




Office of the City Manager

September 21, 2023

To: Honorable Mayor and Members of the City Council
From:  Dee Williams-Ridley, City Manager
Re: Draft Encampment Policy and Good Neighbor Guidelines

Introduction

In 2018, in light of a growing unsheltered homelessness crisis on the streets of Berkeley and the greater Bay Area, the City Council sent three referrals to City staff regarding homeless encampments and how best to address them:

- 4/26/2018: Direct the City Manager to return to Council with (1) an Ordinance codifying Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets, (2) a final Encampment Response Policy, and (3) necessary amendments, if any, to existing policies, Administrative Regulations and/or code sections impacted by the proposed Ordinance and Policy, for Council adoption.
- 10/16/2018:
 - In light of the 9th Circuit Court of Appeal's September 4, 2018 ruling in *Martin v. City of Boise*, refer to the City Manager further analysis of Council's April 26, 2018 proposed "Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets" and analysis of Berkeley's existing regulations and practices, including but not limited to ordinances, administrative regulations, training protocols and other policies and practices, related to use and limits to use of sidewalks, parklets, streets, parks and other City property.
 - Refer to the City Manager to collaborate with the offices of the Mayor and Councilmember Hahn to amend existing and, as necessary, draft new policies and procedures compliant with the above analysis, and report back to Council with recommendations for compliant policies.
- 10/16/2018: Refer to the City Manager the development of non-criminal options for the enforcement of Berkeley laws and regulations related to use of public space that:
 - Reduce, delay or, if possible, eliminate criminal penalties;
 - Offer positive alternatives; and

- Ensure that the City has effective tools for enforcement of laws and regulations.
- While ensuring effective enforcement, options should delay or avoid pursuing infractions and misdemeanors and provide options to cure violations through positive actions such as mandated and verified community service, education, or participation in social service programs.

Since then, three aspects of these staff referrals have been satisfied:

- Council has since passed a sidewalk ordinance (BMC Section 14.48.120) and the City Manager has promulgated Administrative Regulation 10.2 to implement this ordinance.
- The City Attorney's Office, in July 2021, sent Council a privileged and confidential memo providing an analysis of Berkeley's various ordinances and administrative regulations in light of the *Martin v. Boise* ruling.
- With the passage of the FY22 budget in June of 2021, the Council created the Homeless Response Team (HRT) which the City Manager launched in September 2021. Since that time, the HRT has performed 97 encampment and RV operations across the City; throughout all this, and despite some very challenging situations, the HRT has issued citations for infractions or misdemeanors and has issued fewer than 5 custodial arrests during the course of encampment operations. Instead, the HRT focuses resolving encampments through outreach, service referrals, and voluntary compliance, making over 576 shelter offers with an overall acceptance rate of 44%, removing over 950,000 pounds of debris from encampments, issuing 1,151 courtesy public notices, and greatly reducing the health and safety impacts and overall footprint of encampments across the City. In sum, the HRT already effectuates the use of non-criminal options for the enforcement of applicable laws and regulations.

However, in part because of the emergence of a global pandemic and subsequent CDC guidance pertaining to encampments, a rapidly evolving landscape of case law and legal risk, and changes in staff leadership, City staff have been unable to respond to the referral to develop an Encampment Response Policy. With two years and nearly 100 major operations completed; critical lessons learned from both successes and challenges on the ground; and observations regarding the limits of a city like Berkeley's ability to end unsheltered homelessness, the HRT now feels that this is an appropriate and opportune time to respond to this referral, and will be taking the attached draft Encampment Response Policy (see Attachment 1) and Good Neighbor Guidelines (see Attachment 2) to the Homeless Services Panel of Experts for discussion and possible action at their October 4, 2023 meeting.

Rationale for Encampment Response Policy

Homeless encampments affect nearly every person who lives in, works in, and visits Berkeley—not the least of whom are the people living in them. Because so many stakeholders and community members are meaningfully impacted, a robust public

process to develop a final Encampment Response Policy will be necessary before it can be adopted by the full City Council. Accordingly, staff do not believe that the attached draft policy is complete, but rather represents a starting point for the discussion. We are hopeful that the Homeless Services Panel of Experts, as well as the greater Berkeley community, will weigh in and shape this policy over the coming weeks and months.

