



City Council Agenda Item

City Council Meeting Date: September 3, 2024

TO: Honorable Mayor and City Councilmembers

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SUBJECT: Discussion of Addressing Homelessness in Light of the U.S. Supreme Court's Decision in *City of Grants Pass v. Johnson*

Recommendation:

Staff recommends the City Council receive report from City staff and provide direction to staff if desired.

Background:

At the August 15, 2023, City Council meeting, staff presented an informational report on the constraints on addressing homelessness faced by the City, including legal constraints, staffing and operational needs. At that time, a federal court decision entitled *Martin v. City of Boise* prevented cities from criminalizing conduct that is an unavoidable consequence of being homeless—namely sitting, lying, or sleeping on the streets or other property open to the public when no sleeping space is practically available in any shelter.¹ Another federal court decision had also held a city cannot punish people for sleeping in their car at night when there is nowhere else in the city for them to go.²

At the time of the August 15, 2023, presentation, the law required the City to have an available place in or near city limits with enough space for overnight sleeping to accommodate the city's homeless population, if the City wished to enforce a city ban on public camping.

¹ *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019).

² *Johnson v. City of Grants Pass*, No. 20-35752, 2023 WL 4382635, at *19 (9th Cir. 2023).

On June 28, 2024, the U.S. Supreme Court issued its opinion in *City of Grants Pass v. Johnson*, which overruled *Martin v. Boise* and related case law.³ This staff report provides the City Council with a legal update on the implications of the new *Grants Pass* opinion, and an updated summary of staff's current process for addressing homeless encampments.

Discussion:

1. The *Grants Pass* Decision

In a 6 to 3 decision, the U.S. Supreme Court held that prohibiting camping on public property does not violate the Cruel and Unusual Punishment Clause in the Eighth Amendment to the U.S. Constitution, even if there are no available shelter beds or other available places for overnight sleeping in or near city limits.

The law is now clear that cities can adopt and enforce ordinances that ban camping on public property, even if there is no shelter or other sleeping place reasonably available. A city may adopt a complete ban on all public property or a partial ban in certain sensitive areas.

The *Grants Pass* decision does not prevent a city from offering shelter information and other resources to persons experiencing homelessness when enforcing to clean up an encampment or camping site. It is standard practice to provide that information, but no longer a requirement to ensure a bed is immediately available.

On July 25, 2024, Governor Gavin Newsom issued Executive Order N-1-24, which explained that California is experiencing a homelessness crisis decades in the making and highlighted the potential dangers associated with encampments, including subjecting unsheltered occupants to extreme weather, fires, predatory and criminal activity, and widespread substance abuse. The Governor's order highlighted the Supreme Court's *Grants Pass* decision and encouraged local governments to take action "with urgency" to remove encampments from public spaces, "prioritizing those encampments that most threaten the life, health, and safety of those in and around them."

The City should remain aware that the *Grants Pass* decision only eliminates the Eighth Amendment issue. Ordinances banning or regulating camping must still comply with all other relevant laws. The next sections of this staff report are an updated summary of other laws from the August 15, 2023 staff report.

2. Cities Must Respect the Property Rights of Homeless People

Cities must respect the personal property of homeless people and cannot dispose of it without following legally required procedures. Specifically, cities generally cannot seize and dispose of a homeless person's unabandoned personal property without (a) giving

³ *City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 2202 (2024).

prior notice and (b) providing a reasonable opportunity for the person to be heard and to re-obtain their property.⁴ The city will also have to store the property until it is claimed or the time for claiming it expires, with some exceptions.⁵ This applies regardless of the size of the object and it applies to animals that belong to a homeless person.⁶

Governor Newsom's July 25, 2024, Executive Order provides non-binding guidance that recommends cities to provide at minimum 48 hours' notice to vacate the area before clearing an encampment. The Order suggests a city must store property for a minimum of 60 days.

