

DISTRICT COURT, BOULDER COUNTY, COLORADO
Boulder County Justice Center
1777 6th Street
Boulder, Colorado 80302

Plaintiffs: FEET FORWARD – PEER SUPPORTIVE SERVICES AND OUTREACH d/b/a FEET FORWARD, a nonprofit corporation; JENNIFER SHURLEY, JORDAN WHITTEN, SHAWN RHOADES, MARY FALTYNSKI, ERIC BUDD, and JOHN CARLSON

v.

Defendants: CITY OF BOULDER and MARIS HEROLD, Chief of Police for the City of Boulder.

Attorneys for Defendants:

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Case Number: 2022CV30341

Division: 2

ANSWER TO AMENDED COMPLAINT

Defendants, City of Boulder and Maris Herold (collectively the “City”), by their attorneys, the Boulder, Colorado City Attorney’s Office and Hall & Evans, LLC, for their Answer to Plaintiffs’ Amended Complaint (“Complaint”), aver as follows:

I. INTRODUCTION

1. The City admits that it has received accolades for its quality of life and amenities.

2. The City admits that B.R.C. § 5-6-10 (the “Camping Ban”) and § 8-3-21(a) (the “Tent Ban”) are accurately partially quoted in Paragraph 2 of the Complaint. The City states that the Boulder Revised Code in its entirety speaks for itself. The City denies the remainder of Paragraph 2.

3. The City admits that there is not an indoor shelter option in Boulder for every unhoused adult in the City every night. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 3 and denies then on that basis.

4. Denied.

5. The City admits, upon information and belief, that the Plaintiffs include a nonprofit, three taxpayers, and three persons who formerly experienced homelessness in Boulder. The City denies the remaining allegations of Paragraph 5.

6. The City admits that the Plaintiffs are challenging the Camping Ban but deny that Plaintiffs are entitled to any relief whatsoever.

II. JURISDICTION AND VENUE

7. Admitted.

8. Admitted.

III. PARTIES

9. The City admits that Plaintiffs Shurley and Rhoads have been ticketed by law enforcement for violation of B.R.C. § 5-6-10 and summoned to appear before the Boulder Municipal Court. The City states any tickets issued to Plaintiffs Shurley, Rhoads, or Whitten and any court proceedings in the Boulder Municipal Court related to those tickets speak for themselves. The City denies the remaining allegations of Paragraph 9.

10. The City admits that Feet Forward used to be a provider of peer support and navigation services to homeless persons in Boulder. The City denies the remaining allegations of Paragraph 10.

11. Admitted upon information and belief.

12. Admitted upon information and belief.

13. Admitted upon information and belief.

14. The City admits that it adopted the Camping Ban and that the Boulder Police Department (“BPD”), Department of Open Space and Mountain Parks (“OSMP”), and the Parks and Recreation Department enforce the Camping Ban, as does the University of Colorado Police Department.

15. The City admits that Chief Maris Herold is a peace officer and is the Boulder Chief of Police and has general charge and supervision of City police officers and establishes rules and regulations governing the administration of BPD. The City denies the remaining allegations of Paragraph 15.

IV. FACTUAL ALLEGATIONS

A. The City denies the allegations and characterizations in Subheading A prior to Paragraph 16 of the Complaint.

16. The City admits that the City does not know the exact size of its unhoused population, but its best estimate is that there are 450 unhoused residents in the City. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 16 and denies them on that basis.

17. The City admits that the 2021 Point in Time Count showed a 40% increase in those staying in the region's emergency shelters and a 99% increase in those identifying as newly homeless.

18. The City lacks sufficient information to admit or deny the allegations of Paragraph 18 and denies them on that basis.

19. The City admits that the point in time counts identified 142 persons experiencing unsheltered homelessness as of January 25, 2023, and 171 persons experiencing unsheltered homelessness as of July 26, 2023. The City denies the remaining allegations of Paragraph 19.

