



Case Study: A Capital City's Approach to Unsheltered Community

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Responding to *Martin v. City of Boise* and its Progeny: The Capital City's Approach to Protect the Health, Safety, and Welfare of Housed—and Unhoused—Sacramentans

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Unsheltered homelessness cannot fairly be described as a “new” crisis facing the State of California and its municipalities; yet, in the last half-decade, the population of people experiencing homelessness in California increased from approximately 109,000 to more than 171,000, an increase of 56.9%. (Dept. of Housing and Urban Development, 2018 Annual Homeless Assessment Rep. to Congress (Dec. 2018), p. 26; U.C.S.F., *Toward a New Understanding* (June 2023), p. 4.) This paper explores judicial decisions that have compounded the crisis of unsheltered homelessness in and for the City of Sacramento, as well as the legal and policy approaches taken by the capital city to protect the health, safety, and welfare of its housed—and unhoused—residents.

I. Judicial Decisions Compound the Existing Homelessness Crisis.

A. A Constitutional Right to Camp on Public Property—to an Extent.

i. *Martin v. City of Boise* Seismically Changes the Legal Landscape.

Five years ago, almost to the day, the Ninth Circuit Court of Appeals issued its decision in a case that has become ubiquitous among elected and appointed policymakers in local government, and the municipal attorneys who advise them, thus requiring little introduction here. In *Martin v. City of Boise*, the Ninth Circuit was called upon to decide whether “the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter[.]” (*Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031, 1046, superseded by *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, amending opinion and denying petition for panel rehearing and rehearing en banc.) Setting itself apart from all other appellate courts, state and federal, the Ninth Circuit answered this question squarely in the affirmative. (*Ibid.*)

Purporting to rely on United States Supreme Court precedent, the Ninth Circuit read together dissenting and concurring opinions in *Powell v. Texas* (1968) 392 U.S. 514 to extract a controlling principle that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavailable consequence of one’s status or being.” (*Boise, supra*, at 1048, internal quotation marks omitted.) At issue in *Boise* were two city ordinances: one that prohibited the use of “any of the streets, sidewalks, parks, or public places as a camping place at any time,” defining “camping” to mean “the use of public property as a temporary or permanent place of dwelling lodging or residence”; and a second that prohibited “[o]ccupying, lodging or sleeping in any building, structure, or public place, whether public or private ... without the permission of the owner or person entitled to possession or in control thereof.” (*Id.* at 1035, internal quotations marks omitted.) Read together, “the two ordinances criminalize the simple act of sleeping outside on public property, whether bare or with a blanket or other basic bedding.” (*Id.* at 1049.) And “as a practical matter, no shelter [was] available” in the City of Boise due either to full capacity, or time limits on occupancy, impracticable policies, and religious mandates. (*Id.* at 1041-42.)

Having determined that the two ordinances criminalized sleeping on public property throughout the city, and that shelter was practically unavailable in Boise, the Ninth Circuit applied the principle extracted from *Powell* to conclude that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” (*Id.* at 1048.) The Court reasoned that, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” (*Ibid.*, quoting *Jones v. City of Los Angeles* (9th Cir. 2006) 444

F.3d 1118, 1136, vacated by *Jones v. City of Los Angeles* (9th Cir. 2007) 505 F.3d 1006, internal quotation marks omitted.)

ii. The *Boise* Court Frames its Own Holding as “Narrow.”

Despite the broad pronouncement above, the Court went great lengths to qualify its holding as “a narrow one.” First, the Court held only that, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people from sleeping outdoors, on public property”; the holding does not prohibit the imposition of penalties—criminal or otherwise—for unlawfully sitting, sleeping, or lying on private property. (*Boise, supra*, at 1048.) Second, the Court did not dictate that a city “must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.” (*Ibid.*, quoting *Jones, supra*, at 1138, internal quotation marks omitted.)

Doubling down, the Court disclaimed any suggestion “that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where sufficient shelter is unavailable, an ordinance prohibiting sitting, lying or sleeping outside at particular times or in particular locations might well be constitutionally permissible.” (*Boise, supra*, at 1048, n. 8, citing *Jones, supra*, at 1123, emphasis in original.) “So, too,” the Court explained, “might an ordinance barring the obstruction of public rights of way or the erection of certain structures.” (*Id.* at 1048, n. 8.)