Nevertheless, there are several important parameters that staff firmly believe should be established as this discussion begins:

- First, this policy must not be confused with or mistaken for a strategic plan to address homelessness in Berkeley. In the past two years, the City Council has adopted or endorsed both a County strategic plan to end homelessness¹ as well as a regional action plan to reduce unsheltered homelessness in particular.² Permanent housing is the solution to homelessness, and Berkeley remains committed to that solution. However, the policy precipitants to our current homelessness situation have taken decades to unfold, and will likely take decades to address and undo. The work to implement these strategic plans is well underway, but they are long-term undertakings, and encampments present immediate challenges that need policy guidance now.
- Meanwhile, Berkeley as well as the entire State of California, which has roughly 13% of the nation's general population but half of the unsheltered homeless population,³ finds itself in a short-term affordable housing and shelter crisis. Over the last year, the City has lost more year-round interim shelter capacity than it has gained: while we have added 27 beds at the Berkeley Inn and 23 beds at the new Super 8 program, we have lost 50 beds at Horizon and 40 safe RV parking spaces at SPARK (both at 742 Grayson, which closed in December 2022) and 22 beds at the Emergency Respite trailer program (which ended June 2023) for a net loss of 62 beds/interim spaces. On any average day, the HRT has fewer than 10 vacancies to work with across the entire shelter system, meaning that under the Ninth Circuit's rulings many encampments in our city must be able to remain in place. City staff have brought in close to \$10M in State Encampment Resolution Funding grants to establish three new noncongregate shelters for encampments in the last 18 months—a noteworthy feat for a city that otherwise is considered too small to receive direct State homeless funding—but we cannot take on more administrative burden at current staffing levels, and the rate at which people are becoming unsheltered is outpacing the rate of our work to respond to it.
- Thus, **it is critical to understand and accept that unsheltered homelessness is our new normal as a community.** It is not an acceptable new normal, and we must strive as a city and community to do better. But as we work towards a

¹ See: <https://berkeleyca.gov/sites/default/files/2022-04/2022-04-26%20Item%2008%20Endorsement%20of%20the%20Alameda%20County%20Home%20Together.pdf>

² See: <https://berkeleyca.gov/sites/default/files/documents/2021-07-13%20Item%2012%20Endorse%20All%20Home%20CA%20Regional%20Action.pdf>

³ See: <https://www.ppic.org/blog/homeless-populations-are-rising-around-california/>

shared vision of ending unsheltered homelessness, pretending that encampments will somehow self-resolve, or that City staff will eventually be able to resolve all of them, is naïve. Encampments are born of necessity when people have nowhere else to go; few people voluntarily choose to live in encampments and, in the HRT's experience, most would prefer to live inside if presented with the right option. And research and data refute the myth that all encampment residents migrate to generous cities like Berkeley from elsewhere for services.

- Nevertheless, and despite the reality that encampments and unsheltered homelessness will continue to exist in Berkeley and other communities, encampments often present very serious health and safety impacts, both to their residents and the broader public. **Better managing these impacts while we simultaneously work towards policy and funding approaches to solve homelessness is imperative.** Doing so is akin to the now widely-accepted practice of harm reduction for intravenous drug use: practices like needle exchanges or safe injection sites do not encourage or enable drug use, but instead reduce the serious community health impacts of unsafe practices like needle sharing while the community simultaneously works to reduce the supply of drugs and help connect those addicted to drugs to treatment. Similarly, city staff believe that the objective harms of living in dangerous encampments can be better managed while we simultaneously work to implement strategic, community-wide plans to end unsheltered homelessness.

Policy Overview

The attached draft Encampment Response Policy reflects two years of HRT experience as well as known approaches in other peer jurisdictions, federal best practices, and practical applications of relevant case law. The focus of the policy is on reducing and eliminating the worst health and safety impacts that encampments have on their residents and the broader community, and it describes how staff prioritize impacts and what interventions will be used to address them.

Importantly, the policy affirms that the Berkeley Municipal Code (BMC) governs all who live in, visit, or work in Berkeley, irrespective of housing status; housing status itself should confer no immunity to the laws and codes that govern us all. However, the policy reflects the following truths:

- In a shelter crisis, it may not be possible for people living outside to comply with every existing code and regulation in Berkeley. The Good Neighbor guidelines are intended to provide straightforward, harm-reduction oriented guidance to encampment residents and those who support them about how the City prioritizes interventions: encampments that can meet these basic health and safety standards will be deprioritized, while those that do not will be eligible for City intervention.
- Even among those encampments not meeting the Good Neighbor Guidelines, City staff do not have the resources to enforce every Municipal Code everywhere and all at once. Staff already make internal decisions about how to prioritize

limited resources; this policy would provide formal guidance to staff about how to prioritize application of the BMC.

- This draft policy is silent as to considerations of prioritizing specific locations, except those that are otherwise addressed in the BMC and present acute safety concerns (namely, traffic medians and creekbeds in weather specific conditions). Council may wish to contend with whether and how to prioritize other specific locations, but should consider how doing so would comport with a policy framework that focuses on reducing health and safety impacts.
- Finally, criminalizing the status of being unsheltered (i.e., citations/arrests for sleeping outside or violating overnight parks rules when they have nowhere else to go) is ineffective and contrary to Berkeley's values. The policy affirms Berkeley's commitment to non-criminal alternatives to enforcement, and to avoid citation and arrest wherever possible. That said, an open question for the Council and community to contend with is what to do about those people who refuse or are non-compliant with non-criminal alternatives, and yet continue to create impacts to their neighbors.

