Rashi Kesarwani
Councilmember District 1

REVISED
AGENDA MATERIAL
for Supplemental Packet 1

Meeting Date: **November 17, 2026, Special Meeting**

Item Number: **1**

Item Description: **Amending Resolution No. 71,513-N.S. Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods to Include Prohibition Against Encampments in Close Proximity to Preschools and In-Home Early Childhood Daycare Facilities**

Submitted by: **Councilmember Kesarwani**

This revised item reflects two changes: (1) it includes additional details that more firmly tie the policy to the conditions on the street; (2) and it reflects the Harrison encampment final closure as of November 3, 2026 that was enabled by a recent Ninth Circuit Court of Appeals ruling. These changes reflect guidance from the City Attorneys Office.

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Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
November 17~~ October 27~~, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and ~~,~~ Councilmembers Brent Blackaby, Terry Taplin (Co-Sponsors)~~,~~ ~~Councilmember Terry Taplin (Co-Sponsor)~~

SUBJECT: Amending Resolution No. 71,513-N.S. Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods to Include Prohibition Against Encampments in Close Proximity to Preschools and In-Home Early Childhood Daycare Facilities

RECOMMENDATION

Approve adoption of a new resolution amending the Encampment Policy to Promote Healthy and Safe Neighborhoods and rescinding Resolution No. 71,513-N.S. Recommend the new resolution adds proximity to licensed preschools and/or in-home early childhood daycare facilities to the list of circumstances in which the City Manager is authorized to close an encampment even when an offer of shelter is not practicable.

Specifically, it is recommended to add a 600 foot buffer zone[1] prohibiting encampments around preschools and in-home early childhood daycare facilities in order to safeguard the health and welfare of young children. Preschool-aged children are particularly vulnerable to a range of public health concerns because they are more likely to play closer to the ground, touching potentially infected objects

[1] This measurement was chosen to be aligned with the City's Tobacco Ordinance that similarly aims to protect youth who are vulnerable by virtue of their age.

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and then putting their hands in their mouth. A buffer zone around these institutions should be adopted to minimize public health and safety risks. Resolution No. 71,513-N.S should add to the list of enforcement circumstances:

- The encampment is located within 600 feet of any licensed preschool and/or in-home early childhood daycare facility as measured by a straight line from the nearest point of the property line of the parcel on which the preschool/in-home early childhood daycare facility is located to the nearest point of the encampment, including its associated belongings.

Further, refer to the City Manager to amend Administrative Regulation 10.2 to clarify that Temporary Non-Commercial (TNC) objects are prohibited within 600 feet of a licensed preschool/in-home early childhood daycare facility.

When multiple encampments throughout the City meet criteria for an encampment closure, the City Manager is authorized to use discretion in prioritizing the order in which the encampments are closed.

CURRENT SITUATION AND ITS EFFECTS

US District Court Ruling Confirms City's Ability to Close Harrison Encampment While Requiring ADA Accommodations for Encampments on Sidewalks. On April 3, 2026 US District Judge Edward Chen issued what became a final ruling in the *Berkeley Homeless Union (BHU) v. City of Berkeley* lawsuit. While Judge Chen has granted the City permission to close the Harrison encampment and opined that "the City is not required to designate, create or identify enforcement-free relocation zones or City-sanctioned campsites,"[2] he also required the City to grant BHU members with disabilities an exemption from the categorical enforcement of the nine square feet limitation in Administrative Regulation 10.2 (attached) regulating the amount of personal belongings an unhoused person can keep on the sidewalk. Regarding encampment residents with disabilities, Judge Chen noted:

> "The City must conduct an individualized assessment for each claimant that accounts for the claimant's specific disability-related shelter needs; the actual dimensions and physical characteristics of the sidewalk or right-of-way in question; and the public interest in maintaining a regulatorily-mandated path of travel. In this regard, the ordinance's prescribed six-foot minimum path for most sidewalks is presumptively reasonable and sufficient."[3]

[2] US District Judge Chen April 3, 2026 Order Granting in Part and Denying in Part Cross-Motions for Summary Judgement, Document 288, Case No. 25-cv-01414-EMC, attached
[3] Judge Chen April 3, 2026 Order, Document 288, cited above

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Judge Chen similarly ordered that the City must provide relocation assistance, including physical packing and moving assistance to those Harrison encampment residents requesting ~~ADA~~disability-related accommodations. For encampment residents without disabilities, the Judge ruled the City may not enforce space limitations in ways that prevent them from maintaining a tent, provided it does not unreasonably interfere with public passage.

In both cases, the Judge ordered continued engagement and communication between the two parties regarding encampment residents' needs for replacement survival property, such as tents and sleeping bags, and city storage capacity of personal belongings.

Despite Repeated Attempted Temporary Restraining Orders, The Court Maintains City's Ability to Close Encampment and Orders BHU to Find Suitable Relocation Sites on City's Sidewalks. On July 27, 2026, the City posted a public notice of encampment closure for the Harrison Corridor noting a compliance deadline of August 3. That process was temporarily halted due to BHU's successful filing for a Temporary Restraining Order (TRO) on July 29. The court additionally set a hearing date for August 13th and ordered the two sides to submit a status report in advance of the hearing date. During the hearing, the Judge denied BHU's request for a preliminary injunction to halt the City's abatement and closure of the encampment, upholding the City's ability to close the encampment. However, he additionally ordered BHU to provide the City a list of the 23 encampment residents still seeking disability accommodations, along with their requested tent size. He also ordered the City and BHU representatives to travel throughout Berkeley together to identify appropriately wide sidewalks to accommodate new tent relocation sites – that is, identify sidewalks wide enough to allow a tent and a path of travel - and set another hearing date for August 28.

BHU Identifies Two Relocation Sites in Close Proximity to Preschools: Ninth and Camelia and Fourth and Camelia and the City has Limited Capacity to Deny Them. In advance of the August 28 hearing, BHU submitted one criteria-conforming tent relocation site for one Harrison encampment resident: the northwest corner of Ninth and Camelia Street. BHU also submitted a status report just prior to the hearing listing an additional location for two BHU members: the northwest blockface of Fourth and Camelia. Due to the Judge's April 3 ruling, the City has limited capacity to deny certain Harrison encampment individuals requesting ~~ADA~~disability-related accommodations who seek to relocate tents elsewhere on City sidewalks. The City is legally restricted to analyzing only two factors when considering an accommodation at a particular location: whether the sidewalk allows for a six-foot path of travel and whether there is sufficient emergency access. The

Judge has similarly made clear that the City cannot reject a site based on potential future health and safety concerns.

Ninth and Camelia Encampments Less than 300 Feet from Two Childcare Centers. Currently, a Harrison encampment resident has relocated to the Ninth and Camelia site with a tent and associated belongings measuring roughly 10x20 feet. Due to the width of the sidewalk, this shelter *does* comply with the Judge's criteria. Shortly after that encampment got established, it was joined by another single tent owned by someone who did not previously live in the Harrison Encampment. ~~not involved with the Harrison encampment lawsuit.~~ These encampments are less than 300 feet from two childcare centers on the same block on the south side of Camelia Street: Centro Vida Children's Center, serving children ages two to five years old; and Chairez Montessori Preschool, an in-home early childhood daycare facility serving children six~~6~~ months to five years in age.

Fourth and Camelia ~~Potential~~ Encampment Relocation Site Less than 400 Feet from One Preschool. Two Harrison encampment residents requested relocation sites at Fourth and Camelia and tents measuring 11 x 20 feet (10 person tents). In mid-August of this year, these individuals moved belongings to that location though they were later removed. Shortly thereafter, ~~At present~~, one of these individuals relocated to the Berkeley CareBridge transitional housing program that provides supportive re-entry services for adults who have had recent contact with the justice system, and the other remained on the Harrison corridor until November 3, when the City was finally able to close the Harrison Corridor encampments as a result of a Ninth Circuit Court of Appeals stay of Judge Chen's ruling requiring protections for seven individuals with disability-related claims.[4] ~~are still residing in the Harrison corridor as they have a court ordered ADA-related exemption from the current September 15 abatement effort while their relocation site is under consideration.~~ This second individual had also been offered housing in the CareBridge transitional housing program but declined the opportunity to move into the non-congregate hotel room with services and meals provided. The City's Deputy Fire Marshall investigated this proposed accommodation location and determined that while the requested tent sizes exceed the allowable tent width, the sidewalk could accommodate one tent with a width of 6.25 feet in one location; and another tent with a width of 4.5 feet in another location on the block - both with an allowable length greater than 20 feet.[5]

[4] United States Court of Appeals for the Ninth Circuit, Berkeley Homeless Union v. City of Berkeley, Case 26-6170, D.C. No. 3:25-cv-01414-EMC, October 26, 2026: https://www.dropbox.com/scl/fi/vg1bia5i37q6n2nshiby0/9th-circuit-order-Oct-26-26.pdf?rlkey=wdyaly33msl1xhvhv78srcjye&st=r8d0c57r&dl=0

[5] Supplemental Declaration of Thomas Gregory in Support of Defendant City of Berkeley's Status Update, Document 380-1, filed on September 18, 2026, Case No. 3:25-CV-01414-EMC, attached

As there are several four-person tents on the market that fit these measurements, this location remains a criteria-conforming tent relocation site, per Judge Chen's April 3 ruling.~~a potential for future encampments.~~ This location is less than 400 feet from Duck's Nest preschool serving children ages 18 months to five years of age. ~~The proposed accommodation~~ The location ~~in the public right of way~~ is also commonly used by preschool families when parking to pick up and drop off children at the facility.

On November 2, three days after the City had posted its final Public Notice of Harrison Encampment Closure, one moderately-sized tent was spotted at this same location on Camelia Street, joined the very next day by additional moderately-sized tents and a variety of belongs taking up the width of the sidewalk. Staff in the City Manager's office have confirmed as of Tuesday, November 10 that the tents belong to the two individuals at the Harrison Encampment who had originally requested this location. Thus, one tent belongs to and is occupied by an individual who already has non-congregate housing at the CareBridge program, and the other tent belongs to and is occupied by the other individual who was recently offered non-congregate housing in that same program though refused the opportunity.

Preschool Families and Residents Express Fears and Concerns About Encampment Locations in Close Proximity to Childcare Facilities. Almost as soon as the encampments at Fourth and Camelia and Ninth and Camelia were established, preschool directors, preschool families, nearby residents and businesses began reaching out to the District 1 and Mayor's office, often including the City Manager, the entire City Council and at times Judge Edward Chen. Correspondences voiced a range of concerns regarding encampments at these locations, including:

- Reduction of the path of travel on the sidewalk for families with strollers;
- Public health risks posed by used needles and other sharp objects on the ground and within small children's reach and range of vision;
- Safety risks associated with large dogs often found at encampments and at eye level with small children and at times off-leash;
- Increased vector activity and concerns about leptospirosis found in areas less than a mile away;
- City's enforcement capabilities and its ability to prohibit expansion of encampments;
- Sanitation as well as human and animal waste concerns; and
- Exposure to loud profanity, confrontations, threatening behaviors and escalating violence.

City Enforcement Staff are Stretched Thin as They ~~Attempt to~~ Proceed with the Harrison Encampment Abatement, Address Encampments Relocating Close to

Vulnerable Populations, While Managing Safety Concerns Throughout the Rest of the City. On September 15, 2026, the City began abatement of the Harrison encampment save seven individuals the Court exempted from this process as their relocation requests and tent sizes had not yet been settled and leaving the clearing of RVs to a later date. The City worked over two days to clear Harrison Street between Sixth through Eighth Street, the areas along Codornices Creek, and the remaining encampments on Eighth Street, north of Harrison to the Albany border. The effort was punctuated by another emergency motion for a temporary restraining order, ~~TRO~~ which was again denied by the judge. Due to the volume of work the City was unable to finish the abatement effort- at that time and subsequently struggled to keep the area free from being re-encamped by those who had left the area due to the closure. ~~and intends to complete the work at a later date~~. ~~Since that time, several Harrison encampment residents have attempted to return to the area and those who were not protected have simply moved to areas on the corridor not yet addressed.~~

When the Ninth Circuit issued their October 26 stay of Judge Chen's rulings (attached), the City was granted the legal authority to close the Harrison Encampment without further delay, which they did. However, RVs and other vehicles being used for human habitation currently remain as the City is allowed to remove the vehicles yet has no place to relocate them. Since the most recent Harrison Encampment closure on November 3, new encampments have been established throughout areas of the City, primarily in West Berkeley. As noted, some of these encampments are in close proximity to preschools and early childhood in-home daycare centers. City staff have limited capacity to monitor and help maintain areas throughout the City that are being impacted by this homeless crisis. Creating a buffer zone around facilities serving our youngest residents will help ensure their safety and limit their exposure to public health risks.

The City Appeals Judge Chen's Rulings to the Ninth Circuit Court of Appeals. The City strongly disagrees with the Court's interpretation of the Americans with Disabilities Act (ADA) in this and other lawsuits and has officially appealed these rulings to the Ninth Circuit Court of Appeals. On September 24, 2026, our City Attorney's Office filed an emergency motion to the Ninth Circuit for an administrative stay of Judge Chen's August 28th ruling that would extend his orders regarding ADA accommodations for Harrison encampment residents to the rest of the City. On October 26, 2026, the Ninth Circuit granted a partial stay, allowing the City to remove the formerly protected encampments and vehicles in the Harrison corridor. The Court allowed the rest of Judge Chen's order to remain pending the hearing on the merits in February 2027, after which the Ninth Circuit will determine whether to reverse some or all of Judge Chen's final order in this case.

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BACKGROUND

Martin v. Boise Shapes the City's Approach to Addressing Homelessness. The District 1 office has had a long history of addressing homeless-related issues particularly in West Berkeley located in and around the Gilman District. In 2018, the Ninth Circuit Court of Appeals ruled in the Martin v. City of Boise lawsuit[6] that cities cannot criminalize unhoused individuals for sleeping outside on public property when no alternative shelter is available. Berkeley's response to that judgement was to operationalize transitional housing and develop permanent supportive housing to meet the growing needs of homeless individuals. Thanks to Measures O, P, and U1, and several state Encampment Resolution Fund grants, Berkeley has been able to open hundreds of interim housing and permanent supportive housing units serving thousands of residents over the last number of years.[7] These efforts have, for the most part, successfully decreased the number of homeless individuals we see on our streets.[8] However, several hundred homeless individuals remain on Berkeley streets on any given night.

Supreme Court's Grants Pass Ruling Grants the City Greater Flexibility to Close Harrison Encampment. The Supreme Court's June 2024 Grants Pass Ruling[9] overturned Martin v. Boise ruling that enforcing local anti-camping and public sleeping laws does not violate the Eighth Amendment's ban on cruel and unusual punishment. This gives cities the authority to enforce local laws pertaining to homeless individuals camped in the public right of way. That was quickly followed up by Councilmember Kesarwani's Encampment Policy Resolution[10] that affirmed the City's Housing First approach while also listing circumstances in which the City Manager is authorized to enforce encampment closures and deter re-encampment in the event that shelter offers are not practicable. These circumstances include:

- The Fire Department has determined that an encampment poses a fire hazard or emergency condition as referenced in the Berkeley Fire Code, Berkeley Municipal Code (BMC) Chapter 19.48; or

[6] United States Court of Appeals for the Ninth Circuit, Robert Martin et. al. v. City of Boise, No. 15-35845, D.C. No. 1:09-cv-00540-REB: https://cdn.ca9.uscourts.gov/datastore/opinions/2019/04/01/15-35845.pdf

[7] See City Manager's Comprehensive Summary of Berkeley's Homeless Response presented during a July 29, 2025 worksession: https://berkeleyca.gov/sites/default/files/documents/2025-07-29 Special Item 02a Comprehensive Summary of Berkeley's Homeless Response.pdf

[8] 2024 saw a 45% decrease of unsheltered homelessness, slightly countered by a 4% increased seen in 2026.

[9] Supreme Court of the United States: City of Grants Pass, Oregon v. Johnson: https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

[10] Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code, passed on September 10, 2024: https://berkeleyca.gov/sites/default/files/documents/2024-09-10%20Item%2037%20Encampment%20Policy%20Resolution.pdf

- The Environmental Health Division of the Health, Housing and Community Services Department has determined that the encampment poses an imminent health hazard as defined in BMC section 11.36.030; or
- The City has determined that a situation constitutes a public nuisance as defined in the BMC and is subject to an abatement pursuant to the BMC; or
- The encampment is located on a City street median, in the roadway, or otherwise in dangerous proximity to traffic pursuant to BMC section 14.32.040; or
- The encampment is located in an area where the City has authorized work (such as for construction, major or minor encroachments, etc.) pursuant to BMC section 13.36.045; or
- The encampment interferes with or impedes city or utility companies' construction or maintenance activities in the public right-of-way, street lighting installation or repair, street tree maintenance, or utilities maintenance or repair.