20. The City admits that homelessness is generally caused by the conditions identified in Paragraph 20, among other causes.

21. Admitted.

22. The City denies that its own housing stock was damaged by the Marshall Fire. The City admits the remaining allegations of Paragraph 22.

23. Admitted.

24. The City admits that Black, Indigenous and/or people of color are overrepresented in Boulder's homeless population compared to the City's overall population. The remainder of Paragraph 24 sets forth an opinion to which no response is required. To any extent a response is deemed required, the City denies the remainder of Paragraph 24.

25. Denied. The City further affirmatively states that it does not set or have any input into the rules for any shelter in Boulder.

26. Admitted.

27. Denied.

28. Admitted.

29. Admitted.

30. The City admits that on some nights there are not enough overnight shelter beds for the number of people experiencing homelessness in the City. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 30 and denies them on that basis.

31. The City lacks sufficient information to admit or deny the allegations of Paragraph 31 and denies them on that basis.

32. Admitted with regards to the standards individuals must meet to be a part of the Reserved Bed Program. The City denies that the shelter reserves beds that are not available. The shelter has a soft cap on reserved beds at 120. On standard nights they have approximately 40 beds available for "standby," and have approximately 60 available on critical weather nights.

33. Admitted, except that if they are not at capacity there is no lottery.

34. Denied. Boulder Shelter for the Homeless (“BSH”) does not reserve beds they do not have and always holds beds to use as standby. During this time period, no person in the reserved bed program was denied a bed due to capacity.

35. The City lacks sufficient information to admit or deny the allegations of Paragraph 35 and denies them on that basis.

36. Denied. Below are the critical weather criteria. In 2022-23, BSH maintained 30 hotel rooms throughout the critical weather season and expanded its shelter beds by 20 beds during critical weather events including:

- a. Warning for blizzard or dangerous winds with gusts in excess of 70 M.P.H.,
OR
- b. Predicted low temperature of 10°F or below, OR
- c. Predicted six inches or more of snowfall.

37. The City admits that there are other days during the critical weather season that are potentially dangerous to unhoused persons that do not meet the critical weather criteria set forth in Paragraph 36 above.

38. The City admits that 124 persons were turned away for capacity reasons on nights 32 degrees or below. Three individuals were turned away on nights 32 degrees or below for not completing Coordinated Entry (“CE”) after being provided both the opportunity and several grace nights to do so. 260 persons total were turned away for any reason during that time period, including nights that had low temperatures that were 33 degrees or above. There were 29 nights that were below 33 degrees where the shelter turned individuals away.

39. The City admits that it receives six or more inches of snow an average of four days a year, and that it receives at least a trace of snowfall on at least 40 days a year. The City

admits that it can experience snowfall in nine of the 12 calendar months of the year and that between November and April snowfall occurs in a range of between 11 and 16 days a month. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 39 and denies them on that basis.

40. Denied. Warnings for blizzards or dangerous winds with gusts in excess of 70 M.P.H. will trigger critical weather shelter.

41. Denied for 2021-22 critical weather season, due to COVID-19, the number of beds at the shelter and hotel varied as follows: 140 beds at the shelter until 12/28/21, increased to 145 beds on 12/28/21, and increased again to 160 beds on 3/29/22. From 11/15/21-12/31/21, 20 hotel rooms were available, from 1/1/22-1/20/22, 25 hotel rooms were available, and from 1/21/22-1/23/22, 27 hotel rooms were available. From 1/24/22-3/1/22, 30 hotel rooms were available. Denied for the 2022-23 season. From 11/15/22-3/30/23, 30 hotel rooms were added for the winter season. With hotel rooms included, at BSH non-critical weather nights there are 190 beds available and on critical weather nights, 210 beds are available.