City staff do not recommend a new encampment ordinance, but rather making this policy an Administrative Regulation that the Council adopts by Resolution.

Anticipated Process

We will be bringing this policy to the Homeless Services Panel of Experts at their October 4, 2023 meeting, from 7-9 pm. All members of the public are welcome and encouraged to attend, and to accommodate as many community members as possible—and to provide easy access to the meeting for those residents living in the largest encampments in West Berkeley—the Berkeley Rep has graciously agreed to host the meeting at their space at 999 Harrison Street (the entrance is on Ninth St north of Harrison St). Staff will recommend that the Panel provide feedback on the policy, but immediately refer it to the full Council, who can then assign it to an appropriate policy subcommittee for further development.

If you should have any questions, please do not hesitate to contact Peter Radu, Assistant to the City Manager, at 510-981-7045 or pradu@berkeleyca.gov.

cc:

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ATTACHMENT 1

DRAFT City of Berkeley Encampment Response Policy

Draft Date: 9/21/23

- Statement of Values:
 - Encampments—while inherently unhealthy for residents and frequently problematic for surrounding neighbors and businesses—are nevertheless born of necessity for basic human needs (like sleep, shelter, and community) among residents who lack viable alternatives. Few people voluntarily choose to be unsheltered and live in encampments.
 - Resolving encampments requires working with their residents to find viable alternatives to their unsheltered status. Permanent housing is the solution to homelessness, and Berkeley is committed to achieving this solution.
 - In the meanwhile, so long as our State and region remain in an affordable housing and shelter crisis, unsheltered and encampment homelessness will continue to exist, and people without shelter must, necessarily, exist in public space.
 - The City must balance the needs and rights of unsheltered residents with the reasonable expectation of other community members to safe, clean, and accessible public space. Finding this balance requires a new social contract, one in which all community members recognize and respect each other.
 - Criminalizing unsheltered homelessness itself is ineffective and inconsistent with Berkeley’s values, but encampments that violate basic standards of public health and safety have no place in our community.
- Definition of Encampment:
 - An encampment is defined as one or more individuals or households, who:
 - Are involuntarily unhoused and inhabiting a vehicle or other place not meant for human habitation, as defined by the Federal Housing and Urban Development Department (HUD); and
 - Meet at least one of the following conditions:
 - Use temporary sheltering accommodations such as tents or improvised structures that they leave at such public location; and/or
 - Have accumulated Objects larger than 9 square feet (as defined in Administrative Regulation 10.2) that they possess or leave at such public or City property.
- A New Social Contract: Good Neighbor Guidelines
 - Berkeley’s encampment Good Neighbor Guidelines (see Attachment 1) are the basic standards that Berkeley expects of all encampments and unsheltered residents in our City. Encampments that meet these standards will be deprioritized for City interventions, while encampments that do not meet these standards will be prioritized for interventions (types of interventions are defined below).
 - Respect for the Good Neighbor Guidelines has no bearing on eligibility for outreach or other services, though the city may periodically concentrate services and resources on higher-needs encampments to help reduce health and safety issues there.
- How the City prioritizes encampments for response:

- Nobody should have to live outside and Berkeley is committed to ending the unsheltered status of every resident with resources tailored to the person's needs. Since resources are limited, City interventions (defined below) are prioritized in the following fashion and the City Manager shall have the final authority on determining relative priorities:
 - Lowest Priority:
 - Encampments meeting the Good Neighbor guidelines.
 - Tents/vehicles with an external footprint of belongings or debris that is less than 9 square feet as required in Administrative Regulation 10.2, and not otherwise creating ADA accessibility issues. Since most tents cannot meet the 9 square foot maximum, the size of an individual tent itself shall not be included in this assessment.
 - Medium Priority:
 - Accumulated possessions, trash and debris exceeding 9 square feet.
 - ADA-passage obstructions of the public right-of-way and extension of belongings/debris into the roadway.
 - Interference with businesses and residences and public infrastructure.
 - Hindrances to construction or other City-issued permits.
 - Vehicles that meet community caretaking standards for removal, as defined in California state law¹.
 - Impacts to water quality.
 - Highest Priority
 - Extreme environmental hazards, including impacts to fish and wildlife and exposure to toxic materials.
 - Imminent health hazards, including rodents and rodent harborage conditions, syringes, and raw sewage.
 - Imminent fire or life safety hazards, including, unsafe structures, accumulation of combustible materials, and imminently unsafe location such as a street median or a creekbed in flash flood conditions.
- The mere act of living in a vehicle is not illegal in Berkeley. For the wellbeing of the unsheltered given the City's shelter crisis, vehicles used as shelter, absent any parking/municipal code violations and/or community caretaking needs, will not be prioritized for a city intervention as defined in this policy.
- Types of Interventions:
 - The City is committed to harm-reduction approaches to resolving problems stemming from encampments: first and foremost, we aim to reduce and eliminate health and safety violations. Closing an encampment may not always be necessary to abate such violations.
 - The Berkeley Municipal Code (BMC) governs all Berkeley residents and visitors, sheltered and unsheltered alike. Persistent violations of the Good Neighbor Guidelines or other Municipal Code violations may result in enforcement of the BMC as applicable

