



NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Via e-mail at citycouncil@cityofsantacruz.com

November 25, 2019

Mayor Martine Watkins
Vice Mayor Justin Cummings
Councilmember Sandy Brown
Councilmember Drew Glover
Councilmember Chris Krohn
Councilmember Cynthia Mathews
Councilmember Donna Meyers
809 Center Street, Room 10
Santa Cruz, CA 95060

RE: Item 1.2: Introduce for publication an ordinance amending Chapter 6.36 – Camping of the City of Santa Cruz Municipal Code to align with the Ninth Circuit U.S. Court of Appeals decision in *Martin v. City of Boise* (2019) 920 F.3d 584, Santa Cruz City Council November 26, 2019 Meeting

Dear Mayor Watkins and Councilmembers:

Disability Rights California (DRC), the National Law Center on Homelessness & Poverty (Law Center), and the American Civil Liberties Union of Northern California (ACLU) submit this letter jointly in opposition to the proposed changes to the City of Santa Cruz's camping ordinance, Chapter 6.36. Though we agree that the City's current camping ordinance does not conform with legal standards, such as the requirements in *Martin v. City of Boise*, the proposed amendments do not cure the current ordinance's defects. Instead, they represent more of the same punitive approach to homelessness that has

failed the City in the past. The proposed amendments will further harm homeless residents who would be far better served by investment in constructive, proven solutions to homelessness.

In addition, the proposed amendments create new barriers for homeless residents in the City by criminalizing activities such as sleeping, sitting, and lying in public spaces when the City lacks appropriate alternatives. These policies have a disparate impact on homeless people with disabilities, such as DRC's client – a homeless resident with multiple disabilities who resides in the City of Santa Cruz.

In light of the arguments described below, we urge the Council to refrain from enforcement of Chapter 6.36 entirely until it has completed a thorough analysis of the needs of the homeless population in Santa Cruz, in direct consultation with people experiencing homelessness in the City, and established a comprehensive system of supportive services that is responsive to the needs of homeless individuals, including homeless individuals like DRC's client, who has multiple disabilities.

Criminalization Of Homelessness Violates The Eighth Amendment's Prohibition on Cruel and Unusual Punishment

It is well-established law that punishing individuals for their involuntary status violates the Eighth Amendment's prohibition against cruel and unusual punishment.¹ Several courts have concluded that anti-camping ordinances violate the Eighth Amendment when those ordinances punish behavior that is an unavoidable consequence of being homeless, such as sitting, lying, or sleeping in public.² These courts have held that where there is no other adequate, accessible place for a homeless person to be but on the street, criminalizing such behaviors amounts to an unlawful criminalization of their status as homeless.³

Though the proposed amendments to chapter 6.36 purport to comply with that legal principle, the fact remains that the City of Santa Cruz lacks sufficient housing and emergency bed space to shelter all of its homeless residents on any given night. The City's continued effort to address homelessness through criminalization is not only inefficient, expensive, and ineffective, but it is also

¹ See *Robinson v. California*, 370 U.S. 660 (1962).

² See *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018); *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006).

³ *Id.*

unlawful. While the proposed amendments lessen the punishment for violation of the ordinance, they provide for sentence enhancements where a person can be found guilty of a misdemeanor for receiving two citations within a 48-hour period. Given the broad definition of “camping” in the ordinance, it is expected that homeless individuals could be cited frequently for merely sleeping, sitting, and/or lying down in public, creating a situation in which they are criminalized for unavoidable resting behaviors associated with homelessness. For these reasons and those discussed below, we urge the Council to cease all enforcement actions of chapter 6.36 until the City is able to provide safe, reliable, and accessible shelter for all of its homeless residents.

The Proposed Amendment To 6.36.020 On Daytime Encampments Is So Overbroad And Subject to Discriminatory Enforcement That It Is Unconstitutionally Vague

A law is unconstitutionally vague when it fails to specify a standard of conduct and, “as a result, men of common intelligence must necessarily guess at its meaning.”⁴ The proposed amendments do not provide an ordinary person with sufficient notice as to what conduct is prohibited, leaving a person to guess at the ordinance’s meaning and scope. While the stated “Purpose and Intent” is to limit “camping” in public space, the proposed amendment’s definition of camping is so broad that it seemingly prohibits such innocuous behavior as laying out a blanket in the park during a family picnic, taking a brief nap while reading a book, or temporarily setting up a tent to shield oneself from the sun. The ordinance’s sweeping ban on “camping” is therefore unconstitutionally vague in violation of the Due Process Clause.

Furthermore, the broad scope of the ordinance leaves too much discretion in the hands of law enforcement to determine when unlawful camping occurs, which will inevitably lead to arbitrary and discriminatory enforcement. Under federal law, a criminal statute is unconstitutionally vague under the Due Process Clause if it will lead to arbitrary and discriminatory enforcement⁵ and where it provides inadequate standards to govern the exercise of law enforcement discretion.⁶

Proposed chapter 6.36.020 is unconstitutionally vague under this standard. For example, it prohibits the setting-up of bedding or cooking equipment with

⁴ *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971).