42. The City admits BSH requires individuals accessing the shelter to participate in a required screening process known as Coordinated Entry (“CE”). Individuals who have not completed CE are allowed to stay at the shelter until the next opportunity for completing CE is available. BSH does have an annual cap on the number of days any one individual can stay in the shelter, unless that individual is participating in BSH’s “reserved bed” program. The City admits a variety of different reasons may exist to make accessing the BSH shelter more difficult for some individuals including but not limited to their work schedules, family makeup, and mental and physical health needs.

43. The City admits that BSH participates in the HSBC system and that persons seeking access to a bed there go through CE. Individuals are provided grace nights until CE is available (for example, a person showing up at BSH on a Friday evening would be granted grace nights for Friday, Saturday, and Sunday evenings). Grace night criteria are lifted on critical weather nights. The City admits that between August 2021 and May 2022, BSH turned away at least 80 people for not completing CE.

44. The City denies that a lottery takes place every night at BSH. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 44 and denies them on that basis.

45. The City lacks sufficient information to admit or deny the allegations of Paragraph 45 and denies them on that basis.

46. The City lacks sufficient information to admit or deny the allegations of Paragraph 46 and denies them on that basis.

47. The City admits that BSH does not allow individuals to shelter with pets. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 47 and denies them on that basis.

48. The City admits that BSH separates congregate dorms by sex, so that opposite-sex couples cannot shelter together although both persons could take shelter at BSH in separate dorms. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 48 and denies them on that basis.

49. Admitted.

50. Admitted upon information and belief.

51. Denied.

52. Admitted. The 90-day limit does not apply to critical weather nights. Also, anytime during that 90 days individuals can elect to participate in the reserved bed program to be allowed additional nights.

53. Admitted.

B. The City denies the allegations and characterizations in Subheading B prior to Paragraph 54 of the Complaint.

54. Admitted.

55. Admitted.

56. The City admits that the Camping Ban is designed to prevent people from living in public spaces that are not intended to serve as overnight residences. The City further admits that in 2001 the City Attorney made the quoted statements. The City states the entirety of the City Attorney's statements to City Council in 2001 speak for themselves. The City denies the remaining allegations of Paragraph 56.

57. Admitted.

58. Denied.

59. Admitted upon information and belief.

60. Admitted upon information and belief.

61. Admitted upon information and belief.

62. Admitted upon information and belief.

63. Admitted upon information and belief.

64. Admitted upon information and belief.

65. Admitted.

66. Denied to the extent that shelter is not required in all weather conditions.

67. The City admits that it experiences a wide range of temperatures and extreme hot or cold temperatures generally can pose a threat to human health. The remainder of Paragraph 67 sets forth an opinion as to which no response is required. To the extent a response is deemed required, the City denies the remaining allegations in Paragraph 67.

68. The City admits that unhoused residents who cannot access indoor shelter face average minimum temperatures that drop below freezing from November to April. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 68 and denies them on that basis.

69. Admitted.

70. The City admits that unhoused persons in Boulder spend some portion of the year in conditions that could cause hypothermia and frostbite. The City denies the remaining allegations of Paragraph 70.

71. Admitted upon information and belief.

72. Admitted upon information and belief.

73. Admitted upon information and belief.

74. Denied.

75. Admitted upon information and belief, except that the statement that 90-degree temperatures are “extreme” is a statement of opinion to which no response is required. To the extent a response is deemed required, the City denies this statement of opinion in Paragraph 75.

76. Admitted upon information and belief.

77. Admitted upon information and belief.

78. The City lacks sufficient information to admit or deny the allegations of Paragraph 78 and deny them on that basis.

79. Denied.

80. The City admits that the BPD and OSMP Rangers enforce the Camping Ban and that most cases originate from the BPD. The City further admits that the University of Colorado Police Department also enforces the Camping Ban.

81. The City admits that it enforces the Camping Ban against persons experiencing homelessness. The City denies the remaining allegations of Paragraph 81.

