

**State Headquarters**

2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
E-mail aclu@aclumich.org
www.aclumich.org

Legislative Office

115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
E-mail aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office

1514 Wealthy St. SE, Suite 260
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

October 14, 2026

Via email

Amy Shamroe, Mayor
Laura Ness, Mayor Pro Tem
Jackie Anderson, Commissioner
Lance Boehmer, Commissioner
Kenneth M. Funk, Commissioner
Heather Shaw, Commissioner
Mitchell Treadwell, Commissioner
City of Traverse City
400 Boardman Ave
Traverse City, MI 49684

Re: Unlawful Draft Prowling and Trespass Ordinances

Dear Mayor Shamroe, Mayor Pro Tem Ness, and City Commissioners:

The ACLU of Michigan (“the ACLU”), the Michigan Coalition Against Homelessness, and the National Homelessness Law Center strongly oppose Traverse City’s draft prowling and trespass ordinances. The draft ordinances, if adopted, would undermine the constitutional rights of everyone who uses the parks—housed and unhoused individuals alike.

This, unfortunately, is not the first time that some of us have had to speak out against similar ordinances that, however they might be intended, will inevitably and predictably be used disproportionately against unhoused people. The City proposed a similar anti-prowling amendment over a year ago, only to abandon it after opposition from the ACLU’s Northwest Michigan Lawyers’ Committee and after several Commissioners voiced concern about them. We were therefore surprised and disappointed when the City not only revived the anti-prowling ordinance but also did so without notifying us. Worse still, the City has coupled the (still constitutionally problematic) prowling ordinance with a trespass ordinance that raises significant additional constitutional concerns.

Make no mistake: The ACLU opposed the draft prowling ordinance last year, we oppose the draft prowling and trespass ordinances now, and we will continue to oppose the City’s treatment of our unhoused neighbors as problems to be policed instead of community members to be served. Today, we further join with the Michigan Coalition Against Homelessness and the National Homelessness Law Center to demand that the City Commission abandon these patently unlawful ordinances once and for all.

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I. Correcting the record: The ACLU of Michigan never signed off on the proposed ordinances.

Because there has been some public confusion about the ACLU's involvement in the proposed ordinances, we begin by clarifying the facts. In September 2024, Traverse City Police Chief Matthew Richmond proposed a prowling ordinance, along with loitering and public consumption ordinances, as part of a "safety plan" related to Safe Harbor's transition to a year-round emergency shelter.¹ On December 16, 2024, after several Commissioners expressed concerns about the ordinance amendments, the Commission decided to take no action on them.

On January 7, 2025, the ACLU sent the Commission a letter detailing several First and Fourteenth Amendment issues with the proposed prowling and loitering ordinances.² Subsequently, and in light of our January 7 letter, City Attorney Lauren Tribble-Laucht offered us the opportunity to provide feedback on a revised version of the prowling ordinance that had not yet been introduced to the City Commission.³ We responded that the revision suffered many of the same constitutional defects as before and several new ones.⁴ We also asked to be informed if the ordinance would be presented again so we could formally express our concerns to the Commission.⁵ By way of response, in April 2025, Ms. Tribble-Laucht indicated that the City was no longer planning to pursue the prowling ordinance.⁶

The ACLU first learned that the City had re-introduced the prowling ordinance after several community partners contacted us to ask why we had signed off on it. Their confusion

¹ See Memorandum from Lauren Tribble-Laucht, City Attorney, City of Traverse City, to Elizabeth Vogel, City Manager, City of Traverse City (Oct. 8, 2024) (on file with author).

² Letter from Nw. Mich. Laws.' Comm. of the ACLU of Mich. to Bd. of Comm'r, City of Traverse City (Jan. 7, 2025) (on file with author).

³ E-mail from Lauren Tribble-Laucht, City Attorney, City of Traverse City, to Michael Naughton, Chair, Nw. Mich. Laws.' Comm. of the ACLU of Mich. (Feb. 26, 2025, at 2:49 PM ET) (on file with authors).