⁵ *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

⁶ *Id.* At 170.

the intent to remain in that location overnight. It is almost impossible for an officer to determine with any reliable accuracy how long a person setting up bedding or cooking equipment intends to remain in a location. An officer is therefore likely to rely on stereotypes, assumptions, or preconceived ideas to determine a person's intent. The overbroad language of the ordinance places too much discretion in the hands of officers, which leads to discriminatory enforcement. We therefore urge the council to refrain from enforcement of the restrictions on daytime encampments until adequate measures are taken to prevent its discriminatory application.

The Proposed Amendment To 6.36.030 On Nighttime Encampments Does Not Contain Sufficient Protection For People Experiencing Homelessness, Particularly Those With Disabilities

The proposed amendment to chapter 6.36.030 on nighttime encampments creates new procedural protections for people experiencing homelessness. Unfortunately, these amendments are insufficient to protect adequately the needs of people experiencing homelessness, particularly those with disabilities.

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any such entity.”⁷ Under the ADA's broad language, a “program, service or activity” includes within its scope “anything a public entity does.”⁸ Services and programs of a city include the ability to enjoy the city's public spaces.⁹ The City's proposed chapter 6.36 so wholly fails to accommodate people with disabilities that it amounts to a discriminatory program under the ADA. Accordingly, we urge the Council to refrain from enforcing its ban on overnight camping until it develops adequate procedural safeguards for people with disabilities.

The proposed amendments demonstrate a fundamental lack of understanding of the barriers that people experiencing homelessness face in accessing shelter. Specifically, proposed chapter 6.36.030(d) provides that the prohibition on nighttime camping will not be enforced against a homeless person if: “(1) there are a greater number of homeless individuals in the City of

⁷ 42 U.S.C.A. § 12132.

⁸ *Yeskey v. Pennsylvania Dep't of Corr.*, 118 F. 3d 168, 171 & n. 5 (3d Cir. 1997), *aff'd* 524 U.S. 206 (1998) (quoting 28 C.F.R. Pt. 35, App. A, preamble to ADA regulations).

⁹ See, e.g., *Heather K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1262 (N.D. Iowa 1995).

Santa Cruz than the number of available beds in shelters, AND (2) at the time the citation is issued, the person has no actual and immediate access to adequate temporary shelter.” For purposes of that section, “A person has actual and immediate access to shelter if that person has the financial means to pay for that shelter and/or shelter is realistically available for free.” But, 6.36.030(f) states: “[t]he Police Department...shall not be required, to transport the person to the available shelter location.”

Without transportation and an assessment of an individual, the offer of an available shelter is illusory. Overall, the shelters in Santa Cruz do not comply with the requirements of the Americans with Disabilities Act (ADA). If the proposed amendment is adopted, it will place people with disabilities in the difficult position of choosing between an inaccessible shelter that is not suitable to their needs or being arrested under proposed chapter 6.36.030(f) for declining services. Without any consideration of disability-accessibility or appropriateness of offered placement, the ordinance allows the police department to proceed with enforcement “[i]f the individual declines the offered placement.”

Many homeless individuals, like DRC’s client, have post-traumatic stress disorder and other disabilities that are exacerbated by crowded, chaotic, unfamiliar settings like shelters. It is not uncommon for a homeless individual to be admitted to a shelter, only to willingly leave or be forcibly removed when the conditions of the shelter trigger feelings of anxiety, trauma, or even a psychotic episode. In addition, shelters are typically segregated based on gender, and few allow for opposite-sex couples to remain together. This poses a significant problem for individuals with disabilities whose partners are also their caregivers. Moreover, shelters oftentimes do not accept service animals or emotional support animals. People with disabilities who are reliant on their emotional support animals to assist with symptoms of their disabilities will frequently choose to remain unsheltered rather than give up their emotional support animal to enter a temporary shelter. The proposed amendments to chapter 6.36 contain no protections for people experiencing these types of disabilities.

Persons with disabilities have fewer options for accessible and medically-appropriate housing and emergency shelter. Homeless people with disabilities are also less able to comply with the no-camping ordinance and are thus at greater risk of liability, raising serious questions about the City’s compliance with the Americans with Disabilities Act (ADA).

The Proposed Amendment To 6.26.080 On Removal And Storage Deprives People of Their Property Without Due Process

We take issue with and vehemently dispute the blanket assertion in proposed chapter 6.36.080 that unattended encampments are a public nuisance. Encampments are the inevitable result of a government's refusal or inability to address adequately the needs of its most vulnerable residents. We have many concerns with the proposed language of chapter 6.36.080.

First: The standard operating procedures to be established by the City Council should be the result of a thorough analysis of the homeless experience and a medical needs assessment, drafted under the lens of providing housing and supportive services—not law enforcement.