Concurring in the Court’s denial of the City of Boise’s petition for panel rehearing and rehearing en banc, Judge Marsha Berzon, author of the panel opinion, again stressed the “limited nature of the opinion.” (*Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, 589, Berzon, J., concurring in the denial of panel rehearing and rehearing en banc.) Importantly, as Judge Berzon explains, “the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or

lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment.” (*Ibid.*, emphasis in original.) In other words, a municipality might criminalize the acts of sleeping, sitting or lying throughout its jurisdiction, provided that “alternative sleeping space” is available, or criminalize the acts of sleeping, sitting, or lying only in certain public spaces, without running afoul of the Eighth Amendment.

iii. Boise Raises Questions; the Supreme Court Declines to Answer—Yet.

Four months after the Ninth Circuit issued its amended opinion, the City of Boise filed a petition for writ of certiorari in the Supreme Court. (See *City of Boise, Id., Pet. v. Robert Martin, et al.*, No. 19-247, Proceedings and Orders.) While the Court repeatedly characterized its holding as “narrow” or “limited,” the party charged with compliance—the City of Boise—and numerous affected advocacy organizations, business associations, cities and counties, individuals, neighborhood groups, labor unions, nonprofit organizations, and states disagreed. In the wake of *Boise*, they have raised numerous questions unanswered by the Ninth Circuit, the answers to which are necessary to comply with its holding. These questions are perhaps best articulated in the 21 amicus briefs filed in the Supreme Court in support of the City of Boise’s petition for writ of certiorari. (See *Ibid.*)

In their amicus brief, seven cities in Orange County argue that, “[a]lthough [*Boise’s*] rule may appear straightforward at first glance, in reality it gives rise to a welter of conceptual and practical imponderables. (See Brief for Seven Cities in Orange County as Amicus Curiae, p. 1, *City of Boise, Idaho v. Martin* (2019) 140 S. Ct. 674.) Focusing on *Boise’s* requirement of sufficient shelter as a prerequisite to enforcement, the amici curiae ask where the requisite shelter must be available; “in other words, what is the jurisdictional level at which its rule must be applied[?]” (*Id.* at 4.) What sort of accommodations must a shelter provide to substitute for camping on public

property? (*Id.* at 7.) Whether and under what circumstances, other than religious mandates, do a shelter’s policies render it unavailable to a particular unhoused individual? (*Id.* at 9.) When must an unhoused individual have access to shelter for purposes of enforcement? (*Id.* at 10.) The answers to these questions are no where to be found in the opinion.

In their amicus brief, the California State Association of Counties and 33 individual cities and counties agree that *Boise* “raises a host of unanswered questions as to what ‘practically available’ and ‘jurisdiction’ mean” (See Brief for Cal. State Assn. of Counties, et al., as Amicus Curiae, p. 10, *City of Boise, Idaho v. Martin* (2019) 140 S. Ct. 674.) Expounding on the Orange County cities’ questions, they ask whether shelter space is “practically available” if it does not accommodate pets, voluminous personal possessions, a significant other or relative. (*Id.* at 11.) They also ask whether a shelter with only unpartitioned beds is “practically available” to an unhoused individual with a psychological condition who declines such sleeping arrangements. (*Ibid.*) To determine the sufficiency of shelter, they ask whether, particularly for a small jurisdiction, shelter can be available in a neighboring city. (*Id.* at 13.) “[D]oes the answer change if the property is owned by one municipality but the citation is issued by another? What if a county clears an encampment on county-owned land located within a city?” (*Id.* at 13-14.) These questions are not merely hypothetical, but rather, based upon the operations of municipalities throughout the state. (*Ibid.*)

Despite the numerous threshold questions unanswered by the Ninth Circuit, the Supreme Court declined to provide any clarity to the City of Boise and amici curie. In a one-sentence memorandum, the Court ordered: “[p]etition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.” (*City of Boise, Idaho, supra*, 140 S. Ct. 674.) In so doing, the Court left municipalities and other amici to seek answers in the district courts.

iv. Boise’s Progeny is a Double-Edged Sword.

1. “Footnote 8” Takes Center Stage in the District Courts.

