



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** UPDATE ON HOMELESSNESS  
RESPONSE INITIATIVES

**DATE:** August 28, 2017

Approved

Date

8/28/17

## SUPPLEMENTAL

### REASON FOR SUPPLEMENTAL

During the June 8, 2017 Neighborhood Services and Education Committee, the Committee directed the Housing Department to return to Council with information on several homelessness-related issues, including sanctioned encampments, safe parking, and an update on other interim responses by the County of Santa Clara. The items discussed below provide a brief background on the topic areas and the status of each issue or initiative.

### ANALYSIS

#### *Sanctioned Encampments*

The Housing Department has been exploring the feasibility of a sanctioned encampment pilot program for the past several years. The City Attorney's Office released a memorandum, "Sanctioned Tent Camping for the Homeless," in response to the City Council's inquiries regarding the potential implementation of a sanctioned encampment project in San José. The December 7, 2015 memorandum (**Attachment A**) noted:

*"State law does not prohibit the construction of a campground providing temporary housing for the homeless utilizing resident owned tents on a site owned, operated and maintained by the City, provided that the site is not barred from campground use, due to purchase with former redevelopment funding or other similar restricted funds. The State Shelter Crisis Act does not provide any relief from building or housing codes or from ordinary negligence for a newly constructed campground. Therefore, the City would need to comply with any the applicable building code, fire code, ADA and housing code requirements when constructing the facilities. CEQA review would need to be completed and any necessary general plan or zoning amendments obtained. After the facilities are built in a code compliant manner, then the City Council could declare a Shelter Crisis to receive a defense to ordinary negligence connected with provision of emergency housing."*

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While possible, the numerous regulatory barriers presented by this option created significant time and cost constraints for implementation. Given this information, Council accepted a staff report at the December 8, 2015, with the direction to prioritize implementation of other temporary shelter options that would provide the homeless population with more immediate respite from inclement weather conditions, including a modernization of the church shelter ordinance and the opening of an inclement weather program at City-owned facilities. At that time, the County was also preparing a Request for Proposals (RFP) to identify partners to develop plans to implement unconventional housing solutions. Staff committed to collaborating with the County in this effort returning to Council with the results.

At the June 28, 2016 City Council meeting, the Housing Department presented a report to Council providing an update on the City's efforts to implement a pilot sanctioned encampment program and other unconventional housing projects. In the report, staff discussed several efforts to explore the feasibility of sanctioned encampments and other temporary interventions, including the RFP with the County. The RFP process did not yield any successful applicants that could address the potential regulatory issues of sanctioned encampments, leaving no viable option to provide such a program in either a time or cost effective manner. During this Council meeting, staff also presented the potential AB 2176 legislation that, if approved, would provide the necessary legal and regulatory provisions to allow for the siting and development of Bridge Housing Communities (BHC). Given the flexibility of this law, Council directed staff to pursue AB 2176 as the most viable path forward for unconventional housing options.

Staff have continued to monitor other communities engaged in efforts to implement sanctioned encampments. This year, the City of Oakland closed its Compassionate Communities site, a sanctioned encampment pilot project. In its eight months of operation before closing in May, reports from media outlets noted that the project experienced an outbreak of heroin use, severe overcrowding, and a fire due primarily to a lack of site controls and the infrastructure needed to adequately insure the safety and well-being of the residents.

Aside from the safety issues revealed by the Oakland project, a 2016-17 evaluation performed by the City of Seattle on its three unconventional housing projects demonstrated that its tiny home community, the Othello, had significantly better outcomes for its clients' transition to safe and stable housing when compared to the two other less structured sanctioned encampment sites. It is worth noting that the Seattle report also provided insights on several positive benefits of the program sites and provided some potential best practice guidance for siting and operations. Positive outcomes included increased community engagement between the new residents and the surrounding neighborhood. There were also no reports of negative impacts like increased blight or crime at or around any of the sanctioned location sites.

Given the continued regulatory burdens, the findings and issues in other communities, the passage of AB 2176, and the direction of Council, the Housing Department has been focused on the implementation of BHCs as its primary approach to unconventional housing and has not further explored sanctioned encampments. Furthermore, with the extreme challenges experienced recently in locating viable sites for a much more structured BHC project in the City,

it is unlikely staff would be able to find suitable locations for sanctioned encampments, even if all the other issues were fully addressed.

