendment to provide for a problem-solving court or diversion program to address the issue of homelessness/encampments in Omaha is being proposed as part of this ordinance to criminalize homelessness. The amendment draft itself reflects only a diversion program.

This discussion of a problem-solving court and the immediate inclusion of a diversion program, which both utilize supportive and rehabilitative services, is itself an acknowledgement that criminalization is the wrong response to ameliorate the conditions of homelessness. Furthermore, these proposals may seek to assuage the concerns of the community that this ordinance is inhumane, but it is simply not within the purview of the Council to establish a problem-solving court, and diversion programs require funding and staffing, so any reassurance is illusory.

It would be much simpler and more fiscally responsible to NOT criminalize homelessness and continue to develop intervention and support, instead of creating a crime and then seeking a rehabilitative approach, which is what the amended ordinance (made available on October 15th) seeks to do. There is only vague language stating that assisting agencies will offer services and support prior to prosecution, but nonetheless the fear of a fine or jail time then hangs over the head of those experiencing homelessness if they are unable to work with services. During the hearing on September 23, 2025, multiple agencies explained the resources already in place to assist **without the expense of involving law enforcement, the Mayor's office, and the courts.** Service providers expressed a clear desire to work in conjunction with the City Council to find workable solutions that do not involve criminalizing those who are experiencing poverty. We again urge the Council to thoughtfully and specifically consider those solutions, including increasing funding for those agencies as they are already often full and have to turn away those seeking help.



Additionally, we direct your attention to existing crimes in the Omaha City Code and in State statute that provide for adequate criminal sanction for criminal activities that many associate with homelessness.

A Problem-Solving Court is not a realistic option

Problem-Solving Courts in Nebraska are governed by the Nebraska Supreme Court Committee on Problem-Solving Courts. Article 12 § 6-1201 of the Supreme Court Rules explicitly states “[p]roblem-solving courts shall exist and be established **only upon approval of the Nebraska Supreme Court.**” (emphasis added). We are not aware of any formal discussion between the City of Omaha; the City Council of Omaha; or any other representative and the Supreme Court Committee to establish the concept, vision, parameters, or feasibility of a problem-solving court for homelessness. We are not aware of any indication that the Douglas County Judges have the capacity to facilitate a problem-solving court for the proposed crimes of homelessness. Misdemeanors are generally handled in County Court and most, if not all, problem-solving courts in Nebraska are based in a District Court. At this time, the Douglas County Court does not operate ANY problem-solving court program: these are all done in Douglas County District Court.

Bluntly stated, many people are homeless because they do not have enough money or income to have a home. A problem-solving court will not provide more money for people who do not have it. As a matter of practice, problem-solving courts are funded, in part, by the participants as a requirement which is being increasingly emphasized as programs evolve.

Existing criminal penalties are sufficient

We would also point out that current existing city ordinances and state law provide for ample criminal sanctions for the conduct that is intended to be targeted by the proposed city ordinance.

There are various provisions of the Omaha City Code that already criminalize trespass and related offense:



- Section 20-154 prohibits **trespass** and makes it unlawful for any person purposely or knowingly to enter or be upon the property of another person without being invited, licensed or privileged to do so.
- Section 20-42 prohibits **disorderly conduct** and makes it unlawful for any person purposely or knowingly to cause inconvenience, annoyance or alarm or create the risk thereof to any person by: (a) Engaging in fighting, threatening or violent conduct; or (b) Using abusive, threatening or other fighting language or gestures.
- Section 20-43 creates the crime of **failure to disperse** and makes it unlawful for any person purposely or knowingly to fail or refuse to obey an official order to disperse if the person is (a) Participating in a course of disorderly conduct with two or more persons; (b) In the immediate vicinity of any disorderly conduct; or (c) **At any outside location** after 1:00 a.m. and before 6:00 a.m. in the vicinity of or as part of any group creating a disturbance of the peace or unreasonable noise.
- There are multiple city ordinances that criminalize objectionable behavior associated with homeless encampments, including: **littering on street or roadway** in violation of Section 36-139; **lewd conduct** in violation of Section 20-112, **indecent exposure** in violation of Section 20-114 (notably, Omaha City Code provides for a ban-and-bar process in Section 20-111 if such lewd conduct or indecent exposure occurs in a park owned or operated by the City of Omaha); and related ordinance violations.

Additionally, there are provisions in state statute that criminalize much, if not all, of the conduct targeted by this proposed ordinance:

- A person commits **Second Degree Criminal Trespass** if they are on premises knowing they are not to be, in violation of *Neb. Rev. Stat. § 28-521*, which punishable as a Class III misdemeanor (0 to 3 months imprisonment, 0-\$500 fine, or both) or if notice of trespass is personally given to them, as a Class II misdemeanor (0 to 6 months imprisonment, 0-\$1000 fine, or both).



- A person can violate state law for trespassing on state-owned property, even if such property is open to other members of the public. *See, State v. Kalita*, 317 Neb. 906, 12 N.W.3d 499 (2024).
- A person commits **First Degree Criminal Trespass** if they enter or remain in any building or structure on property on which they are not permitted to be on, in violation of *Neb. Rev. Stat. § 28-520*, which is punishable as a Class I misdemeanor (0-1 year imprisonment, 0-\$1000 fine, or both).
- A person commits **Disturbing the Peace** if they intentionally disturb the peace and quiet of any person, family, or neighborhood, in violation of *Neb. Rev. Stat. § 28-1322*, which is punishable as a Class III misdemeanor (0-3 months imprisonment, 0-\$500 fine, or both).
 - A person can violate state law prohibiting disturbing the peace by being on public or private property: on a sidewalk (*State v. Broadstone*, 233 Neb. 595, 447 N.W.2d 30 (1989)); at a public school (*In re Interest of Elainna R.* 298 Neb. 436, 904 N.W. 2d 689 (2017)); or any place in public.
- And, similar to the Omaha City Code, there are multiple state laws that criminalize objectionable behavior associated with homeless encampments, including: public indecency (*Neb. Rev. Stat. § 28-806*); littering on public or private property (*Neb. Rev. Stat. § 28-523*); drug use or possession (*Neb. Rev. Stat. § 28-416*); possession of drug paraphernalia (*Neb. Rev. Stat. § 28-441*); theft offenses (*Neb. Rev. Stat. §§ 28-509 to 518*); and other crimes.

A fundamental problem with enacted crimes that are duplicative of existing crimes is that it will provide for common scenarios in which those who violate the new offense will almost in every circumstance also be committing existing crimes. This will mean offenders will be cited, and possibly charged with multiple offenses, resulting in the “stacking” of charges. This is problematic and simply unfair since those impacted by this law, will almost exclusively be the poor. That is

what is fundamentally misguided about the proposed ordinance intent to criminalize homelessness. Laws that make it a crime to be homeless waste money, make communities less safe, and make it harder to solve homelessness.

We urge the Council to not enact the proposed amended ordinance.



Sincerely,

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