Over the past five years, district courts in the Ninth Circuit have published only seven cases that substantively interpret *Boise*. Five of these cases solidify that public agencies may remove encampments from discrete areas of public property without running afoul of the Eighth Amendment; none, however, resolve the ambiguity raised by amici curiae in support of the City of Boise’s petition for writ of certiorari. In each of the cases below, sufficient shelter in the defendant cities was purportedly lacking.

In *Shipp v. Schaff*, unhoused residents of Oakland challenged as unconstitutional the city’s intended closure of the encampment they occupied for eight hours on one of two days “to clean the site thoroughly.” (*Shipp v. Schaff* (N.D. Cal. Apr. 16, 2019) 379 F.Supp.3d 1033, 1035.) The United States District Court for the Northern District of California determined that “[*Boise*’s] holding does not extend to the situation here.” (*Id.* at 1037.) Even assuming that the encampment would be removed under threat of criminal sanction, which had not been established, the Court held that “remaining at a particular encampment on public property is not conduct protected by [*Boise*], especially where the closure is temporary in nature.” The Court observed that “[t]his is not a case where ‘homeless plaintiffs do not have a single place where they can lawfully be’ within the city.” (*Ibid*, quoting *Pottinger v. City of Miami* (S.D. Fla. Nov. 16, 1992) 810 F.Supp. 1551, 1565.)

In *Aitken v. City of Aberdeen*, unhoused residents of Aberdeen, Washington, challenged the constitutionality of four core ordinances: the first effected the eviction of approximately 100 individuals encamped on a piece of undeveloped land; the second prohibited camping throughout the city, except when overnight shelter was unavailable; the third prohibited sitting and lying on

sidewalks in the downtown area between 6:00 a.m. and 11:00 p.m.; the fourth prohibited the obstruction of sidewalks. (*Aitken v. City of Aberdeen* (W.D. Wash. July 2, 2019) 393 F.Supp.3d 1075, 1079-80.)

The United States District Court for the Western District of Washington first observed that other “courts have been reluctant to stretch [*Boise*] beyond its context of total homelessness criminalization.” (*Id.* at 1081, citing *Miralle v. City of Oakland* (N.D. Cal. Nov. 28, 2018, No. 18-cv-06823-HSG) 2018 WL 6199929, at *2 [*Boise* “does not establish a constitutional right to occupy public property indefinitely at Plaintiffs’ option”].) With regard to the first ordinance, therefore, the Court held that *Boise* “does not limit the City’s ability to evict homeless individuals from particular places” (*Id.* at 1082.) With regard to the other three ordinances, the Court granted “a brief stay of enforcement until the Court [could] assess the City’s regime more thoroughly.” (*Ibid.*) After approximately two months, the Court vacated its order enjoining enforcement without explanation. The parties settled and the case was dismissed six weeks later.

In *Gomes v. County of Kauai*, unhoused occupants of Salt Pond Beach Park in Kauai, Hawaii, challenged the constitutionality of an ordinance that prohibited camping in a park without a permit, and constructing an unauthorized structure in a park. (*Gomes v. County of Kauai* (D. Hawaii Aug. 26, 2020) 481 F.Supp.3d 1104, 1106.) The United States District Court for the District of Hawaii observed that, “[u]nlike the ordinance considered by [*Boise*], which criminalized sleeping outside on public property *anywhere* in Boise, [citation omitted], [the ordinance at issue] is limited to public parks, not public land.” (*Id.* at 1109, emphasis in original.) Quoting both *Aitken* and *Miralle*, *supra*, the Court reasoned that, even if “the County of Kauai ordinance criminalized sleeping at Salt Pond Beach Park, with or without a permit, such a restriction would not by itself

violate the Eighth Amendment” because “there is nothing in the Complaint to suggest that Plaintiffs could not sleep in other public places within the County of Kauai.” (*Ibid.*)

In *Blain v. California Department of Transportation* (Caltrans), unhoused residents of Oakland challenged as unconstitutional the State of California’s (State) intended closure—ostensibly permanent—of the encampment they occupied, which was located on State property. (*Blain v. Cal. Dept. of Transp.* (N.D. Cal. July 22, 2022) 616 F.Supp.3d 952, 955.) The United States District Court for the Northern District of California explained the reason for *Boise*’s holding, as did the *Gomes* Court in different terms, being that “prohibiting homeless people from sleeping in the entire city without providing shelter beds would be to criminalize something involuntary and status-based.” (*Id.* at 959.) Finding no Eighth Amendment violation, the Court concluded that “Caltrans solely seeks to prohibit the plaintiffs from living on a discrete property, so the concerns in [*Boise*] have not been shown to be present.” (*Ibid.*)