⁴ See E-mail from Holly Hillyer, Member, Nw. Mich. Laws.' Comm. of the ACLU of Mich., to Lauren Tribble-Laucht, City Attorney, City of Traverse City (Apr. 3, 2025, at 8:29 AM ET) (on file with authors).

⁵ See *id.*

⁶ See E-mail from Lauren Tribble-Laucht, City Attorney, City of Traverse City, to Holly Hillyer, Member, Nw. Mich. Laws.' Comm. of the ACLU of Mich. (Apr. 17, 2025, at 10:27 AM ET) (on file with authors).

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apparently stemmed from Chief Richmond’s statements that the ordinance now reflects “feedback from . . . the ACLU.”⁷ Although he noted that we had informed the City that we remained concerned about the language, some understood him or the media reports of his remarks to mean that we collaborated with the City to develop the prowling ordinance. We did no such thing. The City has not contacted us about the prowling ordinance since we objected to the revisions over a year ago, at which time Ms. Tribble-Laucht assured us that the City was “not going to proceed” with it.⁸

We take this opportunity to clarify that we had no hand in reviving the draft prowling ordinance.

II. The draft prowling ordinance raises three serious constitutional concerns.

When the City first introduced an anti-prowling ordinance in late 2024, it left the term “prowling” entirely undefined.⁹ The revised draft ordinance includes a definition, but one that simply creates confusion. Instead of prohibiting specific, identifiable conduct, the City proposes to define “PROWL” as “willfully lurking about, lying in wait or moving stealthily about private property as if in search of prey or plunder.”¹⁰ Such arcane and opaque language belongs in the history books, not the municipal code.

The City has also added what we will call an “explain-yourself” provision, which subjects someone to “an arrest” unless they can “dispel any alarm or immediate concern which would otherwise be warranted” after an officer “request[s] the person to identify himself or

⁷ City of Traverse City City Commission - 10/5/2026, at 01:52:44–01:52:52 (Traverse Area Cmty. Media, Oct. 5, 2026), <https://www.tacm.tv/watchgovtv.asp?trid=5819>; *see also* Memorandum from Matt Richmond, Police Chief, Chief of Police, City of Traverse City, to Benjamin Marentette, City Manager, City of Traverse City (Sept. 27, 2026) (on file with author).

⁸ *See* E-mail from Lauren Tribble-Laucht, City Attorney, City of Traverse City, to Holly Hillyer, Member, Nw. Mich. Laws.’ Comm. of the ACLU of Mich. (Apr. 17, 2025, at 10:27 AM ET) (on file with authors).

⁹ *See* Memorandum from Lauren Tribble-Laucht, City Attorney, City of Traverse City, to Elizabeth Vogel, City Manager, City of Traverse City (Oct. 8, 2024) (on file with author).

¹⁰ Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/>.

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herself and explain his or her presence and conduct.”¹¹ The officer has sole authority to evaluate the explanation given and decide whether to proceed with an arrest.¹²

The new provisions are just as unacceptably vague under the Fourteenth Amendment as the anti-prowling ordinance we opposed last year. And just like the previous version of the ordinance that was abandoned in April 2025, the revisions raise additional concerns under the Fourth and Fifth Amendments.

a. Fourteenth Amendment (Vagueness)

Under the Fourteenth Amendment, the government may not “deprive any person of life, liberty, or property, without due process of law.”¹³ Implicit in the Due Process Clause is the void-for-vagueness doctrine, which requires that laws provide “notice that will enable ordinary people to understand what conduct [they] prohibit[]” and standards to prevent arbitrary and discriminatory enforcement.¹⁴ A law that fails on either front is unconstitutionally vague.¹⁵

The City has not cured the vagueness problems that we identified in our prior letter. Although the revised ordinance now defines “prowling,” it does so using inscrutable language, introducing the very ambiguity that the void-for-vagueness doctrine is meant to prevent. Consider, for example, the phrase “as if in search of prey or plunder.”¹⁶ Under the draft ordinance, a person need not actually be “in search of prey or plunder” to be arrested for “prowling,” so long as they act “*as if*” they are.¹⁷ The draft ordinance provides no sense of what specific behaviors will lead officers to perceive them that way.¹⁸

¹¹ *Id.*

¹² *See id.*

¹³ U.S. Const. amend. XIV.

