



Peace and Justice Commission

ACTION CALENDAR
May 1, 2018

To: Honorable Mayor and Members of the City Council
 From: Peace and Justice Commission
 Submitted by: Ezekiel Gorrocino, Chairperson, Peace and Justice Commission
 Subject: Emergency Outdoor Shelter for the Homeless

RECOMMENDATION

Adopt a Resolution entitled “Emergency Outdoor Shelter for the Homeless.”

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

The 2017 Berkeley Point-In-Time Count revealed that on any given night, an estimated 972 people experience homelessness in the City of Berkeley.

Positive programs for permanent housing and temporary shelter are being put in place by the City. A program to permanently house 1,000 homeless people is under development and is projected to be completed over a five-year period.

State requirements for emergency sleeping contained in Govt. Code § 8698.3(h), are strict and would disallow current outdoor sleeping arrangements that currently shelter hundreds of homeless people in Berkeley. These requirements include:

(1) a “relocatable hard-sided structure...with a raised floor area of no less than 120 square feet for two occupants and a minimum of 70 square feet of interior space for one occupant”; (2) “a minimum of 20 pounds per square foot live load roof structure”; (3) electrical power; (4) at least one interior light fixture; and (5) electrical heating that is GFCI-protected.

Beginning January 1, 2018, a new section in the Government Code becomes effective and applies to Berkeley’s current shelter crisis. Section 8698.4 is intended to aid jurisdictions experiencing disproportionate rates of homelessness in building homeless shelters in a timely manner. The new law would suspend laws and procedures related to planning and construction of new homeless shelters and supportive long-term housing if the City adopts an ordinance, with approval by State Department of Health and Community Development (“HCD”), of its own minimum health and safety standards for shelters. The new law requires that the City obtain HCD’s approval of standards and procedures for the design, site development and operation of shelters and supportive housing.

BACKGROUND

The Peace and Justice Commission passed a motion recommending as follows:

Action: M/S/C Lippman/Meola recommending that City Manager propose Berkeley-specific minimum health and safety standards for outdoor homeless shelter, designate location(s) for certain encampments, and immediately implement already-approved storage facilities.

Vote: Ayes: Agrawal, Erickson, Gorrocino, Lippman, Meola, Rodriguez
Noes: None. **Abstain:** Mabanta, Maran. **Absent:** Bohn, Hariri, Marchesini, Watson.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Commission recommends that the City Manager propose Berkeley-specific minimum health and safety standards for outdoor homeless shelter. Berkeley meets the requirements of the new state law as a jurisdiction experiencing disproportionate rates of homelessness. The proposed requirements must then be submitted to the State Department of Health and Community Development for approval.

This recommendation does not commit the City to any further specific action. Understanding staff intent on Berkeley-specific minimum health and safety standards for emergency shelter will provide assist Council and community in planning for amelioration of the crisis in unsheltered living.

The Commission also requests the City work toward designating location(s) for encampments that demonstrate a capacity for self-management and minimal negative impact, on an interim basis and in conjunction with long-term permanent housing plans.

The Commission requests that storage facilities already approved by the City Council be implemented immediately.

ALTERNATIVE ACTIONS CONSIDERED

- Permit all encampments on City property. This approach was not adopted, in favor of the recommendation to establish Berkeley-specific health and safety standards.

CITY MANAGER

See Companion Report.

CONTACT PERSON

Ezekiel Gorrocino, Chairperson, Peace and Justice Commission
George Lippman, Vice-Chair, Peace and Justice Commission, (510) 517-8379

Attachments:

1. Resolution.

RESOLUTION NO. ##,###-N.S.

