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Including Professional Corporations
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CITY OF SAUSALITO, JILL JAMES
HOFFMAN, JOHN ROHRBACHER,
MARCIA RAINES, KENT BASSO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAUSALITO/MARIN COUNTY CHAPTER
OF THE CALIFORNIA HOMELESS UNION,
on behalf of itself and those it represents;
ROBBI POWELSON; SHERI L. RILEY;
ARTHUR BRUCE; MELANIE MUASOU;
SUNNY JEAN YOW; NAOMI
MONTEMAYOR; MARK JEFF; MIKE
NORTH; JACKIE CUTLER and MICHAEL
ARNOLD on behalf of themselves and
similarly situated homeless persons,

Plaintiffs,

v.

CITY OF SAUSALITO; MAYOR JILL
JAMES HOFFMAN; POLICE CHIEF JOHN
ROHRBACHER; CITY MANAGER
MARCIA RAINES; DEPT. OF PUBLIC
WORKS SUPERVISOR KENT BASSO,
individually and in their respective official
capacities,

Defendants.

CASE NO. 3:21-cv-01143-LB

**INDEX OF EXHIBITS IN SUPPORT OF
DEFENDANTS' OPPOSITION TO *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Date: T.B.D.
Time: T.B.D.
Courtroom: T.B.D.

Action Filed: February 16, 2021
Trial Date: T.B.D.
Judge: Magistrate Judge Laurel Beeler

Defendants hereby submit the following Index of Exhibits in support of their Opposition to Plaintiffs' Temporary Restraining Order:

Exhibit	Description
<i>Declaration of Heidi Scoble (City Clerk)</i>	
1	Resolution re: Exploring Housing Opportunities passed by Sausalito City Council via Special Meeting conducted on February 5, 2021
2	Resolution re: Homeless Encampments passed by Sausalito City Council via Special Meeting conducted on February 5, 2021
2a	Attachment A to Resolution re: Homeless Encampments passed by Sausalito City Council via Special Meeting conducted on February 5, 2021
3	<i>[RESERVED - Meeting Minutes of Special Meeting conducted on February 5, 2021]</i>
<i>Declaration of Kevin McGowan (Director of Public Works)</i>	
4	Aerial photograph depicting Dunphy Park in Sausalito
5	Aerial photograph depicting Marinship Park in Sausalito
6a	Photograph depicting exterior of restroom facilities at Marinship Park in Sausalito
6b	Photograph depicting interior of womens' restroom facilities at Marinship Park in Sausalito
6c	Photograph depicting interior of mens' restroom facilities at Marinship Park in Sausalito
6d	Photograph depicting original proposed tent area at Marinship Park in Sausalito (to be utilized in non-rainy periods)
6e	Photograph depicting mobile shower area at Marinship Park in Sausalito
7	Photograph depicting mobile shower program at Marinship Park in Sausalito
8a	Photograph depicting new proposed tent area at Marinship Park (to be utilized during rainy periods)
8b	Photograph depicting new proposed tent area at Marinship Park (to be utilized during rainy periods)
8c	Photograph depicting new proposed tent area at Marinship Park (to be utilized during

	rainy periods)
8d	Photograph depicting installed storage lockers at Marinship Park
8e	Photograph depicting installed storage lockers at Marinship Park
8f	Photograph depicting installed storage lockers at Marinship Park
<i>Declaration of John Rohrbacher (Chief of Police)</i>	
9	Photograph depicting encampment at Dunphy Park on February 16, 2021
10	October 27, 2020 Staff Report led and authored by the City of Sausalito Police Department
11	Notice to Vacate posted February 9, 2021 at Dunphy Park
<i>Request for Judicial Notice</i>	
12	Order Granting Plaintiff's Application for Preliminary Injunction for the case <i>Santa Cruz Homeless Union, et al. vs. Martin Bernal, et al.</i> , Case No. 20-cv-09425-SVK, issued January 20, 2021 in the United States District Court, Northern District of California.
13	Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials, last updated August 6, 2020.
14	Marysville Administrative Code, § 9.65, Camping and Storage of Personal Property on Private and Public Property, current through legislation passed November 3, 2020.
15	Sacramento City Code, § 12.52, Camping, effective January 14, 2021.
16	Woodland Municipal Code, § 9.50, Encampments within the City Limits, current through the September 2020 code supplement.
17	Yuba City Municipal Code, § 23, Camping and Storage of Personal Property on Private and Public Property, last updated April 10, 2020.

1 Dated: February 17, 2021

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3
4 By /s/ Arthur. J. Friedman
5 ARTHUR J. FRIEDMAN
6 ALEXANDER L. MERRITT

7 Attorneys for Defendants
8 CITY OF SAUSALITO, JILL JAMES HOFFMAN,
9 JOHN ROHRBACHER, MARCIA RAINES, KENT
10 BASSO
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EXHIBIT 1

RESOLUTION NO. 6008

RESOLUTION OF THE SAUSALITO CITY COUNCIL AFFIRMING ITS COMMITMENT TO WORK WITH OUR REGIONAL AND LOCAL PARTNERS TO EXPLORE EVERY OPPORTUNITY TO PROVIDE SHELTER AND CARE TO THOSE WITHOUT A HOME AND TO TREAT ALL INDIVIDUALS EXPERIENCING HOMELESSNESS WITH COMPASSION AND DIGNITY

WHEREAS, as of January 2019, California had an estimated 151,278 people experiencing homelessness on any given day, as reported by Continuums of Care to the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, of that total, 7,044 were family households, 10,980 were Veterans, 11,993 were unaccompanied young adults (aged 18-24), and 41,557 were individuals experiencing chronic homelessness; and

WHEREAS, the City of Sausalito has shown its commitment to reducing homelessness and providing housing opportunities for all segments of the community in the following goals, policies and programs in the City of Sausalito 2015-2023 Housing Element adopted January 13, 2015:

-Goal 5.0 **Promoting equal housing opportunities**: “Promote equal housing opportunities for all residents, including Sausalito’s special needs populations, so that residents can reside in the housing of their choice”; and

-Policy 5.6 **Homeless Housing and Services**: “Work cooperatively with Marin County and other applicable agencies to provide a continuum of care for the homeless, including emergency shelter, transitional housing, supportive housing and permanent affordable housing”; and

-Program 27 **Homeless Continuum of Care**:

“Support Countywide programs and the Marin Continuum of Care in the provision of resources to address the needs of the homeless and persons at risk of homelessness, including emergency shelter, transitional housing, supportive housing and permanent housing. Continue to provide flyers and information on the City’s website about the emergency 211 toll-free call system for information and referral”

Senate Bill 2 establishes requirements for emergency shelter ordinances. During the State HCDs review of Sausalito's draft 2015-2023 Housing Element, the State requested specific changes to the City's Emergency Shelter Ordinance that was adopted in July 2014. To address this issue, the City will amend Section 10.28.080 of the Municipal Code as follows: a) amend Sausalito Municipal Code Section 10.28.080.1.3 (Management Plan) to remove the words "for approval" in the sentence "Prior to commencing operation, the shelter operator shall provide a written management plan to the Director for approval" and add the words "(to the extent such services are

required)" after the phrase "The management plan shall address"; and b) eliminate Sausalito Municipal Code Section 10.28.080.I.4 (Annual Report).

2015-2023 Objectives: Support implementation of the Homeless Countywide Continuum of Care and continue to publicize the emergency 211 call system. In 2015, amend Sausalito Municipal Code Section 10.28.080.I.3 and Sausalito Municipal Code Section 10.28.080.I.4 as specified in Program 27."

WHEREAS, in 2016, the City Council adopted Ordinance Nos. 1235 and 1237 thereby making the modifications to the City's Emergency Shelter Ordinance and implemented Program 27 of the Housing Element; and

WHEREAS, the draft General Plan Update currently being considered by the Council includes Policy HS-5.3 "Provide for Compassion. Support organizations and service providers that provide aid and social support in Sausalito. Services that provide housing, transportation, healthcare, and other social services to vulnerable individuals and communities are an essential part of the greater Sausalito community;" and

WHEREAS, the City of Sausalito has been working with our regional and local representatives, the County of Marin, Marin County Health and Human Services, the Marin County Office of Veterans Services, local and regional non-profit organizations, and the faith-based community to provide needed services and find viable alternative shelter for the individuals in the Dunphy Park encampment; and

WHEREAS, since 2017, the City of Sausalito, in conjunction with the Richardson's Bay Regional Agency (RBRA), and the County of Marin, has participated in various efforts to preserve Richardson's Bay waters and assist anchor-outs and other vulnerable populations, including annual Richardson's Bay debris collection events , participation in the mobile showers offered by the Downtown Streets Team, and provision of grab-and-go bags of groceries from the San Francisco-Marin Food Bank during Mobile Shower visits during the pandemic; and

WHEREAS, in order to address vessels in Sausalito waters the City also developed the Safe Harbor Program – a partnership with the local marinas in Sausalito to find slips for sea worthy vessels that allow the boat's occupants a safe, secure place to dock and ready access to numerous benefits including transportation, sanitary facilities and employment; and

WHEREAS, the Sausalito Police Department has hosted an annual Homeless Outreach Event in November for Sausalito's anchor-out and homeless communities providing attendees with access to free medical and dental care, clothing, and supplies.

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES:

The City Council affirms its commitment to continue to work with its regional and local partners to explore every opportunity to provide shelter and care to those without a home and to treat all individuals experiencing homelessness with compassion and dignity.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the City Council on the 5th day of February 2021, by the following vote:

AYES:	Councilmember:	Sobieski, Cleveland-Knowles, Kellman, Mayor Hoffman
NOES:	Councilmember:	Blaustein
ABSENT:	Councilmember:	None
ABSTAIN:	Councilmember:	None

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Jill James Hoffman

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JILL JAMES HOFFMAN
MAYOR

ATTEST:

DocuSigned by:

Heidi Scoble

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HEIDI SCOBLE
CITY CLERK

EXHIBIT 2

RESOLUTION NO. 6009

RESOLUTION OF THE SAUSALITO CITY COUNCIL CLOSING CERTAIN CITY PROPERTY TO CAMPING AND STORAGE OF PERSONAL PROPERTY; AND ADOPTING STANDARD OPERATING PROCEDURES FOR CLEARING AND CLEANING ENCAMPMENTS

WHEREAS, the unauthorized use of public property for camping purposes and the storage of personal property interferes with the rights of others to use the areas for which they were intended and creates public health and safety hazard that adversely affects residential and commercial uses; and

WHEREAS, Sausalito is not immune from the homelessness crisis affecting the Bay Area and the State of California; and

WHEREAS, people without homes may find it necessary to sleep at night outdoors on public property when homeless shelters or other indoor living arrangements are not available; and

WHEREAS, Sausalito endeavors to locate shelter beds or other safe living arrangements wherever available for people without homes within its City limits, and to take other actions to support and protect the welfare of homeless persons and the entire community; and

WHEREAS, an encampment was recently established on City-owned property adjacent to Dunphy Park and that encampment continues to expand; and

WHEREAS, the Dunphy Park encampment is not an appropriate location because of its proximity to Richardson's Bay and Dunphy Park and lack of access to restrooms, showers and other sanitary services and thus poses health, welfare and safety risks to the persons living in the encampment and to the environment; and

WHEREAS, the City finds that Marinship Park, located on Testa Street at Marinship Way, is a more appropriate publically-owned location within the City for overnight sleeping by people without homes who have no option to sleep indoors, due to its access to restrooms, mobile showers, sanitary services, trash collection, and other factors; and

WHEREAS, Sausalito Municipal Code section 13.28.010 authorizes the City Council to regulate entry, access, and use of City property by resolution. Specifically, section 13.28.010, subdivision (a), authorizes the City Council to close or place use restrictions, including area, time, or manner restrictions, on any park, parkway, recreation area, street, alley, or other public land owned or controlled by the City. Further, section 13.28.010, subdivision (b), authorizes the City Council to regulate the manner of use of any park, parkway, recreation area, street, alley, or other public land owned or controlled by the City; and

WHEREAS, pursuant to its authority under Municipal Code section 13.28.010, the City desires to close all City-owned and City-controlled property to daytime camping; and

WHEREAS, pursuant to its authority under Municipal Code section 13.28.010, the City desires to close all City-owned and City-controlled property to overnight camping; except Marinship Park as a temporary, transitional overnight camping location for people without homes who have no option of sleeping indoors; and

WHEREAS, in compliance with due process requirements, the City desires to adopt Standard Operating Procedures for clearing and cleaning of encampments of people without homes and the impoundment of personal property unlawfully stored or maintained on public property.

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES:

1. **Definitions:** As used in this Resolution, the following terms shall have the meanings given them in this section.

a. "Camp" or "camping" means using property for living accommodation purposes, as evidenced by: (a) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of the property as authorized under any other ordinance or law, or regulation, with one's personal possessions or belongings (including, but not limited to, clothing, tents, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware and cooking equipment); and (b) engaging in one or more of the following: sleeping, storing personal possessions or belongings, making a fire outside of a designated fire pit, or cooking meals.

b. "Camping facilities" means and includes, but is not limited to, tents, huts, temporary shelters, unpermitted structures and, when used for the purpose of sleeping, vehicles.

c. "Personal property" means any and all tangible property, and includes, but is not limited to, items, goods, materials, camping facilities, merchandise, furniture and cooking equipment.

2. **Unlawful daytime camping.** Absent express written authorization by the City Manager or his/or her designee, no person shall camp or store camping facilities on any parks, parkways, recreation areas, streets, alleys, and other public lands owned or controlled by the City from sunrise to sunset.

3. **Unlawful overnight camping.** Absent express written authorization by the City Manager or his/her designee, overnight camping and storage of camping facilities is prohibited on any parks, parkways, recreation areas, streets, alleys, and other public lands owned or controlled by the City from sunset to sunrise, except for area(s) of Marinship Park designated by the Interim City Manager or her designee, located on Testa Street at Marinship Way, by persons who have no option to sleep indoors, pending further action by the City Council. All persons camping overnight must

remove all camping facilities and personal property from Marinship Park between the hours of thirty (30) minutes after sunrise to thirty (30) minutes before sunset.

4. **Standard Operating Procedures.** The City hereby adopts the Standard Operating Procedures attached as Exhibit A to govern the clearing and cleaning of areas used for camping.

5. **Severability.** If any section, subsection, sentence, clause, portion or phrase of this Resolution is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof. The City hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, portion or phrase thereof, irrespective of the fact that any one or more sections, subsection, sentences, clauses or phrases be declared illegal, invalid or unconstitutional.

6. **CEQA Findings.** The City pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq., Title 14 California Code of Regulations) has determined that this Resolution is not a "project" pursuant to Public Resources Code Section 21065, and that it is exempt from the provisions of CEQA pursuant to Guidelines Sections 15061(b)(3) (because it can be seen with certainty that the adoption of this Resolution will not have an effect on the environment), 15308 (actions by a regulatory agency for the protection of the environment), 15269 (emergency projects) and 15321 (enforcement actions by regulatory agencies).

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the City Council on the 5th day of February 2021, by the following vote:

AYES:	Councilmember:	Sobieski, Cleveland-Knowles, Kellman, Mayor Hoffman
NOES:	Councilmember:	Blaustein
ABSENT:	Councilmember:	None
ABSTAIN:	Councilmember:	None

DocuSigned by:

Jill James Hoffman

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JILL JAMES HOFFMAN
MAYOR

ATTEST:

DocuSigned by:

Heidi Scoble

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HEIDI SCOBLE
CITY CLERK

Exhibit A: Standard Operating Procedure

**RESOLUTION OF THE SAUSALITO CITY COUNCIL
CLOSING CERTAIN CITY PROPERTY AND PARKS TO OVERNIGHT SLEEPING**

EXHIBIT A: STANDARD OPERATING PROCEDURE

**CLEANING AND CLEARING OF HOMELESS ENCAMPMENTS AND
IMPOUNDMENT OF PROPERTY**

I. General Provisions

- A. These Standard Operating Procedures govern the cleaning and clearing of homeless encampments on City property and the impoundment of personal property unlawfully stored or maintained on public property.
- B. All departments and employees of the City of Sausalito must comply with these Standard Operating Procedures.
- C. The Department of Public Works (DPW) shall have primary responsibility for implementing these Standard Operating Procedures, and may enlist support from other City departments as needed.
- D. Notwithstanding the Municipal Code or other applicable law, the City shall not cite or arrest any individual solely for overnight sleeping or camping on public property, or otherwise for the status of being homeless.
- E. The City must balance the rights of encamped individuals against its fundamental duty to maintain public health, welfare, and safety.
- F. As used in these Standard Operating Procedures, the following terms shall have the meanings given them in this section.
 - 1. “Camp” or “camping” means using property for living accommodation purposes, as evidenced by: (a) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of the property as authorized under any other ordinance or law, or regulation, with one’s personal possessions or belongings (including, but not limited to, clothing, tents, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware and cooking equipment); and (b) engaging in one or more of the following: sleeping, storing personal possessions or belongings, making a fire outside of a designated fire pit, or cooking meals.
 - 2. “Camping facilities” means and includes, but is not limited to, tents, huts, temporary shelters, unpermitted structures and, when used for the purpose of sleeping, vehicles.
 - 3. “Personal property” means any and all tangible property, and includes, but is not limited to, items, goods, materials, camping facilities, merchandise, furniture and cooking equipment.

