

# THE RUTHERFORD INSTITUTE

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April 5, 2019

Via Email ([bos@roanokecountyva.gov](mailto:bos@roanokecountyva.gov))

Board of Supervisors  
Roanoke County Virginia  
520 Bernard Drive, Fourth Floor  
Roanoke, Virginia 24018-0798

## **Re: Ban on Sleeping in Vehicles / Roanoke County Code § 13-14**

Dear Board of Supervisors:

The Roanoke Board of Supervisors has opened itself up to legal jeopardy with its unanimous enactment of Roanoke County Code § 13-14, a constitutionally vague, overly broad statute that makes it unlawful for any person to “use an automobile for sleeping quarters.”<sup>1</sup> Indeed, there is a substantial basis in case law indicating the ordinance would be declared unconstitutional if challenged in court. Court decisions from around the country addressing similar ordinances have found them to be invalid as unduly vague while attempting to punish wholly innocent conduct.

That this ordinance was adopted despite the lack of any compelling reason for forbidding sleeping in cars or evidence that this was a significant problem in the County speaks volumes about the motives behind the ordinance’s adoption, motives that echo a national trend in urban and suburban communities to criminalize homelessness<sup>2</sup> and crack down on those individuals and organizations whose charitable endeavors aim to ease the suffering of the homeless.<sup>3</sup>

Not only do the Board’s actions subject the area homeless population to heightened legal peril under Code § 13-14, but by its plain terms, this new law can also be applied to *any* person law enforcement officials believe is sleeping in a vehicle. Interpreted broadly, this would apply to even the weary traveler who seeking a few minutes of rest in order to continue on their

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<sup>1</sup> ORDINANCE 021219-4 ENACTING SECTION 13- 14 OF THE ROANOKE COUNTY CODE, PROHIBITING THE USE OF AUTOMOBILES AS SLEEPING QUARTERS, available at <http://weblink.roanokecountyva.gov/weblinkbos/0/doc/10177/Page1.aspx>.

<sup>2</sup> A growing number of cities, such as Fort Lauderdale, Fla., have passed ordinances that actively inhibit the ability of private citizens to help those who are less fortunate.

<sup>3</sup> *Food Not Bombs Fort Lauderdale*, 901 F.3d 1238 (11th Cir. 2018)

journey safely. **Therein lies the greater problem with this law: it can be used by police as a justification for seizing a person and his vehicle and conducting a full-blown search, simply because a person decides to take a short nap behind the wheel.**

In light of the harm that Code § 13-14 will cause to otherwise law-abiding individuals, its dubious constitutionality, and the tenuous justifications offered for the ban on sleeping in cars, it would be in the best interests of the residents and taxpayers of Roanoke County and other impacted parties for the Board to repeal § 13-14.

### **The Ban on Sleeping in Cars Addresses a Non-Existent Problem**

One fundamental flaw with the Board's ordinance banning sleeping in cars is that there is no indication that such a ban was needed to prevent a significant problem facing the County, or even one that the County could anticipate would arise.

The report from County officials recommending approval of Code § 13-14 indicates that the ban on sleeping in cars arose from a staff meeting in which they "review[ed] safety concerns and effects on residential neighborhoods that result from the use of automobiles as sleeping quarters." That report goes on to provide that "the use of automobiles as sleeping quarters poses safety risks (particularly during winter months) and can have a negative effect on neighborhood aesthetics."<sup>4</sup> The report, however, offers no facts or specifics on the "safety concerns" which motivated the recommendations. And while a concern over sleeping in cars during winter months is mentioned, it is wholly unclear how it is safer for a person who is homeless and unable to afford a hotel or other lodging to sleep outdoors during the winter months.

It is plain that the ban on sleeping in cars was driven by a misplaced concern over "neighborhood aesthetics," a code phrase for the discomfort caused by the sight of a homeless person forced to sleep in a car. The distress felt by members of the public when forced to confront the problem of homelessness in our communities should never be a basis for measures worsening the plight of the homeless, which is precisely what Code § 13-14 does.

Even if aesthetic concerns are a sufficient basis for depriving the homeless and poor of an available shelter, reports indicate that there were exceedingly few actual instances of people sleeping in cars. The County Attorney is quoted as saying that the problem of sleeping in cars is "not widespread" and that there have only been "intermittent reports" of instances. He otherwise stated that the issue has cropped up only "occasionally" over the years.<sup>5</sup>

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<sup>4</sup> Roanoke County Board of Supervisors, Agenda for February 12, 2019, Item No. G-1, available at <http://roanokecountyva.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1124&Inline=True>.

<sup>5</sup> Alicia Petska, "Roanoke County passes ordinance addressing sleeping in cars," *The Roanoke Times* (Feb. 12, 2019), [https://www.roanoke.com/news/politics/roanoke\\_county/roanoke-county-passes-ordinance-addressing-sleeping-in-cars/article\\_62ea1769-348f-5554-aed2-fa37f6d1f9b3.html](https://www.roanoke.com/news/politics/roanoke_county/roanoke-county-passes-ordinance-addressing-sleeping-in-cars/article_62ea1769-348f-5554-aed2-fa37f6d1f9b3.html).