EMERGENCY OUTDOOR SHELTER FOR THE HOMELESS

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code (BMC) Chapter 3.68.070); and

WHEREAS, Berkeley was the first city in the United States to adopt the Human Rights Articles 55 and 56 of the United Nations Charter as the Berkeley Human Rights Ordinance, which promotes human rights without distinction as to race, sex, language, or religion, and pledges to work with county, state, federal, and U.N. bodies toward this goal; and

WHEREAS, the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 (A/RES/217(III)) with the United States voting in favor, states: "Everyone has the right to a standard of living adequate for the health and well-being of [themselves and of their family], including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond [their] control;" and

WHEREAS, homeless and landless people have the constitutional rights to free speech and peaceful assembly, to equal protection under the law, to due process under the law before eviction or confiscation of property, to privacy, and to protection from cruel and unusual punishment and from property being taken for public use without compensation; and

WHEREAS, the 2017 Berkeley Point-In-Time Count revealed that on any given night, an estimated 972 people experience homelessness in the City of Berkeley;¹ and

WHEREAS, the City Attorney of Berkeley has stated in a response to the Court in the matter of Sullivan v. City of Berkeley, titled "Defendant City of Berkeley's Practical Plan to Shelter Homeless Pursuant to November 1, 2017 Notice":

Pursuant to Government Code section 8698, if the City declares a "shelter crisis" in the city, it can then establish "designated public facilities" to serve as shelters without being subject to state and local building and housing codes, and health and safety codes. Govt. Code § 8698.2. However, the City must enact health and safety standards ensuring minimal public health and safety in order to be protected by the immunity against tort claims specified in Govt. Code § 8698.1(a).

¹ "2017 Berkeley Homeless Point-In-Time Count and Survey Data." Berkeley City Council, 25 July 2017, www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx.

According to the State Department of Health and Community Development (“HCD”), tent encampments would not meet minimum health and safety standards. Although minimum health and safety standards have not yet been defined, HCD advises that an “emergency sleeping cabin” as defined in Govt. Code § 8698.3(h) would meet minimum health and safety standards....² Since outdoor tents have none of these features, a tent encampment would not meet the standards set forth in Govt. Code § 8698, and the City would therefore not be entitled to the immunity from tort liability provided by Govt. Code § 8698.1(a).

AND WHEREAS, the City Attorney’s response adds:

Beginning January 1, 2018, a new section in the Government Code becomes effective and applies to Berkeley’s current shelter crisis. Section 8698.4 is intended to aid jurisdictions experiencing *disproportionate rates of homelessness* in building homeless shelters in a timely manner. The new law would suspend laws and procedures related to planning and construction of new homeless shelters and supportive long-term housing if the City adopts an ordinance, with approval by HCD, of *its own minimum health and safety standards for shelters*.³ The new law requires that the City obtain HCD’s approval of standards and procedures for the design, site development and operation of shelters and supportive housing. [Emphasis added]

If HCD finds that the City’s proposed standards meet “minimum health and safety standards,” then landlord/tenant laws regarding habitability will not apply to any homeless shelters that are constructed pursuant to such standards. The new law would also require the City to develop a publicly available plan to address its shelter crisis on or before January 1, 2019.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley refers to the City Manager to develop, and return to Council within 60 days, minimum health and safety standards under the terms of Section 8698.4, that would allow emergency outdoor shelter for homeless people, in City-designated zones, in an organized, regulated, and well-managed way; and that such emergency outdoor shelters would expand on what the City has already done or set in motion with Pathways and the winter shelter to allow housing for more people who do not qualify for housing under the definition of “chronically homeless” used by HUD.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the city will work to designate a location for encampments that demonstrate a capacity for self-management and a limited public impact and a low level of public complaints, as a companion measure to the Pathways and other housing and shelter solutions being put

² Pursuant to Govt. Code § 8698.3(h), an emergency sleeping cabin must have all of the following features: (1) a “relocatable hard-sided structure....with a raised floor area of no less than 120 square feet...for two occupants and a minimum of 70 square feet of interior space for one occupant”; (2) “a minimum of 20 pounds per square foot live load roof structure”; (3) electrical power; (4) at least one interior light fixture; and (5) electrical heating that is GFCI-protected. (See also Govt. Code § 8698.1).

³ See 2017 California Assembly Bill No. 932, California 2017-2018, CALIFORNIA COMMITTEE REPORT, April 22, 2017).

in place, and on an interim basis while the long-term plan to house 1,000 people is pursued.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley direct the City Manager to make available immediately the storage facilities for which funding was recently authorized in December 2017.