II. **Public Noticing**

- A. Where the City authorizes overnight camping at a location but requires that persons camping overnight remove their camping facilities and personal property from that location during daytime hours, the City must provide reasonable notice of these requirements.
 - 1. The notice must be in writing, distributed to those encamped, and posted around the encampment. As feasible, the notice must also be given orally to those encamped. The notice must include a description of any and all conditions imposed on overnight camping at that location, including any requirements for campers to depart and remove their camping facilities and personal property from the overnight camping location during any specified hours.
 - 2. In the event a person camping overnight fails to comply with legal requirements to remove their camping facilities and personal property from the overnight camping location during daytime hours, the City shall post notice of non-compliance in writing in a visible manner on or in the immediate vicinity of the offending camping facilities or personal property. As feasible, notice of non-compliance must also be given orally to the person in non-compliance. The notice must also inform the overnight camper that a second violation of the daily requirement to remove their camping facilities and personal property from the overnight camping location during daytime hours may result in the City's impoundment of their camping facilities and/or personal property unlawfully remaining at the overnight camping location.
- B. Except as provided in Section II.A., before conducting any non-urgent cleaning, clearing or impoundment activities, the City must provide at least 72-hours' notice.
 - 1. The notice must be provided in writing, distributed to those encamped, and posted around the encampment. As feasible, the notice must also be given orally to those encamped.
 - 2. The notice must include a description of the activities to be conducted, the approximate date and time of those activities, any temporary or permanent relocation requirements, information about authorized overnight camping locations, offers of indoor shelter or alternative housing and information about recovery of personal property.
- C. Before conducting any emergency cleaning, clearing or impoundment activities, the City must make reasonable efforts to provide some form of notice, that may include outreach workers visiting the site and sharing information orally or in writing.

1. Emergency activities are warranted where conditions present a serious threat of environmental harm or injury or death to any persons, including but not limited to wildfire, severe weather, flooding, tsunami, earthquake, and infectious disease.

III. **Cleaning of Encampments and Surrounding Public Property**

- A. After providing the notice described in Section II, the City may conduct any cleaning or maintenance activities within an encampment that it deems to be in the interest of the public health, welfare, or safety. These cleaning activities may include but are not limited to:
 1. Removing debris, trash, waste, illegal dumping, hazardous materials, or other materials; and
 2. Washing and sanitizing the encampment area.
- B. The City may require campers to temporarily or permanently relocate during cleaning activities when it finds that this is necessary to protect public health, welfare, or safety.
- C. Notwithstanding Sections II and III.A, the City may conduct routine cleaning and maintenance activities on public property in the vicinity and around an encampment without providing advance written notice. These activities may include, but are not limited to:
 1. Cleaning, servicing, and repairing restrooms, showers, parks and recreation facilities, and other public facilities;
 2. Performing routine waste, recycling, compost, and trash collection;
 3. Conducting ordinary maintenance and landscaping activities, such as street sweeping, sidewalk cleaning, raking, blowing, mowing, tree trimming, and hedging.

IV. **Clearing and Closing Encampments**

- A. After providing the notice described in Section II, the City may clear and close any encampment or any portion of an encampment, provided that:
 1. The City has located and offered indoor shelter or alternative housing to each affected homeless person; *or*
 2. The closure is for a temporary period of eight hours or less; *or*
 3. The City has designated an alternative location within the City for overnight sleeping and camping by homeless persons who have no option to sleep indoors.

- B. The City must document in writing any decline of an offer of indoor shelter or alternative housing prior to clearing and closing an encampment.
- C. The City may coordinate clearing and closing of encampments with other relevant public agencies, as appropriate.

V. **Storage and Recovery of Property**

- A. The City will take reasonable efforts to mitigate property loss during cleaning and clearing activities or impoundment of property unlawfully stored or maintained on public property, and to ensure that campers have a reasonable opportunity to recover property collected by the City during such activities.
- B. During the notice period, before cleaning and clearing or impoundment activities begin, the City will not prevent campers from retrieving their belongs.
- C. After the notice period, and after cleaning, clearing or impoundment activities have begun, the City will allow campers to retrieve their belongings as long as they do so in a reasonable period of time and do not interfere with the safety of operations.
- D. During cleaning, clearing and impoundment activities, the City will dispose of the following materials and not store them for later recovery:
 - 1. Items that are soiled (i.e., mildewed; moldy; stained with or contaminated with urine, bodily waste, or other waste matter) (e.g., mattresses, blankets, sleeping bags, etc. that are soiled as described);
 - 2. Items that are perishable (e.g., perishable food, open personal products);
 - 3. Items that are contaminated (e.g., used for hygiene, such as toothbrushes, hairbrushes, wash cloths, underwear);
 - 4. Items that are hazardous, combustible, or present a fire risk (e.g., car batteries, gasoline cans, propane tanks, generators);
 - 5. Items that are broken or disassembled (e.g., electronics stripped for copper, flat tires, disassembled or broken furniture, disassembled or broken bikes or cars, rags);
 - 6. Weapons (all weapons will be turned over to the Police Department);
 - 7. Paper products;
 - 8. Open household products;

9. Items that are considered to be trash; and
 10. Items that are considered to be unsafe for storage.
- E. For other property, including the items listed below, the City will make reasonable efforts to store up to one square yard of property per individual, tent, or living space. This will include property whose ownership cannot be determined, or property whose ownership is known but whose owner cannot transport the property.
1. Identification (e.g., passport, Social Security card, Driver's License, library card);
 2. Medications (controlled substances must be turned over to the Police Department);
 3. Photographs, photo albums, and other items of obvious sentimental, religious, or personal value (e.g., religious icons, holy books);
 4. Tax records;
 5. Medical records;
 6. Other vital records (e.g., bank records, checkbooks);
 7. Unopened mail;
 8. Electronics in reasonable shape (i.e., not leaking);
 9. Tools;
 10. A functional bicycle;
 11. Books; and
 12. Up to the volume of a 64-gallon bag of miscellaneous items that its owner attests does not contain any items listed in section V.D above.
- F. "Reasonable efforts" must comport with ordinary practices with respect to property storage.
- G. DPW will, before the end of the cleaning, clearing or impoundment activities, post a "Notice of Collected Property" at the site, which will contain a call center telephone number to facilitate property retrieval.
- H. Storage of above listed will only occur if such storage is safe based on current public health guidance.

- I. DPW will use its ordinary form(s) or methods to record a general description of the item(s) and the date of and location from which they were removed.
- J. DPW will store them for at least ninety (90) days, and longer if such storage is feasible based on storage capacity and/or resources.
- K. DPW may use its discretion to leave rather than store any item listed here if storage would harm the item's owner or harm staff responsible for the storage
- L. If additional procedures are required, they may be promulgated by DPW.

VI. **Compliance**

- A. The City cannot require any person to accept any offered form of indoor shelter or alternative housing, even if acceptance is strongly recommended for public health or public safety reasons.
- B. The City will continue outreach efforts and service offers regardless of encampment compliance. Outreach workers may assist encampment residents to achieve voluntary compliance
- C. Notwithstanding the Municipal Code or applicable law, the City shall not cite or arrest any individual solely for overnight sleeping or camping on public property, or otherwise for the status of being homeless.
- D. The City, its officers, employees, and agents shall not be liable to the owner of impounded personal property because of any transport, handling, storage or disposal of the property made pursuant to these procedures. Additionally, the owner of impounded personal property shall bear the responsibility for the risk of any loss or damage to the impounded property.

EXHIBIT 2a

CITY OF SAUSALITO

STANDARD OPERATING PROCEDURES

CLEANING AND CLEARING OF HOMELESS ENCAMPMENTS AND IMPOUNDMENT OF PROPERTY

I. General Provisions

- A. These Standard Operating Procedures govern the cleaning and clearing of homeless encampments on City property and the impoundment of personal property unlawfully stored or maintained on public property.
- B. All departments and employees of the City of Sausalito must comply with these Standard Operating Procedures.
- C. The Department of Public Works (DPW) shall have primary responsibility for implementing these Standard Operating Procedures, and may enlist support from other City departments as needed.
- D. Notwithstanding the Municipal Code or other applicable law, the City shall not cite or arrest any individual solely for overnight sleeping or camping on public property, or otherwise for the status of being homeless.
- E. The City must balance the rights of encamped individuals against its fundamental duty to maintain public health, welfare, and safety.
- F. As used in these Standard Operating Procedures, the following terms shall have the meanings given them in this section.
 - 1. “Camp” or “camping” means using property for living accommodation purposes, as evidenced by: (a) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of the property as authorized under any other ordinance or law, or regulation, with one’s personal possessions or belongings (including, but not limited to, clothing, tents, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware and cooking equipment); and (b) engaging in one or more of the following: sleeping, storing personal possessions or belongings, making a fire outside of a designated fire pit, or cooking meals.
 - 2. “Camping facilities” means and includes, but is not limited to, tents, huts, temporary shelters, unpermitted structures and, when used for the purpose of sleeping, vehicles.
 - 3. “Personal property” means any and all tangible property, and includes, but is not limited to, items, goods, materials, camping facilities, merchandise, furniture and cooking equipment.

II. **Public Noticing**

- A. Where the City authorizes overnight camping at a location but requires that persons camping overnight remove their camping facilities and personal property from that location during daytime hours, the City must provide reasonable notice of these requirements.
 - 1. The notice must be in writing, distributed to those encamped, and posted around the encampment. As feasible, the notice must also be given orally to those encamped. The notice must include a description of any and all conditions imposed on overnight camping at that location, including any requirements for campers to depart and remove their camping facilities and personal property from the overnight camping location during any specified hours.
 - 2. In the event a person camping overnight fails to comply with legal requirements to remove their camping facilities and personal property from the overnight camping location during daytime hours, the City shall post notice of non-compliance in writing in a visible manner on or in the immediate vicinity of the offending camping facilities or personal property. As feasible, notice of non-compliance must also be given orally to the person in non-compliance. The notice must also inform the overnight camper that a second violation of the daily requirement to remove their camping facilities and personal property from the overnight camping location during daytime hours may result in the City's impoundment of their camping facilities and/or personal property unlawfully remaining at the overnight camping location.
- B. Except as provided in Section II.A., before conducting any non-urgent cleaning, clearing or impoundment activities, the City must provide at least 72-hours' notice.
 - 1. The notice must be provided in writing, distributed to those encamped, and posted around the encampment. As feasible, the notice must also be given orally to those encamped.
 - 2. The notice must include a description of the activities to be conducted, the approximate date and time of those activities, any temporary or permanent relocation requirements, information about authorized overnight camping locations, offers of indoor shelter or alternative housing and information about recovery of personal property.
- C. Before conducting any emergency cleaning, clearing or impoundment activities, the City must make reasonable efforts to provide some form of

notice, that may include outreach workers visiting the site and sharing information orally or in writing.

1. Emergency activities are warranted where conditions present a serious threat of environmental harm or injury or death to any persons, including but not limited to wildfire, severe weather, flooding, tsunami, earthquake, and infectious disease.

III. **Cleaning of Encampments and Surrounding Public Property**

- A. After providing the notice described in Section II, the City may conduct any cleaning or maintenance activities within an encampment that it deems to be in the interest of the public health, welfare, or safety. These cleaning activities may include but are not limited to:
 1. Removing debris, trash, waste, illegal dumping, hazardous materials, or other materials; and
 2. Washing and sanitizing the encampment area.
- B. The City may require campers to temporarily or permanently relocate during cleaning activities when it finds that this is necessary to protect public health, welfare, or safety.
- C. Notwithstanding Sections II and III.A, the City may conduct routine cleaning and maintenance activities on public property in the vicinity and around an encampment without providing advance written notice. These activities may include, but are not limited to:
 1. Cleaning, servicing, and repairing restrooms, showers, parks and recreation facilities, and other public facilities;
 2. Performing routine waste, recycling, compost, and trash collection;
 3. Conducting ordinary maintenance and landscaping activities, such as street sweeping, sidewalk cleaning, raking, blowing, mowing, tree trimming, and hedging.

IV. **Clearing and Closing Encampments**

- A. After providing the notice described in Section II, the City may clear and close any encampment or any portion of an encampment, provided that:
 1. The City has located and offered indoor shelter or alternative housing to each affected homeless person; *or*
 2. The closure is for a temporary period of eight hours or less; *or*

3. The City has designated an alternative location within the City for overnight sleeping and camping by homeless persons who have no option to sleep indoors.
- B. The City must document in writing any decline of an offer of indoor shelter or alternative housing prior to clearing and closing an encampment.
- C. The City may coordinate clearing and closing of encampments with other relevant public agencies, as appropriate.

V. **Storage and Recovery of Property**

- A. The City will take reasonable efforts to mitigate property loss during cleaning and clearing activities or impoundment of property unlawfully stored or maintained on public property, and to ensure that campers have a reasonable opportunity to recover property collected by the City during such activities.
- B. During the notice period, before cleaning and clearing or impoundment activities begin, the City will not prevent campers from retrieving their belongs.
- C. After the notice period, and after cleaning, clearing or impoundment activities have begun, the City will allow campers to retrieve their belongings as long as they do so in a reasonable period of time and do not interfere with the safety of operations.
- D. During cleaning, clearing and impoundment activities, the City will dispose of the following materials and not store them for later recovery:
 1. Items that are soiled (i.e., mildewed; moldy; stained with or contaminated with urine, bodily waste, or other waste matter) (e.g., mattresses, blankets, sleeping bags, etc. that are soiled as described);
 2. Items that are perishable (e.g., perishable food, open personal products);
 3. Items that are contaminated (e.g., used for hygiene, such as toothbrushes, hairbrushes, wash cloths, underwear);
 4. Items that are hazardous, combustible, or present a fire risk (e.g., car batteries, gasoline cans, propane tanks, generators);
 5. Items that are broken or disassembled (e.g., electronics stripped for copper, flat tires, disassembled or broken furniture, disassembled or broken bikes or cars, rags);

6. Weapons (all weapons will be turned over to the Police Department);
7. Paper products;
8. Open household products;
9. Items that are considered to be trash; and
10. Items that are considered to be unsafe for storage.

E. For other property, including the items listed below, the City will make reasonable efforts to store up to one square yard of property per individual, tent, or living space. This will include property whose ownership cannot be determined, or property whose ownership is known but whose owner cannot transport the property.

1. Identification (e.g., passport, Social Security card, Driver's License, library card);
2. Medications (controlled substances must be turned over to the Police Department);
3. Photographs, photo albums, and other items of obvious sentimental, religious, or personal value (e.g., religious icons, holy books);
4. Tax records;
5. Medical records;
6. Other vital records (e.g., bank records, checkbooks);
7. Unopened mail;
8. Electronics in reasonable shape (i.e., not leaking);
9. Tools;
10. A functional bicycle;
11. Books; and
12. Up to the volume of a 64-gallon bag of miscellaneous items that its owner attests does not contain any items listed in section V.D above.

F. "Reasonable efforts" must comport with ordinary practices with respect to property storage.

- G. DPW will, before the end of the cleaning, clearing or impoundment activities, post a "Notice of Collected Property" at the site, which will contain a call center telephone number to facilitate property retrieval.
- H. Storage of above listed will only occur if such storage is safe based on current public health guidance.
- I. DPW will use its ordinary form(s) or methods to record a general description of the item(s) and the date of and location from which they were removed.
- J. DPW will store them for at least ninety (90) days, and longer if such storage is feasible based on storage capacity and/or resources.
- K. DPW may use its discretion to leave rather than store any item listed here if storage would harm the item's owner or harm staff responsible for the storage
- L. If additional procedures are required, they may be promulgated by DPW.

VI. **Compliance**

- A. The City cannot require any person to accept any offered form of indoor shelter or alternative housing, even if acceptance is strongly recommended for public health or public safety reasons.
- B. The City will continue outreach efforts and service offers regardless of encampment compliance. Outreach workers may assist encampment residents to achieve voluntary compliance
- C. Notwithstanding the Municipal Code or applicable law, the City shall not cite or arrest any individual solely for overnight sleeping or camping on public property, or otherwise for the status of being homeless.
- D. The City, its officers, employees, and agents shall not be liable to the owner of impounded personal property because of any transport, handling, storage or disposal of the property made pursuant to these procedures. Additionally, the owner of impounded personal property shall bear the responsibility for the risk of any loss or damage to the impounded property.