### *Safe Parking*

Given the number of residents found living in their vehicles over the past several years and the impact to the City, the Housing Department has committed time to investigating safe parking programs. Safe Parking is a program that provides safe places for homeless individuals living in vehicles to park and sleep, ideally connecting participants to case management, rental subsidies, and housing placement. In June and December of 2015, the Housing Department released two separate RFPs for potential operators, but could not identify a provider for a site-based safe parking program.

While staff still believes in the feasibility and potential effectiveness of this model, one of the principle barriers is the need for an ordinance to regulate and monitor this currently unpermitted use in parking lots. Housing staff would need to work with Planning, Building, and Code Enforcement (PBCE) and the City Attorney's Office and significant public outreach and engagement would be required. An ordinance would allow for the consideration of issues like waste disposal and access to restroom facilities, while also providing a regulatory framework for surrounding neighborhoods that may be impacted by the new safe parking use. To accomplish this work, staff would require Council direction to conduct outreach and develop an ordinance. If developing such an Ordinance is desired by the Council, staff recommends that the Safe Parking Program be included in the next Council Priority Setting process to consider where this policy work ranks with other Council priorities led by PBCE and Housing, including an Anti-Displacement Preference Ordinance, a Garage Conversion Ordinance, Update to Urban Design Guidelines, and a number of other items.

### *Unpermitted Food and Goods Distribution in City Parks*

Over the past several years, the City has been working to address the potential regulatory, environmental, and safety issues posed by unpermitted food and goods distribution in City parks, including St. James Park in downtown San José. Recently, an intradepartmental team, including PRNS, Housing, Police, as well as service providers, advocates, businesses, and interested community members have engaged in a series of conversations and dialogues to better understand this complex issue. Over the next few months, the City team will be working to implement a response that meets the food needs of homeless individuals in a safe, organized manner, while also ensuring that City parks remain accessible to all residents.

### *Update on County-led Unconventional Housing Initiatives*

In late 2016, the County Office of Supportive Housing (OSH) selected Gilroy Compassion Center (GCC) and Abode Services to develop concepts for unconventional housing programs through its aforementioned RFP. OSH returned to the Board of Supervisors this August with draft reports from both agencies. GCC's report conceptualizes a "Compassion Park"

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encompassing three different programs and some structures for non-residential uses. Abode's report provides a broad overview of challenges, potential solutions, and existing operations, ultimately recommending three distinct program types.

Neither organization nor the County administration has proposed any specific sites or dedicated funding for implementation. OSH plans to obtain feedback from the County's Housing, Land Use, Environment, and Transportation Committee (HLUET) and return with recommended next steps at the November 2017 HLUET meeting. The August 17 County report can be found here: <http://sccgov.iqm2.com/citizens/FileOpen.aspx?Type=1&ID=8499&Inline=True>

### *Laura's Law*

Assembly Bill 1421 – known as Laura's Law – was passed by the State Legislature in 2002 and signed by the Governor. The Law allows court-ordered “assisted outpatient treatment” in counties that opt to establish such a program by a resolution of the Board of Supervisors. Recently, the County has expressed interest in further evaluating the applicability of this law in Santa Clara County to address specific instances of individuals experiencing severe mental health issues. A report on the possible local adoption of the Law is tentatively scheduled to go to the County's Health and Hospital Committee this September.

### Next Steps

With the ongoing challenges in addressing both the short-term and long-term service and housing needs of the homeless population, the Housing Department is planning a study session in October to provide an update on the Community Plan to End Homelessness and the variety of interventions and solutions being developed and deployed to address this issue.

### **COORDINATION**

This report has been prepared in coordination with the City Attorney's Office, City Manager's Office, PRNS and PBCE.

/s/

JACKY MORALES-FERRAND  
Director, Housing Department

For questions, please contact Ray Bramson, Acting Deputy Director, at (408) 535-8234.

Attachment

**Attachment A**

COUNCIL AGENDA: 12/08/2015  
ITEM: 4.4



*Memorandum*

**TO:** Mayor and City Council

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Sanctioned Tent Camping for  
the Homeless

**DATE:** December 7, 2015

**PURPOSE**

Several Councilmembers have expressed significant interest in the possibility of a permitted homeless tent camp on city property. This memo is intended to discuss the possibilities for permitted homeless tent camping, and the municipal and state law constraints and the potential liabilities.

**ANALYSIS**

**“Sanctioned” Encampments in California**

Our research has indicated that only three California cities have established some type of sanctioned camping for homeless residents. The City of Fresno zoned private land for camping to allow a non-profit organization to run homeless shelters known as the Village and Community of Hope on privately owned land. Two California cities, Ventura and Ontario, have operated facilities on City-owned property that allow homeless persons with permits to camp on that property. Ontario was unusual in that by the end of its approximately five year operation period virtually all of the 127 permitted residents were housed in permanent housing. Ontario current has no sanctioned encampment.