In *Wills v. City of Monterey*, an unhoused resident of Monterey challenged the constitutionality of five core ordinances: the first prohibited using a motor vehicle for habitation on any public property, or in a public or private parking lot, between 10:00 p.m. and 6:00 a.m.; the second prohibited, among other things, camping outside designated areas and without first obtaining a permit; the third prohibited causing an obstruction by placing anything on a sidewalk; the fourth prohibited intentionally obstructing or impeding the free movement of any pedestrian or vehicle on any public property; the fifth prohibited sitting or lying on a commercial sidewalk between 7:00 a.m. and 9:00 p.m. (*Wills v. City of Monterey* (N.D. Cal. Aug. 1, 2022) 617 F.Supp.3d 1107, 1118-19.)

The United States District Court for the Northern District of California presented the question on which the case turns as “whether the ordinances collectively criminalize sleeping

outside *anywhere* in the City (particularly in the evening, the normal sleeping period for most people), or whether the ordinances merely criminalize sleeping in certain areas of the City. (*Id.* at 1120, citing *Sausalito/Marin County Ch. of Cal. Homeless Union v. City of Sausalito* (N.D. Cal. Dec. 13, 2021, No. 21-cv-01143-EMC) 2021 WL 5889370, at *2 [*Boise* “prohibits a ban on all camping, not the proper designation of permissible areas”].) The city argued that its five ordinances “do not criminalize sleeping outside in *all* public places in the City at all times” because the anti-camping ordinances restrict only overnight camping, and because the commercial sidewalk ordinance permits overnight camping. (*Id.* at 1120, emphasis in original.)

First, invalidating the city’s overnight camping prohibition, the Court observed that the “vast majority of individuals sleep during the evenings, not during daylight hours. The Court will not countenance that a city may constitutionally criminalize sleeping outside during the evenings so long as it provides some public space that is available during daytime hours.” (*Id.* at 1120-21.) Second, the Court cast doubt on the availability of any overnight camping in the city, given that the ordinances prohibited using a tent or sleeping bag in residential areas; it questioned whether a person may camp on any sidewalk, since placing a tent or bedding thereon would presumably cause an obstruction; and reasoned that sleeping on a sidewalk could plausibly be construed as intentionally obstructing or impeding the free movement of any pedestrians. (*Id.* at 1121.) Thus, the Court concluded that the plaintiff stated a claim under the Eighth Amendment. (*Id.* at 1120.)

2. The Ninth Circuit “Slightly” Extends *Boise*.

Over the course of more than four years since deciding *Boise*, the Ninth Circuit has revisited its decision only once. In *Johnson v. City of Grants Pass*, unhoused residents of Grants Pass, Oregon, challenged the constitutionality of four core ordinances: the first prohibited sleeping on sidewalks, streets, alleyways, and in pedestrian or vehicular entrances to public or private

property abutting a sidewalk; the second prohibited occupying a campsite on all public property; the third prohibited camping in public parks, including overnight parking of any vehicle; the fourth provided for a 30-day prohibition from all city parks if the subject twice violated park use regulations within one year. (*Johnson v. City of Grants Pass* (9th Cir. 2022) 50 F.4th 787, 793-94, superseded by *Johnson v. City of Grants Pass* (9th Cir. 2023) 72 F.4th 868, amending opinion and denying petition for rehearing en banc.) Notably, the four locations in Grants Pass that temporarily housed unsheltered residents were inadequate. (*Id.* at 796.)