EXHIBIT 3

“[RESERVED]”

EXHIBIT 4



EXHIBIT 5



EXHIBIT 6a



EXHIBIT 6b



EXHIBIT 6c



EXHIBIT 6d



EXHIBIT 6e



EXHIBIT 7



EXHIBIT 8a



EXHIBIT 8b



EXHIBIT 8c



EXHIBIT 8d



EXHIBIT 8e



EXHIBIT 8f



EXHIBIT 9



EXHIBIT 10



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: October 27, 2020

AGENDA TITLE: Safe Harbor Update

LEAD DEPARTMENT: Sausalito Police Department

RECOMMENDED ACTIONS:

- 1) Receive and file report
 - 2) Approve DRAFT presentation slides for the BCDC Enforcement Committee meeting on October 28, 2020
-

SUMMARY

The City of Sausalito recently learned from Ritter Center that the California Emergency Solutions and Housing (CESH) Program grant request in the amount of \$171,700 for our Safe Harbor Program was approved. Ritter Center is our partner in providing wrap around services to those selected for participation in the Safe Harbor Program.

The purpose of this report is to brief you on that very exciting news.

BACKGROUND

The City of Sausalito withdrew from Richardson Bay Regional Agency at the beginning of 2017. Ever since that date, and even in the months leading up to the City's withdrawal, the Sausalito Police Department has been the lead City department in its efforts to manage our waterfront. Our goal has been to increase public safety and quality of life along the waterfront. We have only been successful due to the combined efforts of our many partners.

In January 2019 the Sausalito City Council approved a modification of the Occupied Vessels (Phase IV) component of the City of Sausalito's Waterfront Management Plan priorities. Phase IV was modified to adopt a 2 part strategy.

1. Immediate enforcement of 72-hour ordinance with respect to any new occupied boats entering our waters;
2. Deferred enforcement of occupied boats already on our waters to enable their numbers to be reduced through attrition and through Marin County / Sausalito relocation efforts (i.e., Marin County housing vouchers / increase in Sausalito liveaboard parameters)

It is the second of the two modifications that led to the City's approval of our Safe Harbor Program.

It is important to note that City Manager Adam Politzer and Chief of Police John Rohrbacher started attending meetings with several Marin County service agencies in early 2018 to learn more about funding for caring for our homeless and anchor outs. Fast forward to April 2019 we were meeting with the County of Marin's Homeless Policy Steering Committee and learned about the CESH grant funds. We selected Ritter Center to be our partner in applying for these funds. Unfortunately, the State of California delayed the release of the CESH funds and Ritter Center was not able to make their application until September 2020.

We were thrilled to learn on September 16, 2020, that Ritter Center's proposal for Safe Harbor was selected and awarded the grant funds. Ritter Center expects the funds to be released in November 2020

DISCUSSION/ANALYSIS

Safe Harbor Program

The Safe Harbor Program participation is at a standstill. This standstill has been caused by a combination of the COVID-19 pandemic, marinas/harbors willingness to participate, and interest amongst the legacy anchor outs. Prior to the pandemic the City and Ritter Center successfully placed one boat with two occupants at the Sausalito Yacht Harbor at the end of October 2019 and a second boat with one occupant at the Clipper Yacht Harbor in December 2019. A third boat with one occupant has been accepted at the Pelican Harbour but due to the harbor's COVID-19 precautions, the vessel and its occupant has not been moved into a berth. The City continues to fund existing Safe Harbor slip fees despite these constraints.

Wraparound services by Ritter Center have been suspended during the COVID-19 pandemic and, as a result, the City has not been charged by Ritter Center for the past several months.

Alternative Housing Arrangements for Richardson's Bay Occupants

Councilmember Joan Cox and City Manager Adam Politzer continue to lead the City's efforts to find other funding sources and housing arrangements for Richardson Bay occupants. Those meetings and conversations have included Senator McGuire, County staff, and the City's Community Development Director, Lilly Whalen. Next steps include

circling back with Senator McGuire, RBRA, Supervisor Sears and Supervisor-Elect Moulton Peters, and subsequently meeting with California's Department of Housing and Community Development to further explore the feasibility of state funding in 2021 for various potential affordable housing sites throughout Marin County.

Mobile Showers Program

The Downtown Streets Team Mobile Showers Program provided us with these numbers:

- 2,342 showers have been provided in Sausalito since the start of the program in November 2018
- 1,271 showers have been provided in Sausalito during 2020.
- In 2020, the Mobile Shower program has seen an approximate 30% increase in usage in Sausalito. This increase has been mostly seen since the COVID-19 Public Health Orders have gone into effect.
 - Some of the new regulars using the mobile showers had recently lost their jobs and were using a friend's place or a gym to shower prior to participating in the mobile shower program
 - Some of these individuals have continued to use the mobile shower program after they had returned to the work force.
- The Downtown Streets Team partnered with the San Francisco-Marín Food Bank to provide an access point for food distribution when the COVID 19 Shelter in Place/Public Health Order started.
- Food was originally distributed at both the Tuesday and Friday Mobile Showers in Sausalito. Now food is distributed by the San Francisco-Marín Food Bank only on Tuesdays when there are volunteers available.
- Downtown Streets Team and San Francisco-Marín Food Bank states that they provided approximately over 600 meals at the Sausalito Mobile Showers.
- The majority of people picking up food at the mobile showers were participating in the mobile shower program. The Downtown Streets team states that approximately 1 or 2 people per week come to the site each week to pick up food and not utilize the showers.
- Working with Marin County Health and Human Services, the Sausalito Mobile Showers hosted two COVID-19 testing sites staffed by medical professionals. These testing were done on Friday, September 11th and Friday, September 18th. The COVID tests were provided free of cost to all those wanting them.

Recurring Meetings with BDCD Enforcement Staff

On Tuesday morning, October 20, 2020, Councilmember Cox, City Manager Politzer, Chief of Police Rohrbacher, and Police Captain Fraass participated in a telephone conference call with BDCD Enforcement Staff members Adrienne Klein, Priscilla Njuguna, and Karen Donovan.

Councilmember Cox covered the following recent topics on behalf of the City of Sausalito.

1. Sausalito received NOAA Marine Debris Program FY 2021 Marine Debris Research notice of funding opportunity and will pursue as appropriate.
2. Sausalito will be prepared to present an updated waterfront report at the upcoming Enforcement Committee Meeting 10/28/20.
3. Sausalito staff and officials are participating this week in Richardson's Bay Eelgrass Plan listening sessions hosted by Rebecca Schwartz Lesberg to commence efforts to restore subtidal habitat to repair damage.
4. Sausalito submitted a Project Homekey Grant Application for Safe Harbor Program; Sausalito received CESH funding for Safe Harbor Program, which will commence November 2020.
5. Sausalito continues to participate in an ongoing dialogue with Senator McGuire, HCD and County of Marin regarding creation of affordable housing options for homeless including anchor outs.
6. Status report regarding enforcement efforts in Sausalito's waters: we are down to 9 boats, one of which we hope to enroll in Safe Harbor program when the marina owner's pandemic concerns are alleviated, and one of which we intend to pursue enforcement efforts once pandemic eases.
7. Councilmember Cox is preparing a Presentation for her upcoming report to the BCDC Enforcement Committee on October 28, 2020.

Items of discussion by BCDC Enforcement Staff include (in summary form):

- Long term resolution process: Adrienne will present all possible options to Enforcement Committee for resolving this matter including various processes / real world opportunities for achieving goal of McAteer Petris Act compliance with Richardson's Bay Special Area Plan.
 - Adrienne inquired about other practical areas City could explore for absorbing remaining anchor outs that might enable them to leave the water sooner beyond permanent housing with wraparound services. For example, BCDC has been working with the City of Oakland but haven't heard us explore temporary upland housing in tuff sheds or vans (Chief explained that for our remaining legacy mariners, upland options are less feasible due to their commitment to keep their boats).
 - Adrienne inquired has condition of remaining vessels been inspected? Are they safe in a storm event? BCDC has become aware of recent loss of life from carbon monoxide poisoning from generator exhaust on a boat in county waters and wants to ensure we are adequately monitoring remaining vessels in Sausalito waters.
-

- Adrienne raised option of ecological moorings as an enforcement tool for securing these remaining vessels for the interim period during which they remain on the anchorage to increase life safety for the person on the vessel, reduce damage to vessel, protect law enforcement and to protect subtidal habitat.
 - Adrienne mentioned that the marine debris grant funding program NOAA could fund the use of ecological moorings.
 - Adrienne clarified that with regard to ecological moorings, there hasn't been a detailed enough discussion of how they could be used to accomplish multi beneficial goals. While the Merkel report identified possible sites for moorings, the Committee may have perceived that proposal as permanent long term moorings. For the moment, Adrienne is putting them on the table for interim short term use in which case the locations would not have to be confined to locations in the Merkel report; rather, current anchor outs would stay where they are. Adrienne is proposing switching out the tackle of the remaining boats through an enforcement process rather than a permit process.
 - Adrienne inquired what happens in 5 years if our legacy anchor outs are not off the water? (Chief responded this is really about people, these are our stalwarts, they are a help to us, they are not responsible for any law enforcement calls for service, they take significant pride in the care of their boats, we check in on almost every marine patrol, we have not been on board below deck, but our municipal code requires decks to be clear and free of debris, and these boats are in compliance. The Chief has asked Ritter Center to assist with ideas for finding funds to get any remaining anchor outs a replacement boat that they could live on in a marina if their own vessel is not suitable for a slip in a marina, so that is another option we are exploring).
 - At next week's Enforcement Committee meeting, BCDC will be bringing to the Committee's attention the loss of life that happened this weekend, which will likely raise concerns about similarly situated people and safety concerns we should be weighing as we continue to work towards resolution. BCDC will be seeking a report from us regarding the vessels still on our water, and that we keep them informed of legacy anchor out condition of boats.
 - In the long term, staff is considering long term solution for managing Sausalito's compliance with Richardson's Bay Special Area Plan, and will be making recommendations to Enforcement Committee. They are trying to iron out the different considerations they should propose. They have to put something in writing that memorializes what we've discussed that's workable and feasible. Because we've been having these discussions about a holistic approach for broader issue of boats on the RBRA side, they recognize any solution for City or RBRA could result in vessels coming from either direction. They are trying to find the best middle ground to try to get everybody to have a workable solution that
-

can be achieved within a particular time frame. Their goal is to propose this solution at the November 12 Enforcement Committee meeting.

- It will be important for the 125 boats in RBRA waters to be treated the same way as the boats in Sausalito's waters. BCDC has to be able to address those boats fairly.
- BCDC would like us to include in our report a clear understanding of the role Sausalito's legacy population plays in real time.
- BCDC staff had an internal discussion about Sausalito's request to increase the number of liveaboards from 10% to 15%; at the moment, BCDC's position is they are not increasing that number.

ALTERNATIVES

N/A

FISCAL IMPACT

As of the date of this report, the City has accrued approximately \$59,664.75 in costs for the Safe Harbor Program. The costs include monthly service charges from Ritter Center and berth rental fees from the marinas.

STAFF RECOMMENDATIONS

1. Receive and file report
2. Approve DRAFT presentation slides for the BCDC Enforcement Committee meeting on October 28, 2020

ATTACHMENTS

1. Local Priority Setting for CESH State Funding meeting notes
2. City of Sausalito – Ritter Center CESH Proposal Plan
3. Ritter Center CESH Proposal
4. DRAFT presentation by Councilmember Cox to BCDC on October 28

PREPARED BY:

John Rohrbacher
Chief of Police

SUBMITTED BY:

Adam W. Politzer
City Manager

EXHIBIT 11

NOTICE TO VACATE

UNAUTHORIZED ENCAMPMENT

DATE and TIME OF POSTING: Tuesday, February 9, 2021, at 5:30 p.m.

LOCATION: Dunphy Park (between 1498 Bridgeway and 300 Napa St.)

The unauthorized use of Dunphy Park for camping purposes and the storage of personal property thereon has been determined to pose serious health, welfare and safety risks to the persons living in the encampment and to the environment that adversely affect residential and commercial uses due to the location's proximity to Richardson Bay, and lack of access to restrooms, showers and other sanitary services.

PURSUANT TO ITS AUTHORITY UNDER SAUSALITO MUNICIPAL CODE SECTION 13.28.010, THE CITY HAS MANDATED THE CLOSURE OF ALL CITY-OWNED AND CITY-CONTROLLED PROPERTY TO OVERNIGHT CAMPING, EXCEPT THE DESIGNATED AND SIGNPOSTED AREA WITHIN MARINSHIP PARK (AT TESTA STREET AT MARINSHIP WAY) AS A TEMPORARY, TRANSITIONAL OVERNIGHT CAMPING LOCATION FOR INDIVIDUALS WHO HAVE NO OPTION OF SLEEPING INDOORS.

THE PUBLIC WORKS DEPARTMENT WILL CLEAR AND CLOSE THIS SITE AT APPROXIMATELY 9 a.m. ON TUESDAY, FEBRUARY 16, 2021, CONDITIONED ON THE AVAILABILITY OF STORAGE AT MARINSHIP PARK. ALL PERSONS ARE DIRECTED TO VACATE THIS SITE AND REMOVE ANY PERSONAL BELONGINGS.

Property left at the time of cleanup will be removed from the site and stored by the City and can be retrieved by contacting 415-289-4170. Property that is unsafe or hazardous will be immediately discarded.

IF YOU HAVE ANY QUESTIONS OR CONCERNS PLEASE CONTACT

LIEUTENANT STACIE GREGORY AT 415-289-4170

EXHIBIT 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTA CRUZ HOMELESS UNION, et al.,

Plaintiffs,

v.

MARTIN BERNAL, et al.,

Defendants.

Case No. 20-cv-09425-SVK

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR PRELIMINARY
INJUNCTION AND DIRECTING THE
PARTIES TO FILE A STATUS
REPORT ON MARCH 9, 2021**

Re: Dkt. Nos. 1, 5, 12-15, 17, 19, 23

Plaintiffs Santa Cruz Homeless Union, Santa Cruz Food Not Bombs, Alicia Avalos (“Avalos”), Hannah Hegel (“Hegel”), Chris Ingersoll (“Ingersoll”), and Randolph Tolley (“Tolley”) (collectively, “Plaintiffs”) bring this Ex Parte Application for Emergency Temporary Restraining Order and Preliminary Injunction against Defendants Santa Cruz City Manager Martin Bernal (“Bernal”), Director of Parks & Recreation Tony Elliot (“Elliot”), Chief of Police for the City of Santa Cruz Andrew Mills (“Mills”), and the City of Santa Cruz (“City”) (collectively, “Defendants”). Dkt. 1.

The Court granted Plaintiffs’ temporary restraining order application on December 30, 2020. Dkt. 5. On January 6, 2021, the Court held a preliminary injunction hearing and, to allow time to evaluate the Parties’ arguments, the Court extended the temporary restraining order to January 13, 2021. Dkt. 11; Dkt. 12. On January 11, 2021, Defendants filed an administrative motion to submit additional evidence. Dkt. 13. The Court granted this request, provided Plaintiffs an opportunity to respond to the new evidence, and extended the temporary restraining order to January 20, 2021. Dkt. 14.

As reasoned below, the City’s Executive Order No. 2020-24 (“Executive Order”) directing

the closure of San Lorenzo Park and the Benchlands at a time when the COVID-19 pandemic is surging and the City's homeless shelters are full, would leave the homeless persons camping in those locales more vulnerable to COVID-19 than if they were allowed to remain in the encampments. Accordingly, the Court **GRANTS** the motion for preliminary injunction. **However**, the keystone of the preliminary injunction is the current dire state of the COVID-19 pandemic. As vaccines roll out and the pandemic eases, dispersal of homeless persons from the encampments may no longer put them at greater risk for COVID-19, and re-evaluation of the injunction will be necessary. As it is possible, indeed highly desirable, that the pandemic eases more quickly than this case proceeds to trial for injunctive relief, the Court directs the Parties to keep a watchful eye on the situation and to submit periodic status reports to the Court as directed below.

I. BACKGROUND

The Court takes judicial notice of the nearly year long public health emergency due to COVID-19.¹ On December 3, 2020, the California Department of Public Health issued a "Regional Stay at Home Order" stating "all individuals living in the Region shall stay at home or at their place of residence" when intensive care unit capacity falls below 15%. Dkt. 1 ¶ 2, Exhibit ("Ex.") A. On December 16, 2020, the Health Services Agency of the County of Santa Cruz issued a press release stating that the Regional Stay-at-Home Order would commence on December 17, 2020. Dkt. 1 ¶ 3, Ex. B. Recently, Santa Cruz County has seen "the largest number [of new COVID cases] to be recorded in Santa Cruz since the pandemic began" and "[t]he absolute number of positive tests has also increased significantly, by about 25% since before Christmas." Dkt. 23, Exs. A, B.