¹⁴ *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion).

¹⁵ *See id.*

¹⁶ Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/>.

¹⁷ *Id.*

¹⁸ *Id.*

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The same goes for the phrase “after dark.”¹⁹ How dark is “dark?” When does “dark” begin and end? We recognize that “due process does not require ‘impossible standards’ of clarity,” but “this is not a case where further precision in the [ordinance’s] language is either impossible or impractical.”²⁰

The draft ordinance is so ambiguous that it, in essence, empowers officers to stop and arrest anyone they deem suspicious, and unhoused people are all too often stereotyped that way. Studies show that they are associated with “stigmatized descriptors (e.g., mentally ill, intimidating, dirty, smelly) and behaviors (e.g., substance use, crime, theft, violence).”²¹ As a result, they “are disproportionately at-risk for being arrested or cited a violation for activities compared to persons who appear housed, including for lying in a park or standing in a particular location.”²² Anti-unhoused prejudice already pervades law enforcement,²³ and the draft ordinance gives officers so much leeway that regardless of their best intentions, implicit bias will almost inevitably shape their enforcement decisions.

What is more, empowering officers with such unchecked discretion can only exacerbate the racial disparities in the criminal legal system. It is well known that over-policing “fall[s] disproportionately on Black, Indigenous, and Hispanic populations.”²⁴ Unsurprisingly, people of color who are *also* unhoused are uniquely vulnerable to police harassment.²⁵ The draft ordinance practically invites that abuse by leaving it to officers to define what it means to act “as if in

¹⁹ *Id.*

²⁰ *Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (quoting *United States v. Petrillo*, 332 U.S. 1, 7–8 (1947) (internal citation omitted)).

²¹ Shirley V. Truong, “Please Do Not Feed the Homeless:” The Role of Stereotyping and Media Framing on the Criminalization of Homelessness 70 (Dec. 2012) (Ph.D. dissertation, University of California Santa Cruz) (on file with author).

²² Sarah L. Canham et al., *A Scoping Review of the Experiences and Outcomes of Stigma and Discrimination towards Persons Experiencing Homelessness*, 2024 Health & Soc. Care in the Cmty. 1, 7 (2024).

²³ See, e.g., *id.*; Deann Gayman, *Study Finds Minority Homeless Youth More Likely to Be Stopped by Police*, Neb. Today (May 23, 2018), <https://news.unl.edu/article/study-finds-minority-homeless-youth-more-likely-to-be-stopped-by-police>.

²⁴ M. Mahmoudi et al., *Fatal Police Violence by Race and State in the USA, 1980–2019: A Network Meta-Regression*, 398 Lancet 1239, 1239 (2021) (discussing police fatalities).

²⁵ Canham et al., *supra* note 22, at 8.

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search of prey or plunder,” “furnish[ing] a convenient tool for ‘harsh and discriminatory enforcement . . . against particular groups deemed to merit their displeasure.’”²⁶ The void-for-vagueness doctrine bars laws that authorize officers to act so arbitrarily.

Our vagueness objections do not end there, as the explain-yourself provision also introduces constitutionally problematic ambiguity. In *Kolender v. Lawson*, 461 U.S. 352 (1983), the Supreme Court struck down a similar requirement. The statute at issue in *Kolender* imposed a misdemeanor on anyone who “loiters or wanders . . . and who refuses to identify himself and to account for his presence . . . if the surrounding circumstances . . . indicate . . . that the public safety demands such identification.”²⁷ The statute, the Court reasoned, “require[d] that ‘suspicious’ persons satisfy some undefined identification requirement, or face criminal punishment.”²⁸ Officers had “full discretion . . . to determine whether the suspect ha[d] provided a ‘credible and reliable’ identification.”²⁹ The Court deemed the statute unconstitutionally vague, emphasizing that it “entrust[ed] lawmaking ‘to the moment-to-moment judgment of the policeman on his beat.’”³⁰

The City’s explain-yourself provision is no better. Like the statute in *Kolender*, it empowers officers to stop people who seem “suspicious” and demand that they “account for their presence” under threat of arrest.³¹ And like the statute in *Kolender*, it contains no standards to guide an officer’s determination of whether an explanation adequately “dispel[s] [their] alarm or immediate concern.”³² For the same reasons as in *Kolender*, then, the explain-yourself provision is unconstitutionally vague.