There is an exception to this general notice rule when the person's property is creating an imminent threat to the health and safety of the public. In that circumstance, the property can be seized or moved immediately without prior notice.⁷ The city can also dispose of trash and abandoned property immediately, without notice. However, the city cannot "treat property as abandoned and trash just because the owner has not removed it in the time the [city] has allotted."⁸

3. Cities Must Follow State Law Requirements When Closing or Limiting Access to Public Property

Since public property is, by its nature, open to the public, cities must follow special procedures to close or limit access to public property that are not required for owners of private property. Private property owners can simply ask a person to leave their property,

⁴ *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012); *Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, at *37 (E.D. Cal. Dec. 8, 2006) ("The City's seizure of homeless people's personal property without probable cause and the immediate and permanent destruction of such property without a method to reclaim or to assert the owner's right, title, and interest to recover such personal property violates the Fourth Amendment to the United States Constitution and Art. I, § 13 of the California Constitution."). Guidance about an effective notice, storage, and hearing process is given in *Kincaid* at *38 (paragraph 22). See also *Sullivan v. City of Berkeley*, 383 F. Supp. 3d 976 (N.D. Cal. 2019), in which the court found that Berkeley's policy regarding practices of collection, storage, and disposal of unattended property at homeless encampments was reasonable and not constitutionally deficient.

⁵ For example, in *Janosko v. City of Oakland*, No. 3:23-CV-00035-WHO, 2023 WL 3029256, at *3 (N.D. Cal. Apr. 19, 2023), the court found that it was reasonable for the city to refuse to store "tiny homes" and other makeshift structures due to the unsafe and decaying nature of the materials," and to refuse to move and store "a 20 to 40 foot long shipping container given the City's inability to search and sort through the contents to assess whether any are hazardous or unsafe."

⁶ *Garcia v. City of Los Angeles*, 11 F.4th 1113, 1119 (9th Cir. 2021) (striking down provision in Los Angeles ordinance that provided for destruction without notice or hearing of items that were too large to fit into a 60-gallon trash can); *Recchia v. City of Los Angeles Dep't of Animal Servs.*, 889 F.3d 553 (9th Cir. 2018) (applying Fourth Amendment analysis where city seized and euthanized birds in possession of homeless person).

⁷ *Kash Enterprises, Inc. v. City of Los Angeles*, 19 Cal. 3d 294, 308, 562 P.2d 1302, 1311 (1977).

⁸ *Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, at *37 (E.D. Cal. Dec. 8, 2006), citing *A & W Smelter and Refiners, Inc. v. Clinton*, 146 F.3d 1107, 1111 (9th Cir.1998).

and if they do not then they are trespassing and can be arrested, regardless of whether there is any sign or fence. This is not the case with property that is open to the public.⁹

Instead, if the city wants someone to leave public property and the person is not engaged in any other kind of illegal conduct, then the city must take action, through an ordinance or resolution, to close that property to the public at large. Examples include establishing hours for public parks and buildings, or completely closing off certain areas of public property to the public or closing it during certain hours.

Cities that own large areas of open space also face additional challenges. It is often impractical or undesirable to place fences around these areas, which makes it difficult to prevent trespassing and to enforce full or time-limited closures.

Finally, enforcement can become complicated when other public agencies own or control property within the City. For example, it is likely that the City lacks authority to clear homeless encampments within the right-of-way of a state highway,¹⁰ although the City could attempt to partner with Caltrans and the County sheriff to address this issue.

4. City Ordinances Must Be Clear and Cannot Be Enforced in a Way That Targets Homeless People

An ordinance must be sufficiently clear in its standards that it does not leave the public uncertain about what conduct it prohibits.¹¹ It does not have to be perfectly clear, but there must be at least a “reasonable degree of certainty.”¹² In the 2014 case of *Desertrain v. City of Los Angeles*, the court struck down an ordinance that prohibited using a vehicle “as living quarters” because it was unclear what actions would violate the ordinance – sleeping in the vehicle? During the day or only at night? Eating in the vehicle? Storing personal belongings in the vehicle? Using a vehicle to get out of the rain?¹³ However, in 2018, in the case of *People v. Diaz*, the court found that a similar ordinance in San Diego was *not* unconstitutionally vague, even though it did not define what it meant to use a vehicle as a “living quarters” or “place of habitation.”¹⁴ The takeaway here is that courts may differ on what exactly counts as too vague, but it is best to err on the side of clarity.

⁹ See Penal Code § 602(o) (Trespassing includes “[r]efusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another *and not open to the general public...*”).

¹⁰ *Where Do We Go Berkeley v. California Dep’t of Transportation*, 32 F.4th 852, 855 (9th Cir. 2022) (“California law provides Caltrans with “full possession and control” of state highways and property acquired for state highway purposes.”); see Streets and Highways Code § 90.