The individual homeless Plaintiffs Avalos, Hegel, Ingersoll, and Tolley have been residing in the San Lorenzo Park and the Benchlands encampment ("Encampment") in Santa Cruz, California for the last several months. Dkt. 1 ¶¶ 15-18. The Encampment has grown to close to

¹ U.S. DEPT. OF HEALTH & HUMAN SERVICES, Determination that a Public Health Emergency Exists (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>; Cal. Exec. Order N-33-20 (Mar. 19, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

200 homeless persons over the last six months. *Id.* at ¶ 1. Plaintiffs argue that the residents of the Encampment are fed and provided with survival services and items at that locale and will face separation from vital services if the City is allowed to carry out the Executive Order. *Id.* Plaintiffs support this assertion with declarations from Santa Cruz residents and homeless advocates, which are discussed in detail in Section III.A.2.b. below. Dkt. 7 Declaration of Alicia Kuhl (“Kuhl Decl.”) ¶ 1; Dkt. 7 Declaration of Arista Bauer (“Bauer Decl.”) ¶ 2; Dkt. 7 Declaration of Joy Schendlecker (“Schendlecker Decl.”) ¶ 2; Dkt. 7 Declaration of Katayun Salehi (“Salehi Decl.”) ¶ 2; Dkt. 7 Declaration of Reggie Meisler (“Meisler Decl.”) ¶ 3.

The City has allowed San Lorenzo Park to be used for encampments during the past 9 months of the COVID-19 pandemic. Dkt. 9 at 7, 9; Dkt. 9-8 Declaration of Lee Butler (“Butler Decl.”) ¶ 9.² More particularly, in April 2020, the City and County of Santa Cruz³ (“County”) attempted to implement a “socially distant” encampment layout “in deference to the CDC guidance on encampments,” and the City provided trash services and hygiene resources to the Encampment residents.⁴ Dkt. 9 at 10; Butler Decl. ¶ 10. In July 2020, the City and County worked together to establish a managed camp at the Benchlands. Dkt. 9 at 11; Butler Decl. ¶ 10. The City has continued to provide trash service and hygiene resources to the Encampment residents, and at the hearing, defense counsel represented that the City continues to manage the trash on a daily basis. Dkt. 9 at 11; Butler Decl. ¶ 11. In addition to its efforts at the Encampment, the City has partnered with the County to add shelter capacity in the City at Veterans’ Hall, the Golflands, the Pavilion, and several motels. Dkt. 9 at 8. Despite these efforts, shelters for homeless persons in the City and County of Santa Cruz are currently full. Dkt. 9 at 8,

² The evidence indicates that San Lorenzo Park and the Benchlands were the site of homeless encampments prior to the onset of the COVID pandemic as well. Dkt. 9 at 10; Dkt. 10 Declaration of Tony Elliot (“Elliot Decl.”) ¶ 6.

³ The County of Santa Cruz is not a defendant in this action. Defendants proffer that it is the County that receives significant funding to provide housing or other services to persons experiencing homelessness and operates all of the shelters within City limits. Dkt. 9 at 9; Dkt. 9-5 Declaration of Martin Bernal (“Bernal Decl.”) ¶ 7; Dkt. 9-8 Declaration of Lee Butler (“Butler Decl.”) ¶ 13.

⁴ On its own motion, the Court takes judicial notice of Executive Order No. 2020-07, available online at <https://www.cityofsantacruz.com/Home/ShowDocument?id=80108>, because its contents “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2), (c)(1).

13; Dkt. 9-8 Butler Decl. ¶ 13.

On or around December 17, 2020, the City issued the Executive Order, which is the catalyst for this action. Dkt. 1 ¶ 4, Ex. C; Dkt. 9 at 12; Dkt. 9-5 Declaration of Martin Bernal (“Bernal Decl.”) ¶ 12. Pursuant to the Executive Order, Defendants Bernal and Elliot authorized and ordered the temporary closure of the San Lorenzo Park and the Benchlands, which would “be accomplished in phases, with the goal of temporarily closing the entire park by January 6, 2021.” Dkt. 1, Ex. C. Further, “[t]he closure period will end on January 31, 2021, unless an extension of the closure is authorized.”⁵ *Id.* The Executive Order notes that “[i]n recent weeks, the conditions at San Lorenzo Park have deteriorated to the extent that we feel that a temporary park closure is the City’s best and only realistic option.” *Id.* Conditions noted in the Executive Order include vandalism, fire safety, criminal activity, tree damage, trash, and a lack of social-distancing or wearing of masks. *Id.* The Executive Order further states that the City had “recently paid over \$140,000 to clean and start the rehabilitation process of areas within the Pogonip” and that “[e]specially during this time of significant budgetary constraints, we have a duty to preserve the park grounds and facilities and to prevent exorbitant rehabilitation expenses from becoming necessary at San Lorenzo Park.” *Id.* In response to Plaintiffs’ motion, the City has provided evidence of significant hazards at the Encampment relating to health, safety, fire, and property, all against the backdrop of severe fiscal financial limitations brought on by the COVID-19 pandemic. The City’s proffer is supported by multiple declarations and is discussed in further detail in Section III.C. On December 21, 2020, the City executed the first phase of the Executive Order, vacating the areas around the playground in San Lorenzo Park. Dkt. 9 at 12; Dkt. 9-7 Declaration of Andrew Mills (“Mills Decl.”) ¶ 15. While the second phase was scheduled to occur on December 28, 2020, the City paused its efforts after large and vocal community protests. Dkt. 9 at 12; Mills Decl. ¶ 16.

It is against this backdrop that, as noted above, on December 30, 2020, Plaintiffs filed the

⁵ The Executive Order describes the closure of the Encampment as “temporary.” The City does not argue, and under the facts presented the Court would not agree, that the use of the word “temporary” mitigates the impact of the Executive Order on the Encampment’s homeless population. Accordingly, the word does not factor into the Court’s analysis.

Ex Parte Application for Emergency Temporary Restraining Order and Preliminary Injunction, which this Court granted. Dkt. 1; Dkt. 5. Having received multiple rounds of evidence from the Parties and having held a hearing, the Court now rules on the motion for preliminary injunction.

II. LEGAL STANDARD: PRELIMINARY INJUNCTION

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co. Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “To obtain a preliminary injunction, the moving party ‘must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest.’” *Idaho v. Coeur d’Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015) (quoting *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014)). The Ninth Circuit has adopted a “sliding-scale approach” such that “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotations omitted). A temporary restraining order or preliminary injunction is a matter of equitable discretion and is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); *Earth Island Institute v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

III. DISCUSSION

A. Likelihood of Success on the Merits

Plaintiffs allege that by authorizing the closure of San Lorenzo Park and the Benchlands at the height of the COVID pandemic, Defendants are placing Plaintiffs in a position of danger in violation of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Article I, Section 7 of the California Constitution. Dkt. 1 ¶¶ 39-48. More specifically, Plaintiffs assert that by clearing the Encampment and failing to provide alternate safe housing, Defendants are placing Plaintiffs and other similarly situated unhoused persons at greater risk of COVID-19

infection, injury, and death. *Id.* at ¶¶ 1, 43, 48.

1. Legal Standard: State Created Danger

There is no fundamental right to housing. *Lindsey v. Normet*, 405 U.S. 56, 74, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972). However, the Ninth Circuit recognizes liability under substantive due process where a state or local official acts to place a person in a situation of known danger with deliberate indifference to their personal or physical safety. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061-62 (9th Cir. 2006). “[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Board of County Com’rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 410, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). “In examining whether [the city] affirmatively places an individual in danger, [a court does] not look solely to the agency of the individual, nor [does it rest its] opinion on what options may or may not have been available to the individual. Instead, [the court must] examine whether [the city] left the person in a situation that was more dangerous than the one in which they found him.” *Kennedy*, 439 F.3d at 1062 (citation omitted). Thus, the question before the Court is whether Plaintiffs are likely to succeed in demonstrating that the City’s closure of the Encampment at this point in time will put the homeless persons living there at greater risk of contracting COVID-19.

2. Evidence Presented

a. The CDC Guidelines and Regional Stay at Home Order

The Centers for Disease Control and Prevention’s (CDC) “Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials” (“CDC Guidelines”), states:

[i]f individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.

1 Dkt. 1 at 50 (emphasis added).⁶

2 Defendants argue that because the CDC Guidelines are not binding and do not set
3 constitutional standards, this Court should not consider them in its analysis. Dkt. 9 at 23-24. In
4 support, Defendants cite *Roman v. Wolf*, 829 F. App'x 165 (9th Cir. 2020), where the court found
5 that in the context of a mandatory injunction directed at correctional and detention facilities, the
6 CDC COVID-19 Guidelines “do not provide a workable standard for a preliminary injunction.”
7 *Id.* at 174. Specifically, the court noted that the CDC guidance document “spans 25 pages and
8 makes hundreds of recommendations, many of which lack specificity” and contains key caveats
9 that are fatally vague. *Id.* at 174-75.

10 *Roman* is distinguishable from the case at bar in two critical aspects. First, the plaintiffs in
11 *Roman* had been awarded a *mandatory* injunction requiring defendants to implement a series of
12 protective measures to limit the spread of COVID-19 at the facilities, including the suspension of
13 receipt of new detainees and reduction of the current detainee population. *Id.* at 168. In the case
14 before this Court, Plaintiffs are seeking a *prohibitory* injunction, to maintain the status quo at the
15 Encampment. While the legal standard for mandatory and prohibitory injunctions are the same, as
16 the *Roman* court notes, “[i]njunctive orders that alter the status quo ‘are not granted unless extreme or
17 very serious damage will result and are not issued in doubtful cases.’” (citation omitted). *Id.* at
18 170. Second, in contrast to the guidelines discussed in *Roman*, the CDC Guidelines before this
19 Court are clear and specific: if there is no alternative housing available, leave the encampments to
20 remain where they are because clearing encampments may increase the potential for infectious
21 disease spread. Dkt. 1 at 50.⁷

22 There is further support for considering the CDC guidelines in evaluating the relative
23 COVID-19 risk to Plaintiffs. Cities and states routinely look to the CDC for guidance during this
24

25 ⁶ On its own motion, the Court takes judicial notice of the CDC Guidelines. *See* Fed. R. Evid.
26 201(c)(1).

27 ⁷ At least one other appellate court has held that the CDC Guidelines “provide the authoritative
28 source of guidance on prevention and safety mechanisms for a novel coronavirus in a historic
global pandemic where the public health standards are emerging and changing.” *Mays v. Dart*,
974 F.3d 810, 823 (7th Cir. 2020) (finding that “[t]he district court thus properly relied on these
Guidelines in the course of its preliminary injunction analysis”).

novel pandemic. Dkt. 23 at 3. This includes the City of Santa Cruz, who relied upon these same CDC Guidelines in a previous Executive Order when creating and implementing an encampment lay-out plan in San Lorenzo Park and the Benchlands in April 2020.⁸ Dkt. 23 at 3. The CDC guidelines are consistent with the California Department of Public Health's most recent Regional Stay at Home Order, also adopted by the County of Santa Cruz, which states that "[a]ll individuals living in the Region shall stay at home or *at their place of residence*." Dkt. 1 at 33 (emphasis added).⁹ Finally, the Court notes that the City offers no alternative authority to that of the CDC in managing the homeless population in this pandemic.

b. Services and Survival Items at the Encampment

At the Encampment the homeless persons have shelter in the form of actual or make-shift tents. Dkt. 1, Ex. G; Dkt. 23 Declaration of Hannah Hegel ("Hegel Decl.") ¶ 7, Ex. B; Dkt. 23 Declaration of Keith McHenry ("McHenry Decl."), Ex. A. This obvious fact is significant in light of evidence that the first phase of Encampment closure led to people losing their tents and tarps. McHenry Decl. ¶ 10, Ex. A. At the Encampment, the homeless population has access to services and hygiene facilities. For example, multiple sources state that there are showers, portable toilets, hand washing stations, and sharps disposal containers at the Encampment. Bauer Decl. ¶ 2; Schendlecker Decl. ¶ 2; Salehi Decl. ¶ 2; Hegel Decl. ¶ 2; McHenry Decl. ¶ 5. Notably, one of the vital services is nurses from Homeless Persons Health Project coming to the park "every couple of days to check in with campers and offer medical assistance as needed."¹⁰ Hegel Decl. ¶ 1;

⁸ City of Santa Cruz Executive Order No. 2020-07 (April 30, 2020), <https://www.cityofsantacruz.com/Home/ShowDocument?id=80108>.

⁹ The City argues that the Regional Stay at Home Order does not support Plaintiffs' application because it expressly excepts "persons experiencing homelessness." Dkt. 9 at 25. Defendants' argument misses the mark. This state's Department of Public Health wisely excepted from an order to stay home those for whom compliance would be impossible because they do not have a home. To the extent the state directive instructs all persons to remain at their "place of residence," and to the extent the Encampment is a place of residence for the Plaintiffs and others, the Regional Stay at Home Order speaks directly to the dispute at hand.

¹⁰ Defendants object to Ms. Hegel's statement regarding loss of vital services relating to the visits of HPHP to the Encampment. Dkt. 24 at 3; Order Re Requests for Judicial Notice and Evidentiary Objections. In its objection, Defendants make a proffer that "HHP outreach workers go wherever homeless individuals are camping." Dkt. 24 at 3. Even accepting the proffer as true, it is reasonable to infer that the closure of the Encampment without any plan or direction as to where the current population will re-establish themselves will lead to a break in services of some duration. Given the current status of the COVID-19 pandemic, any break in services is

McHenry Decl. ¶ 3. Plaintiffs also present evidence that the homeless persons receive donations at the Encampment such as clothing, food, masks, and medical supplies. Dkt. 1 ¶ 1; Salehi Decl. ¶ 2; Meisler Decl. ¶ 3; Hegel Decl. ¶¶ 2, 4; McHenry Decl. ¶¶ 2-3, 6.

c. No Alternative Housing Options

There is no disagreement between Plaintiffs and Defendants that there are no alternative shelters or individual housing options available for the people residing in the Encampment. Dkt. 1 ¶ 28; Dkt. 9 at 9, 13; Bernal Decl. ¶ 9. Despite efforts by the City and County to accommodate the homeless persons during the COVID-19 pandemic, including expanding shelter capacity at multiple locations (Dkt. 9 at 8-9; Butler Decl. ¶¶ 6-8), the longer-term shelters are generally full. Dkt. 9 at 13; Butler Decl. ¶ 13. Further, the County has a prioritized referral pool from which vacant shelter beds are quickly filled, and the individuals encamped at San Lorenzo Park do not have priority within that system.¹¹ Dkt. 9 at 13; Butler Decl. ¶ 14.

3. Plaintiffs' Likelihood of Success on the Merits

The Court finds that the Plaintiffs' are likely to succeed in demonstrating that the City's dispersal of the homeless persons during the current dire situation of the COVID-19 pandemic puts them at greater risk for COVID-19 than if they remain in the Encampment. The CDC Guidelines are clear and direct, stating that, as here, where there is no alternative housing available, leave the encampments to remain where they are to prevent the potential for infectious disease spread. The CDC Guidelines and the Regional Stay at Home Order are instructive in evaluating the risk and danger when analyzing the factors for a preliminary injunction. The CDC Guidelines discuss sanitation, hygiene materials, and handwashing facilities, and Plaintiffs present unrefuted evidence of the services the homeless persons have access to at the Encampment. Dkt. 1, Ex. F.

The Defendants' counter-arguments are unavailing. At the hearing and in a supplemental

significant.

¹¹ The City did recently identify a portion of its limited CDBG CARES Act funding to potentially fund short-term hotel room vouchers for individuals encamped at San Lorenzo Park. Dkt. 9 at 13; Butler Decl. ¶ 15. However, as the length of stay would be only 2-5 days, the Court does not find this fact to be significant. Dkt. 9 at 13; Butler Decl. ¶ 15.

1 submission, Defendants suggest that following previous dispersals of homeless encampments in
 2 the COVID-era, the County did not observe an increase in positive COVID-19 cases among the
 3 dispersed populations. Dkt. 15 at 2. Defendants' evidence on this point is inconclusive and
 4 unpersuasive. In his declaration, City of Santa Cruz Fire Chief Jason Hajduk ("Chief Hajduk")
 5 states that as a result of the CZU Lightening Complex fires in August 2020, there were 50
 6 homeless persons evacuated from an encampment, in a total evacuation that exceeded 35,000
 7 persons. Dkt. 19 Supplemental Declaration of Jason Hajduk ("Supplemental Hajduk Decl.") ¶¶
 8 10, 11. Chief Hajduk then states that there was no significant COVID increase attributed to this
 9 large-scale evacuation. *Id.* ¶ 12. The declaration is silent as to any COVID increase among the 50
 10 homeless persons in particular. Further, although Chief Hajduk attests to the overall absence of an
 11 increase in COVID cases in the August-October time frame (*Id.*), this statement is not tied to any
 12 additional dispersals of homeless encampments.¹² Consequently, the evidence presented does not
 13 support Defendants' argument that dispersal of the Encampment homeless population will not lead
 14 to an increase in the risk of COVID-19 infection.