²⁶ *Kolender*, 461 U.S. at 360 (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 n.10 (1972)).

²⁷ *Id.* at 353 n.1 (quoting Cal. Penal Code § 647(e)).

²⁸ *Id.* at 361.

²⁹ *Id.* at 360.

³⁰ *Id.* (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)).

³¹ *Id.*

³² Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/>.

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Were there any doubt, the U.S. Court of Appeals for the Eighth Circuit considered a vagueness challenge involving a *materially identical* explain-yourself provision to the one the City has proposed.³³ The Eighth Circuit held that the statute was void for vagueness, and it was not a close call. The court could not “distinguish the subsequent identification provision” at issue there “from the ‘identify himself [or herself] and ... account for his [or her] presence’ clause” that the Supreme Court invalidated in *Kolender*.³⁴ “[A] mere opportunity to identify and explain,” the court observed, “does not prevent arbitrary and discriminatory law enforcement” absent “a clarifying standard to guide the police officer’s discretionary assessment of the account a suspect provides.”³⁵ Because the statute before the Eighth Circuit did not provide any “clarifying standard,” it violated the Fourteenth Amendment.³⁶ So too here.

In sum, we are back to where we started over a year ago. The draft prowling ordinance once again violates “the requirement that a legislature establish minimal guidelines to govern law enforcement.”³⁷ The City’s remarks during the October 5 Commission meeting that officers will rely on their discretion when interpreting and enforcing the ordinance were presumably intended to ease public discomfort. Instead, they demonstrate its fatal flaw: Conferring virtually untrammelled discretion by a police officer to decide whether someone belongs somewhere is a

³³ Compare *Fields v. City of Omaha*, 810 F.2d 830, 833 n.1 (8th Cir. 1987) (“Unless flight by the person or other circumstances makes it impracticable, a police officer shall, prior to any arrest for an offense under this division, allow the person an opportunity to dispel any alarm which would otherwise be warranted by requesting him [or her] to identify himself [or herself] and explain his [or her] presence and conduct.” (quoting Omaha, Neb. Code § 20-173) (alterations in original)) with Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/> (“Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to an arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct.”).

³⁴ *Fields*, 810 F.2d at 833 (alterations in original).

³⁵ *Id.* at 834.

³⁶ *Id.*; see also, e.g., *Brown v. Municipality of Anchorage*, 584 P.2d 35, 38 (Alaska 1978) (“The opportunity to explain one’s conduct provides little protection from police harassment when it remains for the arresting officer to decide whether he or she is satisfied with the explanation given.”); *Coleman v. City of Richmond*, 5 Va. App. 459, 466–67 (1988).

³⁷ *Fields*, 810 F.2d at 834 (quoting *Kolender*, 461 U.S. at 358).

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constitutional bug, not a salutary feature, of a criminal prohibition. As President Franklin D. Roosevelt observed when vetoing a District of Columbia vagrancy law: “‘It would hardly be a satisfactory answer to say that the sound judgment and decisions of the police and prosecuting officers must be trusted to invoke the law only in proper cases. The law itself should be so drawn as not to make it applicable to cases which obviously should not be comprised within its terms.’”³⁸

b. Fourth Amendment

Under the Fourth Amendment, “every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause.”³⁹ To establish probable cause, an officer must have “reasonable ground for belief of guilt,” and that belief “must be particularized with respect to the person to be searched or seized.”⁴⁰ Probable cause means “more than bare suspicion” and exists only where “the facts and circumstances within [officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.”⁴¹

The draft prowling ordinance does away with the probable-cause requirement by fiat. It creates criminal liability for “[a]n individual . . . whom police may think is suspicious but do not have probable cause to believe has committed a crime.”⁴² Chief Richmond could hardly have been clearer on that point in his remarks introducing the ordinance, which he presented as a tool to arrest suspicious individuals whom police are investigating for burglary but “don’t meet the elements” of that crime.⁴³ The City is attempting to get around the rule that “mere suspicion” cannot establish probable cause by defining suspicious activity as an arrestable offense.⁴⁴

³⁸ *Papachristou*, 405 U.S. at 166 n.10 (quoting H.R. Doc. No. 392, 77th Cong., 1st Sess.).