Second: While we agree that the reasonableness of a notice period depends on many factors, to comply with the Fourth Amendment's ban on unreasonable seizures there should always be a minimum notice period between a request to remove personal property and the confiscation of property, to give individuals sufficient time to retain life-sustaining property, such as a tent or medical supplies. Any determinations of a reasonable notice period should err on the side of giving the public more notice, not less.

Third: The requirement in proposed chapter 6.36.080(b)(2) that a person receiving notice sign an acknowledgment creates an unnecessary new liability for people experiencing homelessness. An individual does not need to sign an acknowledgment for the City to comply with due process requirements. This requirement puts an individual at risk of citation when their inability to sign or lack of understanding is interpreted as "refusal."

Fourth: Proposed chapter 6.36.080(c)(1) contains an exception to the notice requirement for "personal property which poses an imminent threat to public health or safety, is contraband, or is evidence of a crime." Given the extreme hardship that loss of personal property creates for people experiencing homelessness, in particular people with disabilities, this exception is far too broad. Any exceptions to the notice requirement should be as narrow as possible to prevent the unjustified loss of personal property.

Fifth: Proposed chapter 6.36.080(c)(2) lists the "personal effects" that must be removed from the encampment after the relevant notice period has expired. When the City conducts its encampment sweeps, homeless individuals in Santa Cruz report of personal effects and medically necessary equipment,

such as wheelchairs, being seized and destroyed. Furthermore, Santa Cruz does not have adequate procedures in place for homeless individuals to reclaim their property if seized by law enforcement. The difficulties of getting to and from the site where property is being stored can itself be a tremendous burden for homeless people, particularly those with disabilities. The City must develop policies and procedures for reclaiming property that provide adequate due process and are accessible to people with disabilities.

The City Must Develop Policies On Homelessness That Include Healthcare-led Outreach And Are Rooted In The Provision Of Supportive Services, Not Law Enforcement

The County and City of Santa Cruz have created and adopted evidence-based models— such as, the Housing First model and Whole Person Care project—that include short and long term strategies to solve the issue of homelessness. These models are consistent with the Encampment Principles and Practices developed by the Law Center and adopted by the Los Angeles Homeless Services Authority.¹⁰ We urge the City to continue along the path of using evidence-based models and set aside punitive strategies and ordinances, such as enactment and enforcement of its Camping ordinance.

The City adopted the Housing First model in its HUD Consolidated Plan.¹¹ The Housing First model calls for “an approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment or service participation requirements.”¹² Paired with the County of Santa Cruz’s “Whole Person Care” project (WPC)¹³, homeless individuals could obtain housing services, management of health conditions, and wrap-around supportive services. WPC is authorized and funded for 2020.

¹⁰ National Law Center on Homelessness & Poverty, *Tent City USA* (2017), available at https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf. The principles are based on case studies and federal and international legal guidance regarding evidence-based solutions to outdoor encampments.

¹¹ Short-Term Action Strategies, City of Santa Cruz 2015-2020 Consolidated Plan, pp. 97, located at: <http://www.cityofsantacruz.com/home/showdocument?id=53602>.

¹² <https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>

¹³ “Whole Person Care (WPC) – Cruz to Health is a pilot project authorized and funded under California’s MediCal 2020 waiver to test county-based initiatives to improve care management of individuals with chronic co-occurring health conditions and repeated and avoidable medical and/or psychiatric hospitalizations. Funding for WPC – Cruz Health also comes from the Mental Health Services Act which funds supportive housing services and the innovative use of telehealth device to help clients and care teams manage chronic health conditions in more independent and non-medical settings.” Located at: <https://www.santacruzhealth.org/HSAHome/HSADivisions/BehavioralHealth/CruztoHealth.aspx>.

In addition, we note that a separate item on the agenda for the November 26, 2019 City Council meeting is a motion to 1) accept the Health in All Policies (HiAP) Evaluation Report and Recommendations, 2) introduce for publication an ordinance adding Chapter 6.02 to the Municipal Code, 3) adopt the HiAP Implementation City Council Policy, and 4) direct staff to return with an Implementation Work Plan by the first meeting in January. We applaud the Council's consideration of HiAP and wholeheartedly support its adoption into the municipal code. Adoption and implementation of HiAP is exactly the type of approach that we recommend in responding to the homelessness crisis. While we recognize the Council's efforts to introduce procedural and substantive protections for people experiencing homelessness, we note that the Council continues to engage with the issue of homelessness from the perspective of criminalizing homelessness without fully embracing other initiatives in the City and County that involve more long-term strategies.

To approach the problem of homelessness from the perspective of criminalization puts the City and law enforcement in an oppositional relationship to members of the public it purports to serve. Rather than amending ordinances to justify the citation and arrest of homeless individuals, we urge the Council to undertake a considered, thoughtful analysis of homelessness and the barriers that people experiencing homelessness face when attempting to access services. Until that time, the City should refrain from enforcement of chapter 6.36 and other ordinances that have the effect of criminalizing the homeless.

Sincerely,



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