15 Defendants further urge that within or without the Encampment, the risk of infection is
 16 mitigated by wearing face masks, avoiding crowds and social distancing. Dkt. 15 at 2.
 17 Defendants also proffer evidence of homeless persons in the Encampment gathering in crowds and
 18 not wearing face masks. Dkt. 9-10 Declaration of Cynthia Crossley ("Crossley Decl.") ¶ 4; Dkt.
 19 9-11 Declaration of Cynthia McCusker ("McCusker Decl.") ¶ 2; Dkt. 10 Declaration of Tony
 20 Elliot ("Elliot Decl.") ¶ 17; Dkt. 15-1 Declaration of Tony Elliot ("Supplemental Elliot Decl.") ¶
 21 14; Dkt. 15-2 Declaration of Eric Grodberg ("Supplemental Grodberg Decl.") ¶¶ 3, 4, 6.
 22 Defendants' point as to the wearing of face masks and social distancing is well taken. However,
 23 how carefully these practices are followed in the Encampment is disputed with dueling
 24 declarations and photographs submitted by both sides. Crossley Decl. ¶ 4; McCusker Decl. ¶ 2;
 25 Elliot Decl. ¶ 17; Supplemental Elliot Decl. ¶ 14; Supplemental Grodberg Decl. ¶¶ 3, 4, 6, Ex. A-

26
 27 ¹² The Court takes judicial notice of the fact that the entire state of California enjoyed an all too
 28 brief respite from the virus in the late summer and early fall of 2020. Tracking COVID-19 in
 California (Jan. 18, 2021, 11:00 AM), <https://covid19.ca.gov/state-dashboard/>; see Fed. R. Evid.
 201(c)(1).

1 1, A-2, A-6; Schendlecker Decl. ¶ 2; Salehi Decl. ¶ 1; Dkt. 7 Declaration of Maria Solis Kennedy
 2 (“Kennedy Decl.”) ¶ 2; Dkt. 7 Declaration of Thomas Landes (“Landes Decl.”); Hegel Decl. ¶ 3,
 3 Ex. B; McHenry Decl. ¶ 11, Ex. A. Finally, Defendants argue that the large Encampment itself
 4 presents a heightened risk of COVID-19 transmission. Dkt. 9 at 18; Supplemental Hajduk Decl. ¶
 5 7. While COVID-19 transmission is a legitimate risk to any co-habitation setting, here it is
 6 outweighed by the risk of dispersing the homeless persons against the CDC Guidelines and the
 7 Regional Stay at Home Order, particularly when there are no safe, alternate housing options
 8 available. Dkt. 1 at 50.

9 In sum, the CDC Guidelines, the Regional Stay at Home Order, and common sense dictate
 10 that at what one can only hope is the height of the COVID-19 pandemic, the homeless persons
 11 would be placed in a more vulnerable situation and in greater danger without access to shelter or
 12 services, particularly medical services, showers, and handwashing stations, that they have been
 13 receiving at this central location. *See Jeremiah v. Sutter Cty.*, 18-cv-00522-TLN-KJN, 2018 WL
 14 1367541, at *5 (E.D. Cal. Mar. 16, 2018) (finding that Defendants would “knowingly place the
 15 homeless at increased risk of harm if it confiscates and seizes Plaintiffs’ shelters and possessions”
 16 during “the recent wind, rain, and cold weather”); *see also Sanchez v. City of Fresno*, 914 F. Supp.
 17 2d 1079, 1102 (E.D. Cal. 2012) (finding that Plaintiffs sufficiently alleged enough facts to support
 18 a substantive due process claim based on the danger creation doctrine when Defendants timed the
 19 demolitions of plaintiff’s shelter and property during the onset of the winter months).
 20 Accordingly, the Court finds that Plaintiffs have shown a likelihood of success on the merits of
 21 their due process claim if the City cleans and clears the Encampment.

22 **B. Irreparable Harm**

23 The Ninth Circuit has held that “an alleged constitutional infringement will often alone
 24 constitute irreparable harm.” *Associated Gen. Contractors of Cal., Inc. v. Coalition for Econ.*
 25 *Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (citation omitted). Plaintiffs have shown the
 26 likelihood of being placed in a position of danger in violation of their substantive due process
 27 rights during the COVID-19 pandemic. Accordingly, the Court finds that Plaintiffs have
 28 demonstrated that irreparable harm will result in the absence of a preliminary injunction at this

1 time.

2 **C. Balance of Equities**

3 The balancing of the equities in the evidence before the Court presents a closer call.
 4 Plaintiffs argue that the balance tips heavily in their favor, as many of Defendants’ representations
 5 are “a product of the City’s own negligence” and could be remedied without forcing the homeless
 6 persons out during the COVID-19 pandemic. Dkt. 1 ¶¶ 35-36. On the other hand, the Court
 7 recognizes the significant efforts and burden the City has taken on during the pandemic, including
 8 coordinating with the County to add shelter capacity at multiple sites and allowing encampments
 9 at San Lorenzo Park for the last nine months. Dkt. 9 at 8-9. Further, Defendants present
 10 compelling evidence of numerous concerns regarding the Encampment. The degree and severity
 11 of these issues are debated by the Parties and are the subject of competing declarations.
 12 Defendants contend that there are major public safety concerns, including drug use and major
 13 crimes and safety incidents, including two deaths, one attempted murder, and two cases of assault
 14 with a deadly weapon. Dkt. 9 at 14-15; Mills Decl. ¶¶ 6-8, 10-13. Defendants also raise serious
 15 safety concerns regarding fire hazards, which poses a threat to the health and safety of the
 16 encamped individuals, as well as the general public. Dkt. 9 at 16; Dkt. 9-4 Declaration of Jason
 17 Hajduk (“Hajduk Decl.”) ¶¶ 6-16. Defendants reference public nuisances, including human and
 18 animal waste, needles, vandalism, theft of City and County property, and damage to the City’s
 19 trees, plantings, and grass. Dkt. 9 ¶¶ 16-17; Elliot Decl. ¶¶ 20-25; Supplemental Elliot Decl. ¶ 14.
 20 Defendants’ recent submissions evidence that since the date of the hearing, there have been
 21 additional incidents of violence, retaliation, and vandalism at San Lorenzo Park, although whether
 22 these incidents are properly attributed to the homeless persons living in the park is less clear.
 23 Supplemental Elliot Decl. ¶¶ 8-12; Dkt. 23 at 4. Numerous community members have also
 24 expressed their concerns regarding the Encampment. Dkt. 9-9 Declaration of Blanche Williams
 25 (“Williams Decl.”) ¶¶ 3-7; Crossley Decl. ¶¶ 1-6; McCusker Decl. ¶¶ 2-4; Dkt. 9-12 Declaration
 26 of David Sievert (“Sievert Decl.”) ¶¶ 1-3; Dkt. 9-13 Declaration of Eric Grodberg (“Grodberg
 27 Decl.”) ¶¶ 3-6; Dkt. 9-14 Declaration of Jeffrey Stonehill (“Stonehill Decl.”) ¶¶ 3-6, 8-9; Dkt. 9-
 28 15 Declaration of Louanne Hill (“Hill Decl.”) ¶¶ 1-2; Dkt. 9-16 Declaration of Carrie Haake

(“Haake Decl.”) ¶¶ 1-2; Dkt. 9-17 Declaration of Karen Dixon-Santos (“Dixon-Santos Decl.”) ¶¶ 2-5; Supplemental Grodberg Decl. ¶¶ 2-6.

The Court recognizes that the City currently faces multiple crises arising from the pandemic. However, the City’s interest in cleaning and clearing the Encampment in San Lorenzo Park and the Benchlands at this moment in time is outweighed by Plaintiffs’ interest in their constitutional rights during what the Court can only hope is the peak of the COVID-19 pandemic. Accordingly, this factor also weighs in favor of Plaintiffs.

D. Public Interest

The Court recognizes the legitimate public interest of protecting the public health and safety as well as the need to protect and preserve San Lorenzo Park and the Benchlands. However, the Court also recognizes the public interest in “maintaining the protections afforded by the Constitution to those most in need of such protection.” *Cobine v. City of Eureka*, No. C 16-02239 JSW, 2016 WL 1730084, at *7 (N.D. Cal. May 2, 2016). The Court finds that this preliminary injunction, tightly tied to the current phase of the COVID crisis, will benefit public health at large. Ensuring that the homeless persons have access to shelter and vital services during the COVID-19 pandemic is imperative to help stop the spread of COVID-19 amongst the population impacted by this injunction. Further, it will also help reduce the likelihood that COVID-19 will spread throughout the greater Santa Cruz community, as suggested by the CDC Guidelines. Accordingly, the Court finds that the public interest also weighs in favor of a preliminary injunction.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that the Plaintiffs have met their burden to show that a preliminary injunction should issue to enjoin the City from clearing San Lorenzo Park and the Benchlands during the current phase of the COVID crisis. There is no dispute that the current phase of the COVID-19 pandemic is one of an unprecedented rise in the rate of increase in COVID-19 cases, hospitalizations, and test positivity rates throughout California and specifically in Santa Cruz County. The Court recognizes the significant hardship on the City to allow the Encampment to remain, but with the COVID-19 pandemic still raging, the balance of hardships

tips in favor of the Plaintiffs. The situation is fluid and the length of the COVID-19 pandemic is unknown. However, the administration of vaccines is now underway.¹³ As the COVID-19 crises recedes, the preliminary injunction will need to be revisited. Accordingly, Plaintiffs' application for preliminary injunction is **GRANTED**. The Court **ORDERS** the Parties to meet and confer regarding a case schedule, to be submitted to the Court by **January 29, 2021**. The Court further **ORDERS** the Parties to file a joint status report due **March 9, 2021** and sets a status hearing for **March 16, 2021** to review the conditions of San Lorenzo Park and the Benchlands and the homeless persons residing in the Encampment.

SO ORDERED.

Dated: January 20, 2021


 SUSAN VAN KEULEN
 United States Magistrate Judge

United States District Court
 Northern District of California

¹³ CDC COVID Data Tracker, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 15, 2021, 6:00 AM), <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

EXHIBIT 13



COVID-19

Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials

Interim Guidance

Updated Aug. 6, 2020

[Print](#)

This interim guidance is based on what is currently known [about coronavirus disease 2019 \(COVID-19\)](#). The Centers for Disease Control and Prevention (CDC) will update this interim guidance as needed and as additional information becomes available.

[Printer friendly version](#)

Summary of Recent Changes

A revision was made on 5/10/2020 to reflect the following:

- Revisions to document organization for clarity
- Description of “whole community” approach
- Clarification of outreach staff guidance
- Clarification of encampment guidance

People experiencing unsheltered homelessness (those sleeping outside or in places not meant for human habitation) may be at risk for infection when there is community spread of COVID-19. This interim guidance is intended to support response to COVID-19 by local and state health departments, homelessness service systems, housing authorities, emergency planners, healthcare facilities, and homeless outreach services. Homeless shelters and other facilities should also refer to the [Interim Guidance for Homeless Shelters](#). Community and faith-based organizations can refer to the [Interim Guidance for Communities of Faith](#) for other information related to their staff and organizations.

COVID-19 is caused by a new coronavirus. We are learning about [how it spreads, how severe it is, and other features of the disease](#).

Lack of housing contributes to poor physical and [mental](#) health outcomes, and linkages to permanent housing for people experiencing homelessness should continue to be a priority. In the context of COVID-19 spread and transmission, the risks associated with sleeping outdoors or in an encampment setting are different than from staying indoors in a congregate setting such as an emergency shelter or other congregate living facility. Outdoor settings may allow people to increase physical distance between themselves and others. However, sleeping outdoors often does not provide protection from the environment, adequate access to hygiene and sanitation facilities, or connection to services and healthcare. The balance of risks should be considered for each individual experiencing unsheltered homelessness.

Community coalition-based COVID-19 prevention and response

Planning and response to COVID-19 transmission among people experiencing homelessness requires a “[whole community](#)” [🔗](#) approach, which means involving partners in the response plan development, with clearly outlined roles and responsibilities. Table 1 outlines some of the activities and key partners to consider for a whole-community approach.

Table 1: Using a community-wide approach to prepare for COVID-19 among people experiencing homelessness

Connect to community-wide planning Connect with key partners to make sure that you can all easily communicate with each other while preparing for and responding to cases. A community coalition focused on COVID-19 planning and response should include: • Local and state health departments • Outreach teams and street medicine providers • Homeless service providers and Continuum of Care leadership • Emergency management • Law enforcement • Healthcare providers • Housing authorities • Local government leadership • Other support services like case management, emergency food programs, syringe service programs, and behavioral health support • People with lived experiences of homelessness People with lived experiences of homelessness can help with planning and response. These individuals can serve as peer navigators to strengthen outreach and engagement efforts. Develop an advisory board with representation from people with current or former experiences of homelessness to ensure community plans are effective.
Identify additional sites and resources Continuing homeless services during community spread of COVID-19 is critical. Make plans to maintain services for all people experiencing unsheltered homelessness. Furthermore, clients who are positive for COVID-19 need to have access to services and a safe place to stay, separated from others who are not infected. To facilitate the continuation of services, community coalitions should identify resources to support people sleeping outside as well as additional temporary housing, including sites with individual rooms that are able to provide appropriate services, supplies, and staffing. These sites should include: • Overflow sites to accommodate shelter decompression and higher shelter demands • Isolation sites for people who are confirmed to be positive for COVID-19 by laboratory testing • Quarantine sites for people who are awaiting testing, awaiting test results, or who were exposed to COVID-19 • Protective housing for people who are at increased risk for severe illness from COVID-19 Depending on resources and staff availability, housing options that have individual rooms (such as hotels/motels) and separate bathrooms should be considered for the overflow, quarantine, and protective housing sites. In addition, plan for how to connect clients to housing opportunities after they have completed their stay in these temporary sites.

Communication

Outreach workers and other community partners, such as emergency food provision programs or law enforcement, can help ensure people sleeping outside have access to updated information about COVID-19 and access to services.

- Stay updated on the local level of transmission of COVID-19 through your [local](#) [🔗](#) and [state](#) health departments.
- Build on existing partnerships with peer navigators who can help communicate with others.
- Maintain up-to-date contact information and areas frequented for each person.
- Communicate clearly with people sleeping outside.

- Use [health messages and materials developed](#) by credible public health sources, such as your local and state public health departments or the Centers for Disease Control and Prevention (CDC).
- Post signs in strategic places (e.g. near handwashing facilities) providing instruction on [hand washing](#) and [cough etiquette](#) .
- Provide educational materials about COVID-19 for [non-English speakers](#), those with low literacy or intellectual disabilities, and people who are hearing or vision impaired.
- Ensure communication with clients about changes in homeless services policies and/or changes in physical location of services such as food, water, hygiene facilities, regular healthcare, and behavioral health resources.
- Identify and address potential language, cultural, and disability barriers associated with communicating COVID-19 information to workers, volunteers, and those you serve. Learn more about [reaching people of diverse languages and cultures](#).

Considerations for outreach staff

Staff training and policies

- Provide training and educational materials related to COVID-19 for staff.
- Minimize the number of staff members who have face-to-face interactions with clients.
- Develop and use contingency plans for increased absenteeism caused by employee illness or by illness in employees' family members. These plans might include extending hours, cross-training current employees, or hiring temporary employees.
- Assign outreach staff who are at [increased risk for severe illness from COVID-19](#) to duties that do not require them to interact with clients in person.
- Outreach staff should review [stress and coping resources](#) for themselves and their clients during this time.

Staff prevention measures

- Encourage outreach staff to maintain good hand hygiene by washing hands with soap and water for at least 20 seconds or using hand sanitizer (with at least 60% alcohol) on a regular basis, including before and after each client interaction
- Advise staff to maintain 6 feet of distance while interacting with clients and other staff, where possible.
- Require outreach staff to wear [masks](#) when working in public settings or interacting with clients. They should still maintain a distance of 6 feet from each other and clients, even while wearing masks.
- Advise outreach staff to avoid handling client belongings. If staff are handling client belongings, they should use disposable gloves, if available. Make sure to train any staff using gloves to [ensure proper use](#) and ensure they perform hand hygiene before and after use. If gloves are unavailable, staff should perform [hand hygiene](#) immediately after handling client belongings.
- Outreach staff who are checking [client temperatures](#) should use a system that creates a physical barrier between the client and the screener as described [here](#).
 - Where possible, screeners should remain behind a physical barrier, such as a car window, that can protect the staff member's face from respiratory droplets that may be produced if the client sneezes, coughs, or talks.
 - If social distancing or barrier/partition controls cannot be put in place during screening, PPE (i.e., facemask, eye protection [goggles or disposable face shield that fully covers the front and sides of the face], and a single pair of disposable gloves) can be used when within 6 feet of a client.
 - However, given PPE shortages, training requirements, and because PPE alone is less effective than a barrier, try to use a barrier whenever you can.
- For street medicine or other healthcare staff who are providing medical care to clients with suspected or confirmed COVID-19 and close contact (within 6 feet) cannot be avoided, staff should at a minimum, wear eye protection (goggles or face shield), an N95 or higher level respirator (or a facemask if respirators are not available or staff are not fit tested), disposable gown, and disposable gloves. **Masks are not PPE and should not be used when a respirator or facemask is indicated.** Healthcare providers should follow infection control [guidelines](#).
- Outreach staff who do not interact closely (e.g., within 6 feet) with sick clients and do not clean client environments do not need to wear personal protective equipment (PPE).
- Outreach staff should launder work uniforms or clothes after use using the warmest appropriate water setting for the items and dry items completely.