Encampment Closures Proceed Despite Legal Challenges. In January 2025, pursuant to the Encampment Policy Resolution No. 71,513-N.S. that directed the City to prioritize closing the large encampments along the Harrison corridor and Second Street, the City began the abatement process for the two encampments.[11] Shortly thereafter, the Berkeley Homeless Union (BHU) filed a lawsuit in federal District Court to halt the clearing based on the City's failure to accommodate the encampment residents' disability needs under the Americans with Disabilities Act (ADA). This is the same lawsuit that continues to legally entangle the City and ~~has~~ led to Judge Edward Chen's April 3, 2026 ruling. The City has ~~now~~ attempted to abate the Harrison encampment on several different occasions over the last year and a half though the attempts were stymied by BHU's efforts to halt the closures, despite. ~~Despite~~ the known presence of leptospirosis, a bacterial disease spread by rats and identified in January 2026.[12] ~~, BHU's efforts to halt the closures have largely been successful until~~ Just recently, however, with the September 15 abatement

[11] The City's efforts to close the Second Street encampment that largely consisted of RV's was remarkably successful, no doubt a result of the Pilot RV buy-back program that offered cash value per square footage of the vehicle in exchange for encampment residents moving into transitional shelter. See Dr. Margot Kushel's Interim Evaluation of the Berkeley Encampment Resolution/RV Buyback Program, Benioff Homeless and Housing Initiative, UCSF, March 2026: https://homelessness.ucsf.edu/sites/default/files/2026-03/Berkeley RV Interim Evaluation Final 3.31.pdf

[12] The leptospirosis was identified shortly after the death of two dogs living in the Harrison encampment. See Berkeley Scanner article: Deadly Bacterial Outbreak at Berkeley Homeless Camp: https://www.berkeleyscanner.com/2026/01/14/community/berkeley-homeless-camp-deadly-bacteria-leptospirosis/. Several months later in May, 2026 a man who bred rats living near the Harrison encampment contracted leptospirosis and died. Berkeley Scanner article: Man who Bred Rats Dies after Catching Leptospirosis, City Says: https://www.berkeleyscanner.com/2026/06/10/community/berkeley-couple-rats-leptospirosis-1-died-city-says/

followed by the final clearing of encampments on November 3, the Harrison Corridor currently remains free of encampments on the streets and sidewalks. Residents and businesses continue to struggle with encampments elsewhere in the City, however.

~~While the Harrison corridor is already greatly improved now that most of the encampments and associated belongings have been removed, the City continues to struggle with the remaining encampments and the court-ordered encampment relocation efforts elsewhere in the City.~~

RATIONALE

Homeless encampments situated near preschools raise numerous concerns. Most notably, they expose young children to unsanitary conditions, discarded hazardous materials, and unpredictable public behaviors. Used and potentially infected needles are sometimes found in and near encampments and are more accessible to children; human waste and trash more quickly accumulate near encampments, along with unsanitary conditions. Improper food storage attracts rats and other pests that can spread diseases, such as leptospirosis. Unsecured animals can sometimes act aggressively toward children traveling to and from the school facilities, and individuals struggling with severe mental health crises leading to erratic actions can be threatening and disturbing to witness.

Appendix A (attached) provides both narratives and photographs of the conditions at the Harrison encampment at the start of the September 15, 2026 abatement. The Appendix describes bio waste, rotting food, discarded drug paraphernalia, moldy and soiled materials, infestations of bugs, rodent harborages and droppings, scattered potentially infected and uncapped needles, loaded syringes and live and dead rodents among the debris encroaching into the public right of way. City staff have confirmed that individuals who had previously resided in the Harrison encampment have now relocated to areas that are directly adjacent to preschools. It stands to reason that these types of conditions may regenerate at the current locations if the encampments are left unregulated. Pursuant to our current Encampment Policy Resolution 71,513-N.S., absent a preschool buffer zone, the City would be forced to let the conditions at the encampments degenerate in order to prioritize them for closure, during which time our community's children and their families would be directly placed at risk.

In addition to public health risks due to accumulations of trash and debris, human and animal waste, and drug paraphernalia, there are significant fire hazards that arise from the accumulation of items related to cooking fires and damage to critical infrastructure. The August 13, 2026 Supplemental Declaration of Deputy Fire Marshal Shannon Shaffer-Killey (attached) recalls an August 9 call for service to

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respond to an encampment fire located at the northeast corner of Harrison and Eighth Street:

> "When crews attempted to establish a water supply, they were unable to access the nearest fire hydrant because items associated with an adjacent encampment were blocking access, creating a significant fire safety, life threatening hazard and directly interfering with fire suppression operations…Not only is the fire hydrant obstructed, it has also been severely damaged. The operating spindle, which is engaged by a hydrant wrench to open the hydrant valve, has been completely stripped as a result of repeated tampering. The damage is consistent with what occurs when people repeatedly siphon water off the hydrant."

Fortunately, firefighters were able to manage being strategic with the limited water supply carried on the fire engine and the fire was contained and extinguished. The increased public safety risks of fires associated with encampments is further highlighted in the same declaration when Deputy Fire Marshal Shaffer-Killey notes the Fired Department responded to 62 calls for service at the Harrison encampment between January 1 and August 13, 2026; 31 of those calls were related to actual fires.[13]

Currently, the encampment at Fourth and Camelia is contained to two individuals who were formerly residing on the Harrison Corridor. The presence of established encampments often attracts additional encampment residents, however, and the City has limited capacity to monitor and help maintain the encampments. As noted, shortly after the first Harrison encampment individual moved to the Ninth and Camelia location, they were joined by another person from elsewhere in the City. More recently in October, another person took up residence on Camelia Street at a nearby location who had exhibited both lewd and erratic behavior, and at times was partially naked. Late October, this person managed to break into the backyard of the Chairez Montessori Preschool and was eventually arrested, not for the first time that month.

Because of these concerns and real risks to children, many other cities within the state have already enacted encampment bans near schools and other sensitive areas:

- Los Angeles adopted Municipal Code Section 41.18 that allows city leaders to establish zones where unhoused people cannot sit, lie down, sleep, or store

[13] Supplemental Declaration of Shannon Shaffer-Killey Berkeley Fire Department Aug. 13, 2026, attached, p. 8 of 9.

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personal property in certain public spaces and near specific sensitive locations, banning encampments within 500 feet of schools, July 2021;[14]
- City of Sacramento approved banning homeless encampments within 500 feet of k-12 schools, adding them to the list of the city's existing Critical
- Infrastructure Ordinance, October 2022;[15]
- City of Oakland reclassified specific geographic areas as Highest Priority Zones for purposes of enforcement and intervention, including proximity to schools, creating a 150-foot buffer for elementary, middle, pre-school or childcare centers, and a 100-foot buffer from high schools;[16] and
- City of San Jose established School Clearance Zones banning all homeless encampments within 150 feet of k-12 schools citywide, January 2024.[17]

FISCAL IMPACTS

The fiscal impact of implementing a buffer zone around licensed preschools and in-home early childhood daycare facilities is limited to staff time to enforce this policy.

ENVIRONMENTAL IMPACTS

Encampments often are coupled with hazardous materials such as human waste and contaminated needles and increased vector activity. Prohibiting encampments in certain sensitive areas of the City will eliminate public health and safety concerns and improve the conditions of those areas for all users.

CONTACT

Councilmember Rashi Kesarwani, District 1 (510) 981-7110

ATTACHMENTS

1) Appendix A: Staff Documentation/Inventory Photos of Harrison Encampment, Sept. 15-16, 2026

[14] Parts of LA Municipal Code 41.18 were recently selectively repealed in August, 2026 though none of the repealed sites were near schools. LA Municipal Code Section 41.18: https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128514
[15] City of Sacramento City Council Report August 1, 2023, Critical Infrastructure List Resolution: https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=5631&meta_id=741121
[16] City of Oakland Resolution NO. 91102, amended April 2026: https://acrobat.adobe.com/id/urn:aaid:sc:va6c2:12773cfc-642c-4c26-89be-d03f74bee7b9?viewer%21megaVerb=group-discover
[17] San Jose Spotlight, January 2024 City Council Agenda Item 8.2: Addressing Encampments and oversized Vehicles Around Schools: https://sanjosespotlight.com/wp-content/uploads/2024/01/mini-packet_City-Council_20240130202315564.pdf

2) Supplemental Declaration of Shannon Shaffer-Killey Berkeley Fire Department Aug. 13, 2026
3) Ninth Circuit Order October 26, 2026
4) Resolution Amending Encampment Policy No. 71,513-N.S., underlined
5) Administrative Regulation 10.2 Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120
6) April 3, 2026 Order Granting in Part and Denying in Part Cross-Motions for Summary Judgement
7) September 18, 2026 Supplemental Declaration of Thomas Gregory in Support of Defendant City of Berkeley's Status Update

~~1) Resolution Amending Encampment Policy No. 71,513-N.S., underlined Administrative Regulation 10.2 Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120~~
~~2) April 3, 2026 Order Granting in Part and Denying in Part Cross-Motions for Summary Judgement~~
~~3) September 18, 2026 Supplemental Declaration of Thomas Gregory in Support of Defendant City of Berkeley's Status Update~~

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Appendix A: Excerpts from Staff Inventory Photos of Harrison Encampment - Sept. 15-16, 2026

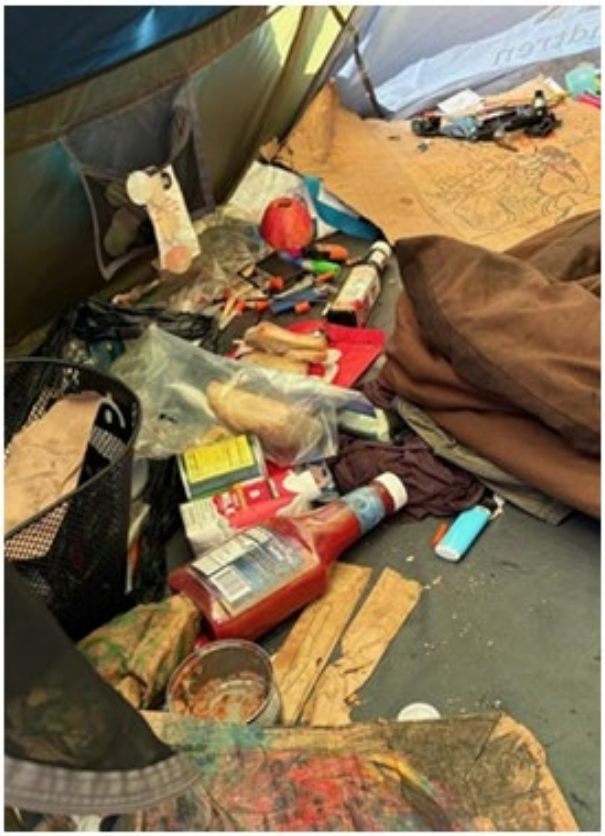
“East side of 8th at creek - the entire encampment smelled strongly of feces and there was evidence of bio waste and open rotting food. Discarded.”



“Codornices Creek. Discarded: drug paraphernalia, trash, toiletries, mattress”



“Harrison between 6th and Seventh. many scattered needles, too dangerous to sort and thus was discarded”



“Harrison between 6-7th - heavily soiled, lots of mold, trash, bugs, torn and tattered. Completely discarded after being abandoned”

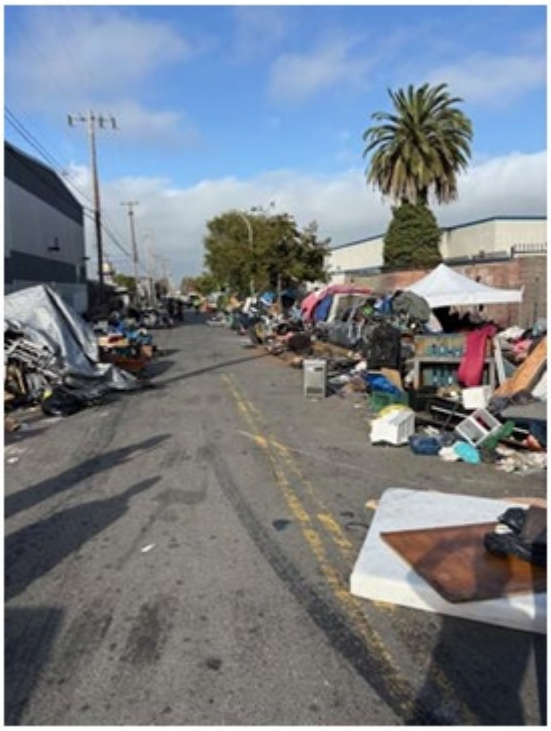


“Northwest corner of 8th/Harrison. Plausibly contaminated—visible rodent droppings, smelled strongly of rat urine, Rodent harborage. Scattered needles.”





“Harrison between 7-8th - rodent harborage, dead and live rodents, rodent droppings, smelled strongly of rodents, evidence of extensive bug/vermin infestation, loose, uncapped and loaded syringes, rotting food, everything heavily soiled. Severe extensions into the roadway to the point of interference with minimum fire lane widths for emergency access vehicle passage. Actual dead rodents. Trash everywhere. Plausibly contaminated with lepto and actively hazardous to approach, let alone sort and store. All discarded.”





Docusign Envelope ID: 8BBDCCD8-6805-81B4-81C2-D35425D5542C

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION, Plaintiff, v. CITY OF BERKELEY, THOMAS GREGORY, PAUL BUDDENHAGEN, PETER RADU, OKEYA VANCE-DOZIER, RASHI KESERWANI, DOES 1-10 Defendants.	Case No. 3:25-CV-01414-EMC SUPPLEMENTAL DECLARATION OF SHANNON SHAFFER-KILLEY IN SUPPORT OF DEFENDANT CITY OF BERKELEY'S OPPOSITION TO BHU'S TRO/PI Hearing: Date: August 13, 2026 Time: 1:30 p.m. Judge: Hon. Edward M. Chen

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DECLARATION OF SHANNON SHAFFER-KILLEY

I, Shannon Shaffer-Killey, declare as follows:

1. I am now, and at all times mentioned herein have been, the Deputy Fire Marshal employed by the Berkeley Fire Department ("Department"), for the City of Berkeley ("City"), and have served within the Department since April 2022.

2. I am over the age of 18 and am competent to testify in a court of law.

3. I have personal knowledge of all the matters stated herein and, if called as a witness, I could and would competently testify thereto, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

4. The Department's functions include but are not limited to prevention of fire; maintenance of fire protection equipment; and the enforcement of all laws and regulations pertaining to fire prevention, fire protection and the control of the spread of fire.

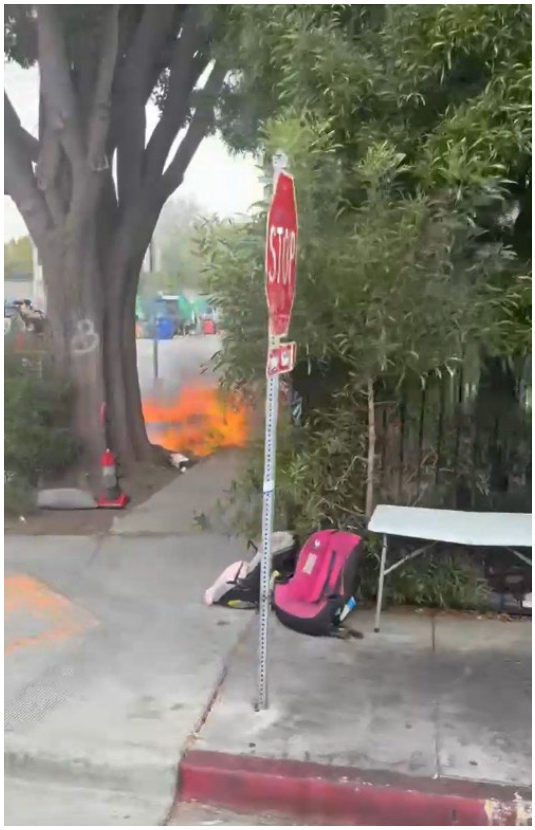
5. As Deputy Fire Marshal I am assigned with, among other things, the responsibility of inspecting a variety of structures including businesses, schools, factories, and residential homes for compliance with local, state, and national fire codes as well as building, administrative, and health codes. My professional duties also include researching, interpreting, and applying codes related to specific on-site conditions; issuing citations for non-compliance with fire and building codes; preparing and posting notices of violations and orders to abate; and investigating the origin of fires.

6. On Sunday, August 9, Berkeley firefighters responded to a reported fire at the encampment located on the northeast corner of Harrison and 8th Streets. Upon arrival, crews found an encampment fully enveloped in fire. When crews attempted to establish a water supply, they were unable to access the nearest fire hydrant because items associated with an adjacent encampment were blocking access, creating a significant fire -safety, life threatening hazard and

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directly interfering with fire suppression operations. The photos below represent true and correct copies of images of the August 9 fire.