Thus, the ban on sleeping in cars addresses a “problem” that, for practical purposes, does not exist. Therefore, Code § 13-14 only creates problems for the homeless and makes it more difficult for them to find shelter and safety.

### **Code §13-14 Is Overbroad**

The ban on sleeping in cars also gives police broad enforcement powers that can be abused to violate the rights and privacy of all citizens.

Although County officials have stated that Code § 13-14 “would not prohibit napping in a vehicle”<sup>6</sup> and that it “doesn’t prevent the occasional ‘reasonable and safe napping’ by weary motorists,”<sup>7</sup> nothing in the terms of the ordinance itself limits enforcement of the ban in a way that would not be detrimental to our freedoms. Indeed, Code § 13-14 is broadly worded to make it “unlawful and a Class 4 misdemeanor for any person to use an automobile for sleeping quarters[.]”

Moreover, nothing in the terms of the ordinance limits the scope of the sleeping ban as represented by County officials. While commission of the offense requires that the use of the automobile be “in place of a residence, hotel or other similar accommodation,” it is wholly unclear how a law enforcement officer who comes upon someone sleeping in their car is to make a determination of whether the occupant is doing so “in place” of other accommodations. More fundamentally, there is nothing to guide officers in determining whether a person is merely “napping” or is engaged in the forbidden act of “sleeping.” Indeed, there is no principled distinction between the two behaviors.

As a result, Code § 13-14 gives police broad power enforcement powers to invade the privacy of motorists who are doing nothing more than resting their eyes. Police who encounter a citizen that is merely napping will now have cause to seize that person and cite him for violating the ordinance. This in turn will allow the officer to demand the person exit the car, submit to a full search of his person and to a full search of the car and any containers in the passenger compartment.<sup>8</sup>

By criminalizing common activity that is wholly innocent, this ordinance gives police an additional basis for conducting arbitrary and pretextual seizures and searches of citizens and their vehicles. It threatens not only the homeless, but also law-abiding citizens guilty of nothing more than fatigue while driving.

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<sup>6</sup>Roanoke County Board of Supervisors, Agenda for February 12, 2019, Item No. G-1, available at <http://roanokecountyva.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1124&Inline=True>.

<sup>7</sup> Alicia Petska, “Roanoke County passes ordinance addressing sleeping in cars,” The Roanoke Times (Feb. 12, 2019), [https://www.roanoke.com/news/politics/roanoke\\_county/roanoke-county-passes-ordinance-addressing-sleeping-in-cars/article\\_62ea1769-348f-5554-aed2-fa37f6d1f9b3.html](https://www.roanoke.com/news/politics/roanoke_county/roanoke-county-passes-ordinance-addressing-sleeping-in-cars/article_62ea1769-348f-5554-aed2-fa37f6d1f9b3.html).

<sup>8</sup> *New York v. Belton*, 453 U.S. 454, 460 (1981).

## **Car Sleeping Ordinances Have Been Declared Unconstitutional**

Code § 13-14 is not simply bad policy, but is very likely unconstitutional, as well. Courts around the country have not hesitated in finding similar ordinances to be invalid as unduly vague and an arbitrary exercise of government power. For example, an Alabama appeals court struck down an ordinance forbidding sleeping in a car on a public street because it left to police the unfettered discretion of whether the conduct of the person cited was lawful or unlawful. The court ruled that the ordinance “makes no distinction between conduct that is calculated to harm and that that is essentially innocent. It provides punishment for unoffending behavior and makes criminal activities that are normally considered innocent. In this sense, it is similar to vagrancy ordinances, which have been held to be unconstitutional.”<sup>9</sup>

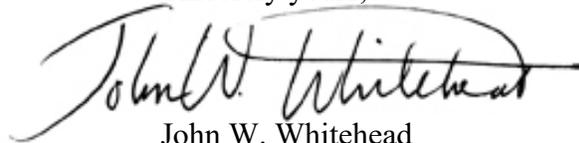
Similarly, a Florida appeals court found an ordinance making it unlawful for a person to “lodge or sleep in or about, any automobile or truck” to be overbroad by criminalizing conduct that does not impinge upon the rights of others. It also found the ordinance unduly vague because it covered a variety of wholly innocent activity, yet left to the police officer’s unbridled discretion whether to enforce the ordinance.<sup>10</sup>

Just last year, a federal court held that a city ordinance making it illegal to use public streets or parks for temporary lodging constituted cruel and unusual punishment as applied to homeless persons who had no other shelter available to them. As such, the Eighth Amendment forbids making it criminal to be homeless in a public place.<sup>11</sup>

Roanoke County’s ban on sleeping in cars suffers from the same legal infirmities.

Code § 13-14 should be repealed. It is our hope that the Board will reconsider its actions and repeal the ordinance. Should you need further guidance, The Rutherford Institute is available to review and advise on the constitutionality of any proposals that could negatively impact the rights of the general public or specific demographic populations such as the homeless.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive style with a large, sweeping flourish over the last name.

John W. Whitehead  
President

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<sup>9</sup> *Horn v. City of Montgomery*, 619 So.2d 949, 951 (Ala. Crim. App. 1993).

<sup>10</sup> *City of Pompano Beach v. Capalbo*, 455 So.2d 468, 470 (Fla. App. 1984).

<sup>11</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9<sup>th</sup> Cir. 2018).