82. The City admits that other Colorado jurisdictions, including large jurisdictions, have enacted ordinances similar to the Camping Ban. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 82 and denies them on that basis.

83. Admitted.

84. The City admits that it spends tax dollars trying to ensure compliance with the Camping Ban. The City admits that the partial quote from Chief Herold is accurate though out of context as she was discussing a holistic response to homelessness at the time she made this statement to City Council. The City states that Chief Herold's statement in its entirety speaks for itself.

85. The City admits that Council appropriated \$2.7 million for encampment removal and clean-up and enforcement of the Camping Ban, the bans on tents and propane tanks, and other ordinances, including funding for two new urban park rangers, six BPD officers, and three police vehicles.

86. The City admits that approximately one-third of all Camping Ban tickets between January 2020 and January 2022 were issued between 7:00 a.m. and 8:59 a.m. and approximately two-thirds of all Camping Ban tickets were issued between 7:00 a.m. and 6:59 p.m. The City denies the remaining allegations of Paragraph 86.

87. The City admits that Chief Herold issued a directive on camping violations, states that the document in its entirety speaks for itself, and denies Plaintiffs' characterization of that document.

88. Denied. The Directive allows consideration of "any other factors deemed appropriate by the on-duty supervisor."

89. Denied.

90. Denied.

91. The City admits that law enforcement officers at OSMP and BPD have enforced the Camping Ban. The City denies that they have enforced the Camping Ban on many nights when, or mornings after, BSH had reached capacity and turned people away. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 91 and denies them on that basis.

92. The City admits that law enforcement officers at BPD and OSMP have enforced the Camping Ban on days when the temperature was below freezing, when it was raining, or when it was snowing. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 92 and denies them on that basis.

93. Admitted.

94. Denied. Three people died of hypothermia in Boulder in 2020, two of whom are believed to have been unhoused.

95. Denied.

96. Paragraph 96 sets forth a statement of opinion to which no response is required. To the extent Paragraph 96 may contain factual allegations, the City lacks sufficient information to admit or deny those allegations and denies them on that basis. To the extent a response to the statement of opinion is deemed required, the City denies the statement of opinion in Paragraph 96.

97. Denied.

98. The City admits the first sentence of Paragraph 98. With respect to the second sentence of Paragraph 98, the City lacks sufficient information to admit or deny its allegations and denies them on that basis.

99. Admitted.

C. The City denies the allegations and characterizations in Subheading C prior to Paragraph 100 of the Complaint.

100. The City lacks sufficient information to admit or deny the allegations of Paragraph 100 and denies them on that basis.

101. The City lacks sufficient information to admit or deny the allegations of Paragraph 101 and denies them on that basis.

102. The City admits that Feet Forward used to hold a community outreach event at the Bandshell on Tuesdays. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 102 and denies them on that basis.

103. Denied.

104. The City lacks sufficient information to admit or deny the allegations of Paragraph 104 and denies them on that basis.

105. The City lacks sufficient information to admit or deny the allegations of Paragraph 105 and denies them on that basis.

106. The City lacks sufficient information to admit or deny the allegations of Paragraph 106 and denies them on that basis.

107. The City lacks sufficient information to admit or deny the allegations of Paragraph 107 and denies them on that basis.

108. The City lacks sufficient information to admit or deny the allegations of Paragraph 108 and denies them on that basis.

109. The City lacks sufficient information to admit or deny the allegations of Paragraph 109 and denies them on that basis.

110. Denied.

111. The City lacks sufficient information to admit or deny the allegations of Paragraph 111 and denies them on that basis.

112. The City lacks sufficient information to admit or deny the allegations of Paragraph 112 and denies them on that basis.

113. Denied.

114. The City admits that for several months beginning in October 2021, to address the large number of tickets, failures to appear, and warrants unhoused people received for violating the Tent and Camping Bans, the Boulder Municipal Court co-located its Community Court

program to Central Park around the same time as Feet Forward's program, and that Feet Forward's former executive director received the warrant list and helped track down people to participate in Feet Forward's event and Community Court. The City denies the remaining allegations of Paragraph 122.