¹ See: <https://legiscan.com/CA/text/AB2876/id/1817442>

and as resources permit. In so doing, the City prefers not to cite and arrest anyone, and citation and arrest will be avoided whenever possible.

- The City may apply, as resources permit, one or more of the following non-criminal (i.e., non citation/arrest) alternatives to enforcement. Application of these interventions is situation-specific and not every intervention may be necessary or appropriate:
 - Public noticing and encouragement to voluntarily relocate/comply with rules.
 - Health and hygiene interventions – dumpsters, toilets/wash stations, mobile shower and laundry.
 - Voluntary trash and debris removal.
 - Deep cleanings, in which medium- or high-priority encampments (defined above) will be addressed without requiring the encampment to be closed.
 - Encampment Closure:
 - Encampment closures require relocation of the individuals and their possessions from a particular location. This includes towing of vehicles that meet community caretaking standards, as defined in State law.
 - Closures are reserved for instances when medium and high-priority violations cannot be resolved with less intensive interventions. Whenever possible, given limited city resources, closures shall be performed in accordance with Federal best practices and all applicable laws.² At a minimum, shelter or other housing resources shall be offered to everyone living in the encampment prior to its closure.
- Citation/arrest will be reserved for case-by-case situations where the situation cannot be resolved with non-criminal interventions. This policy shall not preempt the Berkeley Police Department or Berkeley Fire Department from responding to public safety calls for service at encampments.

² See: https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addressing_Encampments_1.pdf

ATTACHMENT 2



Good Neighbor Guidelines for Encampments

In order to create a safe, clean environment for everyone in this encampment community, please try to follow these guidelines:

1. **Please throw away your trash and old food.** To prevent rats, please try to keep good food in closed containers and throw away old food and trash. *To help assist with this, the City can provide you with rolls of trash bags to help stash your trash, and can provide trash removal service as well. Please call the Homeless Response Team at 510-529-5376.* These are no-cost ways to keep your area and the community a little cleaner.
2. **Please keep your belongings out of the road.** The closer you and your belongings are to moving traffic, the greater chance there is for accidents and injuries to you and others. To prevent this, please keep everything out of the roadway and parking spaces. *To help assist with this, the City can help find storage options or can work with you to schedule a clean-up in your area. For help with either of these, please call the Homeless Response Team at 510-529-5376.*
3. **Please do not build any structures out of wood, metal, or other materials that can create a fire hazard or injury risk.** *To assist you with this, the City and other nonprofit organizations may be able to provide new tents or sheltering materials to replace unsafe structures. Please contact the Homeless Response Team at 510-529-5376 for more information.*
4. **Please try to stay to one sidewalk side of the street.** Our sidewalks are for everyone's use. Blocking sidewalks on both sides of the street prevents people from safely walking to catch the bus or get to work, so please try to keep one of the two sidewalks on every street clear. *To help assist with this, the City can work with you to schedule a clean-up in your area. For help with this or to discuss shelter options, please call the Homeless Response Team at 510-529-5376.*
5. **Please be fire safe.** Warming or cooking fires on the sidewalk are not permitted in Berkeley and can be very unsafe. But if you need to use fire, please be fire safe: use a commercial device or sturdy, non-combustible container intended for the type of fire you're using, such as a charcoal barbeque, and keep fire at least 10 feet away from combustible materials (like wood, fuel, paper, plastic tarps, tents, etc.) whenever possible. Never use fire under a tarp, inside a tent, or in an enclosed space. The fire could easily spread to the tarp or tent and toxic fumes and gases from the fire and smoke could accumulate and harm you. *If you would like more fire safety information, please contact Fire Prevention at 510-981-5585.*

Though the City may still need to intervene for other reasons, sticking to these rules will help avoid the need for City interventions, such as encampment deep cleanings or closures. An ongoing lack of respect for these rules may result in a Public Notice and/or a City intervention.

IF YOU ARE HAVING A MENTAL HEALTH CRISIS: Call the Specialized Care Unit at (510) 948-0075. For the Alameda County Suicide and Crisis Lifeline, please call 988 or (800) 309-2131. To leave a direct message for the Berkeley Mobile Crisis Team, call (510) 981-5254