Staff process for outreach

- In the process of conducting outreach, staff should
 - Greet clients from a distance of 6 feet and explain that you are taking additional precautions to protect yourself and the client from COVID-19.
 - If the client is not wearing a mask, provide them with one.
 - Screen clients for symptoms by asking them if they feel as if they have a fever, cough, or other [symptoms consistent with COVID-19](#).
 - Children have similar symptoms to adults and generally have mild illness
 - Older adults and persons with medical comorbidities may have delayed presentation of fever and respiratory symptoms.
 - If medical attention is necessary, use standard outreach protocols to facilitate access to healthcare.
 - Continue conversations and provision of information while maintaining 6 feet of distance.
 - If at any point you do not feel that you are able to protect yourself or your client from the spread of COVID-19, discontinue the interaction and notify your supervisor. Examples include if the client declines to wear a mask or if you are unable to maintain a distance of 6 feet.
-

Considerations for people experiencing unsheltered homelessness

Help clients prevent becoming sick with COVID-19

- Consider the balance of these risks when addressing options for decreasing COVID-19 spread. Those who are experiencing unsheltered homelessness face several risks to their health and safety.
- Continued linkage to homeless services, housing, medical, mental health, syringe services, and substance use treatment, including provision of medication-assisted therapies (e.g., buprenorphine, methadone maintenance, etc.). Use telemedicine, when possible.
- Some people who are experiencing unsheltered homelessness may be at [increased risk of severe illness](#) from COVID-19 due to older age or certain underlying medical conditions, such as chronic lung disease or serious heart conditions.
 - Reach out to these clients regularly to ensure they are linked to care as necessary.
 - Prioritize providing individual rooms for these clients, where available.
- Recommend that all clients wear [masks](#) any time they are around other people. Masks should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.
- Provide clients with hygiene materials, where available.
- Discourage clients from spending time in crowded places or gathering in large groups, for example at locations where food, water, or hygiene supplies are being distributed.
 - If it is not possible for clients and staff to avoid crowded places, encourage spreading out (at least 6 feet between people) to the extent possible and wearing masks.

Help link sick clients to medical care

- Regularly assess clients for [symptoms](#).
 - Clients who have symptoms may or may not have COVID-19. Make sure they have a place they can safely stay in coordination with local health authorities.
 - If available, a nurse or other clinical staff can help with clinical assessments. These clinical staff should follow [personal protective measures](#).
 - Provide anyone who presents with symptoms with a mask.
 - Facilitate access to non-urgent medical care as needed.
 - Use standard outreach procedures to determine whether a client needs immediate medical attention. Emergency signs include (this list is not all inclusive. Please refer clients for medical care for any other symptoms that are severe or concerning to you):

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion or inability to arouse
- Bluish lips or face
- Notify the designated medical facility and personnel to transfer that clients might have COVID-19.
- If a client has tested positive for COVID-19
 - Use standard outreach procedures to determine whether a client needs immediate medical attention.
 - If immediate medical attention is not required, facilitate [transportation](#) to an isolation site.
 - Notify designated medical facility and personnel that the client has tested positive for COVID-19.
 - If medical care is not necessary, and if no other isolation options are available, advise the individual on how to isolate themselves while efforts are underway to provide additional support.
 - During isolation, ensure continuation of behavioral health support for people with substance use or mental health disorders.
 - In some situations, for example due to severe untreated mental illness, an individual may not be able to comply with isolation recommendations. In these cases, community leaders should consult local health authorities to determine alternative options.
 - Ensure the client has a safe location to recuperate (e.g., respite care) after isolation requirements are completed, and follow-up to ensure medium- and long-term medical needs are met.

Considerations for encampments

- If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.
 - Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.
- Encourage those staying in encampments to set up their tents/sleeping quarters with at least 12 feet x 12 feet of space per individual.
 - If an encampment is not able to provide sufficient space for each person, allow people to remain where they are but help decompress the encampment by linking those at [increased risk for severe illness](#) to individual rooms or safe shelter.
- Work together with community coalition members to improve sanitation in encampments.
- Ensure nearby restroom facilities have functional water taps, are stocked with hand hygiene materials (soap, drying materials) and bath tissue, and remain open to people experiencing homelessness 24 hours per day.
- If toilets or handwashing facilities are not available nearby, assist with providing access to portable latrines with handwashing facilities for encampments of more than 10 people. These facilities should be equipped with hand sanitizer (containing at least 60% alcohol).

COVID-19 Readiness Resources

- [Considerations for food pantries and food distribution sites](#)
- Visit cdc.gov/COVID19 for the latest information and resources
- [Information for health departments](#)
- Guidance for [homeless service providers](#)
- COVID-19 [fact sheets](#) for people experiencing homelessness (at the bottom of the page)
- Department of Housing and Urban Development (HUD) [COVID-19 resources](#) [↗](#)
- CDC's [COVID-19 stress and coping information](#)

EXHIBIT 14

Chapter 9.65
CAMPING AND STORAGE OF PERSONAL PROPERTY ON PRIVATE AND PUBLIC PROPERTY

- 9.65.010 Declaration of legislative intent—Purpose.**
- 9.65.020 Findings.**
- 9.65.030 Application.**
- 9.65.040 Definitions.**
- 9.65.050 Unlawful camping.**
- 9.65.060 Unlawful daytime camping.**
- 9.65.070 Stored property—Impoundment.**
- 9.65.080 Mandatory pre-impoundment notice.**
- 9.65.090 Pre-impoundment informal hearing.**
- 9.65.100 Storage, post-impoundment notice, and disposal.**
- 9.65.110 Proceeds of sale.**
- 9.65.120 Repossession.**
- 9.65.130 City not liable.**
- 9.65.140 Designated areas.**
- 9.65.150 Penalty for violation.**
- 9.65.160 Nonexclusivity.**
- 9.65.170 Severability.**

9.65.010 Declaration of legislative intent—Purpose.

The purpose of this chapter is to maintain streets, parks, waterways, and other public and private property within the city in a clean, sanitary, and accessible condition and to promote the public health, safety, and welfare of the community. (Ord. 1421 § 2 (part), 2019).

9.65.020 Findings.

The city council finds that the unauthorized use of certain areas for camping purposes and the storage of personal property interfere with the rights of others to use the areas for which they were intended and create a public health and safety hazard that adversely affects residential and commercial areas.

The city council further finds that camping or storing personal property near the high water mark of waterways poses a serious risk to the quality of the waterways and the health and safety of citizens using the waterways and results in abandoned, unattended, or unsecured property polluting the waterways during high water flows.

The city council further finds that camping or storing personal property on, upon, or within a fifty-foot clear zone of the landside toe of the levees that protect the city of Marysville and its residents from flooding poses a threat to the public health, safety, and welfare by compromising the integrity of the levee system which could result in a catastrophic failure of the levee protections.

The city council further finds that abandoned, unattended, or unsecured personal property, especially such property which is a biological or health hazard, creates pollution and adversely affects waterways, residential areas, and commercial areas and the health, safety and welfare of the people who live, work, and visit the city.

The city council further finds that unsanitary conditions and premises that contain an accumulation of junk, trash, debris, dead organic matter, offal, stagnant water, rodent harborages, or biological hazards are injurious to the

health, safety, and welfare of the people who live, work, and visit the city and such conditions have a significant potential to cause economic or physical injury to persons and property.

The city council further finds that camping or storing personal property on private property without the consent of the owner adversely affects private property rights as well as the health, safety, and welfare of the owner and the public generally. (Ord. 1421 § 2 (part), 2019).

9.65.030 Application.

This chapter shall apply generally to all property throughout the incorporated territory of the city of Marysville wherein any of the conditions herein specified are found to exist. Any condition or conduct that would constitute a violation of this chapter, but which is permitted or authorized under any city ordinance or state or federal law, shall not constitute a violation of this chapter. (Ord. 1421 § 2 (part), 2019).

9.65.040 Definitions.

As used in this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the meanings given them in this section.

- (a) "Biological hazards" means any waste containing infectious materials or potentially infectious substances, including but not limited to human or animal blood, human or animal bodily fluids, human or animal tissue, or used needles or any sharp objects that have been contaminated with potentially infectious materials.
- (b) "Camp" or "camping" means using property for living accommodation purposes, as evidenced by: (1) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of the property as authorized under any other ordinance, law, or regulation, with one's personal possessions or belongings (including but not limited to clothing, tents, sleeping bags, bedrolls, blankets, sheets, pillows, luggage, backpacks, kitchen utensils, cookware, and cooking equipment); and (2) engaging in one or more of the following: sleeping, storing personal possessions or belongings, making a fire outside of a designated fire pit, or cooking meals. The combined activities of (1) and (2) constitute camping when it reasonably appears in light of all the circumstances that a person is using the property as a living accommodation.
- (c) "Camp facilities" means and includes, but is not limited to, tents, huts, temporary shelters, unpermitted structures and, when used for the purpose of sleeping, vehicles.
- (d) "Camp paraphernalia" means and includes, but is not limited to, tarpaulins, bedding, cots, beds, shopping carts, sleeping bags, hammocks, or other storage containers or similar equipment.
- (e) "Hazardous waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the state in Health and Safety Code Sections [25110.02](#), [25115](#), and [25117](#) or in the future amendments to or recodifications of such statutes or identified and listed as hazardous waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act ([42 USC Section 6901](#) et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.
- (f) "Health hazard" means hazardous waste, biological hazards, vector infestation, medical waste, or other health hazards in which exposure to them could reasonably be expected to do either of the following: (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or (2) pose a substantial present or potential danger to human health, animal health, or the environment, due to factors including, but not limited to, carcinogenicity, toxicity, ignitability, bio-accumulative properties, reactivity, pollutants, or persistence in the environment, when improperly treated, stored, transported, or disposed of, or otherwise managed. The harm caused by the health hazard does not have to happen immediately.
- (g) "Imminent threat" means any conditions or practices existing on property which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter including but not limited to activities such as the erection of structures in waterways or camping within two hundred feet of the high water mark from October 15th through May 1st.

- (h) "Levee" means a manmade barrier constructed of soil along a water course for the primary purpose of providing flood protection.
- (i) "Levee system" means one or more discrete reaches of levee and/or floodwall and other flood management structures along one or more streams that together provide flood protection to a common, defined area (i.e., the protected area).
- (j) "Levee toe" means the most landward point of the levee where the landside levee slope meets natural ground.
- (k) "Median strip" means a strip or area, lying along the middle and between the paved portions of a highway, which is designed to divide vehicular traffic on such highway into two opposite directions.
- (l) "Ordinary high water mark" means (1) the average level of the water attained in annual seasonal flow as demonstrated by the line below which the soil and vegetation show the effects of submersion under water; or (2) the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.
- (m) "Park" or "parks" means any park, playground, recreation center, or any other lands or facilities owned, operated, maintained, administered, or managed by the city or a community services district within the city and devoted to active or passive recreation including but not limited to those areas identified in the city of Marysville's parks master plan. The term "park" includes all facilities or improvements within a park and all water or waterways within or adjacent to a park.
- (n) "Personal property" means any and all tangible property, and includes, but is not limited to, items, goods, materials, camp facilities, camp paraphernalia, merchandise, furniture, equipment, fixtures, structures, clothing, and household items. The term shall not include any vehicle as defined in Vehicle Code Section [670](#).
- (o) "Private property" means all private property, including but not limited to streets, sidewalks, alleys, and improved or unimproved land.
- (p) "Public property" means all property that is owned, managed or maintained by the city and county, and shall include, but not be limited to, any street, accessway, sidewalk, replacement sidewalk, median strip, space, ground, building, structure, public park, and any other property of the city.
- (q) "Serious physical harm" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (r) "Sidewalk" means a paved walkway, bikeway, or combination of those designed for use by the public, generally within the public right-of-way and generally parallel to a public street.
- (s) "Trail facility" or "trail facilities" means any class 1 trail, bicycle or multi-use trail, natural trail, or horseback riding trail that is owned, maintained, or operated by the city or a community services district within the city, including any area or access point adjoining the trail over which the city or community services district within the city owns or maintains an easement.
- (t) "Unattended" means no person is present with the personal property who asserts or claims ownership over the personal property. Conversely, property is considered "attended" if a person is present with the personal property and the person claims ownership over the personal property.
- (u) "Vector infestation" means personal property that has been invaded by insects, rodents, vermin and flying insects, including, but not limited to, bedbugs, cockroaches, flies, lice, mosquitoes, ticks, insects, rat fleas, rats and mice, which are capable of transmitting disease-causing agents, such as a parasite, bacterium, or virus, to humans or animals. (Ord. 1421 § 2 (part), 2019).

9.65.050 Unlawful camping.

(a) With the exception of authorized camping at a private or public campground or recreational vehicle park or camping authorized under any other ordinance, law, or regulation, no person shall camp in the following areas:

(1) Any private property unless:

(A) The person camping (i) is the owner or tenant of the private property; (ii) is a family member or relative of an owner or tenant of the private property; (iii) is accompanied by an owner or tenant of the private property; or (iv) has written permission in his or her possession from an owner or tenant of the private property and the written permission includes the owner's or tenant's name, address, and phone number; and

(B) The camping is not prohibited under city ordinance or any other law or regulation.

(2) Any city park or trail facility, except in locations designated for such purposes or pursuant to a lawfully issued permit.

(3) Any city cemetery.

(4) Any property that is within or below two hundred feet above the ordinary high water mark of any lake, waterway, river, stream, pond, or reservoir.

(5) Any levee or within fifty feet of the landside toe of the levee.

(6) Any city right-of-way including but not limited to public highways, roadway shoulders, sidewalks, or alleys so as to in any manner hinder or obstruct the free passage therein or thereon of any persons or vehicles passing or attempting to pass along the same right-of-way.

(b) Permitting of camping in city parks shall be governed by Section [16.10.025](#).

(c) Permitting of camping for an outdoor music festival shall be governed by Section [16.10.025](#). (Ord. 1421 § 2 (part), 2019).

9.65.060 Unlawful daytime camping.

For any city public property where camping is not authorized under authority independent of this chapter or not prohibited under Section [9.65.050](#), no person shall erect, configure, or construct a tent from thirty minutes after sunrise to thirty minutes after sunset (except during rainfall or when the temperature is below fifty degrees Fahrenheit). A person must take down, fold, deconstruct, or put away any tent erected, configured, or constructed in any such public property between the hours of thirty minutes after sunrise to thirty minutes after sunset (except during rainfall or when the temperature is below fifty degrees Fahrenheit). Removal of property for a violation of this section pursuant to Section [9.65.070](#) is limited to the tent erected in violation of this section. (Ord. 1421 § 2 (part), 2019).

9.65.070 Stored property—Impoundment.

For any city public property where camping is not authorized under authority independent of this chapter or not prohibited under Section [9.65.050](#), no person shall erect, configure, or construct a tent from thirty minutes after sunrise to thirty minutes after sunset (except during rainfall or when the temperature is below fifty degrees Fahrenheit). A person must take down, fold, deconstruct, or put away any tent erected, configured, or constructed in any such public property between the hours of thirty minutes after sunrise to thirty minutes after sunset (except during rainfall or when the temperature is below fifty degrees Fahrenheit). Removal of property for a violation of this section pursuant to Section [9.65.070](#) is limited to the tent erected in violation of this section. (Ord. 1421 § 2 (part), 2019).

9.65.080 Mandatory pre-impoundment notice.

(a) Before impounding or removing any personal property stored in violation of this chapter, the city shall provide pre-impoundment notice. The written notice shall contain the following:

- (1) A description of the personal property to be removed (such description may refer to an attached photograph);
- (2) The location of the personal property;
- (3) The date and time the notice was posted;
- (4) The section of the Marysville Municipal Code that is being violated;
- (5) A statement that the personal property will be impounded if not removed within forty-eight hours;
- (6) The address where the removed personal property will be located, including a telephone number through which a person may receive information as to impounded personal property;
- (7) A statement that impounded property will be sold, or otherwise disposed of, if not claimed within ninety days after impoundment;
- (8) A statement that personal property presenting a health hazard, posing an imminent threat to public health or safety, or is evidence of a crime, or contraband, will be removed or destroyed at any time by the city;
- (9) A statement that the owner of the personal property shall be responsible for all costs of removal, storage and disposal, unless the owner of the personal property qualifies for a fee waiver by meeting the income poverty threshold, as established by the U.S. Department of Health and Human Services; and
- (10) A statement that the owner of the personal property may dispute the removal of the personal property or cited violation of this chapter and a telephone number for the owner of the personal property to request an informal hearing before the property is removed.