As a threshold matter, the Ninth Circuit found that the plaintiffs could sue as a class of involuntarily homeless people. (*Id.* at 803.) A putative class must satisfy four prerequisites: numerosity, commonality, typicality, and adequacy of representation. (*Id.* at 802, citing Fed. R. Civ. P. 23(a).) The city argued that *Boise* applies only “after an individualized inquiry of each alleged involuntarily homeless person’s access to shelter. The . . . need for individualized inquiry defeats numerosity, commonality, and typicality.” (*Id.* at 803.) While acknowledging that *Boise* was not a class action, the Ninth Circuit determined that nothing in its opinion precluded class actions, and that a class of involuntary homeless persons could be certified. (*Ibid.*)

As to the merits of Plaintiffs’ Eighth Amendment claim, the ordinance scheme at issue required the Court to determine whether civil citations can be challenged under the Cruel and Unusual Punishments Clause, and whether *Boise* precludes enforcement of an ordinance that prohibits the use of bedding or similar protection from the elements. (*Id.* at 806.) First, the Court acknowledged that, “[u]sually, claims under the Cruel and Unusual Punishments Clause involve straightforward criminal charges.” (*Id.* at 807.) While the city asserted that “the ordinances are civil and civil citations are ‘categorically not punishment under the Eight Amendment[,]’” enforcement of the anti-camping ordinances began with a civil fine, but ended with criminal

prosecution for trespass if the subject twice violated the ordinance, was issued a park exclusion order and returned to the park. (*Ibid.*) The Court held that “local government cannot avoid [*Boise*] by issuing civil citations that, later, become criminal offenses.” (*Ibid.*)

Second, the Court observed that the city had since amended its anti-camping ordinances to allow unhoused residents to sleep in parks, but continued to prohibit them from using “bedding, sleeping bag, or other material used for bedding purposes.” (*Id.* at 808.) The Court called attention to the issuance of a citation in *Boise* to a woman found sleeping on the ground, wrapped in blankets, as “an example of the anti-camping ordinance being ‘enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements’; [*Boise*] deemed such enforcement unconstitutional.” (*Id.* at 808-09, quoting *Boise, supra*, 920 F.3d at 618.) “It follows,” the Court held, “that the City cannot enforce its anti-camping ordinances to the extent they prohibit ‘the most rudimentary precautions’ a homeless person might take against the elements.” (*Grants Pass, supra*, at 809.) As in *Boise*, the Ninth Circuit characterized its decision in *Grants Pass* as “narrow,” stating that its “decision reaches beyond [*Boise*] slightly.” (*Id.* at 813.) Nevertheless, the City of Grants Pass filed a petition for writ of certiorari in the Supreme Court. (See *City of Grants Pass, Oregon v. Johnson*, No. 23-175, Proceedings and Orders.)

B. Sacramento Responds to *Boise* and its Progeny.

i. The City Moves to Protect Critical Infrastructure and Wildfire Risk Areas.

Over a six-month period in 2019, the City of Sacramento faced 1,009 fires associated with encampments occupied by persons experiencing homeless, ensuing damage to a Department of Utilities (DOU) facility, impeded access to a second DOU facility and the Sacramento Water Treatment Plant, and encampment-related damage to levees. (Staff Rpt. Re: City of Sac. Ord. No. 2020-0009, p. 3.) Thus, City staff recommend adoption of an ordinance “to mitigate the threat of

fire and other potential causes of destruction and damage to and interference with, critical infrastructure and wildfire risk areas and similarly sensitive areas, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near those areas.” (Staff Rpt. Re: City of Sac. Ord. No. 2020-0009, p. 2.)

In general terms, the ordinance prohibits camping and storing personal property (1) on, within 25 feet of, and within 25 feet of a pedestrian or vehicular entrance to, or exit from, critical infrastructure, (2) on portions of a public right-of-way that, under local, state, or federal law, must remain free of obstruction to first responders, (3) within hollow sidewalks, and (4) in wildfire risk areas. (See Sac. City Code, § 8.140.030, subs. A-B.) The ordinance provides that, except for violations that pose an imminent threat to public health or safety, which the city may abate immediately, the city may abate the foregoing violations upon 24 hours’ notice. (Sac. City Code, § 8.140.040, sub. A.) Should any person willfully prevent, delay, resist, obstruct, or otherwise interfere with the city’s abatement, they are subject to enforcement action. (See Sac. City Code, §§ 8.140.050-060.)

By its terms, the ordinance identifies as critical infrastructure levees and any other real property or facility that the city manager designates, and that the city council approves by resolution, “as being so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.” (See Sac. City Code, § 8.140.020.) After a months-long assessment of real property and facilities as well as consultation with subject matter experts, the city manager designated as critical infrastructure additional parcels and facilities that house vulnerable populations, government operations, utilities, healthcare providers, public safety and transportation infrastructure, and public gathering spaces, which the City Council adopted by resolution in July

2021. (City of Sac. Res. No. 2021-0227.) The City Manager subsequently revised the designation on October 11, 2022, and July 25, 2023, which the City Council adopted by resolution in October 2022 and August 2023, respectively. (City of Sac. Res. Nos. 2022-0322, 2023-0252.)