115. The City admits upon information and belief that Plaintiffs Budd, Faltynski and Carlson each pay sales and use taxes in Boulder. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 115.

116. The City admits Sales & Use Tax and Property Tax revenue funds all the City's departments including those departments involving in enforcement of the Camping Ban.

117. Denied.

118. Admitted.

119. The City admits that Council appropriated \$2.7 million for encampment removal and clean-up and enforcement of the Camping Ban, the bans on tents and propane tanks, and other ordinances, including funding for two new urban park rangers, six BPD officers, and three police vehicles. The City denies the remaining allegations of Paragraph 119.

120. Admitted.

121. Admitted.

122. Admitted upon information and belief.

123. The City admits that the taxpayer Plaintiffs object to enforcement of the Camping Ban. The City denies the remaining allegations of Paragraph 123.

124. The City lacks sufficient information to admit or deny the allegations of Paragraph 124 and denies them on that basis.

125. The City lacks sufficient information to admit or deny the allegations of Paragraph 125 and denies them on that basis.

126. The City lacks sufficient information to admit or deny the allegations of Paragraph 126 and denies them on that basis.

127. The City admits that Plaintiff Shurley has been screened through CE. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 127 and denies them on that basis.

128. The City lacks sufficient information to admit or deny the allegations of Paragraph 128 and denies them on that basis.

129. The City lacks sufficient information to admit or deny the allegations of Paragraph 129 and denies them on that basis.

130. The City lacks sufficient information to admit or deny the allegations of Paragraph 130 and denies them on that basis.

131. The City lacks sufficient information to admit or deny the allegations of Paragraph 131 and denies them on that basis.

132. Denied.

133. Denied.

134. The City admits it is possible Plaintiff Shurley could have been at risk of being turned away by BSH due to the number of shelter and hotel beds available on any given night. The City states it lacks sufficient information to know whether this actually occurred to Plaintiff Shurley or not.

135. Denied.

136. Denied.

137. The City lacks sufficient information to admit or deny the allegations of Paragraph 137 and denies them on that basis.

138. The City lacks sufficient information to admit or deny the allegations of Paragraph 138 and denies them on that basis.

139. The City lacks sufficient information to admit or deny the allegations of Paragraph 139 and denies them on that basis.

140. The City lacks sufficient information to admit or deny the allegations of Paragraph 140 and denies them on that basis.

141. The City lacks sufficient information to admit or deny the allegations of Paragraph 141 and denies them on that basis.

142. The City lacks sufficient information to admit or deny the allegations of Paragraph 142 and denies them on that basis.

143. The City lacks sufficient information to admit or deny the allegations of Paragraph 143 and denies them on that basis.

144. The City lacks sufficient information to admit or deny the allegations of Paragraph 144 and denies them on that basis.

145. The City lacks sufficient information to admit or deny the allegations of Paragraph 145 and denies them on that basis.

146. The City lacks sufficient information to admit or deny the allegations of Paragraph 146 and denies them on that basis.

147. Denied.

148. Denied.

149. The City lacks sufficient information to admit or deny the allegations of Paragraph 149 and denies them on that basis.

150. The City lacks sufficient information to admit or deny the allegations of Paragraph 150 and denies them on that basis.

151. The City lacks sufficient information to admit or deny the allegations of Paragraph 151 and denies them on that basis.

152. The City denies that BSH's residence policy was unconstitutional. The City admits that BSH had such a policy but rescinded it. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 152 and denies them on that basis.

153. The City admits that Plaintiff Rhoads qualified for diversion services. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 153 and denies them on that basis.

154. The City lacks sufficient information to admit or deny the allegations of Paragraph 154 and denies them on that basis.

155. The City denies that BSH's residency requirement was unconstitutional. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 155 and denies them on that basis.