The pre-impoundment notice shall be deemed to have been served if a copy of the written notice is served on the person storing the personal property or is posted prominently and conspicuously on or near the stored personal property. (Ord. 1421 § 2 (part), 2019).

9.65.090 Pre-impoundment informal hearing.

- (a) The pre-impoundment hearing shall be conducted within forty-eight hours, excluding weekends and holidays, after receipt of the request by the person claiming ownership of the personal property.
- (b) Any law enforcement officer may conduct the informal hearing. Alternatively, the seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the impoundment of the personal property and is not junior in rank to that person or the agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.
- (c) At the time of the hearing, the owner of the personal property shall be provided the opportunity to show why the property has not been stored in violation of this chapter; that the stored personal property is not a health hazard and should not be destroyed; or to show that additional time is necessary for the owner to remove the property.
- (d) The informal hearing may be held at any location, including the location of the personal property at issue.
- (e) The hearing officer, after the hearing, may affirm or deny the impoundment and/or destruction of the personal property. The hearing officer may in his/her discretion determine that additional time be provided for the removal of the personal property so long as such delay does not pose an immediate threat to the public health, safety, or welfare.
- (f) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a pre-impoundment hearing or right to challenge his or her liability for costs incurred pursuant to this chapter. (Ord. 1421 § 2 (part), 2019).

9.65.100 Storage, post-impoundment notice, and disposal.

(a) Storage. Except for personal property described under Section [9.65.070](#), impounded personal property shall be moved to a secure place of storage.

(b) Storage Fees and Waiver. The owner of the personal property shall be assessed moving, storage, and other related fees and costs, unless the owner qualifies for a fee waiver. An owner of the personal property qualifies for a waiver if the person's income falls at or below the poverty threshold, as established by the U.S. Department of Health and Human Services.

(c) Post-Impoundment Notice. Upon removal of stored personal property pursuant to this chapter, written notice shall be provided to the person who stored or claims ownership of the personal property. The written notice shall contain the following:

- (1) The date and approximate time the personal property was removed;
- (2) The section of the Marysville Municipal Code that was being violated;
- (3) A description of the personal property removed (such description may refer to an attached photograph);
- (4) The location where the impounded personal property is being kept and when it may be claimed by the rightful owner;
- (5) A statement that the city intends to sell, donate, or otherwise dispose of the impounded property if not claimed within ninety days from the date of the post-impoundment notice; and
- (6) Contact information and instructions on how the owner may reclaim the impounded property.

Service of the written notice shall be by personal service or by certified mail, return receipt requested, to the last known address of the owner of the impounded property if the owner is known. Where the identity or the address of the owner is unknown or cannot be determined through the exercise of reasonable diligence, the notice shall be posted at or near the location where the property was stored or seized.

(d) Mandatory Storage Holding Time. The city of Marysville, its officers, employees, and agents shall store impounded property in a secure location for a period of not less than ninety days.

(e) Disposal of Unclaimed Property.

- (1) General. If the owner or any other person entitled to the impounded personal property does not claim the property as specified in Section [9.65.120](#), the city of Marysville, its officers, employees, and agents may sell, donate, destroy, or otherwise dispose of the impounded property.

(f) Records. The city shall maintain a record of the impounded property, name of any person repossessing the impounded property and date thereof, date and method of any disposal of the impounded personal property, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. Such record shall be kept as a public record for a period of not less than one year from the date of disposal of the property. (Ord. 1421 § 2 (part), 2019).

9.65.110 Proceeds of sale.

All fees and unpaid rent, debts and charges owing and all expenses of handling, storage, appraisal, advertising, and other sale expenses incurred by the city shall be deducted from the proceeds of any sale of the impounded property. Any amount remaining shall be held in trust for the owner of the property for thirty days after sale, after which time the proceeds shall be paid into the general fund. (Ord. 1421 § 2 (part), 2019).

9.65.120 Repossession.

(a) General. The owner or any other person entitled to the impounded personal property may repossess or assert the right, title, and interest to the impounded personal property within ninety days from the date of the post-impoundment notice.

(b) Method to Reclaim. Upon submitting satisfactory proof of ownership or entitlement and payment of all unpaid storage-related costs, the city shall restore the impounded property to the owner or other person entitled to the impounded property, unless the person qualifies for a fee waiver, as described in Section [9.65.100\(b\)](#). Thereafter, the city shall release the impounded property to the owner or other entitled person. (Ord. 1421 § 2 (part), 2019).

9.65.130 City not liable.

The city of Marysville, its officers, employees, and agents shall not be liable to the owner of impounded personal property because of any disposal of the property made pursuant to this chapter. The remedies available to the owner of impounded property are limited to those provided in this chapter. Additionally, the owner of impounded personal property shall bear the responsibility for the risk of any loss or damage to the impounded property. (Ord. 1421 § 2 (part), 2019).

9.65.140 Designated areas.

The city council of the city of Marysville may, by majority vote, establish one or more specified designated areas in which individuals may store personal property. Such designated areas, if any, may be located in prohibited public places as set forth in Section [9.65.070](#), except that such designated areas shall not be located within public parks or waterways.

Personal property stored in a designated area under this section must be stored in a manner that does not create a public nuisance or health or safety hazard. Additionally, such personal property shall be stored in a manner which protects the personal property against damage from the elements. (Ord. 1421 § 2 (part), 2019).

9.65.150 Penalty for violation.

Any person violating any provision of this chapter is guilty of a misdemeanor. (Ord. 1421 § 2 (part), 2019).

9.65.160 Nonexclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter and the remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate the conduct described herein. (Ord. 1421 § 2 (part), 2019).

9.65.170 Severability.

If any section, subsection, sentence, clause, portion, or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The city council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. (Ord. 1421 § 2 (part), 2019).

EXHIBIT 15

Chapter 12.52 CAMPING

12.52.010 Purpose.

The streets and public areas within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. Such activity can constitute a public health and safety hazard which adversely impacts neighborhoods and commercial areas. Camping on private property without the consent of the owner, proper sanitary measures and for other than a minimal duration adversely affects private property rights as well as public health, safety, and welfare of the city. The purpose of this chapter is to maintain streets, parks and other public and private areas within the city in a clean, sanitary and accessible condition and to adequately protect the health, safety and public welfare of the community, while recognizing that, subject to reasonable conditions, camping and camp facilities associated with special events can be beneficial to the cultural and educational climate in the city. Nothing in this chapter is intended to interfere with otherwise lawful and ordinary uses of public or private property. (Prior code § 44.03.005)

12.52.020 Definitions.

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

“Camp” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, vehicles, vehicle camping outfits or temporary shelter.

“Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

“City manager” means the city manager or designee.

“Establish” means setting up or moving equipment, supplies or materials on to public or private property to “camp” or operate camp facilities.

“Maintain” means keeping or permitting equipment, supplies or materials to remain on public or private property in order to camp or operate camp facilities.

“Operate” means participating or assisting in establishing or maintaining a camp or camp facility.

“Park” means the same as defined in Section [12.72.010](#) of this title.

“Private property” means all private property including, but not limited to, streets, sidewalk, alleys, and improved or unimproved land.

“Public property” means all public property including, but not limited to, streets, sidewalks, alleys, improved or unimproved land and parks.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

“Street” means the same as defined in Section [12.16.180](#) of this title. (Prior code § 44.03.006)

12.52.030 Unlawful camping.

It is unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia in the following areas:

- A. Any public property; or

B. Any private property.

1. It is not intended by this section to prohibit overnight camping on private residential property by friends or family of the property owner, so long as the owner consents and the overnight camping is limited to not more than one consecutive night.

2. Nothing in this chapter is intended to prohibit or make unlawful, activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and provided further, nothing is intended to prohibit or make unlawful, activities of a property owner or other lawful user if such activities are expressly authorized by the Planning and Development Code or other laws, ordinances and regulations.

3. The city manager may, as provided in Section [12.52.050](#) of this chapter, issue a temporary permit to allow camping on public or private property in connection with a special event.

A violation of this section is a misdemeanor. In addition to the remedies set forth in [Penal Code](#) Section 370, the city attorney may institute civil actions to abate a public nuisance under this chapter. (Ord. 2013-0021 § 34; prior code § 44.03.007)

[12.52.040 Storage of personal property on public and private property.](#)

It is unlawful and a public nuisance for any person to store personal property, including camp paraphernalia, in the following areas, except as otherwise provided by resolution of the city council:

A. Any public property; or

B. Any private property without the written consent of the owner.

A violation of this section is a misdemeanor. In addition to the remedies set forth in [Penal Code](#) Section 370 the city attorney may institute civil actions to abate a public nuisance under this chapter. (Prior code § 44.03.008)

[12.52.050 Permit for special events required.](#)

The city manager may, in his or her discretion, issue a permit to establish, maintain and operate a camp or a camp facility in connection with a special event. A special event is intended to include, but not be limited to, programs operated by the departments of the city, youth or school events, marathons or other sporting events and scouting activities. The city manager may consult with various city departments, the health officer and the public prior to issuing any temporary permit. Each department or person consulted may provide comments regarding any health, safety or public welfare concerns and provide recommendations pertaining to the issuance, denial or conditioning of the permit. A reasonable fee, to be set by the city council shall be paid, in advance, by the applicant. The fee shall be returned if the application is denied. In exercising his or her discretion to issue a temporary permit, the city manager may consider any facts or evidence bearing on the sanitary, health, safety and welfare conditions on or surrounding the area or tract of land upon which the proposed temporary camp or camp facility is to be located.

Any person who establishes, maintains or operates a camp or camp facility without a permit is guilty of a misdemeanor and constitutes a public nuisance. In addition to remedies provided in [Penal Code](#) Section 370 the city attorney may institute civil actions to abate a public nuisance under this chapter. (Prior code § 44.03.009)

[12.52.060 Posting copy of permit.](#)

It is unlawful for any person to establish, maintain, conduct or carry on any camp or camp facility unless there shall be at all times posted in a conspicuous place upon the area or tract of land upon which the camp or camp facility is located a permit obtained from the city manager in accordance with the provisions of Section [12.52.050](#) of this chapter. (Prior code § 44.03.010)

12.52.070 Power of the city manager to make rules and regulations.

The city manager is further empowered to ascertain that the operation or maintenance of any camp or camp facilities to which a temporary permit shall apply will in no way jeopardize the public health, safety or welfare and for this purpose may make additional rules and regulations pertaining to their establishment, operation or conduct. The city manager may also impose conditions on the establishment, maintenance and operation of the camp or camp facility, including, but not limited to, security, sanitation facilities, the number of occupants, posting of bonds or deposits, insurance, quiet hours, duration of the permit, and permitted activities on the premises. When the city manager shall issue any permit under the terms of Section [12.52.050](#) of this chapter, the same may be revoked at any time thereafter by the city manager if the city manager becomes satisfied that the maintenance or continuing operation of the camp or camp facilities is adverse to the public health, safety and welfare. (Prior code § 44.03.011)

12.52.080 Current ordinance provisions.

Neither the adoption of the ordinance codified in this chapter nor the repeal hereby of any ordinance shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as affecting any of the provisions of such ordinance relating to the collection of any such license or penalty or the penal provision applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect. (Prior code § 44.03.013)

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EXHIBIT 16

Woodland Municipal Code

Title 9 PUBLIC PEACE AND WELFARE

Chapter 9.50 ENCAMPMENTS WITHIN THE CITY LIMITS

9.50.010 Authority and purpose.

A. Encampments such as tents and other habitable structures persist and have become a problem on City property. Such encampments are unsafe and unhealthy for the people living in them, and they make public spaces and the adjoining neighborhoods intimidating, less safe, and less healthy for families, residents, and visitors to City facilities. The City already prohibits camping on public and private property in the City without permission, and the unregulated placement of tents and other habitable structures on City properties, including, but not limited to, parking lots, areas of ingress and egress, patios, and similar spaces, is not a traditional or customary use of these important public spaces.

B. Maintaining accessible and safe access to City facilities for everyone is an important public safety objective. Tents and other habitable structures erected for temporary shelter often exhibit the following public safety hazards, all of which present public health risks and can become vectors for disease, illness, and rodents:

1. Solid waste from discarded food and other garbage;
2. The presence of syringes;
3. Untreated human waste;
4. Unsanitary food storage; and
5. Lack of potable running water for personal hygiene.

C. In addition to the foregoing concerns, tents and other habitable, temporary shelters provide a shield for criminal activity and expose members of the public and law enforcement to increased risk of assault and other threats to personal safety. This risk extends not only to members of the public seeking to access City facilities for lawful purposes, but also to nearby residents, business owners, and pedestrians. (Ord. 1654 § 1, 2019)

9.50.020 Definitions.

For purposes of this chapter, the following definitions shall apply.

“City property” means all real property owned or leased by the City or any agency or department thereof, irrespective of whether such real property is located within an incorporated area.

“Encampment” means a tent or any similar temporary structure consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied to a structure or bush to create an enclosed area.

“Enforcing employee” means the employee of the City or Yolo County, authorized to enforce this chapter.

“Housing” shall mean placement in a Shelter or another housing option provided by the City or Yolo County.

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“Personal property” shall mean any tangible property, and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal items such as household items, luggage, backpacks, clothing, food, documents, and medication.

“Shelter” shall mean temporary shelter or another shelter option. (Ord. 1654 § 1, 2019)

9.50.030 Prohibition.

It is unlawful to place an encampment upon City property. This prohibition shall not apply to the placement of an encampment on City property pursuant to and in compliance with a permit or other written authorization signed by the City Manager or other City employee with authority to provide such permits or authorizations. (Ord. 1654 § 1, 2019)

9.50.040 Offer of housing, shelter and services.

Prior to directing a person to remove an encampment or prior to removing the encampment, the enforcing employee shall offer information to the occupant(s) regarding any available housing or shelter and other health and human services that said employee reasonably believes are relevant to the occupant(s) and their individual circumstances. (Ord. 1654 § 1, 2019)

9.50.050 Enforcement.

- A. The prohibition of Section 9.50.030 may be enforced by: (1) the Woodland Police Department; (2) the City's Code Enforcement Division; (3) Parks and Public Works personnel; (4) or other local law enforcement. The City Manager, or a department designated by the City Manager, may issue regulations or guidelines necessary or appropriate to aid in the enforcement and implementation of this chapter and may create any additional procedures consistent with this chapter necessary or appropriate to protect the property rights of individuals whose property is taken into custody pursuant to this chapter.
- B. All references to enforcement are to the process of implementing the prohibition of Section 9.50.030, as set forth in this chapter, and violations of this chapter do not constitute infractions, misdemeanors, or felonies. No citation may be issued for a violation of this chapter. As set forth in Section 9.50.080, below, nothing in this chapter is intended or shall be interpreted to limit or in any way constrain enforcement action (including, but not limited to, the issuance of citations) for other violations of federal, state, or local law occurring in connection with an encampment. (Ord. 1654 § 1, 2019)

9.50.060 Notices.

The enforcing employee shall provide occupants of an encampment notice of intent to remove the encampment at least 24 hours in advance of any action to remove the encampment. Notice shall be in writing and shall be served personally on the occupant(s) of the encampment present when the enforcing employee attempts to serve notice. In addition, the enforcing employee shall post the notice on or near the encampment, so as reasonably to communicate the notice to persons living at the encampment but not present during the attempt to serve notice. The notice shall contain the following information:

- A. The location of the encampment;
- B. The date and time notice was served or posted;
- C. A statement that the encampment violates this chapter;
- D. An advisement that the City or County will remove the encampment 24 hours after the date and time of the notice;

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E. Information about any housing or shelter and homeless services available for occupants of the encampment and the phone number and address to contact in order to obtain the housing or shelter or other health and human services;

F. An advisement that any personal property remaining at the encampment site when the enforcing employee returns to remove the encampment will be impounded for no fewer than 90 days and will be discarded thereafter if not claimed; and

G. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved and that the City or County will charge no fee for storage or retrieval. (Ord. 1654 § 1, 2019)

9.50.070 Personal property.

A person occupying an encampment who is present at the time the enforcing employee is removing the encampment may retain his or her personal property except that items constituting an immediate threat to the health or safety of the public or items that constitute evidence of a crime or contraband may be seized, as permitted by law. Any personal property seized shall be stored for no less than 90 days, with the following exceptions:

A. Items that present a health or safety risk if stored, such as items soiled by bodily fluids, items that are moldy, items infested by insects or vermin, and food, need not be stored and may be discarded; and

B. Items that constitute evidence of a crime or contraband may be seized and discarded, as permitted by law. (Ord. 1654 § 1, 2019)

9.50.080 Other laws and orders.

Nothing in this chapter shall be construed to limit the City's or County's authority to enforce any other Federal, State, or local law. (Ord. 1654 § 1, 2019)

EXHIBIT 17

CHAPTER 23. - CAMPING AND STORAGE OF PERSONAL PROPERTY ON PRIVATE AND PUBLIC PROPERTY

Sec. 5.23.010. - Declaration of legislative intent—Purpose.