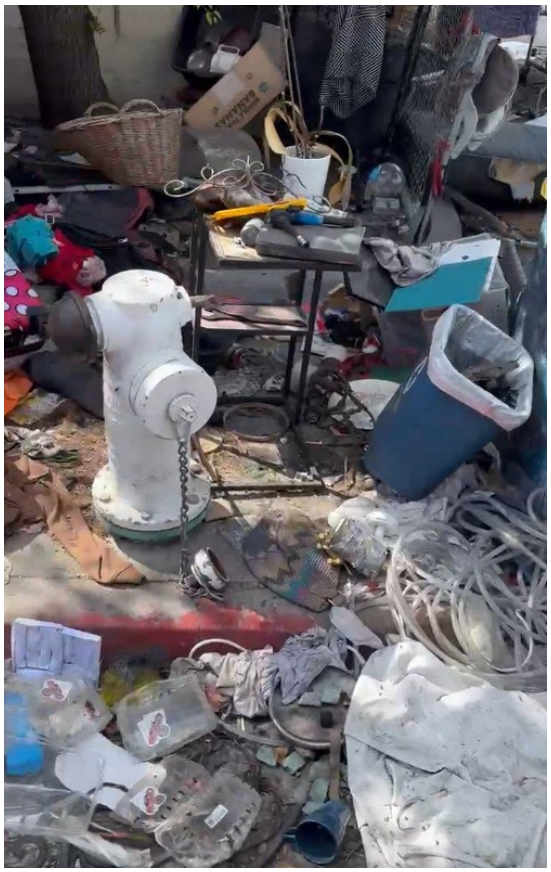


7. Fortunately, firefighters were able to strategically manage the limited water supply carried on the fire engine, which can sustain firefighting operations for just three minutes, to contain and extinguish the fire. Because of the crew's quick actions and effective water management, the fire did not extend into the large tree it was directly against or spread beyond its immediate footprint to adjacent encampments, and no one in the area was injured. Had the fire extended or required additional water, the inability to immediately access the hydrant could have significantly inhibited fire suppression operations and allowed the fire to spread beyond the initial encampment.

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8. The obstruction of the fire hydrant by the campers poses an immediate threat to life and property of both encampment residents and to adjacent property owners. The photos below are true and correct copies of images depicting the inaccessible fire hydrant.







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9. Not only is the fire hydrant obstructed, it has also been severely damaged. The operating spindle, which is engaged by a hydrant wrench to open the hydrant valve, has been completely stripped as a result of repeated tampering. The damage is consistent with what occurs when people repeatedly siphon water off the hydrant. The photo below represents a true and correct copy of an image of the fire hydrant in the area that has been damaged.



10. As a result of this damage, the East Bay Municipal Utility District (EBMUD) advised it needs to be replaced entirely and work could start on this as soon as next week.

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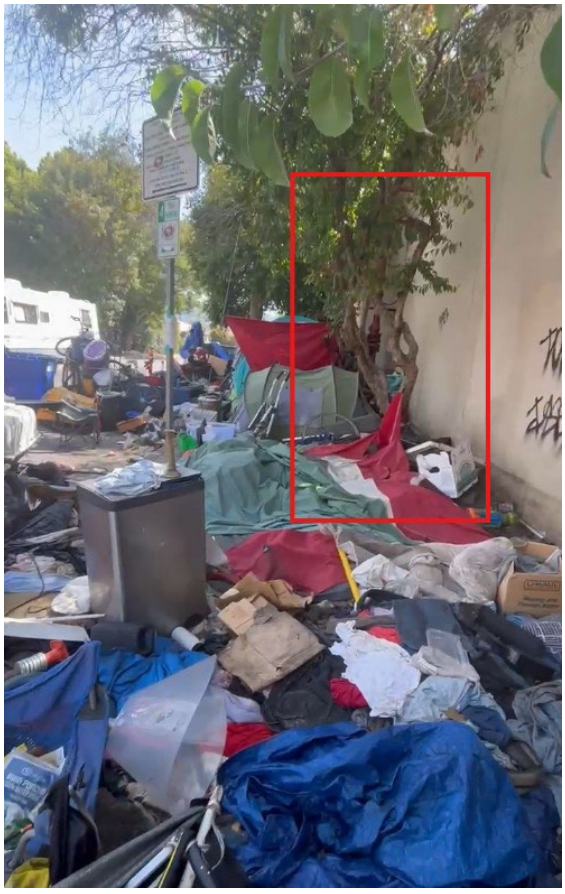
11. Replacement of the hydrant is a complex operation that would, based on my best estimate, require clearance of all items in a five-foot perimeter at a minimum. Furthermore, replacement of a fire hydrant requires the use of a large truck and special machinery. Because the street is currently obstructed by encampments to the point that it is a one-way road, the street would need to be clear so that the work truck would not entirely block traffic during this operation. This area would need to remain clear for one full workday.

12. The lack of an accessible and functioning hydrant at this location leaves the surrounding encampment and adjacent buildings vulnerable. With the hydrant itself now damaged, future incidents may require firefighters to establish a water supply from a more distant hydrant. This damaged hydrant serves 8th street from Harrison north to the Albany boarder, and south to Gilman St, East to 9th street and west to 7th. Depending on the location of the next fire, the Department may be forced to lay down hundreds of feet of hose line to connect to a more distant hydrant. This may delay the establishment of a continuous water supply and could impact our ability to control a fire in a structure or in a rapidly developing encampment fire before it spreads to adjacent encampments, vegetation, or nearby structures.

13. Additionally, the Fire Department Connections (FDCs) which allow firefighters to connect a fire engine to a building's fire protection systems (standpipes and sprinklers) at 1201 8th Street, associated with the Hathaway Dinwiddie Construction, and the U.S. Post Office at 1150 8th Street are completely obstructed by encampments and associated materials. From the street, these FDCs are no longer visible to responding firefighters.

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14. Without access to these FDCs, the Department would be unable to provide supplemental water to the buildings' sprinkler systems. In the case of a fire, the systems in those buildings typically only support seven to twelve sprinkler heads at once, and pressure is decreased as each head is activated. Our supplemental water allows the sprinklers to function at full capacity. Without access to these FDCs, a fire in these buildings is more likely to grow and spread and take longer to extinguish. The photo below is a true and correct copy of an image of where an FDC for Hathaway Dinwiddie Construction is located, within the red square, which is entirely blocked by the encampment.



15. Aside from the clear and increased risk to property and life these conditions create, they are creating multiple violations of the California Fire Code, including but not limited to the following:

- **CFC 507.5.4 – Obstruction:** Unobstructed access to fire hydrants shall be maintained at all times. The Fire Department shall not be deterred or

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hindered from gaining immediate access to fire protection equipment or fire hydrants.

- **CFC 507.5.5 – Clear Space Around Hydrants:** A 3-foot clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved.
- **CFC 912.4 – Access to Fire Department Connections:** Immediate access to FDCs shall be maintained at all times and without obstruction by fences, bushes, trees, walls, or any other fixed or movable object.
- **CFC 912.4.2 – Clear Space Around Connections:** A working space of not less than 36 inches in width, 36 inches in depth, and 78 inches in height shall be provided and maintained in front of and to the sides of wall-mounted FDCs and around free-standing FDCs, except as otherwise required or approved by the Fire Chief.

16. These violations are especially concerning in an area where we receive such high calls for service. As I noted in my August 4 declaration, the Department has responded to fifty-five calls for service within the Harrison Corridor this year alone, with twenty-six for fires and ten more for smoke. That reflected the number of calls through July 29, 2026. Since that date, there have been seven more calls for service from the Harrison Corridor, five of which were for reported fires, and two were active and uncontained fires.

17. A Tesla repair shop is located in the abatement area which increases the risk of a fire emergency. Tesla lithium-ion batteries are highly volatile. If that building were to catch on fire, it has the potential to be considered uncontainable and require first responders to not enter the building as well as requiring the department to conduct a "surround and drown" operation. A fire involving that building could be potentially catastrophic. Also vulnerable are the Berkeley Reparatory Theater, which stores stage equipment outside its building, a construction business, and Urban Adamah an organic farm and community education center.

18. I understand that there is currently a Temporary Restraining Order affecting the City's ability to take certain actions regarding the Harrison Street encampment. However, the Department's operational and life-safety concerns regarding required access to fire hydrants and

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FDCs have now escalated to the point where an actual emergency response was impacted because access to a hydrant was prevented by an encampment. Clearing this encampment immediately is necessary in order to establish and continuously maintain the Fire Code-required clearances around all hydrants and FDCs within the affected area and ensure that these critical fire protection features remain visible and immediately accessible to responding crews. Allowing the encampment to remain here will result in repeated problems with access and vandalism to critical firefighting assets.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 11, 2026

By: Signed by: 47C6ED31CCF8442...

SHANNON SHAFFER-KILLEY

FOR PUBLICATION

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BERKELEY HOMELESS UNION; FRANK MOORE,

Plaintiffs - Appellees,

ADRIEN BOUCHARD, NICHOLAS JOHNSON,

Plaintiffs,

v.

CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN; PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI,

Defendants - Appellants.

No. 25-7341

D.C. No.
3:25-cv-01414-EMC
Northern District of California,
San Francisco

ORDER

BERKELEY HOMELESS UNION; FRANK MOORE,

Plaintiffs - Appellees,

NICHOLAS JOHNSON, ADRIEN BOUCHARD,

Plaintiffs,

v.

CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN;

No. 26-842

D.C. No.
3:25-cv-01414-EMC

Northern District of California,
San Francisco

PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI,

Defendants - Appellants.

BERKELEY HOMELESS UNION,

Plaintiff - Appellee,

ADRIEN BOUCHARD, NICHOLAS JOHNSON, FRANK MOORE,

Plaintiffs,

v.

CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN; PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI,

Defendants - Appellants.

No. 26-2755

D.C. No. 3:25-cv-01414-EMC

Northern District of California, San Francisco

BERKELEY HOMELESS UNION; FRANK MOORE,

Plaintiffs - Appellees,

and

ADRIEN BOUCHARD, NICHOLAS JOHNSON,

Plaintiffs,

v.

CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN;

No. 26-2820

D.C. No. 3:25-cv-01414-EMC

Northern District of California, San Francisco

PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI,

Defendants - Appellants.

YESICA PRADO, on behalf of themselves and all others similarly situated; ERIN SPENCER; LUCIAN JEFFORDS; AMBER WHITSON; MONIQUE WILLIAMS; RUFUS LEE WHITE; WHERE DO WE GO, named as Where Do We Go Berkeley; JERMAINE WHITE,

Plaintiffs - Appellees,

ANGEL KENNETT, BARBARA GEIB,

Plaintiffs,

v.

CITY OF BERKELEY,

Defendant - Appellant,

v.

BAY AREA COMMUNITY SERVICES, BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY, DOROTHY DAY HOUSE, INSIGHT HOUSING,

Third-pty-defendants.

No. 26-2823

D.C. No. 3:23-cv-04537-EMC

Northern District of California, San Francisco

BERKELEY HOMELESS UNION; FRANK MOORE,

Plaintiffs - Appellees,

No. 26-6170

D.C. No. 3:25-cv-01414-EMC

v. CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN; PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI, Defendants - Appellants.	Northern District of California, San Francisco

BERKELEY HOMELESS UNION, Plaintiff - Appellee, FRANK MOORE, Plaintiff, v. CITY OF BERKELEY; THOMAS GREGORY; PAUL BUDDENHAGEN; PETER RADU; OKEYA VANCE-DOZIER; RASHI KESERWANI, Defendants - Appellants.	No. 26-6177 D.C. No. 3:25-cv-01414-EMC Northern District of California, San Francisco

Before: Sidney R. Thomas, Morgan B. Christen, and Patrick J. Bumatay, Circuit Judges.
Concurrence in part and dissent in part by Judge Bumatay.

PER CURIAM:

This case arises from a challenge to the City of Berkeley's abatement of a long-running homeless encampment at 8th and Harrison in Berkeley, California (the "Harrison Encampment").[1] The court has received the City's emergency

[1] The City's Notice of Encampment Closure, dated September 11, 2026, defines the area as "bounded by San Pablo Avenue to the East, the Railroad tracks

motion for administrative stay and stay pending appeal. (Nos. 26-6170, 26-6177, Dkt. 4). The request for stay pending appeal is **GRANTED IN PART, AND DENIED IN PART WITHOUT PREJUDICE**. The request for administrative stay is **DENIED AS MOOT**.

"A request for a stay pending appeal is committed to the exercise of judicial discretion." *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). "To secure a stay pending appeal, the Government must show that it is likely to succeed on the merits and that it is likely to suffer irreparable harm without a stay." *Trump v. California*, No. 26A124, 2026 WL 2473573, at *2 (U.S. Aug. 24, 2026) (per curiam). Because the "authority to grant stays has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public' pending review," "simply showing some possibility of irreparable injury" is insufficient. *Nken v. Holder*, 556 U.S. 432, 434 (2009) (citation omitted).

Our court's application of the *Nken* factors "operates on a 'sliding scale,' such that 'if there is a probability or strong likelihood of success on the merits, a relatively low standard of hardship is sufficient.'" *California v. Express Scripts,*

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to the West, Codornices Creek to the North, and Gilman St to the South." We refer to this area as the Harrison Encampment, encampment, and camp. The City did not provide a copy of this Notice of Encampment Closure in its emergency motion, but it is included in the district court docket. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Inc., 139 F.4th 763, 772 n.8 (9th Cir. 2025) (quoting *Golden Gate Rest. Ass'n v. City and Cnty. of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008)). But "*Nken* instruct[s] 'that if the petition has not made a certain threshold showing regarding irreparable harm . . . then a stay may not issue, regardless of the petitioner's proof regarding the other stay factors." *Doe #1*, 957 F.3d at 1058 (citation omitted). "We therefore begin our *Nken* analysis with consideration of irreparable harm." *Id.* When a party fails to demonstrate irreparable harm, the *Nken* analysis can "conclude." *Id.* at 1062; *see Rubin v. United States*, 524 U.S. 1301, 1301 (1998) (Rehnquist, C.J., in chambers) ("An applicant for stay first must show irreparable harm if a stay is denied.").

1. The most concerning aspect of the City's motion is the need to clear the Harrison Encampment because the City has detected leptospirosis in the camp and this presents a public health risk.[2] We do not question that the need to abate the encampment qualifies as a situation warranting emergency relief. The district court ordered abatement to go forward in mid-September 2026. The parties agree

[2] Leptospirosis is a disease that can include fever, headache, body or muscle aches, fatigue, and red eyes, and if left untreated can progress to kidney damage, meningitis, liver failure, and even death. *See About Leptospirosis*, Center for Disease Control and Prevention, https://www.cdc.gov/leptospirosis/about/index.html [https://perma.cc/L885-V86V]. The disease was first detected in the camp in winter 2025. The City did not seek emergency relief in our court for over ten months, despite having a docketed appeal from the district court's earlier rulings in November 2025.

that the primary abatement work was done between September 15 and September 17 of this year but it appears that continued work was contemplated. The City has not updated our court regarding the status of the abatement since filing its motion on September 24, but the City included internal emails in support of its motion for stay pending appeal that provide some additional information. In the emails, the Assistant City Manager described the abatement as "truly impressive" and informed his team that the Harrison area was "completely clear of encampments" as of September 23, except for two individuals temporarily protected by injunctive relief. In the district court, a Special Master entered an order dated October 16 that states, "the abatement of the 8th and Harrison encampment has already occurred." We are hesitant to peruse the parties' district court filings on our own, absent guidance from the parties or the district court. But near close of business on October 20, the City filed a declaration in the district court clarifying that at least a few BHU members remain in the encampment as of that date. Even on an incomplete record, we are persuaded that the City must be able to clear the Harrison Encampment because of the public health risk posed by leptospirosis.

The remaining *Nken* factors support the City. BHU waives any argument regarding the likelihood of success on the merits at this stage because it does not defend the merits in its opposition to the City's motion for stay. *See Clem v. Lomeli*, 566 F.3d 1177, 1182 (9th Cir. 2009). A stay will not substantially injure

BHU members or other individuals remaining in the camp given the City's offer to BHU to "set up their new tents outside of the Harrison Corridor" and its proposal to connect those residents with interim housing. The public interest lies in reducing the risk that disease will spread. Therefore, to the extent the district court's orders prevent the City from abating and clearing the Harrison Encampment, the motion for stay pending appeal is **GRANTED.**

Our dissenting colleague incorporates outdated photos of the Harrison Encampment taken at the outset or during the abatement process. We agree that the conditions in the encampment warranted intervention without delay, but omitted from the dissent is any mention that, with one exception, the photos it incorporates were all taken prior to or during the September 15 and 16 abatement. The one exception is a photo on page 37 of the dissent. We cannot tell the date that photo was taken. Our record also shows that the pictured debris was "[a]ll discarded" prior to the filing of the City's motion for stay pending appeal. Our record is silent regarding the current conditions in the encampment. The most recent photo of the encampment in our record is dated September 21. It was also submitted in support of the City's motion and it shows Harrison between 6th and 8th to be a fully cleared street.[3]

[3] Two days later, on September 23, the City reaffirmed this area was "clear." We recognize the City has more recently voiced concerns regarding individual



2. The City's motion for stay raises concerns regarding re-encampment, but the district court's orders do not permit re-encampment. The record also reflects that the City has continued to exercise enforcement authority at the site, including arresting at least one individual who attempted to return to the Harrison Encampment. The City's September 24, 2026 motion states that BHU-member residents' vehicles remained in or near the encampment as of that date, but the

instances of re-encampment. But this order makes clear that the City may clear the Harrison Encampment without delay.