Fresno’s Village and Community of Hope are still open and the nonprofit owner of the sites provides shelter for approximately 125 persons. The facility is operated as a shelter and residents must leave the unheated “Tuff Sheds” every morning and may not return until evening. Ventura’s River Haven tent camp, also run by a non-profit, has U-dome tents and is described as transitional housing. River Haven’s permit limits occupancy to 30 persons.

**DISCUSSION**

**A. Shelter Crisis Act**

Government Code Section 8698-8698.2 (the “Shelter Crisis Act”) empowers a local government to declare a shelter crisis in a situation in which a significant number of

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persons are without the ability to obtain shelter, resulting in a threat to their health and safety. Designated public facilities can be used for "emergency housing" after a City declaration of shelter crisis. The declaration applies to any public facility including parks, schools, and vacant or underutilized facilities, and after making a declaration the City would gain defenses to ordinary negligence connected with provision of emergency housing and the City would also enjoy a suspension of State and local "standards of housing, health, or safety" to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis. The declaration does not suspend the California Environmental Quality Act ("CEQA"), state or federal disability access laws, or zoning and general plan requirements.

If the City adopted a declaration of Shelter Crisis in order to allow an emergency camping facility, however, the declaration would not authorize a suspension of State and local "standards of housing, health, or safety" or provide defenses to negligence. This is because the Shelter Crisis Act's suspension is intended to facilitate the use of *existing* public facilities for emergency housing, not the use of undeveloped land for camping. This means that the facilities, the site and, to the extent applicable, the tents would need to comply with the building, fire and housing code. After the facilities are built in a code compliant manner, then the City could declare a Shelter Crisis to receive a defense to ordinary negligence connected with provision of emergency housing.

**B. Special Occupancy Parks Act**

If the City were to establish a new campground with common facilities and provide tents for habitation, then under state law the nature of the use would be as a "special occupancy park" rather than a traditional residential use. The State Special Occupancy Parks Act, enforced by the State Department of Housing and Community Development contains health and safety standards and building codes that apply to special occupancy parks. It allows camping for up to 30 days in those parks. City owned, operated, and maintained special occupancy parks are exempt from the Special Occupancy Parks Act. Therefore, if the City owns, operates and maintains a site, any camping and related facilities would be exempt from the restrictions in the Special Occupancy Parks Act.

**C. Landlord Tenant Law**

State landlord-tenant law provides rights to any person who hires a dwelling unit including tenants, lessees, boarders, lodgers, and others. This includes almost any kind of rental other than hotel, hostel or overnight shelter use, where parties must vacate the premises the following morning. These rights include that the unit be "tenantable" or "habitable" with hot and cold running water, sewage disposal, heat, and lighting, within the unit. Lack of habitability can be the basis for liability and legal action by the residents. These landlord-tenant law requirements will not apply in the event that tents or domes used at the project are given to the occupants. Alternatively, simple overnight shelter use, similar to Fresno's shelters, where persons are required to leave the following morning would also be exempt from landlord-tenant law.

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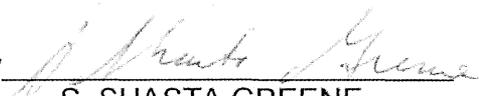
**D. California Environmental Quality Act and Other Codes**

Before a site was approved by the City, review under the California Environmental Quality Act would be required and additionally, City owned sites might need to be rezoned and obtain General Plan Amendments to allow such a use. The City's facilities on the site would need to comply with the Americans with Disabilities Act ("ADA"), the California Disabled Persons Act, and the building code. The overall site design would also have to comply with the fire code.

**CONCLUSION**

State law does not prohibit the construction of a campground providing temporary housing for the homeless utilizing resident owned tents on a site owned, operated and maintained by the City, provided that the site is not barred from campground use, due to purchase with former redevelopment funding or other similar restricted funds. The State Shelter Crisis Act does not provide any relief from building or housing codes or from ordinary negligence for a newly constructed campground. Therefore, the City would need to comply with any the applicable building code, fire code, ADA and housing code requirements when constructing the facilities. CEQA review would need to be completed and any necessary general plan or zoning amendments obtained. After the facilities are built in a code compliant manner, then the City Council could declare a Shelter Crisis to receive a defense to ordinary negligence connected with provision of emergency housing.

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By 

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