As City staff’s report explains, the “ordinance is an exercise of the City’s authority to protect the public health, safety, and welfare as recognized by the Ninth Circuit The ordinance is geographically limited. Possible summary abatement under the ordinance does not apply to the entirety of the City. It is limited to real property upon which the presence of unauthorized personal property poses a heightened threat to the health and safety of residents. Encampments and associated personal property of unsheltered homeless persons would not be subject to such summary abatement on the remainder of property in the City.” (Staff Rpt. Re: City of Sac. Ord. No. 2020-0009, p. 4.)

ii. Sacramentans Call for Additional Shelter—and Enforcement.

In February 2022, residents concerned with the increasing number of unsheltered people experiencing homelessness in Sacramento proposed a ballot initiative that, among other things, would have required the City to rapidly identify and authorize significantly more emergency shelter space, and authorized enforcement action against those to whom it was available and offered, but who refused and remained. (Staff Rpt. Re: City of Sac. Ord. No. 2022-0011, p. 2.) The City Manager reported, however, that “there is no scenario in which the City will be successful in providing the emergency shelter compelled by this proposal without decimating core programs and services.” (*Ibid.*) Therefore, the City Manager recommended that the Council put an alternative initiative ordinance to the voters in the November 2022 election; that ordinance, dubbed the Emergency Shelter and Enforcement Act (ESEA) of 2022, “was crafted to address emergency

shelter needs while recognizing the Council’s and community’s priorities regarding the provision of core programs and services.” (*Id.* at 4.)

In general terms, the ESEA—identified as Measure O on the November 2022 ballot—(1) directs the City Manager to authorize new emergency shelter spaces (spaces) equal to at least 12% of the estimated number of unsheltered City residents, after which the authorization of new spaces is contingent upon 60% utilization of existing spaces; the City Manger must also perform regular outreach; (2) provides that, once the City Manager has authorized the requisite number of spaces, a person may be cited for unlawful camping on public property if a space is available and offered to that person, but that person rejects the offer and refuses to relocate; (3) makes it unlawful and a public nuisance in an encampment—defined as at least four persons camping together or within 50 feet of each other, without power, water, or bathrooms—to camp, occupy camp facilities, use camp paraphernalia, or accumulate or fail to properly dispose of waste; (4) creates a mechanism for residents harmed by unlawful camping or storage on City-owned property to commence abatement proceedings against the City, and recover costs and attorney’s fees if the City is ordered to abate a nuisance; and (5) directs the City Manager to fund the ESEA first from external sources, then with up to 50% of unobligated General Fund year-end resources, not to exceed \$5 million. (Ballot Pamp., Gen. Elec. (Nov. 8, 2022), impartial Analysis of Measure O by Sac. City Attorney.) The ESEA passed with 70,016 voters or 52.09% in favor of adoption, and 64,404 voters or 47.91% against adoption. (Sac. Cnty. Gen. Election Results, Nov. 8, 2022, at <https://eresults.saccounty.net/>.)

II. Balancing the Rights and Needs of People Experiencing Homelessness and the Public Health and Safety of the Community.

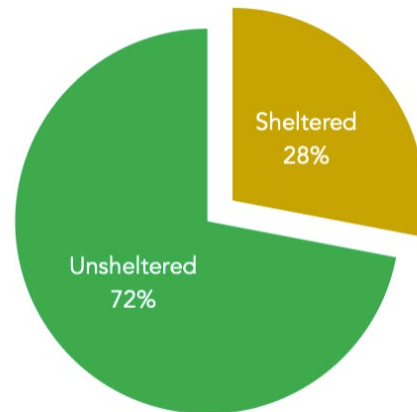
According to the U.S. Census, Sacramento is the seventh largest City in the State, with a population of 528,001.

(<https://www.census.gov/quickfacts/fact/table/sacramentocitycalifornia/PST045222>.)