City's September 11 Notice of Encampment Closure states "[v]ehicles are not required to relocate at this time." We do not read the district court's orders to prohibit the City from removing vehicles, and the City does not argue otherwise. Indeed, it appears that the City's abatement process included removing at least one vehicle from the Harrison Encampment by "backhoe." Contrary to our dissenting colleague's suggestion, our record does not show that the district court required the City to "let BHU members keep their vehicles parked in the camps." It shows only that the court required the City to engage in certain steps before taking "more drastic measures such as impoundment" of vehicles used as shelter. Nothing in the record tells us how many, if any, vehicles are left in the Harrison Encampment. If any vehicles remain, we clarify that to the extent the district court's orders prevent the City from removing them, the motion to stay those orders pending appeal is **GRANTED.**

3. Regarding the removal of the former residents' personal property, the district court required the City to comply with its existing regulations and, in the context of a "one-time abatement action," ordered the City to not "summarily" destroy the property of disabled BHU members without providing relocation assistance and property storage. Recognizing the public health risk, the district court specified that the City need not "put its own staff at unreasonable risk" and is "not required to physically handle or store items" that are "observably"

contaminated. In short, the district court recognized that the removal and storage of personal property warranted special consideration because it implicates the health risk presented by the outbreak of leptospirosis. The City does not argue that complying with these parts of the district court's order risks irreparable injury.

4. The City argues that the August 20 order expands the relief afforded by the court's summary judgment ruling and earlier preliminary injunctions. More specifically, the City argues that it will suffer irreparable harm absent a stay because the court's order violated Article III by extending relief to include all members of BHU, wherever they are located in Berkeley. According to the City, this exceeded the scope of relief that BHU requested. On this point, the City's motion for emergency stay pending appeal is defeated by the current record.

In April 2026, the district court entered summary judgment and preliminary injunction rulings that required the City to engage in certain interactive processes pursuant to the Americans with Disabilities Act (ADA) before proceeding with abatement. The court also ordered limited relief to BHU pursuant to its Fourth Amendment and state-created danger claims. Before proceeding with abatement of the Harrison Encampment, the City requested entry of final judgment in May to facilitate its appeal of the district court's rulings on BHU's claims.

The City's motion for stay pending appeal is supported almost entirely by the written record, which leaves much of the relevant litigation story unexplained.

But on October 23, in conjunction with its supplemental merits briefing, the City filed a transcript of the July 17, 2026 hearing held on the City's motion for entry of final judgment. The newly filed transcript does not support the City's contention that the district court sua sponte expanded the scope of relief, but the colloquy does show that the parties and court may have miscommunicated at the hearing on the City's motion for entry of judgment.

By the time the July hearing was held, the terms of the court's earlier orders were well known to both parties. The City sought entry of final judgment to facilitate the appeal. In response to the City's motion for entry of final judgment, BHU objected that it had outstanding claims that had yet to be adjudicated and that entry of final judgment at that point would result in piecemeal litigation. That position was consistent with BHU's amended complaint, which did seek broader relief than its original complaint. The transcript of the July hearing shows that the district court agreed that it would benefit from our court's review of its merits rulings on BHU's claims, which present novel legal issues. In an effort to enter a final judgment that would facilitate an appeal of the merits issues as requested by the City, and also to avoid piecemeal litigation, the district court suggested several forms of final judgment and heard the parties' respective positions. At the beginning of the hearing, the district court asked the City if "there [was] some reason why I can't enter a final judgment on what I've ruled on [at summary

judgment] and maybe making it clear that it applies . . . to encampments anywhere in Berkeley that now we have a final judgment [because] *I mean, that's what you're looking for*." The City did not object; it responded, "Yes, Your Honor." After the district court suggested a final "judgment [that] applies to all members of the BHU for which BHU has standing" and repeated that the order would apply "throughout the city even though there may or not be threatened enforcement," the City responded "correct" and that such an "order accomplishes" and "support[s] entry of final judgment." The district court then expressly asked the parties: "Do you have any objection if [the court] were to enter an order to make clear that the summary judgment order applies - - its protection applies to all members of BHU and applies throughout Berkeley . . . [even though] there would[] be future litigation on who's a member, who's not, whether they're violating the actual terms[.]" Again, the City did not object. At the end of the hearing on the City's motion, the district court concluded that "I think the thing to do is enter a final judgment and it be phrased as a permanent injunction." The City responded: "We agree, Your Honor."

The City's motion for stay pending appeal takes the position that the court sua sponte expanded the scope of relief when it entered final judgment. But the motion does not acknowledge that the City requested entry of judgment or the positions the City took at the July 17, 2026, hearing. In its supplemental merits

brief filed yesterday, the City contends that it was not provided an opportunity to comment on the form of the written final judgment order before it was entered, and the transcript of the July 17 hearing suggests that the court did intend for the parties to have that opportunity. If that is the case, and/or if the court and counsel miscommunicated during their colloquy about the scope of the final judgment that was to be entered, the City should direct those concerns to the district court so that it may address them in the first instance. A hearing is set for October 29, 2026 in the district court on the City's motion for stay pending appeal. In the meantime, the present record does not support the City's motion for stay pending appeal on the ground that the district court impermissibly expanded the scope of the permanent injunction.

5. The City's motion for stay anticipates that the district court will order it to allow BHU members to camp in areas the City has designated as "No Lodging" areas. The dissent suggests that this is already occurring and analogizes to *Grants Pass* because, in its view, the district court's orders require the City to allow BHU members to pitch tents throughout the City "regardless of local prohibitions." The record does not support these assertions, and the situation in Berkeley differs from *Grants Pass* in important ways. *Cf. Grants Pass v. Johnson*, 603 U.S. 520, 556 (2024). To begin, Berkeley has not banned outdoor camping in

public spaces. From the beginning of this litigation, the City has been clear on this point.

At a June 2025 hearing, one of the city's attorneys told the district court that the City "does not have a camping ban" or "a blanket 'no camping' ordinance," and that "our position" is that "[i]f there is no limitation on camping in the city other than certain locations . . . folks are available and free to move in other locations where it may be allowed." At the March 2026 summary judgment hearing, the City again represented that it "doesn't have a policy of removing unhoused or homeless individuals from the streets" and emphasized that it did not want unhoused people to "move out of the City." Indeed, in a recent email dated October 19, 2026 and filed in the district court, a city attorney directed that for those BHU members evicted from the encampment, they "*are advised to set up their new tents outside of the Harrison Encampment*"; they were not asked to leave the City. This is consistent with Administrative Regulation 10.2, which the City adopted in 2018. As the Deputy City Manager explained to the district court, in the regulation, the City "recognized the need for unsheltered individuals to have a limited amount of personal space and possessions in public spaces."

Despite the dissent's suggestions, the record does not show that the district court has ever required the City to relocate a BHU member to a "No Lodging" area, or to require the City to allow BHU members to pitch tents regardless of local

prohibitions.[4] The court did provide temporary injunctive relief to seven disabled BHU-member residents of the Harrison Encampment and required the City to engage in an interactive process to facilitate the relocation of these seven people. The City argues that the district court overstepped because the process is excessively detailed. Against the backdrop described above, whether this process (or any other) is legally required under the ADA is a merits determination. We recognize the need to expedite resolution of this dispute. Therefore, pursuant to the parties' joint request, we consolidated the City's appeals and added this matter to our February calendar. The parties' merits briefing is not yet complete. At this stage of the proceedings and on the present record, the City has not met its burden to show that the district court's requirements that it engage in certain interactive processes to facilitate relocation within the City constitutes irreparable injury. Therefore, except as specified above, the City's request for stay pending appeal is denied without prejudice to renew if the circumstances change.

We remind the parties that our record of the proceedings is fragmented at best. Until October 23, the parties had not provided us with transcripts from the key hearings in the district court, and we do not have recent transcripts for other

[4] In addition to denying BHU's requested right to remain in the Harrison Encampment, the district court denied BHU's request for guaranteed housing, enforcement-free zones, city-owned campsites, and a map or list of enforcement-free areas.

hearings in which the district court or Special Master may have addressed the current situation on the ground. If the parties do return to our court to seek interim relief, it will be incumbent upon them to be sure that we have a sufficient record to address their requests.

If the parties would like to engage assistance from the Ninth Circuit Mediation Office, they may contact the mediator at ca09_mediation@ca9.uscourts.gov.

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Berkeley Homeless Union v. City of Berkeley, No. 25-7341+
BUMATAY, Circuit Judge, concurring in part and dissenting in part:

"The growth of cities, the crowding of populations, the increased awareness of the responsibility of the state for the living conditions of its citizens"—"all have combined to create problems" for governments throughout this country. *Frank v. Maryland*, 359 U.S. 360, 371 (1959), *overruled on other grounds by Camara v. Mun. Ct.*, 387 U.S. 523 (1967). These difficult problems are for elected officials—not courts—to resolve. Yet the district court injects itself into managing—indeed, micromanaging—the problems of homelessness in the City of Berkeley.

A disease plagues one of Berkeley's homeless encampments—an outbreak of leptospirosis. This "ancient" sickness "flourishe[s]" where rats do. S. Faine et al., *Leptospira and Leptospirosis* 1–3 (2d ed. 1999) (describing "the extremely unwholesome condition of the Ottoman camp, and the numbers of dead putrid carcas[s]es of animals suffered to remain uncovered," where the disease broke out in the nineteenth century (simplified)). In humans, "the illness may be mild and self-limiting or severe and possibly fatal." *Id.* at 68.

Severe leptospirosis means kidney failure, bleeding from the lungs and heart, liver failure, and brain inflammation. David A. Haake & Paul N. Levett, *Leptospirosis in Humans*, *in Leptospira and Leptospirosis* 65, 74–78 (Ben Adler ed., 2015); Faine et al., *supra*, at 68–69. It kills when it's left untreated. Haake & Levett, *supra*, at 85–86; Faine et al., *supra*, at 68. And while modern antibiotics and dialysis

save many lives, permanent damage to the kidneys and heart is common—as is brain fog that doesn't go away. Haake & Levett, *supra*, at 79.

Diseased rats dwell in a Berkeley homeless encampment centered on Harrison Street, polluting the area and making it unsafe for the City's citizens. One person has already died. Berkeley is trying to abate the situation. As the Court recognized long ago, "a major concern of American government" is "to prevent the spread of disease." *Frank*, 359 U.S. at 371. Berkeley seeks to clean the homeless encampment by clearing away the filth and debris creating the rat infestation and exterminating the rats that carry leptospirosis. To do that, it must move and discard *all* illegally placed cars, tents, and other potential rodent harbors left in the encampment. Only then can Berkeley effectively eradicate the dangers of the disease.



The Harrison Encampment, During Abatement

Yet a district court prevents Berkeley from completely clearing the encampments. Why? Because an advocacy group calling itself the Berkeley Homeless Union ("BHU") says that Berkeley's clean-up deprives its members of constitutional and statutory rights. Based on that, the district court ordered ever-shifting, ever-expanding injunctions that preclude Berkeley from taking certain abatement measures. Under multiple district court injunctions, Berkeley must leave certain tents in the encampment untouched and not remove illegally parked vehicles used as housing in the area.

This patchwork of district court restrictions has undermined Berkeley's ability to effectively eradicate leptospirosis from the homeless camp. Now, the rats have refuge from the traps and rodenticide placed by City workers—allowing the disease to potentially survive and infect more people. As if that weren't enough, the district court's final injunction reaches BHU members citywide, hamstringing Berkeley's efforts to protect its citizens in camps far away from Harrison. Unsurprisingly, Berkeley seeks an emergency stay pending appeal. The City is entitled to a stay for *at least* three reasons.

First, BHU shouldn't even be in federal court. BHU doesn't meet the requirements for associational standing under our precedent. The district court simply ignored those requirements and gave BHU a pass. Whether the district court likes our precedent or not, it was not free to defy it. The tell that associational standing was improper? The district court ordered a mismatched remedy—rather than grant BHU any relief, it enjoined the City from taking certain measures against individual homeless non-parties. That defeats the purpose of associational standing. The district court lacked Article III jurisdiction to issue injunctions in this way.

Second, BHU is likely to lose on the merits. Its constitutional and statutory claims can't justify the district court's unprecedented actions.

To begin, based on BHU's Fourth Amendment argument, the district court enjoined Berkeley from impounding vehicles that violate numerous ordinances, and

from cleaning the surrounding areas. But this ignores the well-established and historic "caretaker exception" to warrantless searches and seizures. And in ruling for BHU, the district court invented a new Fourth Amendment test from whole cloth. The district court's orders should be stayed on this basis alone.

Next, the district court weaponized the Americans with Disabilities Act ("ADA") to force Berkeley to meet unreasonable demands when it clears camps. Yet even if the ADA applies here, it doesn't require Berkeley to fundamentally alter its abatement program to accommodate homeless persons with disabilities as it battles a public-health risk.

Finally, BHU's "state-created danger" claim goes nowhere. "State-created danger" is a judge-created doctrine untethered from text and history. Given this background, we should be skeptical of its expansion. Yet the district court substantially enlarged its reach to enjoin Berkeley from removing obstructive cars and tents—even though it's entirely speculative that any homeless person would be actually and particularly harmed by the abatement, and even though Berkeley's actions don't evince any deliberate indifference. Yes, Berkeley is removing illegally erected tents and illegally parked vehicles. But that's to stop the spread of a deadly disease.

Third, Berkeley suffers serious, irreparable harm. The district court both prevents the City from achieving its rat-eradication objectives and precludes

Berkeley from abating other encampments citywide without its say-so. Enjoining a city from undertaking a basic function of government without judicial approval is an irreparable harm in itself. And the balance of interests tips decisively in Berkeley's direction. Nothing else outweighs Berkeley's need to eliminate "the hazards of rodent-caused plague and other serious diseases" on Berkeley's streets. *Dawson v. City of Seattle*, 435 F.3d 1054, 1063 (9th Cir. 2006).

Given that all stay factors favor Berkeley, we should've granted the stay pending appeal in full. *See Nken v. Holder*, 556 U.S. 418, 426 (2009).

Unfortunately, we've seen this before. The Ninth Circuit is no stranger to misusing the law to craft misguided homelessness policy. *See Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2024), *rev'd*, 603 U.S. 520 (2025). It took the Supreme Court to slap down our misadventures in homelessness policymaking. No matter how well intentioned, courts have no business dictating to local governments what policies best address this persistent problem. The Ninth Circuit's *Grants Pass* ruling was as wrongheaded as it was cruel to that city's residents. But now the district court has manufactured an end run around the Supreme Court's decision and started us down this dangerous path again.

I concur with the majority in staying the district court's orders impeding the Harrison abatement. But we should have granted the stay in full and stopped the district court's interference with Berkeley's homelessness policy writ large. Because

the district court issued lawless orders enjoining Berkeley from effectively cleaning up homeless encampments, I respectfully dissent from the partial denial of the stay pending appeal.

I.

BACKGROUND

The origins of this case are themselves a rat's nest. Our suit began when BHU filed its complaint in February 2025, but its story stretches back further. In September 2024, Berkeley adopted a new policy that allowed for the abatement of encampments that pose health and safety concerns. And Berkeley soon put the policy to work—in December 2024, it declared an encampment at Eighth and Harrison Streets a public nuisance due to "significant health and safety hazards including loose and scattered syringes; rodent harborage conditions and evidence of extensive and active rodent burrows; unmitigated human and animal waste; and open/rotting sources of food." And "the accumulation of personal belongings and debris in the area" blocked the sidewalks and vehicle lanes.

In mid-January 2025, after Berkeley declared a nuisance, it posted notices announcing a planned abatement. Shortly afterward, it held a hearing, and, by the end of the month, a hearing officer had overruled the objections of those who occupied the encampment. Berkeley could clear the camp.

Or so it thought. Enter the "Berkeley Homeless Union." One of BHU's leading members, Yesica Prado, previously sued Berkeley in a challenge to its homelessness policy. See *Prado v. City of Berkeley*, No. 23-cv-04537, 2024 WL 3697037 (N.D. Cal. Aug. 6, 2024), which has been consolidated with this case. This time, BHU's complaint alleged that shutting down the Harrison encampment would cause a state-created danger, violate the Fourth and Fourteenth Amendments, and offend the ADA.

From the beginning, Berkeley has said it closes encampments to enforce the law, keep its citizens safe, and preserve access to public roads and sidewalks. As it turns out, the Harrison encampment provided the ideal conditions for leptospirosis. Roaming rats and standing water meant a brewing storm. And a public-health risk to some is a public-health risk to all: Given the lack of running water, the Harrison homeless bathed in a nearby creek, which sits across from family housing provided by UC Berkeley. Further, the encampment itself was not isolated. Restaurants, a brewery, and even an urban farm sat nearby. When rats tested positive for leptospirosis in December 2025, the abatement took on new importance.

Berkeley's abatement efforts have faced many obstacles from the start. Only three days after BHU sued, the district court issued its first temporary restraining order, preventing Berkeley from moving forward with the abatement. That TRO was extended to the end of April 2025, then to May. And in June 2025, the district

court gave Berkeley 60 days to complete the ADA's "interactive process" for BHU members who occupied the encampment and had submitted accommodation requests. That injunction extended on for months. The district court allowed a limited abatement on the east side of one block to proceed in September 2025. Berkeley had planned a February 2026 abatement to deal with the leptospirosis outbreak, but bad weather postponed it. Another TRO was issued in March 2026 and extended into April.

In April 2026, the district court expanded its relief in two related orders. These orders required Berkeley to undertake a new accommodations inquiry related to illegally parked vehicles, permit some camp inhabitants to take up more than nine square feet of public sidewalk space, and affirmatively provide physical assistance and storage for BHU members.