³⁹ *Michigan v. Summers*, 452 U.S. 692, 700 (1981).

⁴⁰ *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citation modified).

⁴¹ *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (citation modified).

⁴² *Kolender*, 461 U.S. at 358.

⁴³ City of Traverse City City Commission - 10/5/2026, at 01:59:04–01:59:17 (Traverse Area Cmty. Media, Oct. 5, 2026), <https://www.tacm.tv/watchgovtv.asp?trid=5819>.

⁴⁴ *Brinegar*, 338 U.S. at 176.

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The Fourth Amendment cannot be circumvented so easily. Multiple state supreme courts have struck down similar statutes that “give a police officer the right to arrest persons whose appearance or actions arouse the officer’s suspicion.”⁴⁵ Sustaining such ordinances, as the Oregon Supreme Court has noted, “would be to allow a crime to be defined so as to render the requirement of probable cause to effect a valid arrest an illusory protection.”⁴⁶

Another reason that the draft prowling ordinance offends the Fourth Amendment is that it unconstitutionally expands the scope of a *Terry* stop. Under *Terry v. Ohio*, 392 U.S. 1 (1968), “police officers with reasonable suspicion that an individual has committed or is about to commit a crime may detain that individual, using some force if necessary, for the purpose of asking investigative questions.”⁴⁷ During a *Terry* stop, however, officers “may not *compel* an answer, and they must allow the person to leave after a reasonably brief period of time.”⁴⁸

The draft prowling ordinance goes further. Its explain-yourself provision would require enforcement targets to account for their “presence and conduct” under threat of arrest,⁴⁹ giving officers more power than they have under *Terry* to extract information from suspicious individuals. The City’s “interest [in] general facilitation of police investigation and preservation of public order”⁵⁰ does not authorize it to upset the “balance” struck in *Terry* between “the neutralization of danger . . . and the sanctity of the individual.”⁵¹ Put another way, the City may

⁴⁵ *City of Portland v. James*, 251 Or. 8, 10 (1968); *see also, e.g., State v. Bitt*, 118 Idaho 584, 590–91 (1990).

⁴⁶ *James*, 251 Or. at 14; *see also City of Portland v. White*, 9 Or. App. 239, 242 (1972) (extending the reasoning in *James* to strike down a prowling statute on vagueness grounds).

⁴⁷ *Kolender*, 461 U.S. at 366 (Brennan, J., concurring).

⁴⁸ *Id.* (emphasis in original).

⁴⁹ Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/>.

⁵⁰ *Kolender*, 461 U.S. at 367 (Brennan, J., concurring).

⁵¹ *Terry*, 392 U.S. at 26.

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not use the explain-yourself provision “to compel what may not be compelled under [*Terry*],”⁵² which courts have recognized in cases dealing with similar laws.⁵³

c. Fifth Amendment

Finally, the draft prowling ordinance offends the Fifth Amendment right against self-incrimination.⁵⁴ “[T]he Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves,”⁵⁵ including during police interrogations. We reiterate: Although “the police have the right to request citizens to answer voluntarily questions concerning unsolved crimes[,] they have no right to compel them to answer.”⁵⁶

The Supreme Court recognized in *Kolender* that “[t]o the extent that [an identification requirement] criminalizes a suspect’s failure to answer such questions put to him by police officers, Fifth Amendment concerns are implicated.”⁵⁷ That is the case here. Under the draft prowling ordinance’s explain-yourself provision, an enforcement target “is faced with the choice of either foregoing his constitutional right to remain silent in the hope that his explanation will satisfy that particular law enforcement official, or invoking his constitutional right to remain silent and being arrested.”⁵⁸ That is no choice at all.

⁵² *Kolender*, 461 U.S. at 369 (Brennan, J., concurring).