156. The City lacks sufficient information to admit or deny the allegations of Paragraph 156 and denies them on that basis.

157. The City admits it is possible Plaintiff Rhoads could have been at risk of being turned away by BSH due to the number of shelter and hotel beds available on any given night.

The City lacks sufficient information to know whether this was in fact true or not for Plaintiff Rhoads on any specific night.

158. The City lacks sufficient information to admit or deny the allegations of Paragraph 158 and denies them on that basis.

159. The City admits that Plaintiff Rhoads has received tickets for violation of the Camping Ban, among other things, and that each time he was ticketed he was ordered to appear at Boulder Municipal Court or face a warrant for his arrest. The City lacks sufficient information to admit or deny the remaining allegations of Paragraph 159 and denies them on that basis.

160. The City lacks sufficient information to admit or deny the allegations of Paragraph 160 and denies them on that basis.

161. The City lacks sufficient information to admit or deny the allegations of Paragraph 161 and denies them on that basis.

162. Denied.

163. Denied.

164. The City lacks sufficient information to admit or deny the allegations of Paragraph 164 and denies them on that basis.

D. The City denies the allegations and characterizations in Subheading D prior to Paragraph 165 of the Complaint.

165. The City admits that the ACLU sent a letter to the City in the summer of 2021, which speaks for itself, and denies Plaintiffs' characterization of that document. The City admits the remaining allegations of Paragraph 165.

166. The City admits that the ACLU sent a letter to the City dated December 23, 2021, which speaks for itself, and denies Plaintiffs' characterization of that document. The City admits the remaining allegations of Paragraph 166.

167. Admitted.

168. Denied.

V. CLAIMS FOR RELIEF

FIRST CLAIM

169. The City incorporates its responses to Paragraphs 1-168 above.

170. The allegations in Paragraph 170 constitute a determination of law for the Court and are not a factual allegation requiring a response from the City. To the extent a response is required, the allegations in Paragraph 170 are denied.

171. The City admits that there have been days when the indoor shelters are full and unable to accept all persons who may be seeking shelter. The City denies the remaining allegations of Paragraph 171.

172. The City admits that there have been days when the indoor shelters are full and unable to accept all persons who may be seeking shelter. The City further admits that the individual Plaintiffs may not have been able to access shelter due to their own choices. The City denies the remaining allegations of Paragraph 172.

173. The City admits that there currently is not a daytime shelter.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. The City denies Plaintiffs are entitled to any of the relief sought in the Complaint including the relief sought in subparagraphs (A) through (F).

GENERAL DENIAL

The City denies each and every allegation in the Plaintiff's Complaint not specifically admitted in this Answer.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief could be granted.
2. Plaintiffs, in whole or in part, lack standing to assert the remaining claim for relief.
3. Plaintiffs' claims against Chief Herold are barred by the political question doctrine.
4. The District Court lacks jurisdiction over Plaintiffs' claim on ripeness and justiciability grounds.
5. The City specifically reserves the right to amend this Answer to include additional defenses and affirmative defenses and/or delete defenses and affirmative defenses which have become applicable or non-applicable upon completion of discovery.

WHEREFORE, Defendants City of Boulder and Maris Herold respectfully request that the Court enter judgment in their favor and against Plaintiffs and grant such further relief as the Court deems proper.

Respectfully submitted this 30th day of October 2023.

By: *s/ Luis A. Toro*

Luis A. Toro

Senior Attorney

Boulder City Attorney's Office

By: *s/ Andrew D. Ringel*

Andrew D. Ringel

Hall & Evans, L.L.C.

*Attorneys for Defendants, City of Boulder and
Maris Herold*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2023, a true and correct copy of the foregoing **ANSWER TO AMENDED COMPLAINT** was served via the Colorado Courts E-Filing System to counsel of record appearing herein.

s/ Lisa R. Thompson

Lisa R. Thompson