And when the district court entered final judgment on August 20, 2026, it expanded relief again. In its final order, the district court issued a permanent injunction sweeping in all BHU members and imposing its orders citywide. The district court stated that "[t]he permanent injunctive relief applies to all BHU members, wherever situated within the City, and is not limited to the Harrison Encampment or to any previously identified claimants."

The result is unprecedented. In addition to imposing a requirement that Berkeley provide 72-hour written notice before beginning an abatement—and use

"patient, low-stimulation communication" with BHU's members—the district court ordered Berkeley to comply with a litany of obligations:

Vehicles. Before Berkeley can tow, impound, or otherwise dispose of a vehicle used as shelter, it must make a determination that the specific vehicle poses "a concrete, individualized threat to health and safety"—beyond "mere parking violations, inoperability, or expired registration." Berkeley must give the owner of the vehicle an opportunity to respond. And Berkeley further must "consider and pursue reasonable, less restrictive alternatives, including targeted cleaning, pest treatment, containment orders, and assisted relocation." Before destroying any vehicle as a hazard, Berkeley must "additionally show that no reasonable alternative could adequately mitigate the identified hazard."

Sidewalk Space and Tents. The district court ordered that Berkeley could not enforce its general sidewalk restrictions "in a manner resulting in the destruction of a BHU member's tent or shelter unless the City first conducts an individualized assessment accounting for the member's disability-related needs, if any, the physical dimensions of the sidewalk or right-of-way at issue, and the public interest in maintaining a reasonable path of travel." And when enforcing sidewalk rules would lead to loss of shelter, Berkeley must "allow the [BHU] member to retain [the tent] or relocate [it] to a location that does not unreasonably obstruct pedestrian passage,

or . . . provide a replacement tent consistent with that standard." This last requirement applies even if the BHU member isn't disabled.

Property Replacement and Storage. For disabled BHU members who can't relocate their property, the district court ordered Berkeley to provide them with "reasonable physical assistance." And the City must provide 90-day storage for any property that isn't "contaminated." When Berkeley destroys "[e]ssential survival property" because of contamination, it must replace it.

These orders directly impacted an abatement that Berkeley had initially scheduled for early August 2026. After a month of delays, the district court let the abatement proceed in mid-September 2026—subject to the court's restrictions. The district court allowed all "[r]esidents of the Harrison Encampment" to submit requests for "reasonable accommodation[s]" and "exempt[ed]" those who submitted a request "from encampment abatement" until the district court adjudicated their claims.

The district court soon granted temporary injunctive relief to seven individuals—prohibiting Berkeley from abating their encampments. And it announced it'd appoint a special master to resolve accommodation requests for 21 more. The district court also suggested that two individuals should be free to set up camp at another location in the City—one very close to a preschool. And the district

court let five others make their case for why they should be free to move somewhere camping was banned.

The abatement finally began on September 15, 2026. Within three days, Berkeley collected 50 tons of trash. The district court's orders hampered Berkeley's abatement efforts. City officials saw individuals pile their personal belongings onto vehicles, which were protected under the district court's orders. City officials also saw the BHU President move other people's property to areas protected by the district court's orders to keep it from being removed. What's more, BHU personnel left chalk marks "inaccurately indicating" property and sidewalk space were protected by the district court when they weren't—up to half a block at a time, and "extending into the street." As for the requirement to replace survival gear—a BHU member requested a six-person, $400 tent.

After operations concluded on September 18, Berkeley's Assistant City Manager stated that the abatement efforts had been "truly impressive, and admittedly greatly in excess of what I expected to see." But the City encountered re-encampment almost immediately. Further efforts were needed to combat re-encampment—on September 21, one person was arrested and Berkeley removed 2.8 tons of debris, then, on September 23, Berkeley removed another 4.23 tons of trash and debris. Through late September and October, BHU members and non-members alike continued to encamp at Harrison—vehicles and all.

II.

LIKELIHOOD OF SUCCESS ON THE MERITS

As it stands, Berkeley fights an uphill battle to carry out the ordinary duties of municipal government: protecting public health and safety, enforcing laws, and simply ensuring people can walk on the sidewalk. And through a series of orders, the district court effectively exempted more and more people not just from abatement, but from Berkeley's ordinary laws—including banal provisions about vehicle parking and registration. Compliance with such a regime is legally unwarranted. Berkeley must be allowed to set its own policy.

For four reasons, Berkeley is likely to succeed on the merits—the most important of the stay factors. First, Berkeley is likely to show that BHU lacks associational standing to bring claims on behalf of homeless individuals. Second, the district court's Fourth Amendment ruling ignores the community-caretaker exception. Third, BHU's ADA claims likely fail because the district court's ordered accommodations fundamentally alter Berkeley's effort to abate homeless camps that endanger the public. And finally, BHU's state-created-danger theory likely can't establish that Berkeley exposes BHU members to non-speculative, concrete harms, or that it does so with deliberate indifference. In each case, the district court evaded established law to rule for BHU. "Such gross overreaching by a federal district court

simply cannot be tolerated . . . ." *Lewis v. Casey*, 518 U.S. 343, 364 (1996) (Thomas, J., concurring).

A.

BHU Lacks Associational Standing

No homeless person in Berkeley is a party to this motion. Instead, the linchpin of this case is associational standing. BHU, a homeless-advocacy organization, claims to bring this challenge on behalf of homeless individuals in Berkeley. This is contrary to the traditional view of Article III standing, which holds that plaintiffs generally "must assert [their] own legal rights and interests, and cannot rely on the interests of third parties." *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1013 (9th Cir. 2025) (simplified).

There's reason to doubt whether Article III even tolerates associational standing. *See, e.g.*, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 402 (2024) (Thomas, J., concurring) ("Because no party should be permitted to obtain an injunction in favor of nonparties, I have difficulty seeing why an association should be permitted to do so for its members."); *Moody v. NetChoice, LLC*, 603 U.S. 707, 760 (2024) (Thomas, J., concurring in the judgment) (similar). So "[w]e must be [especially] careful in granting organizations associational standing." *Mi Familia Vota v. Fontes*, 129 F.4th 691, 764 (9th Cir. 2025) (Bumatay, J., dissenting), *cert. granted sub nom. Republican Nat'l Comm. v. Mi Familia Vota*, 146 S. Ct. 2799

(2026). "[W]e mustn't relax any standing requirements just because an organization presses a claim on behalf of an injured member." *Id.* And we regularly reject associational standing. *See, e.g.*, *NetChoice*, 152 F.4th at 1014; *LA All. for Hum. Rts. v. County of Los Angeles*, 14 F.4th 947, 960 (9th Cir. 2021).

Rather than approach associational standing with skepticism, the district court did the opposite. It so lowered the bar to associational standing that it effectively wiped away one third of its requirements. Both Supreme Court and Ninth Circuit precedent make clear that a membership association has standing only if three requirements are met: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *NetChoice*, 152 F.4th at 1013.

Somehow, the district court thought it could dispense with these requirements. In its terse analysis, the district court ruled:

> As an initial matter, regarding associational standing, BHU easily satisfies the first two prongs of the *Hunt* associational standing test. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344–45 (1977). Because BHU's Americans with Disabilities Act ("ADA") claim requires substantial individualized evidence, BHU does not clearly satisfy the third prong of the *Hunt* test. However, because the third prong is prudential, the Court allows BHU to bring its claims on behalf of its members.

That was the district court's whole jurisdictional analysis. It has refused to revisit it since. This was inadequate for three reasons.

To begin, we don't adjudicate jurisdiction in gross. "We consider . . . standing on a claim-by-claim basis." *Valley Outdoor, Inc. v. City of Riverside*, 446 F.3d 948, 952 (9th Cir. 2006). While its ADA analysis was lacking, the district court didn't even consider BHU's standing for its Fourth Amendment and "state-created danger" claims. Instead, it seemingly applied a categorical approach, giving BHU carte blanche to raise any claim once it purportedly satisfied standing for one claim.

Next, and more importantly, the district court was not free to disregard our precedent on the requirements of associational standing. The district court expressly found that BHU doesn't satisfy the third prong of associational standing—whether individual association members must join the suit. But it excused that failing because it was only a "prudential" requirement. This was improper.

To be sure, the Supreme Court considers the third prong to be "prudentially imposed." *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 558 (1996). But just because an element is "prudential," that doesn't make it *optional*. The district court can't defy our precedent and just ignore a requirement. Even if there's reason to doubt prudential-standing doctrine, *see, e.g.*, *Assoc. of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 538 (6th Cir. 2021), we lower-court

judges must still adhere to it. In other words, a "prudential" requirement is still a requirement.

Nor does the fact that BHU seeks injunctive relief excuse the disobedience. True, the Court has suggested "individual participation is not normally necessary when an association seeks prospective or injunctive relief for its members." *United Food*, 517 U.S. at 546 (simplified). But that still requires an analysis of whether an "individual member" is in fact required for the "relief requested." *Hunt*, 432 U.S. at 343. In fact, we've *always* asked whether an associational plaintiff who wants injunctive relief can satisfy the third *Hunt* prong. *See, e.g.*, *NetChoice*, 152 F.4th at 1014 (denying associational standing where a district court required "participation of individual members—to adjudicate NetChoice's 'fact intensive' [First Amendment] claims"); *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 839 (9th Cir. 2012) (asking whether "the prospective relief that Plaintiffs seek . . . require[s] that individual . . . members participate in this action"); *Laws. for Fair Reciprocal Admission v. United States*, 141 F.4th 1056, 1065 (9th Cir. 2025) (same).

A proper analysis of this individual-member-participation prong dooms BHU's associational standing for each claim.

First, as the district court recognized, ADA claims require substantial individualized evidence. *See LA All.*, 14 F.4th at 960 ("Public sidewalk and

architectural obstruction ADA claims are fact-intensive[,] with specific requirements and evidentiary burdens."). And individualized evidence requires individual participation. Faithfully following our precedent means no standing here.

Second, it's the law of this circuit that civil Fourth Amendment claims are individualized and may not be raised by third parties. *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1111 (9th Cir. 2001) ("[Plaintiff] has no standing to claim a violation of [another's] Fourth Amendment rights."). Fourth Amendment standing thus needs individual plaintiffs.

And third, "state-created dangers" require "particularized danger" to the individual—it's not enough to show danger to the public at large. *Sinclair v. City of Seattle*, 61 F.4th 674, 680 (9th Cir. 2023); *see also Pahssen v. Merrill Cmty. Sch. Dist.*, 668 F.3d 356, 366 (6th Cir. 2012) (restricting "the application of this so-called 'state-created danger' doctrine to scenarios where the state's actions cause a special danger to the plaintiff, i.e., place him specifically at risk, as distinguished from a risk that affects the public at large" (simplified)); *L.R. v. Sch. Dist.*, 836 F.3d 235, 245 (3d Cir. 2016) (recognizing that "this inquiry is fact-specific"). Simply, Berkeley's abatement might endanger individuals differently. What's sufficiently harmful for one homeless person may not be for another. The harm two individuals experience can differ not only in magnitude, but in kind. *See Hernandez v. City of San Jose*, No. 16-cv-03957, 2019 WL 4450930, at *15 (N.D. Cal. Sept. 17, 2019) (Koh, J.)

("[I]ndividualized inquiries will be necessary to establish the existence of a state-created danger at each time and location where an altercation took place.").

Each of these claims thus requires individual participation to determine the scope of the right and the remedies needed. Tellingly, the district court never ordered blanket relief to BHU based on generalized evidence. Instead, the district court ordered *individualized* relief and appointed a special master to determine the rights of the individual non-parties to the case. That's pretty odd for an associational-standing case.

Simply put, that is not how associational standing works. An association brings *one* suit to resolve issues *as to all members*. That was abundantly clear even when the Court invented associational standing. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). That case dealt with a statute's constitutionality. *Id.* at 451. Striking down the statute necessarily provided relief to all individual NAACP members—without the need to adjudicate each member's constitutional rights. *See id.* at 458–60. Associational standing has never been a vehicle to bring dozens or hundreds of as-applied challenges. Yet the district court repeatedly awarded injunctive relief to individual BHU members. And in its latest order, the district court extended injunctive relief to an ever-increasing number of BHU members citywide, all while letting BHU act as the sole plaintiff.

Finally, on top of all this, the district court failed to verify injuries to BHU members. In this circuit, "to establish a member's injury for associational standing, an organization must submit individual affidavits from members who have suffered the requisite harm." *LA All.*, 14 F.4th at 959 (simplified); *see also Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep't of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013) (requiring "specific allegations establishing that at least one *identified member* had suffered or would suffer harm" (simplified)). That never happened. BHU didn't submit supporting affidavits with its amended complaint. It didn't identify its members in the complaint. And to the extent that later filings asserted supplemental individual harms, "[t]he fact that [BHU] may have broadened its membership after filing this action to include currently unhoused individuals—even ones who were unhoused at the time of the Complaint—does not factor into the standing calculus." *LA All.*, 14 F.4th at 959–60 n.9. "Judges are not like pigs, hunting for truffles buried in the record." *Murthy v. Missouri*, 603 U.S. 43, 67 n.7 (2024) (simplified). But the district court found truffles among the rats and leptospirosis anyway.

All in all, the district court provided expansive injunctive relief to nonparty individuals; whose standing may never be tested; on no legal authority; and in direct defiance of our precedents. This case—if it had any merit—should have been

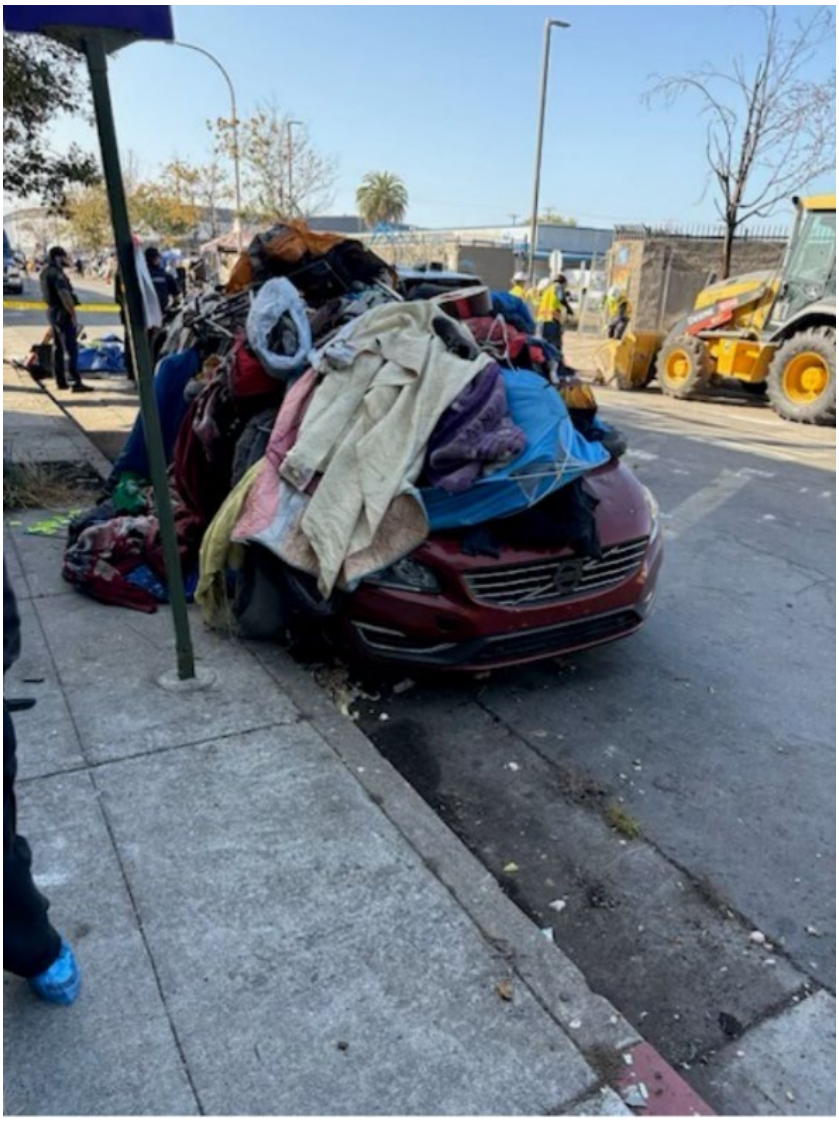
brought by individual homeless persons. But BHU picked this as a representational case, so it must contend with the consequences.

Berkeley is thus likely to show that BHU lacked standing to bring this challenge.

B.

Berkeley's Vehicle Policy Doesn't Violate the Fourth Amendment

Even if BHU had standing, the district court still erred in ruling that Berkeley's vehicle policy violates the Fourth Amendment. Both history and precedent support what Berkeley seeks to do here—remove vehicles that pose a risk to public safety. Under the community-caretaker exception to the Fourth Amendment, Berkeley's goal to impound obstructive or unsafe RVs and cars used as shelter is reasonable.



Car, During and Post-Abatement

1.

History of Community Caretaking

"The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). That's because it falls within the Fourth Amendment's community-caretaker exception, which allows police to

temporarily seize property "[i]n the interests of public safety" without a warrant. *Id.* at 368. The exception comes from the recognition that the police have "varied responsibilities" in taking care of and promoting order in the community—apart from arresting criminals. *Id.* at 367–68. So not "all searches and seizures conducted for non-law-enforcement purposes must be analyzed under precisely the same Fourth Amendment rules developed in criminal cases." *Caniglia v. Strom*, 593 U.S. 194, 200–01 (2021) (Alito, J., concurring). While the community-caretaking exception isn't boundless, history shows that government action to remove risks to public health without a warrant was widely accepted.