¹¹ *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1155 (9th Cir. 2014).

¹² *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 54 (2015).

¹³ *Desertrain*, at 1155-56.

¹⁴ *People v. Diaz*, 24 Cal. App. 5th Supp. 1, 7 (Cal. App. Dep’t Super. Ct. 2018) (“The reasonable and practical construction of the ordinance here is clear—it is intended to prevent people from living in their vehicles on city streets. The language of the ordinance is sufficiently clear to inform persons that they may not use their vehicles as homes on any street, as well as to inform law enforcement that a person utilizing his or her vehicle for a purpose that does not turn the vehicle into a place of residence does not violate this

Furthermore, regardless of whether the ordinance leaves room for interpretation, cities cannot enforce otherwise neutral laws in a way that intentionally singles out homeless people for enforcement.¹⁵

Staffing and Operational Constraints on Addressing Homelessness

A. Code Enforcement

The Code Enforcement Division receives citizen concerns regarding homelessness impacts through the online citizen concern form. The online form allows for:

1. **Easy Tracking:** The portal allows tracking and managing of all complaints that are submitted, ensuring no concern goes unnoticed and to allow for photos to accompany the concerns.
2. **Data Analysis:** By utilizing the portal, staff extract valuable data that reveals trends, emerging issues, and common violations in different areas of the City.
3. **Efficient Routing:** Each submission through the portal is automatically directed to the appropriate department for follow-up, utilizing an algorithm. This reduces the chances of paperwork or emails being delayed if an individual is out of the office or absent due to illness, ensuring prompt attention to each matter. Concerns related to homelessness are routed to multiple City departments and divisions for a coordinated effort.
4. **Comprehensive Data Centralization:** By having all this information in one location, staff are able to track frequency, location, type and many other attributes of the data.

Depending on the concern type, level of severity, type of property (private, public, public right of way, park, etc.), and other factors, Code Enforcement division staff coordinate with homeless service providers, Police Department, private property owners, Parks and Recreation, Public Works, Airport, Solid Waste and other City departments and divisions in order to address the concern in the applicable manner.

Code Enforcement division staff then respond to the concerned resident to let them know their concern has been received and they are working to address it. When resolution is achieved, the concerned resident then receives notification of such.

ordinance. While there may be circumstances where the facts are open to conflicting interpretations, that does not render the ordinance unconstitutional—it simply creates a factual issue for the court.”).

¹⁵ *Ashbaucher v. City of Arcata* (N.D.Cal., Aug. 19, 2010, No. CV 08-2840 MHP (NJV)) 2010 U.S. Dist. Lexis 126627, pp. *47–48 (complaint alleging selective enforcement of ordinances against the homeless states an equal protection claim), cited in *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 64 (2015). “Selective enforcement of laws that are neutral on their face is not a denial of equal protection “unless there is shown to be present in it an element of intentional or purposeful discrimination.” *Ashbaucher v. City of Arcata*, at *12, citing *Snowden v. Hughes*, 321 U.S. 1, 8 (1944).

Because of the complexity and constraints surrounding addressing homelessness, there are some concerns that are rapidly addressed and others that take more time and coordination.

B. Police Department

The Police Department has many challenges in addressing the homeless issue. The first of which is staffing. Most agencies today are assigning staff as homeless liaison officers. These officers become familiar with the laws addressing people experiencing homelessness and the resources available to them. As we have done here in Lompoc, the officers have a working relationship with all of the entities assisting people experiencing homelessness. This is typically a position that does not respond to calls for service so that the officers have the time to invest in resolving some of the challenges facing our homeless population.

The Police Department has received two additional Police Officer positions in the current budget. Officers assigned to this new role will focus on Cannabis Compliance and Homelessness. The Police Department will evaluate the workload of these new positions at the end of this budget cycle to see if the Department needs to add additional staffing in future budgets. These new positions will be assigned to the Community Services section and supervised by the Sergeant assigned.

It would also make sense to provide the officers with funding to help appropriately relocate or reunite homeless individuals with their families in other cities and for other supplies as needed.

These are time-intensive contacts. Many in this population push back against services due to their clean and sober requirements. Some do not like the time requirements required of the shelters and some just choose the lifestyle. This burdens law enforcement to adapt to the subject they contact and navigate their challenges.

Respectfully submitted,



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APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

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