Although no one intended for public health and safety to be compromised by restricting enforcement of public camping ordinances, communities have experienced a decrease in quality of life and increasing problems related to PEH. Sacramento is no exception and the consequences have been severe. The following is a summary of a recent report by Sacramento State University detailing the number of PEH within the County. (<https://sacramentostepsforward.org/wp-content/uploads/2022/06/PIT-Report-2022.pdf>):

Results of the 2022 Homeless Count

6,664 Unsheltered
2,614 Sheltered
9,278 Total Individuals



According to the same report, the City's Unsheltered population of PEH is now at least 4,444:

Areas in Sacramento County	Total Unsheltered	% of Total
City of Sacramento	4,444	67%
American River Parkway (inside City of Sac.)	594	8%
Citrus Heights	89	1%
Rancho Cordova	156	2%
Elk Grove	45	1%
Folsom	20	.5%
Unincorporated County	1,316	20%
Total Sacramento County	6,664	100%

With this growth in PEH, the issues related to homelessness continue to escalate. For example, by the end of July, 2023, the Department of Community Response (DCR) had received over 19,000 calls for service related to homelessness. This has forced the City to consider new approaches to manage the workload and response models given the need to understand the issues and match resources accordingly.

Calls for service related to PEH can range from simple or complex. Some calls may involve a sidewalk obstruction, an RV parked over 72 hours at the same location, or a large encampment spanning miles. The former can be addressed by a single department on the same day, but the latter requires a multi-agency coordinated response.

For example, this summer the City response to a large encampment located along property leased by the Higgin Oaks Golf Course. This location had developed ongoing and vast amounts of unlawful camping activity, illegal dumping, narcotics sales, and other criminal activity. In addition, the fire department had to respond to several fire incidents related to PEH. Some of the cumulative negative effects of unlawful camping there included environmental destruction, on-going threat of fire hazard and health safety issues related to drug sales and the open disposal of hazardous material, including but not limited to trash, needles, drug paraphernalia and human waste. The

following is a summary of the cleanup efforts, spanning several weeks, and involving various City, county, and California state departments:

METRICS: (SPD Impact, Code Enforcement, Forensclean)

Metrics	Total
PEH Contacted	18
Arrests	1 Felony Warrant
Stolen Vehicle Recovered	11
Total Vehicles Removed from Property	24
Total Trash Removed	215,060 lbs
Metal and Propane Tanks Removed	20,000 lbs
Syringes Disposed	2,143

METRICS: (DCR Specific)

Service Type	Total
Total Contacts	245
Total Engagements	187
Coordinated Access Referrals	6
ID Voucher	18
HMIS Enrollments	21
Mental Health Assessments	5
Referred to DHA	3
Behavior Health Referral	1

***Definitions:**

1. **Contact** – “any exchange between staff and an unhoused community member.”
2. **Engagement** – “a more substantial interaction where discussion of service provision takes place.”
3. **Coordinated Access Referral** – “shelter referrals which place an individual on a list for available shelter spots.”

Below is an example of the situations that City, county, and state officials encountered, and the result after coordinated response:

Before



After



According to the Sacramento Police Department, of the 20,000 arrests last year, half constituted felony arrests, and one-third of those arrests involved PEH. This is a significant figure because although PEH account for about 1% of the population within the City, they are allegedly responsible for over one-third of the crimes that occurred within the City.

Given the issues above, the City developed a new response model system with specified protocols aimed to effectively categorize and respond to these calls for service. (https://sacramento.granicus.com/MetaViewer.php?view_id=21&event_id=4740&meta_id=740858.) In summary, these new protocols aim to address the following more effectively:

1. **Outreach efforts**

- Assess needs of encampment residents (PEH) and provide appropriate resources;
- Establish rapport and connect PEHs to social services as appropriate and available;
- Prioritize and assign an appropriate response/resources to different encampments;
- Establish coordinated response with County and state partners for larger encampments such as the example above.

2. Encampment management

- Prioritize locations based on the nature of calls for service and field assessments;
- Determine need for contractors, support from specialty departments, or partners;
- Execute cleanup and removal of trash and hazardous materials.

3. Compliance

- Coordinate enforcement agencies: Sacramento Police Department, Sacramento Fire Department, Park Rangers, and Code Enforcement Division
- Enforce City Codes, the California Vehicle Code, and additional relevant state law.
- Promote public health and safety through compliance.