Aspects of the community-caretaker function can be traced to the Colonial era, when watchmen were tasked not only with detaining criminals, but also with generally pursuing the "good order of the town." *See* An Act Establishing a Watch for the Safety and Better Securing the Good Order of the Town of Boston, 1761–62 Mass. Acts 462, ch. 5. Watchmen performed public-safety functions like lighting and maintaining streetlamps, An Act for Regulation and Continuing the Nightly Watch, Enlightening the Streets, Lanes and Alleys of the City of Philadelphia, and for Other Purposes Therein Mentioned, 1770–71 The Statutes at Large of Pennsylvania 96, ch. 636, § 1; preventing and responding to fires, *id*. at 98, § 4; and bringing those "very much in drink" to spend the night in the watchhouse, not because they were breaking a law but to keep them from harming themselves or

others. Nicole Breault, *Keeping Order in the North End: On Patrol with the Night Watch*, Old N. Church (Mar. 24, 2018) (quoting Isaac Townsend, *Return: September 1765*).[1]

Early governments also regulated parking. Boston imposed regulations in the 1790s remarkably similar to those at issue today. It designated specific parking areas—called "stands"—and anyone who left their "Cart[,] Truck[,] or Wheelbarrow" on the road outside one of those areas would be fined. Minutes of Meeting on May 24, 1799, *reprinted in* 35 *A Volume of Records Relating to the Early History of Boston Containing Boston Town Records, 1796 to 1813*, at 72, 74 (1905). Just like today, one of the driving concerns was the flow of traffic: Anyone who parked a vehicle "as to cross the street or foot path or prevent other carriages or foot passengers from passing in the direction of such street" had only "five minutes after the request of any passenger [to] cause the same to be removed." *Id.* Anyone who failed to do so or who wasn't there to move the vehicle would be fined. *Id.* Early evidence also shows that watchmen had the duty to keep the roads clear by "deliver[ing] to the constable of the watch any goods or merchandize [sic] they may find in the streets." Minutes of Meeting on January 27, 1819, *reprinted in* 39 *A Volume of Records Relating to the Early History of Boston Containing Minutes of the Selectmen's Meetings from September 1, 1818, to April 24, 1822*, at 40, 41

[1] https://perma.cc/A9YH-D2ZY.

(1909). And police had broad authority to "remov[e] incumbrances," including private property. *Id.* at 64–65 (Minutes of Meeting on May 4, 1819).

Local government's power extended to removing public-health risks. For example, city health officials in the State of New York could, "as they judge adviseable [sic]," remove "offensive noxious or putrid articles or substances" from "streets, alleys, passages, . . . and other places." An Act to Provide Against Infections and Pestilential Diseases, 1797–1800 N.Y. Laws 227, ch. 65. And all "things" in New York City that were "infected by or tainted with pestilential matter" could be "removed from the said city" and sent to a nearby island. *Id.* at 231–32. And Massachusetts law empowered town officials to "remove all filth of any kind whatever" from "Streets, Lanes, Wharves, Docks" or other public places "whenever such filth shall in their Judgment endanger the lives or the Health" of the city's inhabitants. An Act to Prevent the Spreading of Contagious Sickness, 1797–1798 Mass. Acts 363, ch. 16, § 11. Neither statute required a warrant to remove public health nuisances from public streets.

Given this history, what Berkeley has done here is not new—it is as old as the Republic.

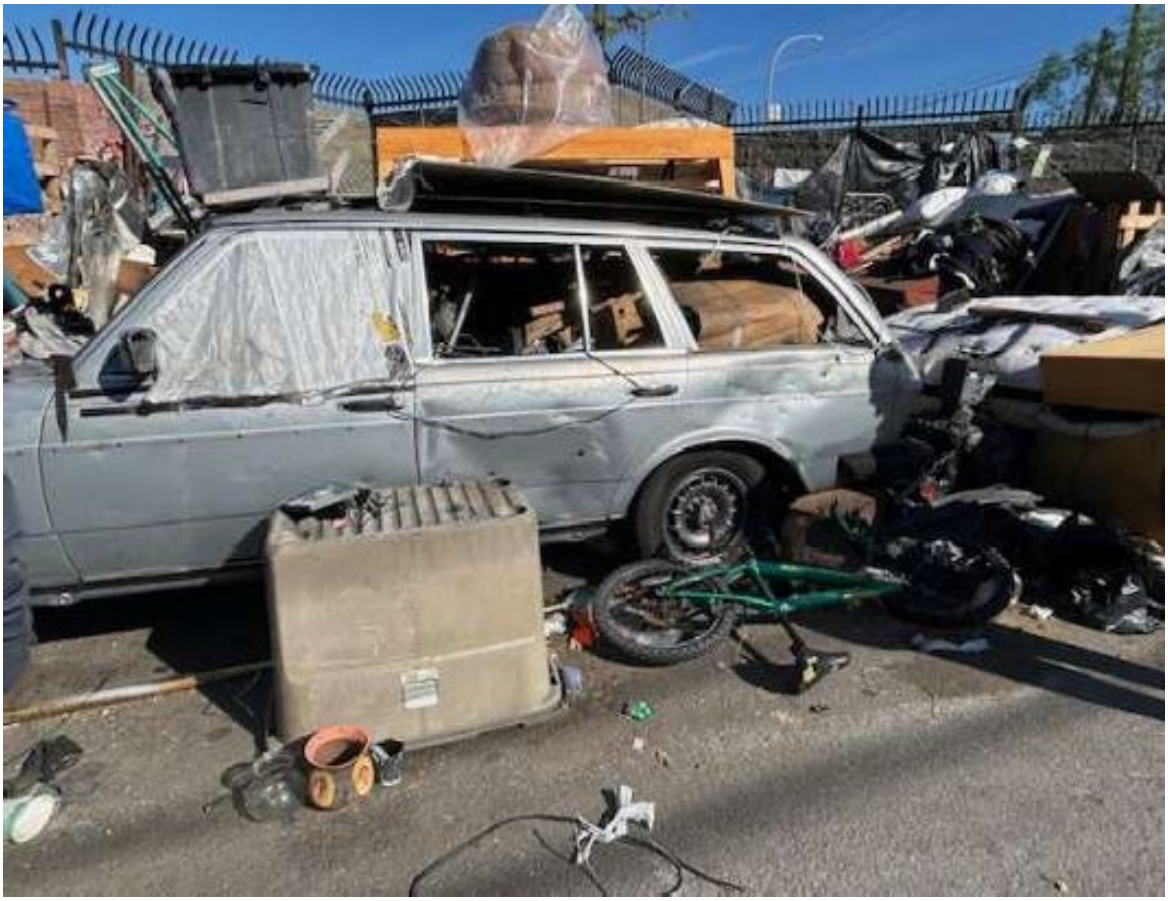
2.

The District Court's Novel Test Is Inconsistent with Precedent

Today's Fourth Amendment caselaw confirms that Berkeley may "remove vehicles that are presently impeding traffic or creating a hazard." *Miranda v. City of Cornelius*, 429 F.3d 858, 866 (9th Cir. 2005). Our cases turn on whether a vehicle was impounded for a "valid caretaking purpose," *United States v. Torres*, 828 F.3d 1113, 1120 (9th Cir. 2016), as opposed to seized for an unlawful purpose like punishing an arrestee, *see Miranda*, 429 F.3d at 866. The only showing this court has required is a connection to a caretaking purpose.

These purposes—clearing the roads and removing hazards—are the two independent justifications that Berkeley asserted here. First, the vehicles were parked illegally, impeding the flow of traffic. All vehicles the City sought to tow at the Harrison encampment in March 2026 were noncompliant with state and local motor-vehicle codes, from expired registrations to being downright inoperable. Second, these vehicles all posed a public-health hazard. Berkeley made extensive factual findings about each vehicle and decided that public safety demanded each be removed. They were often used as drop sites for personal belongings, creating ideal habitats for leptospirosis-carrying rats. The rats roamed in and around the vehicles—as shown by the large amounts of rat droppings Berkeley officials found under them.

So the City could not achieve "complete eradication of rodent burrows" in the encampment without removing each vehicle.



But, despite acknowledging these findings, the district court demanded more. It invented a new test for Berkeley to satisfy before it impounds a vehicle. Berkeley must:

> (1) make a specific, fact-based determination—beyond mere parking violations, inoperability, or expired registration—that the particular vehicle obstructs traffic or poses a concrete, individualized public health or safety threat; (2) provide the vehicle's owner with written notice of the specific findings, an opportunity to respond, and a reasonable opportunity to remediate the identified condition or voluntarily relocate the vehicle; (3) consider and pursue reasonable,

> less restrictive alternatives . . . or demonstrate with particularity why such alternatives are ineffective for the given vehicle and occupant.

The Fourth Amendment doesn't require any of these steps.

Contrary to the district court's view, the Fourth Amendment permits police to "remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic." *Opperman*, 428 U.S. at 369. "Mere" parking violations *are* enough—illegally parked vehicles can impede lawful business operations, and police are authorized to prevent that harm. The same goes for violations of other regulations. This circuit has reasoned that police can impound a vehicle if it could not legally be driven away—for example, because the driver lacked a license or had expired tags—and impoundment was "necessary to remove the vehicle from an exposed or public location." *Miranda*, 429 F.3d at 865. The police can even impound based on their "reasonable interest in preventing [a] vehicle from being a target for vandalism or theft." *Torres*, 828 F.3d at 1120; *see also Hallstrom v. City of Garden City*, 991 F.2d 1473, 1477 n.4 (9th Cir. 1993); *United States v. Jensen*, 425 F.3d 698, 706 (9th Cir. 2005).

What none of these cases require is notice and opportunity to respond. That's consistent with the exception's purpose: to allow police to quickly remove a vehicle that is "impeding traffic or threatening public safety and convenience." *Opperman*, 428 U.S. at 369. The classic example is towing a car wrecked in the middle of the

road. *See id.* at 368. Every second the car remains in place undermines public safety. Bureaucratizing the process does little to further the public interest in safe and efficient travel.

Even so, it's unfair to accuse Berkeley of "summarily seizing and destroying the personal property of unhoused individuals" as it pursues abatement. This is far from taking "property like a thief in the night." *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1032 (9th Cir. 2012) (simplified). Look at the notice from January 2025, before this suit was filed: Berkeley gave Harrison campers a month to comply. That deadline was almost two months after Berkeley declared the camp a nuisance that must be closed. And the notice also gave information on appeal rights and how to request accommodations. Or consider the September abatement: A notice in July 2026 gave a compliance period of five days, and after the district court hit that action with a TRO, a new notice gave a compliance deadline of two weeks, until September 8th. Even then, abatement was delayed until September 15th. So although no court, in this circuit or otherwise, has required notice and opportunity for a hearing in the context of the community-caretaker exception, Berkeley went out of its way to alert residents of the Harrison encampment about its abatement plans.

The "least restrictive means" rule the district court posits is also a novel invention. The Ninth Circuit has rejected such a rule, explaining that "[a]n officer, acting within the scope of his or her community care-taking function, is not required

to consider the existence of alternative less intrusive means when the vehicle must in fact be moved to avoid the creation of a hazard or the continued unlawful operation of the vehicle." *Miranda*, 429 F.3d at 865 n.6 (simplified). The vehicles observed at the Harrison encampment create a public-health hazard. Berkeley's Public Health Officer explained that "cleaning around [parked vehicles] is not sufficient" because they—"especially RVs that stay in one place for a long time—are attractive rodent harborages," which encourage the spread of leptospirosis. And parking them in "no parking" areas is unlawful. That is all Berkeley must show.

To be sure, the Fourth Amendment provides robust protections—even when it comes to vehicles. *See Verdun v. City of San Diego*, 51 F.4th 1033, 1048 (9th Cir. 2022) (Bumatay, J., dissenting). As I explained in my *Verdun* dissent, however, Fourth Amendment reasonableness often turns on individualized suspicion. *See id.* at 1051 (Bumatay, J., dissenting). In *Verdun*, the vehicles at issue had not violated any law and were searched anyway. This situation is different. That's because the Harrison vehicles pose a public-health risk and violate multiple motor-vehicle laws. Thus, even though a warrant is not required under the community-caretaker exception, these vehicles all raised individualized suspicion.

In short, BHU is not likely to prevail on its Fourth Amendment claim.

C.

BHU's ADA Claims Fare No Better

BHU also claims Berkeley violates its disabled members' rights under Title II of the ADA. How? By not offering enough accommodation as it tries to clear homeless encampments, even in the face of a deadly disease. Simply, any accommodation that undermines the City's objective to eradicate leptospirosis is no reasonable accommodation.

Begin with the law. The ADA says: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. "The failure to provide reasonable accommodation can constitute discrimination." *Mayfield v. City of Mesa*, 131 F.4th 1100, 1110 (9th Cir. 2025) (simplified). And, generally, the ADA's "implementing regulations require [a city] to make reasonable modifications in policies, practices, or procedures" when the city offers a "service, program, or activity." *Where Do We Go Berkeley v. Cal. Dep't of Transp.* ("*We Go*"), 32 F.4th 852, 860 (9th Cir. 2022) (simplified).

To assert a reasonable-accommodation claim, BHU must first point out a city service, program, or activity. *See We Go*, 32 F.4th at 860. Next, it "bears the initial burden" of proposing a "reasonable accommodation[] that was denied or . . . not

provided." *Mayfield*, 131 F.4th at 1110 (simplified). Finally, Berkeley may "defeat the claim by showing that the plaintiff's proposed accommodation would cause an undue burden." *Id.* (simplified). An undue burden can be "financial," "administrative," or something that "fundamentally alter[s]" a city program. *We Go*, 32 F.4th at 862 (quoting *Tennessee v. Lane*, 541 U.S. 509, 532 (2004)).

That last concept, "fundamental alteration," kills BHU's ADA theory.

1.

Berkeley Doesn't Have to Provide Unreasonable Accommodations

Start with the "program." Let's assume that the City's abatement policy—cleaning up homeless camps that threaten health and safety—constitutes an ADA "program." *See We Go*, 32 F.4th at 860–62 (clearing homeless encampments was a program); *see also Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014) ("the broad language of Title II brings within its scope anything a public entity does," and so providing a city sidewalk was held to be a "service, program, or activity" (simplified)). In response, BHU proposed several accommodations it thinks are reasonable: an open-ended abatement moratorium, free guaranteed city housing, new city-run campsites, the right to store vehicles in the current encampments, the right to keep large tents on the sidewalk, moving and storage services, "individualized sanitation and utility infrastructure," bureaucracy "navigation

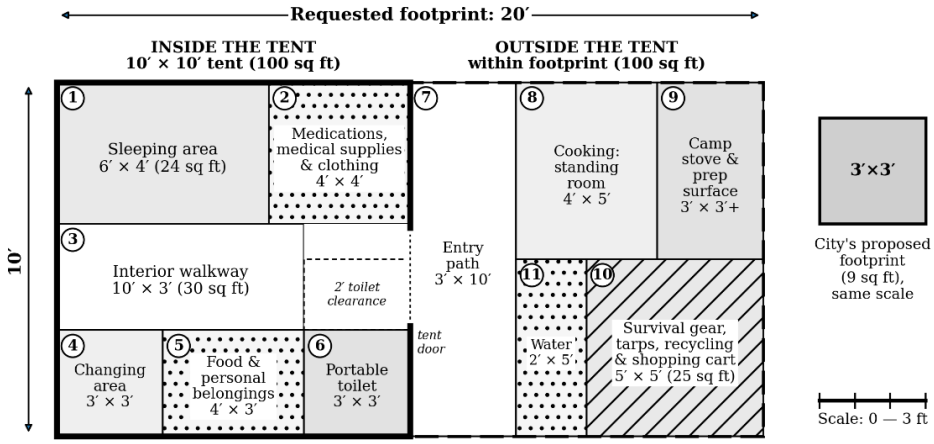
services" and other personalized treatment from city officials, and lots of extra process before Berkeley may do anything else.

That leaves undue burden. So what does an unduly burdensome "fundamental alteration" look like? This "fact-specific" question calls for a "case-by-case inquiry." *We Go*, 32 F.4th at 862 (quoting *Crowder v. Kitagawa*, 81 F.3d 1480, 1486 (9th Cir. 1996)). And when city programs "address risks to the public," "[t]he distinction between a reasonable modification and fundamental alteration" turns on "the nature of the risk, whether the proposed modification would affect the [city's] ability to address the risk, and the probability of worsening the risk" if the accommodation forces the city to "alter its programs." *Id.* (simplified). "[O]ther logistical limitations" matter too. *Id.* (simplified).

Berkeley easily shows an undue burden. Berkeley "designed" its program to "address risks to the public," *id.*—here, the City wants to address "the clear and increased risk to property and life" created by the Harrison encampment, and to kill leptospirosis-infected rats that endanger public health. The "nature of the risk" is obviously serious. A rat infestation has spread a dangerous disease. A person not far from the Harrison encampment has even died from it. So the salient question is whether BHU's accommodations "fundamentally alter" Berkeley's camp-clearing program by making it less effective against these conditions, or upping the odds they get worse. Again, easily, "yes."