The purpose of this chapter is to maintain streets, parks, waterways, and other public and private property within the City in a clean, sanitary, and accessible condition and to promote the public health, safety, and welfare of the community.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.020. - Findings.

The City Council finds that the unauthorized use of certain areas for camping purposes and the storage of personal property interferes with the rights of others to use the areas for which they were intended and creates a public health and safety hazard that adversely affects residential and commercial areas.

The City Council further finds that camping or storing personal property near the high water mark of waterways poses a serious risk to the quality of the waterways and the health and safety of citizens using the waterways and results in abandoned, unattended, or unsecured property polluting the waterways during high water flows.

The City Council further finds that camping or storing personal property on, upon, or within a 50 foot clear zone of the landside toe of the levees that protect the City and its residents from flooding poses a threat to the public health, safety, and welfare by compromising the integrity of the levee system which could result in a catastrophic failure of the levee protections.

The City Council further finds that abandoned, unattended, or unsecured personal property especially such property which is a biological or health hazard creates pollution and adversely affects waterways, residential areas, and commercial areas and the health, safety, and welfare of the people who live, work, and visit the City.

The City Council further finds that unsanitary conditions and premises that contain an accumulation of junk, trash, debris, dead organic matter, offal, stagnant water, rodent harborages, or biological hazards are injurious to the health, safety, and welfare of the people who live, work, and visit the City and such conditions have a significant potential to cause economic or physical injury to persons and property.

The City Council further finds that camping or storing personal property on private property without the consent of the owner adversely affects private property rights as well as the health, safety, and welfare of the owner and the public generally.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.030. - Application.

This chapter shall apply generally to all property throughout the boundaries of the City wherein any of the conditions herein specified are found to exist. Any condition or conduct that would constitute a violation of this chapter, but which is permitted or authorized under any City ordinance or state or federal law, shall not constitute a violation of this chapter.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.040. - Definitions.

As used in this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the meanings given them in this section.

- (a) *Biological hazards* means any waste containing infectious materials or potentially infectious substances, including but not limited to, human or animal blood, human or animal bodily fluids, human or animal tissue, or used needles or any sharp objects that have been contaminated with potentially infectious materials.
- (b) *Camp* or *camping* means using property for living accommodation purposes, as evidenced by: (1) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of the property as authorized under any other ordinance, law, or regulation, with one's personal possessions or belongings (including but not limited to clothing, tents, sleeping bags, bedrolls, blankets, sheets, pillows, luggage, backpacks, kitchen utensils, cookware, and cooking equipment); and (2) engaging in one or more of the following: sleeping, storing personal possessions or belongings, making a fire outside of a designated fire pit, or cooking meals. The combined activities of (1) and (2) constitute camping when it reasonably appears in light of all the circumstances that a person is using the property as a living accommodation.
- (c) *Camp facilities* means and includes, but is not limited to, tents, huts, temporary shelters, unpermitted structures and, when used for the purpose of sleeping, vehicles.
- (d) *Camp paraphernalia* means and includes, but is not limited to, tarpaulins, bedding, cots, beds, shopping carts, sleeping bags, hammocks, or other storage containers or similar equipment.
- (e) *Hazardous waste* means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.
- (f) *Health hazard* means hazardous waste, biological hazards, vector infestation, medical waste, or other health hazards in which exposure to them could reasonably be expected to do either of the following: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or (2) pose a substantial present or potential danger to human health, animal health, or the environment, due to factors including, but not limited to, carcinogenicity, toxicity, ignitability, bio-accumulative properties, reactivity, pollutants, or persistence in the environment, when improperly treated, stored, transported, or disposed of, or otherwise managed. The harm caused by the health hazard does not have to happen immediately.
- (g) *Imminent threat* means any conditions or practices existing on property which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter including but not limited to activities such as the erection of structures in waterways or camping within 200 feet of the high water mark from October 15 through May 1.
- (h) *Levee* means a man-made barrier constructed of soil along a water course for the primary purpose of providing flood protection.
- (i) *Levee system* means one or more discrete reaches of levee and/or floodwall and other flood management structures along one or more streams that together provide flood protection to a common, defined area (i.e.,

the protected area).

- (j) *Levee toe* means the most landward point of the levee where the landside levee slope meets natural ground.
- (k) *Median strip* means a strip or area, lying along the middle and between the paved portions of a highway, which is designed to divide vehicular traffic on such highway onto two opposite directions.
- (l) *Ordinary high water mark* means (1) the average level of the water attained in annual seasonal flow as demonstrated by the line below which the soil and vegetation show the effects of submersion under water; or (2) the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.
- (m) *Park or parks* means any park, playground, recreation center, or any other lands or facilities owned, operated, maintained, administered, or managed by the City and devoted to active or passive recreation including but not limited to those area identified as a parking in any general or specific plan of the City. The term "park" includes all facilities or improvements within a park and all water or waterways within or adjacent to a park.
- (n) *Personal property* means any and all tangible property, and includes, but is not limited to, items, goods, materials, camp facilities, camp paraphernalia, merchandise, furniture, equipment, fixtures, structures, clothing, and household items. The term shall not include any vehicle as defined in Vehicle Code Section 670.
- (o) *Private property* means all private property, including but not limited to streets, sidewalks, alleys, and improved or unimproved land.
- (p) *Public property* means all property that is owned, managed or maintained by the City, and shall include, but not be limited to any street, access way, sidewalk, replacement sidewalk, median strip, space, ground, building, structure, public park, and any other property of the City.
- (q) *Serious physical harm* means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (r) *Sidewalk* means a paved walkway, bikeway, or combination of those designed for use by the public, generally within the public right-of-way and generally parallel to a public street.
- (s) *Trail facility or trail facilities* means any Class 1 trail, bicycle or multi-use trail, natural trail, or horseback riding trail that is owned, maintained, or operated by the City, including any area or access point adjoining the trail over which the City owns or maintains an easement. For purposes of this chapter, "trail facility" includes trails identified in the General Plan or any specific plan of the City.
- (t) *Unattended* means no person is present with the personal property who asserts or claims ownership over the personal property. Conversely, property is considered "attended" if a person is present with the personal property and the person claims ownership over the personal property.
- (u) "Vector infestation" means personal property that has been invaded by insects, rodents, vermin and flying insects, including, but not limited, to bedbugs, cockroaches, flies, lice, mosquitos, ticks, insects, rat fleas, rats and mice, which are capable of transmitting disease-causing agents, such as a parasite, bacterium, or virus, to humans or animals.

Sec. 5.23.050. - Unlawful camping.

- (a) With the exception of authorized camping at a private or public campground or recreational vehicle park or camping authorized under any other ordinance, law, or regulation, no person shall camp in the following areas:

(1) Any private property unless:

- (i) The person camping (i) is the owner or tenant of the private property; (ii) is a family member or relative of an owner or tenant of the private property; (iii) is accompanied by an owner or tenant of the private property; or (iv) has written permission in his or her possession from an owner or tenant of the private property and the written permission includes the owner's or tenant's name, address, and phone number;
- (ii) The camping is not prohibited under Chapter 5.20 or any other ordinance, law, or regulation;
- (iii) Any City Park or trail facility, except in locations designated for such purposes or pursuant to a lawfully issued permit;
- (iv) Any City airport;
- (v) Any City cemetery;
- (vi) Any property that is within or below 200 feet above the Ordinary High Water Mark of any lake, waterway, river, stream, pond, or reservoir;
- (vii) Any levee or within 50 feet of the landside levee toe; and
- (viii) Any City right-of-way including but not limited to public highways, roadway shoulders, sidewalks, or alleys so as to in any manner hinder or obstruct the free passage therein or thereon of any persons or vehicles passing or attempting to pass along the same right-of-way.

(2) Permitting of camping in City parks shall be governed by Chapter 5.20

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.060. - Unlawful daytime camping.

For any City public property where Camping is not authorized under authority independent of this chapter or not prohibited under Section 5.23.050, no person shall erect, configure, or construct a tent or other temporary shelter from 30 minutes after sunrise to 30 minutes after sunset. A person must take down, fold, deconstruct, or put away any tent or temporary shelter erected, configured, or constructed in any such public property between the hours of 30 minutes after sunrise to 30 minutes after sunset. Removal of property for a violation of this section pursuant to Section 5.23.070 is limited to the tent erected in violation of this section.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.070. - Stored property—Impoundment.

- (a) No person shall store personal property in the following areas:

- (1) Any private property unless the person (i) is the owner or tenant of the private property; (ii) is a family member or relative of an owner or tenant of the private property; (iii) is accompanied by an owner or tenant of the private property; (iv) has verbal or written consent of the owner and the property is stored

inside a building or structure other than a tent; or (v) has written permission in his or her possession from an owner or tenant of the private property and the written permission includes the owner's or tenant's name, address, and phone number.

- (2) Any City park or trail facility.
 - (3) Any City airport unless inside a hanger and consistent with the terms of a lease.
 - (4) Any public property if the personal property obstructs City operations, including street or sidewalk maintenance or cleaning, or impedes passage on public streets, sidewalks, or alleys, including passage for persons with disability.
 - (5) Any public property that has a clearly posted closure time and the property is stored after the posted closure time.
 - (6) Any property that is within or below 200 feet above the Ordinary High Mark of any lake, waterway, river, stream, pond, or reservoir.
- (b) All personal property unlawfully stored pursuant to subdivision (a) of Section 5.23.070 may be impounded by the City.
- (c) Personal property placed on property in violation of this chapter shall be deemed to be stored personal property if it has not been removed from the property within 72 hours of service of the written notice required by Section 5.23.080, which requires such removal, and the City may cause the removal and impoundment of such stored personal property or destruction of such stored personal property as provided in subsection (d); provided that moving the personal property to another location in the same private or public property shall not be considered to be removing the personal property from private or public property; and provided further that this section shall not apply to personal property that, pursuant to statute, ordinance, permit, regulation, or other authorization by the City or state, is placed on property that is owned or controlled by the City.
- (d) In the event personal property placed in violation of this chapter presents a health hazard, poses an imminent threat to the health, safety, or welfare of the public, is evidence of a crime, is perishable, or contraband, it may be immediately impounded, disposed of, or turned over to law enforcement at any time by the City and no written notice shall be required before impounding, removing or destroying such personal property.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.080. - Mandatory pre-impoundment notice.

- (a) Before impounding or removing any personal property stored in violation of this chapter, the City shall provide pre-impoundment notice. The written notice shall contain the following:
- (1) A description of the personal property to be removed (such description may refer to an attached photograph);
 - (2) The location of the personal property;
 - (3) The date and time the notice was posted;
 - (4) The section of the Yuba City Municipal Code that is being violated;
 - (5) A statement that the personal property will be impounded if not removed within 72 hours;
 - (6) The address where the removed personal property will be located, including a telephone number

through which a person may receive information as to impounded personal property;

- (7) A statement that impounded property will be sold, or otherwise disposed of, if not claimed within 90 days after impoundment;
- (8) A statement that personal property presenting a health hazard, posing an imminent threat to public health or safety, or is evidence of a crime, or contraband will be removed or destroyed, at any time by the City;
- (9) A statement that the owner of the personal property shall be responsible for all costs of removal, storage and disposal, unless the owner of the personal property qualifies for a fee waiver by meeting the income poverty threshold, as established by the U.S. Department of Health and Human Services; and
- (10) A statement that the owner of the personal property may dispute the removal of the personal property or cited violation of this chapter and a telephone number for the owner of the personal property to request an informal hearing before the property is removed.

The pre-impoundment notice shall be deemed to have been served if a copy of the written notice is served on the person storing the personal property or is posted prominently and conspicuously on or near the stored personal property.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.090. - Pre-impoundment informal hearing.

- (a) The pre-impoundment hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request by the person claiming ownership of the personal property.
- (b) Any law enforcement officer may conduct the informal hearing. Alternatively, the seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the impoundment of the personal property and is not junior in rank to that person or the agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.
- (c) At the time of the hearing, the owner of the personal property shall be provided the opportunity to show why the property has not been stored in violation of this chapter; that the stored personal property is not a health hazard and should not be destroyed; or to show that additional time is necessary for the owner to remove the property.
- (d) The informal hearing may be held at any location, including the location of the personal property at issue.
- (e) The hearing officer, after the hearing, may affirm or deny the impoundment and/or destruction of the personal property. The hearing officer may in his/her discretion determine that additional time be provided for the removal of the personal property so long as such delay does not pose an immediate threat to the public health, safety, or welfare.
- (f) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a pre-impoundment hearing or right to challenge his or her liability for costs incurred pursuant to this chapter.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.100. - Storage, post-impoundment notice, and disposal.

- (a) *Storage*. Except for personal property described under subdivision (d) of Section 5.23.070, impounded personal property shall be moved to a secure place of storage.
- (b) *Storage fees and waiver*. The owner of the personal property shall be assessed moving, storage, and other related fees and costs, unless the owner qualifies for a fee waiver. A owner of the personal property qualifies for a waiver if the person's income falls at or below the poverty threshold, as established by the U.S. Department of Health and Human Services.
- (c) *Post-impoundment notice*. Upon removal of stored personal property pursuant to this chapter, written notice shall be provided to the person who stored or claims ownership of the personal property. The written notice shall contain the following:
- (1) The date and approximate time of personal property was removed;
 - (2) The section of the Yuba City Municipal Code that was being violated;
 - (3) A description of the personal property removed (such description may refer to an attached photograph);
 - (4) The location of where the impounded personal property is being kept and when it may be claimed by the rightful owner;
 - (5) A statement that the City intends to sell, donate, or otherwise dispose of the impounded property if not claimed within 90 days from the date of the Post-Impoundment Notice; and
 - (6) Contact information and instructions on how the owner may reclaim the impounded property.
- Service of the written notice shall be by personal service or by certified mail, return receipt requested, to the last known address of the owner of the impounded property if the owner is known. Where the identity or the address of the owner is unknown or cannot be determined through the exercise of reasonable diligence, the notice shall be posted at or near the location where the property was stored or seized.
- (d) *Mandatory storage holding time*. The City, its officers, employees, and agents shall store impounded property in a secure location for a period of not less than 90 days.
- (e) *Disposal of unclaimed property*.
- (1) General. If the owner or any other person entitled to the impounded personal property does not claim the property as specified in Section 5.23.120, the City, its officers, employees, and agents may sell, donate, destroy, or otherwise dispose of the impounded property.
- (f) *Records*. The City shall maintain a record of the impounded property, name of any person repossessing the impounded property and date thereof, date and method of any disposal of the impounded personal property, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. Such record shall be kept as a public record for a period of not less than one year from the date of disposal of the property.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.110. - Proceeds of sale.

All fees and unpaid rent, debts, and charges owing and all expenses of handling, storage, appraisal, advertising, and other sale expenses incurred by the City shall be deducted from the proceeds of any sale of the impounded property. Any amount remaining shall be held in trust for the owner of the property for 30 days after sale, after which time the proceeds shall be paid into the general fund.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.120. - Repossession.

- (a) *General*. The owner or any other person entitled to the impounded personal property may repossess or assert the right, title, and interest to the impounded personal property within 90 days from the date of the post-impoundment notice.
- (b) *Method to reclaim* . Upon submitting satisfactory proof of ownership or entitlement and payment of all unpaid storage related costs, the City shall restore the impounded property to the owner or other person entitled to the impounded property, unless the person qualifies for a fee waiver, as described in subdivision (b) of Section 5.23.100. Thereafter, the City shall release the impounded property to the owner or other entitled person.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.130. - City not liable.

The City, its officers, employees, and agents shall not be liable to the owner of impounded personal property because of any disposal of the property made pursuant to this chapter. The remedies available to the owner of impounded property are limited to those provided in this chapter. Additionally, the owner of impounded personal property shall bear the responsibility for the risk of any loss or damage to the impounded property.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.140. - Designated areas.

The City Council of the City of Yuba City may, by majority vote, establish one or more specified designated areas in which individuals may store personal property. Such designated areas, if any, may be located in prohibited public places as set forth in [Section] 5.23.070, except that such designated areas shall not be located within public parks or waterways.

Personal property stored in a designated area under this section must be stored in a manner that does not create a public nuisance or health or safety hazard. Additionally, such personal property shall be stored in a manner which protects the personal property against damage from the elements.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.150. - Penalty for violation.

Any person violating any provision of this chapter is guilty of a misdemeanor.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.160. - Non-exclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter and the remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate the conduct described herein.

(Ord. No. 001-20, § 3, 1-21-2020)

Sec. 5.23.170. - Severability.

If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

(Ord. No. 001-20, § 3, 1-21-2020)