The above City protocols also create three types of coordinated responses:

1. General Response

- Calls involving non-emergency situations, where outreach and provided resources are usually successful to assist PEH, not involving various departments or coordination with partners, or where there is no immediate need to relocate.

2. Rapid Response:

- Situations where there is an immediate need to relocate or comply with the law due to public health or safety reasons.

3. Coordinated Response

- Situations where the response would require an extensive resources and/or coordination with county or State partners.

In summary, recognizing the complexity of the homelessness crisis the City developed protocols to promote efficiency, coordination, and compliance with the law. These protocols are intended to connect community members experiencing homelessness with the appropriate social

services, and also eliminate or minimize the negative impact of encampments on surrounding neighborhoods.

III. The City of Sacramento Advances Novel Policies to Address Homelessness.

A. City of Sacramento's Department of Community Response.

On July 1, 2021, the City of Sacramento created the Department of Community Response (DCR) as a stand-alone department. DCR consists of two primary divisions. The Homeless Services Division handles numerous agreements that provide services and programming for families and individuals experiencing homelessness. The Community Outreach Division deploys social workers and outreach specialists who perform outreach to households experiencing homelessness and connect them to services.

DCR contracts to fund a total of twelve programs which generate a maximum capacity of 1,214 units of shelter, transitional housing, and safe ground/respice on any given night. Additionally, the City provides partial funding to four unique programs that provide such services for women with children exclusively, a population which saw decline in the most recent PIT count as 32% of family households with children were found to be unsheltered; a 31% reduction from the last PIT count in 2019. These programs provide for the basic needs as well as comprehensive case management specifically tailored to many subpopulations of those experiencing homelessness including singles, parents, Transitional Aged Youth, families, and the LGBTQ+ community.

Since its creation through June 30, 2023, DCR has assisted 5,607 people in moving off the streets of Sacramento – many of which moved on to positive temporary or transitional housing, or permanent housing. Additionally, as of the beginning of this current year (2023), the Community Outreach Division has responded to 19,125 calls for service.

B. City of Sacramento and County of Sacramento Partnership Agreement.

On December 6, 2022, the City of Sacramento and the County of Sacramento entered into a Partnership Agreement. The key provisions of the agreement are as follows:

- 5-year term with annual updates.
- Outlines roles and responsibilities of each agency.
- Addresses key provisions of the Emergency Shelter and Enforcement Act of 2022.
- Demonstrates shared commitment to the Sacramento Local Homeless Action Plan (LHAP) and Coordinated Access System.
- Sets forth provisions for accountability and measuring progress with reports in open session to both City Council and Board of Supervisors every 6 months.

In furtherance of the Partnership Agreement, the City of Sacramento and County of Sacramento established Collaboration Protocols. The key provisions of the protocols are as follows:

- Training and data sharing.
- Creation of Outreach Engagement Teams.
- Coordination of shelter and respite services.
- Planning and accountability.

Per the Partnership Agreement and Collaboration Protocol, there are currently there are eight County staff working alongside twenty-seven DCR Community Outreach Division staff and a third-party outreach operator. In addition, two County clinicians provide regular service to City shelter and safe ground programs. City and County staff and leadership on a weekly basis to ensure the effectiveness and implementation of the Partnership Agreement.

C. Regionally Coordinated Homeless Action Plan: Are JPA's the Future?

Effective July 10, 2023, AB 129 has made substantive changes to the Homeless Housing, Assistance and Prevention (HHAP) program (Health & Safety Code § 50216 et seq.). In particular, Health and Safety Code section 50233 sets forth a “regionally coordinated homeless action plan” for HHAP Round 5 eligibility. Prior rounds of HHAP programming only encouraged joint applications but the forthcoming HHAP Round 5 will require jurisdictions apply as part of a region and must be signatory to a regionally coordinated homelessness action plan that has been approved by California Interagency Council on Homelessness (Cal ICH).

In addition to HHAP-5 requirements, Assemblymembers McCarty, Hoover, and Nguyen have introduced AB 1086 which would authorize the County of Sacramento and the cities of Sacramento, Rancho Cordova, Elk Grove, Citrus Heights, and Folsom to form a joint powers authority (JPA) to address homelessness. (See https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1086.) As of the time of writing this letter, it is not certain whether AB 1086 will pass but will certainly be explored.