The district court ordered Berkeley to give BHU three accommodations. First, Berkeley must let BHU members keep their vehicles parked in the camps—making it difficult to remove rat burrows. Second, Berkeley must buy BHU members new tents and other equipment if it determines the old items pose a public-health risk—as well as provide personal services, like help packing and moving if the members choose to encamp on another public street. Third, Berkeley must let BHU members take up much more sidewalk space than the nine square feet per person Berkeley allows. One member demanded 330 square feet on the sidewalk for a ten-person tent. BHU filed *floor plans* with the district court.

Figure 1. Example: 10′ × 20′ footprint with a 10′ × 10′ (6-person) tent, survival gear, and medical supplies — drawn to scale



Tent (100 sq ft): 1 Sleeping 24 · 2 Medical/clothing storage 16 · 3 Interior walkway 30 · 4 Changing 9 · 5 Food & belongings 12 · 6 Toilet 9

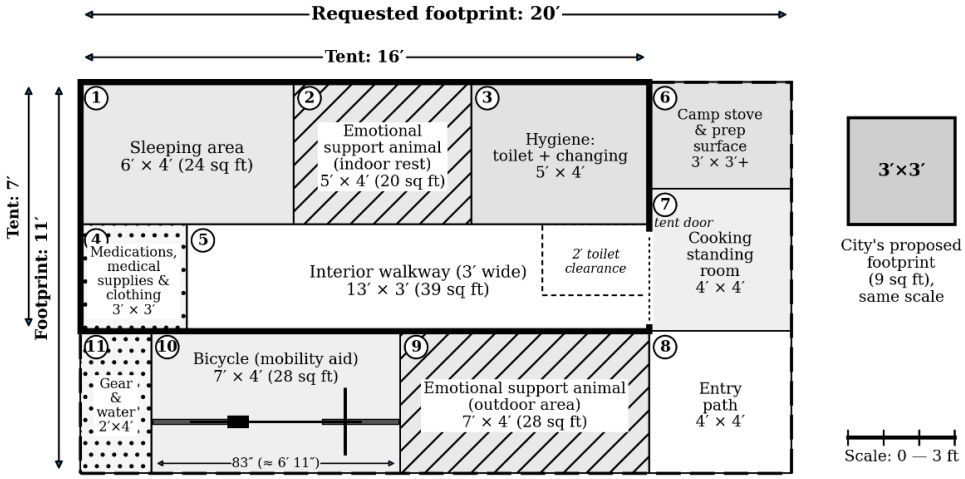
Outside tent (100 sq ft): 7 Entry path 30 · 8–9 Cooking 35 · 10 Survival gear, recycling & cart 25 · 11 Water 10

Total: 200 sq ft — every square foot is assigned to a basic life function (toilet clearance is counted within the walkway).

Cooking is outside the tent wall for fire safety. Medications and food are kept inside the tent.

Minimums from Section I: sleeping 6′×4′; walkway ≥ 3′ wide; cooking surface 3′×3′ with 4′×4′ standing room; toilet 3′×3′ + 2′ clearance; changing 3′×3′. Dashed outer line = requested footprint boundary; heavy line = tent wall.

Figure 2. Example: 11′ × 20′ footprint with a 16′ × 7′ (8-person) tent, an emotional support animal, and a bicycle used as a mobility aid — drawn to scale



Inside the tent (112 sq ft): 1 Sleeping 24 · 2 Animal (indoor) 20 · 3 Hygiene 20 · 4 Medical supplies & clothing 9 · 5 Walkway 39

Outside the tent (108 sq ft): 6 Stove & prep 12 · 7 Cooking standing 16 · 8 Entry path 16 · 9 Animal (outdoor) 28 · 10 Bicycle 28 · 11 Gear 8

Total: 220 sq ft — every square foot is assigned to a basic life function (toilet clearance is counted within the walkway).

The animal needs a resting place beside its handler inside the tent and room to stand, turn and move outside. The outdoor strip is only 4′ deep, so the 5′×5′ (25 sq ft) minimum is laid out as 7′×4′. Cooking is outside the tent for fire safety; the 83″ bicycle is parked along the front of the tent.

Minimums from Section I: sleeping 6′×4′; walkway ≥ 3′ wide; cooking surface 3′×3′ with 4′×4′ standing room; toilet 3′×3′ + 2′ clearance; changing 3′×3′; large dog 5′×5′. Dashed outer line = requested footprint boundary; heavy line = tent wall.

These supposed accommodations fundamentally alter the City's goal to completely eradicate the ongoing public-health emergency. To stop the outbreak risk in its tracks, Berkeley must eliminate all rat burrows in the area. Yet the district court's orders endorsed providing tent space much bigger than UC Berkeley student bedrooms. *See, e.g.*, *Intersection Apartments*, UC Berkeley Housing.[2] These tents act as a safe haven from rodenticide and traps. Leaving current tents untouched—or putting in new tents for BHU members, many of whom demand hundreds of square feet in the Harrison encampment—thus undermines Berkeley's ability to target and kill all rats. The same goes for RVs and cars left in the encampment. The

[2] https://perma.cc/WFS4-KYPG.

district court's orders supposedly accommodating BHU members in fact worsen the threat of disease to Berkeleyans—particularly homeless people staying on top of and among infected rats. Finally, the ADA doesn't entitle BHU to free gear or packing/moving services. The law doesn't require cities "to provide to individuals with disabilities personal devices . . . or services of a personal nature." 28 C.F.R. § 35.135 (giving examples); *see also Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003) (noting that the ADA doesn't require government to "create new programs that provide heretofore unprovided services to assist disabled persons"); *We Go*, 32 F.4th at 862 (same).

Simply, these accommodations are an undue burden under the ADA because they protect disease-carrying rats that threaten the public. The leptospirosis outbreak is spread by contaminated rodents and has killed a Berkeley citizen. No one suggests there's any way to eliminate the risk of leptospirosis while sparing some rats. The thing to do is eradicate them—all of them. To illustrate: On multiple occasions, *every single rat sample* captured at the Harrison encampment tested positive. And that's just the live ones. Infected dead rodents rot on the ground too. By undermining the clean-up, BHU's accommodations risk the spread of a deadly disease.



Rat, Post-Abatement

To sum up, ADA accommodations must be *reasonable*. *Mayfield*, 131 F.4th at 1110. And BHU's aren't. Instead, they "fundamentally alter" Berkeley's camp-clearing "program" by frustrating its objectives and threatening to spread the disease. *We Go*, 32 F.4th at 862 (simplified). It's "difficult to imagine a case that would more clearly demonstrate the soundness of the rule." *Harwood v. Wentworth*, 162 U.S. 547, 560 (1896).

2.

The District Court Too Broadly Defined Berkeley's "Program"

The district court blundered the ADA analysis by mischaracterizing Berkeley's program to clear homeless camps. Recall that the ADA applies to city "services, programs, or activities." *We Go*, 32 F.4th at 860 (quoting 42 U.S.C. § 12132). But in the district court's telling, Berkeley's "program" wasn't clearing homeless encampments. Instead, the district court viewed it as something far broader and vaguer: "the City's maintenance of public roadways and sidewalks to ensure their functionality, orderly, [sic] use, and public health and safety." "This includes use of roadways and sidewalks which serve as locations of abode for the unhoused."

With this remarkably expansive definition, the district court foreclosed Berkeley's "fundamental alteration" argument by sweeping in many governmental interests besides Berkeley's pressing need to abate a public-health threat. The result: The district court "evaluate[d] the requested accommodations" against what even it called a "broader definition of the City's roadway and sidewalk management program." Conclusion? In the district court's view, these accommodations were reasonable and wouldn't fundamentally alter Berkeley's all-encompassing program.

To the district court, it was reasonable to make Berkeley let BHU members keep their RVs even though they could create safe havens for rat-infested burrows.

Why? Because the accommodation wouldn't "meaningfully disrupt[] parking turnover" or "traffic flow" at the Harrison encampment. And again, because it was reasonable to make Berkeley let BHU members pitch giant tents even though they could harbor and protect rat nests. Why? Because Berkeley could still "protect pedestrian access, disability access, and aesthetically pleasing streetscapes." All this ignores the fundamental alteration of Berkeley's plan to eradicate leptospirosis.

The district court thus provided a roadmap for weaponizing the ADA against municipalities when they try to create safe conditions at homeless encampments. Define a city's ADA "program" at a high enough level of generality and you manufacture an ADA violation. By conflating the City's *program* with all of the City's *interests*, the district court may minimize the interests that are inconvenient. What does it matter if accommodating BHU frustrates Berkeley's effort to stop a potentially deadly disease, when that's just one of many program goals—alongside parking enforcement, and protecting aesthetic streetscapes? Cobbling together a city's interests makes it harder to say granting some accommodations would fundamentally alter the generally defined, multifaceted program—when programs are so broad, almost nothing would be a "fundamental alteration."

"It's a clever workaround, but it doesn't succeed." *United States v. Texas*, 599 U.S. 670, 691 (2023) (Gorsuch, J., concurring in the judgment). Our caselaw defines "programs" very concretely. Take *We Go*. There, we defined the California

Department of Transportation's ADA "program" as "clearing [homeless] encampments." *We Go*, 32 F.4th at 861–62. And that program was precisely bounded by the actions the Department actually took to close down the camps. *See id.* at 860–62. Contrast that with the cornucopia of public interests the district court laid out on the sidewalk here. It was legal error for the district court to do that—just as it was error for the same district court to try the same stunt in *We Go*. *Id.* at 864.

Our other precedents underscore the point. Take *Crowder*. Hawaii's program was quarantining out-of-state dogs. *Crowder*, 81 F.3d at 1481–82. It was not "maintaining Hawaii's biosphere to promote a rabies-free environment, ecodiversity, and the Spirit of Aloha." *Cf. Wolford v. Lopez*, 609 U.S. 185, 206 (2025), *rev'g* 116 F.4th 959 (9th Cir. 2024). Or take *Cohen*. Culver City's program was providing the city sidewalk—just the sidewalk. *Cohen*, 754 F.3d at 695; *see LA All.*, 14 F.4th at 959 ("Skid Row area sidewalks are a service, program, or activity of the City"). It was not "ensur[ing its] functionality, orderly, [sic] use, and public health and safety," as well as the rival interests of future plaintiffs. Or take *Townsend*. Washington's program was providing Medicaid. *Townsend*, 328 F.3d at 518–19. And in rebuking a district court for accepting an earlier attempt to define ADA programs at the wrong level of generality, we said they cover the "services" the government actually "provide[s]"—not something vague like "adequate health care." *Id.* at 518 (quoting *Alexander v. Choate*, 469 U.S. 287, 303 (1985)).

The district court tried to bake the reasonableness of the accommodations into the program definition itself. That was wrong in *We Go* and it's wrong now.

D.

BHU's State-Created-Danger Claims Also Fail

Finally, BHU argues that Berkeley violates its members' substantive due process rights, claiming that Berkeley's abatement efforts constitute a "state-created danger." The so-called "state-created danger doctrine" is unmoored from the Constitution's text. *Murguia v. Langdon*, 73 F.4th 1103, 1108–10 (9th Cir. 2023) (Bumatay, J., dissenting from denial of rehearing en banc). It comes from two sentences in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). Using those two sentences "like Dr. Frankenstein, courts have cobbled together bits and pieces of standards from other contexts to try to breathe new life into substantive due process." *Murguia*, 73 F.4th at 1114 (Bumatay, J., dissenting from denial of rehearing en banc). Given its judge-made origin, we shouldn't so easily expand its reach. But that's what the district court did. It crafted an injunction based on speculative, non-particularized injuries and didn't grapple with Berkeley's need for abatement.

To succeed on a state-created-danger claim, a plaintiff must show: "(1) a state actor's affirmative actions created or exposed him to an actual, particularized danger that he would not otherwise have faced, (2) that the injury he suffered was

foreseeable, and (3) that the state actor was deliberately indifferent to the known danger." *Sinclair*, 61 F.4th at 680 (simplified). And a hangnail isn't enough to raise a state-created-danger claim. Instead, our past cases have all involved significant, imminent harm to life or limb: death, rape, battery, or abuse. *See 3Pak LLC v. City of Seattle*, 174 F.4th 1180, 1185 (9th Cir. 2026) (collecting cases).

BHU fails even this open-ended test. It faces no non-speculative injury, let alone state action that is deliberately indifferent. The district court paid lip service to the fact that "the generalized dangers of homelessness preexist the state's actions in abating an encampment." But it nevertheless converted the state-created-danger doctrine into a freewheeling right to stymie homelessness policy.

In its summary judgment order, the district court granted BHU's state-created-danger claims for two groups: BHU members who live out of vehicles in the Harrison encampment, and BHU members with tents that exceed Berkeley's nine-square-foot rule. The district court found that removing shelter—whether an illegally parked vehicle or an illegally placed tent—"transform[ed BHU members] from persons who are *unhoused but sheltered* into persons who are *unhoused and unsheltered*, exposing them to the elements, the cold, and the absence of any private, secure space." That isn't enough to raise a state-created-danger claim.

First, because the district court ordered *prospective* relief, any alleged injuries Berkeley's abatement might cause were necessarily speculative. The district court

didn't know if or how any BHU members would be harmed by some future abatement, because it hadn't yet happened. That didn't stop the district court from clairvoyance. Yet exposure to the elements—without more—isn't a concrete enough danger. It's speculative that BHU members wouldn't find other shelter. And it's speculative that BHU members would be seriously harmed by the lack of makeshift shelter.

Indeed, this shows the problem with injunctive relief for state-created-danger claims. To my knowledge, no other circuit court grants forward-looking injunctions based on this doctrine. With good reason. The injunctions rest on mere conjecture about how Berkeley's actions will affect BHU's different members. We must speculate on a chain of possibilities to find liability here. But that's not the role of the Due Process Clause.

Second, the broad nature of the forward-looking injunctive relief the district court ordered can't meet our "actual [and] particularized danger" requirement. *Sinclair*, 61 F.4th at 680. That's because Berkeley's only enforcing generally applicable traffic, parking, and nuisance laws. *See Vance v. Aldrich*, --- F.4th ----, 2026 WL 2652464, at *8 (10th Cir. Sept. 9, 2026) ("[G]enerally applicable policies don't meet the immediate-risk-of-harm requirement.").

Third, any injury to BHU members wouldn't be a foreseeable result of tent removal or car impoundment. *Sinclair*, 61 F.4th at 680. Under our caselaw,

foreseeability is only met if the state action leaves someone "in a situation more dangerous than the one she already faced." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1064 n.5 (9th Cir. 2006). Berkeley's actions don't place the BHU members at the Harrison encampment in a foreseeably more dangerous situation than the one they are already in. In fact, abatement arguably *reduces* the dangers BHU's members at Harrison face by eliminating the rats that serve as the source of leptospirosis.

Fourth, BHU hasn't shown that Berkeley acted with deliberate indifference. To show that, BHU needs to prove that Berkeley acted even beyond "gross negligence"—with "a culpable mental state." *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (simplified). BHU hasn't cleared this high bar. BHU hasn't demonstrated that Berkeley "recognize[d] an unreasonable risk and actually intend[ed] to expose the plaintiff to such risks without regard to the consequences to the plaintiff." *Id.* (simplified). The opposite is true. Berkeley has a robust policy of serving the homeless, including BHU members. For example, Berkeley has spent tens of millions of dollars to triple the number of private shelter beds in the City. In addition, Berkeley provides services to encampment residents, like shelter housing, port-a-potties, showers, and free laundry services. That Berkeley has found full abatement is in the best interest of public safety isn't close to negligence—let alone "gross negligence." Instead, this is the basic work of local government. The Due

Process Clause shouldn't be misused to judicially micromanage homelessness policy.

Thus, BHU's state-created-danger claims likely fail too.

III.

IRREPARABLE HARM

Since Berkeley is highly likely to succeed on the merits, it only needs to make a correspondingly low showing on irreparable harm. *See Mi Familia Vota v. Fontes*, 111 F.4th 976, 993 (9th Cir. 2024) (Bumatay, J., dissenting); *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020). That stems from the Ninth Circuit's unique—but wrongheaded—"sliding scale" approach to the stay factors. *See Whitfield v. Mullin*, --- F.4th ----, 2026 WL 3093506, at *1 (9th Cir. Oct. 16, 2026) (Bress, J., dissenting from denial of rehearing en banc). Yet even if our caselaw set the bar correctly, Berkeley would leap over it.

Because a "stay simply suspends judicial alteration of the status quo," *Nken*, 72 F. at 429 (simplified), it's important to get the baseline right. What's the status quo? BHU contends that it includes the district court's various orders. Not quite. "[T]he status quo here . . . is the legal landscape that would have existed prior to the district court's judicial misadventure." *Nat'l Urban League v. Ross*, 977 F.3d 698, 712 (9th Cir. 2020) (Bumatay, J., dissenting). With that clarification, it's clear that we should have issued a stay.

Berkeley faces irreparable harm. The district court's orders threaten Berkeley's ability to eradicate leptospirosis in the Harrison encampment and so protect health and safety, and they also fundamentally compromise Berkeley's ability to conduct effective homelessness policy. In short, Berkeley's efforts face the ongoing threat of paralysis by judicial fiat.

A.