⁵³ See, e.g., *Waters v. McGuriman*, 656 F. Supp. 923, 928–29 (E.D. Pa. 1987); *Bitt*, 118 Idaho at 590–91.

⁵⁴ See U.S. Const. amend. V.

⁵⁵ *Miranda v. Arizona*, 384 U.S. 436, 467 (1966).

⁵⁶ *Davis v. Mississippi*, 394 U.S. 721, 727 n.6 (1969). The Supreme Court has recognized a limited exception for laws that compel individuals to disclose their names when prompted to do so by law enforcement. See *Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 190–91 (2004). The Court emphasized that there was no “real and appreciable fear” that compelling people to disclose their names “would furnish a link in the chain of evidence needed to prosecute” them. *Id.* at 190 (quoting *Hoffman v. United States*, 341 U.S. 479, 486 (1951)). The explain-yourself provision requires people to share more than just their names; they must provide details about the very conduct that the officer is investigating, lest they face arrest.

⁵⁷ *Kolender*, 461 U.S. at 360 n.9.

⁵⁸ *People v. Bright*, 71 N.Y.2d 376, 386 (1988).

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1514 Wealthy St. SE, Suite 260
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

III. The draft trespass ordinance lacks procedural safeguards and raises serious First Amendment concerns.

We turn now to the draft trespass ordinance, which would allow officers to unilaterally suspend people from “any park” for three days based on an alleged violation of the park rules.⁵⁹ Here, too, the City seeks to run roughshod over people’s constitutional rights. The draft trespass ordinance restricts people’s freedom to come and go in public places as they please without affording them either notice or an opportunity to be heard, which procedural due process under the Fourteenth Amendment requires. Additionally, we have grave concerns that officers could issue trespass orders based on disfavored political activity in violation of the First Amendment. We discuss each objection in turn.

a. Fourteenth Amendment (Procedural Due Process)

The draft trespass ordinance violates the Fourteenth Amendment’s guarantee of procedural due process, which “imposes constraints on governmental decisions [that] deprive individuals of ‘liberty’ or ‘property’ interests.”⁶⁰ The trespass orders contemplated by the draft ordinance intrude on a protected liberty interest: namely, the freedom “to remain in a public place of [one’s] choice.”⁶¹ Because the trespass orders infringe on a constitutionally cognizable liberty interest, they must conform to due process, “[t]he essential requirements of [which] . . . are notice and an opportunity to respond.”⁶² At a minimum, someone subject to a trespass order is “entitled to oral or written notice of the charges against him, an explanation of the [officer’s] evidence, and an opportunity to present his side of the story”⁶³ to an “impartial tribunal.”⁶⁴

⁵⁹ Memorandum from Benjamin Marentette, City Manager, City of Traverse City, to City Commission, City of Traverse City (Sept. 29, 2026), <https://traversecitymi.civicweb.net/document/369871/>.

⁶⁰ *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

⁶¹ *Morales*, 527 U.S. at 55 (plurality opinion); *see also Kennedy v. City of Cincinnati*, 595 F.3d 327, 335 (6th Cir. 2010); *Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002) (recognizing the “right to travel locally through public spaces and roadways”).

⁶² *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985).

⁶³ *Id.*

⁶⁴ *In re Murchison*, 349 U.S. 133, 134 (1955).

**State Headquarters**

2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
E-mail aclu@aclumich.org
www.aclumich.org

Legislative Office

115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
E-mail aclu@aclumich.org
www.aclumich.org

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The draft trespass ordinance, however, does not contain any of those crucial protections. Officers have no obligation to notify enforcement targets of the specific park rule they allegedly transgressed, much less the specific conduct that ostensibly underlies the violation. As a result, the draft ordinance would leave people “to guess at the factual and legal bases for” officers’ trespass orders, which is “no[] substitute for actual notice.”⁶⁵ Nor does the draft ordinance provide for any pre- or post-deprivation hearing. People subject to trespass orders under the draft ordinance will have no recourse to a “neutral and detached” decisionmaker.⁶⁶ Trespass orders will be, in practice, final and irrevocable three-day suspensions from public parks, with the issuing officer acting as judge, jury, and executioner.

The Fourteenth Amendment protects people from being deprived of their liberty so arbitrarily. Courts across the country have held as much, striking down trespass orders where the recipients have no notice of the basis for the penalty nor any meaningful opportunity to obtain redress on the backend.⁶⁷ The City’s draft trespass ordinance would likely fare no better.

b. First Amendment

The draft trespass ordinance additionally raises First Amendment concerns by threatening to chill and punish constitutionally protected political activity. Police officers can easily conjure rules violations to censor disfavored speech: Political activity might be too “loud” or “boisterous” for their liking,⁶⁸ or they might punish protestors for “interfer[ing]” with an event.⁶⁹ And the list of pretextual violations of the Parks Code that could be used to trespass targeted individuals is also vast; the ordinance authorizes issuance of trespass bans to anyone who “injure[s]” any flower, plant, or “growing thing” in the park; disposes of an empty pop can in the park that originated from outside; or parks illegally.⁷⁰ Our First Amendment concerns are

⁶⁵ *Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965, 986–87 (9th Cir. 2012).

⁶⁶ *Ward v. Vill. of Monroeville*, 409 U.S. 57, 62 (1972).

⁶⁷ See, e.g., *Norris v. City of Asheville*, No. 23-cv-103, 2024 WL 1261206 (W.D.N.C. Mar. 25, 2024); *Wilson v. N.E. Indep. Sch. Dist.*, No. 14-cv-140, 2015 WL 13716013 (W.D. Tex. Sept. 30, 2015); *Cuellar v. Bernard*, No. 13-CV-91, 2013 WL 1290215 (W.D. Tex. Mar. 27, 2013).

⁶⁸ Traverse City, Mich. Code § 1064.10 (2026) (prohibiting activity that might “annoy a reasonable person using the park in a proper manner”).

⁶⁹ *Id.* § 1064.20.

⁷⁰ *Id.* §§ 1064.03, .04, .14.

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compounded by the City Manager’s remark that the “ordinances would assist in dispersing gatherings that become concerning and reduce unwanted activity.”⁷¹ There is a serious risk that officers could and would take aim at people’s freedom to speak, gather, and associate. This risk is particularly grave at a time (like now) when political passions run high and protest is an increasingly common expression of dissent—and one that often is unwelcome by law enforcement officials.

The First Amendment recognizes that parks “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”⁷² As such, parks are classified as “traditional public fora” where First Amendment protections are at their apex.⁷³ Although the government can impose time, place, and manner restrictions on expression in public fora, it usually does so through “generally applicable statutes.”⁷⁴ By contrast, a restriction on expression that targets individual speakers triggers “a more stringent application of general First Amendment principles.”⁷⁵ The ordinance is not a time, place, or manner restriction and provides essentially no protection whatsoever against being weaponized to suppress protected speech and assembly.

IV. Conclusion

We urge the City Commission to reject the draft prowling and trespass ordinances on October 19, 2026. We hope that this letter has adequately clarified why that is the correct course, but should you have any questions, you may contact us at NWMI@aclumich.org.

⁷¹ City of Traverse City City Commission - 10/5/2026, at 01:52:44–01:52:52 (Traverse Area Cmty. Media, Oct. 5, 2026), <https://www.tacm.tv/watchgovtv.asp?trid=5819>.

⁷² *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939).

⁷³ *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985).

⁷⁴ *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994).

⁷⁵ *Id.*

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Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

Sincerely,

Holly Hillyer, Member

Email: holly@tropospherelegal.com

Michael Naughton, Chair

Email: mike@thenorthcoastlegal.com

Northwest Michigan Lawyers' Committee of the ACLU of Michigan

Email: NWMI@aclumich.org

Phil Mayor

Deputy Legal Director
ACLU of Michigan

Marty Berger

Skadden Fellow
ACLU of Michigan

Sarah Prout Rennie

Senior Director of Advocacy and Outreach
Michigan Coalition Against Homelessness

Eric Tars

Senior Policy Director
National Homelessness Law Center

cc: Daniel J. Kelly, City Attorney
Benjamin Marentette, City Manager
Matthew G. Richmond, Chief of Police