Ongoing Health and Safety Risks at the Harrison Encampment

Rats with leptospirosis have infested the Harrison encampment—allowing a disease to fester that can escalate to serious organ damage and even death. Court orders irreparably harm the government when they prevent it from implementing lawful policies, *see Simon v. City & County of San Francisco*, 135 F.4th 784, 817 (9th Cir. 2025), and that's magnified here—"the police power is never more legitimately exercised than in removing such nuisances." *Leovy v. United States*, 177 U.S. 621, 636 (1900). Given the health risks posed by the conditions of the Harrison encampment, "[i]rreparable injury is obvious." *Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023).

Although Berkeley undertook an abatement in mid-September 2026, it was precluded from completely realizing its objective—as Berkeley's Public Health Officer, Dr. Noemi Doohan, determined, "the entire encampment (tents, structures, vehicles) must be removed to allow for complete eradication of rodent burrows."

She also concluded that "[p]eople should be instructed not to re-encamp within 1/3 mile because rats can travel and will travel to a new encampment site with similar unsanitary conditions including lack of proper food storage." She said that people needed to leave the encampment "permanently because the eradication cannot be done if the encampment is there, including the dwellings and vehicles which harbor the rats." Finally, she believed that the cleanup "would take at least 30 days" because that's how long leptospirosis bacteria can survive in the soil. According to Dr. Doohan, that is the only way to "remove the risk of further spread of rat borne Lepto[spirosis]."

The district court's injunctions undermined all of this. It prevented Berkeley from completely removing tents and vehicles—and the debris within those structures—from the encampment. It allowed some BHU members to remain in the encampment—limiting the use of rodenticide and creating the conditions for repopulation. Thus, the district court interfered with Berkeley's ability to achieve its abatement goals and the City suffers irreparable harm—the continued risk of leptospirosis infections.

To see why, consider a few things about leptospirosis: The disease spreads through contact with contaminated animals or an environment in which the animal has urinated. Rats are the primary vector of the disease. The Harrison encampment—with its rat harborages, standing water, lack of containment of

animals, and adjacent creek—was a breeding ground for the disease. To eliminate the risk of the disease, Berkeley needs to eliminate the rats. And leaving any structures in place that may protect rats then creates the conditions for rat repopulation. That's true even if initial abatement was successful in killing many of the rats. According to the City's Environmental Health Division Manager, Ronald Torres, if any rats were left, they were likely to be infected and to infect.

Tents and property remaining in the encampment—like those of the seven BHU members protected by the district court's orders—make it easier for rats to survive partial abatement. That's because tents, with their piles of personal belongings, debris, furniture, clothing, and food, may provide or cover burrows and feed rat populations. And the district court's orders placed restrictions on Berkeley's ability to impound vehicles. But Berkeley's Public Health Officer concluded that "[v]ehicles—especially RVs that stay in one place for a long time—are attractive rodent harborages, so cleaning around them is not sufficient." According to Berkeley's Environmental Health Division Manager, it only takes one person "living in a tent or structure on the sidewalk, or in a long-term vehicle" to create a sanctuary for rat repopulation. And merely relocating people to replicate the conditions of the Harrison encampment elsewhere would be insufficient. Rats can and do travel where similarly unsanitary conditions exist. According to Berkeley, the proper eradication

of rats would require a weekly cycle of scouting burrows, baiting or trapping, removing carcasses, and repeating.

While partial abatement can reduce the risk of the disease, Berkeley believes that it won't be effective. For one, the presence of rat harborages threatens to disrupt the eradication process—the rats can hide in tents and cars instead of in their burrows. Operations may be further inhibited by dangerous conditions presented by the harborages themselves. And, of course, rat poison is harmful to humans and can't be used around those who remain in the encampment.

The district court's orders thus pose irreparable harm. When Berkeley finally undertook the September 2026 abatement, its hands were tied. The district court's orders limited access to rat burrows, hampering efforts to place rodenticide and set traps to clear the encampment. According to Berkeley, it didn't touch any protected BHU tents. What's more, all RVs—and nearly all vehicles—remained after the September 2026 abatement. According to Berkeley officials, members of the Harrison encampment piled personal belongings on top of vehicles, and at least one of those piles was left by city officials for fear of violating the court's orders. And the officials could not place rodenticide in the immediate vicinity of BHU members' property—since, after all, rodenticide is poisonous. Because the City could not accomplish a full abatement, not all rat harborages could be treated and eliminated—leading to rat repopulation.

Sure, a city official described the first round of cleanup efforts as "truly impressive and admittedly greatly in excess of what [he] expected to see." But initial success doesn't guarantee overall success. It didn't guarantee that all rats were eradicated or that they wouldn't return. Only complete abatement would do that. As Dr. Doohan warned, "[w]ith the high burden of Lepto[spirosis] disease in this population of rats at the Harrison Street encampment (as proven by the recent testing), it is unsafe to allow this rat population to reemerge after eradication efforts."

And predictably, allowing *any* BHU member to remain in the Harrison encampment encouraged other homeless persons to return after the initial abatement. As a city official said, "[w]hen people see that an area is encamped by some, it attracts others to encamp there." Indeed, within a week of initial abatement, the return of homeless individuals posed major problems for the City. Take an incident only a few days after abatement started. A city official saw BHU's President moving other individuals' property to a protected member's encampment to avoid the cleanup. After the initial abatement effort, city officials removed another 4.23 tons of debris—some from those re-encamping. Re-encampment and using court-protected areas to salvage potentially contaminated property risk continued spread of the disease.

Berkeley warned that the district court's actions would result in the Harrison encampment not being fully cleared; in risks that the homeless would return; and in

health concerns about using rat poison around those who stay behind. It was also predictable that others would take advantage of the district court's orders. While the abatement had some initial success, the district court's orders jeopardize Berkeley's overall efforts. And failure to fully abate the spread of disease is irreparable harm to the City.

B.

Judicial Usurpation of Homelessness Policy Citywide

What's more, the district court's orders are *not* limited to the Harrison encampment. The government is irreparably harmed whenever it's prevented from effectuating its lawful policies. *Simon*, 135 F.4th at 817. Simply, "hind[ering] . . . the government's ability to enforce the laws . . . constitutes irreparable harm." *Reach Cmty. Dev. v. U.S. DHS*, 174 F.4th 1143, 1150 (9th Cir. 2026). The City of Berkeley has shown this in spades.

The scope of the district court's orders is breathtaking. In its final order, the district court noted that "BHU seeks injunctive relief to achieve certain systemic reforms at the City-level [sic]." And that is what the district court ordered. It granted permanent injunctive relief "to all BHU members, wherever situated within the City, and . . . not limited to the Harrison encampment or to any previously identified claimants." And it required the City to comply with its restrictions citywide. This includes protections for "any vehicle used as a shelter by a BHU member anywhere

within the City." And "[t]he City shall not enforce . . . sidewalk-space limitation[s] in a manner resulting in the destruction of a BHU member's tent or shelter" without jumping through hoops. And Berkeley must provide physical relocation assistance "[w]here a BHU member's documented disability prevents the member from independently packing, moving, or relocating personal belongings during an abatement." And, of course, "the City shall provide at least 72-hours written notice before any enforcement action resulting in the seizure or destruction of a BHU member's property."

This threatens to handicap future abatements and law enforcement throughout Berkeley. By simply claiming membership in BHU, any person may receive the benefit of the district court's rewriting of homelessness policy and municipal law. Indeed, under the district court's final order, "parking violations, inoperability, or [an] expired registration" don't suffice to tow a BHU member's vehicle.

The orders take Berkeley's attempts to manage access to public spaces off the table for BHU members. City policy allows the homeless to occupy up to nine square feet of public sidewalk with their personal belongings. That policy attempts to balance concern for the homeless with competing concerns, like public safety and accessibility. The nine-square-foot policy is born of recognition that "accumulations of large amounts of personal possessions by unsheltered residents create nuisance conditions . . . including excessive litter, rodents, elevated fire, public health, and

environmental risks, obstruction of the public right of way, and interference with the operations of adjacent businesses."

But now, the district court's orders constrain Berkeley's ability to enforce this policy—or "any other sidewalk-space limitation," for that matter. If enforcement of Berkeley's sidewalk policies would result in the destruction of any BHU member's tent, Berkeley must "retain [the tent] or relocate [it] to a location that does not unreasonably obstruct pedestrian passage, or must provide a replacement tent consistent with that standard." This is lawmaking by injunction. Despite what the majority suggests, the fact that Berkeley has not banned all outdoor camping in public spaces did not give the district court license to crown itself the czar of sidewalks. "Homelessness is complex." *Grants Pass*, 603 U.S. at 560. It is up to city councils—not courts—to decide the proper policy solutions to these problems.

We cannot wave away the irreparable harm that Berkeley faces in attempting to satisfy BHU's extensive demands for relocation assistance under the ADA. Consider that some former members of the Harrison encampment seek alternative placement in no-camping zones. In granting relief from the September 2026 abatement to seven BHU members, the district court questioned Berkeley's decision to prohibit camping in certain areas at all. But that's not for the court to decide. Some requested accommodations are next to the site of a former homeless encampment with a dangerous history. In one year, it averaged nearly one fire call

every four days, and almost 400 police calls. In that same time, there were two arson calls within just a few weeks. The City has abated that site. The district court's orders would unravel these efforts.

To the extent the majority can be read to construe the district court's orders narrowly—covering only those identified BHU members from the Harrison encampment who are already in the ADA process—it would be a welcome narrowing. But even with such a limited reading, the district court's orders would still infringe on Berkeley's ability to govern. Such a reading would still permit BHU members to sleep on public sidewalks with outsized tents throughout Berkeley regardless of local prohibitions. And the City is still hamstrung by the onerous burdens of the ADA interactive process.

Still, under any reading of the district court's orders, Berkeley faces irreparable harm to its right to administer its homelessness policy citywide.

IV.

BALANCE OF INTERESTS

The combination of Berkeley's likely success on the merits and the irreparable harm it faces is decisive in itself. *See City & County of San Francisco v. U.S. Citizenship & Imm. Servs.*, 944 F.3d 773, 806 (9th Cir. 2019); *see also Trump v. Orr*, 146 S. Ct. 44, 46 (2025) (granting stay after determining that the government was likely to succeed on the merits and would suffer irreparable harm, with no ruling on

the balance of equities). Even so, the remaining *Nken* factors—"whether issuance of the stay will substantially injure the other parties interested in the proceeding" and "where the public interest lies," 556 U.S. at 434 (simplified)—favor Berkeley.

Because Berkeley is a party, these considerations merge: All that's left is to assess any harms a stay would cause BHU and weigh them against the public interest. *Cf. Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024). BHU argues that, without the protection of the orders, its members' property would be destroyed. It also highlights weather risks associated with the approaching El Niño season. These are serious concerns, but they aren't the end of the inquiry. After all, the homelessness "crisis impacts *everyone.* It reduces the quality of life for millions, increases anti-social behavior, and decimates businesses." *Sacramento Homelessness Union v. City of Sacramento*, 115 F.4th 1149, 1151 (9th Cir. 2024) (Nelson, J., statement respecting denial of rehearing en banc). We all agree the balance of interests favors staying the district court's interference with Berkeley's ongoing efforts to abate Harrison. After all, Berkeley's homeless are *themselves* affected by the risk of leptospirosis—previously, two "unhoused people living in an RV with extensive rat harborage not far from the Harrison Corridor Encampment" came down with serious cases of the disease. One of those individuals died. But a stay is equally necessary to conclude the never-ending story that the district court has authored for Berkeley. We need not indulge a cycle of

unreasonable ADA relocation requests, understandable denials, and orders undermining legitimate policy. *Cf. Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025) ("A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation.").

We must always remember that homelessness policy—with its competing interests and fraught context—belongs to the people and their elected officials, not to federal judges and their special masters. *See Grants Pass*, 603 U.S. at 560.

V.

CONCLUSION

The majority rightfully stays the district court's injunctions that hinder Berkeley's ability to abate the Harrison encampment. Without full abatement of the area, it will continue to pose a public-health emergency. But we should have gone further and stayed all the other orders that hamper Berkeley's ability to manage its streets and abate other encampments. Berkeley must be allowed to conduct its homelessness policy without unmerited judicial micromanagement. I respectfully dissent in part.

RESOLUTION NO. XX,XXX-N.S.

ENCAMPMENT POLICY RESOLUTION TO PROMOTE HEALTHY AND SAFE NEIGHBORHOODS

WHEREAS, offering shelter and housing to homeless individuals is considered a best practice, according to the United States Interagency Council on Addressing Homelessness; and

WHEREAS, the City of Berkeley expresses its continued commitment to a Housing First approach, in which we recognize that people experiencing homelessness must first be able to access a decent, safe place to live before stabilizing, improving health, reducing harmful behaviors, or increasing income; and

WHEREAS, in 2018, Berkeley voters approved an increase in the real estate transfer tax for the top third of real estate transactions to augment General Fund resources available for homeless services, known as Measure P, which has helped to fund transitional housing motels Berkeley Inn and Campus Hotel (formerly Super 8) and permanent supportive housing sites Golden Bear Homes, The Rodeway Inn, and Step-Up Housing (under construction), and will be considered by the voters for extension in November 2024 as Measure W; and

WHEREAS, from 2022 to 2024, the City saw a dramatic 45 percent reduction in street homelessness corresponding with a 54 percent increase in sheltered homelessness, and an overall 21 percent reduction in homelessness, illustrating that the provision of transitional and permanent supportive housing can successfully reduce overall homelessness; and

WHEREAS, in 2018, the Ninth Circuit Court of Appeals ruled in *Martin v. City of Boise* that "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property," which required the City of Berkeley to make a shelter offer in all circumstances; and

WHEREAS, the recent Supreme Court decision in *Grants Pass v. Johnson* overturns the *Martin* standard, thus giving cities like Berkeley the authority to set a more nuanced encampment policy that considers exigent circumstances of fire, health, and nuisance abatement pursuant to the Berkeley Municipal Code; and

WHEREAS, certain encampments ~~have~~ had persisted for years, such as the encampments in the Harrison Corridor (between Ninth and Seventh Streets and Eighth

Street north of Harrison), and the Second and Cedar Area (Cedar between Eastshore and Fourth, and Second between Page and Cedar and on Page and Jones west of Fourth), despite documented fire, environmental health, and nuisance hazards as defined in the Berkeley Municipal Code and ongoing exhaustive City staff efforts to offer shelter when available and abate hazards; and

WHEREAS, City staff have provided extensive services for individuals sheltering in the Harrison Corridor area, including reserving the 23 rooms at the Campus Hotel (formerly Super 8) for residents of the Harrison corridor. City staff have also provided case management and engagement, abatement of rodent harborage conditions, deep cleaning and trash removal four times per week, and basic sanitation services including portapotties, a handwashing station, weekly showers, and laundry services; and

WHEREAS, calls for Berkeley Police and Fire service ~~are~~ were exceedingly high at both encampment areas with Berkeley Police calls for service at the Harrison encampment during 12 months (August 1, 2023 - July 31, 2024) totaling 252 and at Cedar and Second Streets encampment totaling 369—on average one call every day to day-and-a-half—and calls for Berkeley Fire service totaling 78 and 81, for each encampment respectively, during that same timeframe, and more recently totaling 62 at the Harrison encampment between January 1, 2026 and August 13, 2026 with safety impacts for nearby residents, workers, and visitors and detrimental impacts on business operations.

WHEREAS, young children ages zero to five years are particularly vulnerable due to their size and age and at risk of picking up objects that could be dangerous or contaminated; and~~.~~

WHEREAS, documented hazards at the Harrison Corridor encampments as of September 15 – 16, 2026 included bio waste, rotting food, drug paraphernalia and loaded syringes, bug infestations, moldy and soiled materials, and live and dead rodents and since the final Harrison encampment closure of November 2-3, 2026, encampment residents have scattered throughout the City, some establishing encampments in close proximity to preschools.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley will continue to offer interim housing (generally a shelter offer, with a preference for non-congregate options) when closing encampments, whenever practicable, in accordance with the City's existing "Housing First" approach and best practices guidance from the federal government;

BE IT FURTHER RESOLVED, in the event that the City Manager determines that a shelter offer is not practicable, then the City Manager is nonetheless authorized to enforce state and local laws to address the following specific circumstances:

- The Fire Department has determined that an encampment poses a fire hazard or emergency condition as referenced in the Berkeley Fire Code, BMC Chapter 19.48; or
- The Environmental Health Division of the Health, Housing and Community Services Department has determined that the encampment poses an imminent health hazard as defined in BMC section 11.36.030; or
- The City has determined that a situation constitutes a public nuisance as defined in the BMC and is subject to an abatement pursuant to the BMC; or
- The encampment is located on a City street median, in the roadway, or otherwise in dangerous proximity to traffic pursuant to BMC section 14.32.040; or
- The encampment is located in an area where the City has authorized work (such as for construction, major or minor encroachments, etc.) pursuant to BMC section 13.36.045; or
- The encampment interferes with or impedes city or utility companies' construction or maintenance activities in the public right-of-way, street lighting installation or repair, street tree maintenance, or utilities maintenance or repair.
- The encampment is located within 600 feet of any licensed preschool and/or in-home early childhood daycare facility as measured by a straight line from the nearest point of the property line of the parcel on which the pre-school/in-home early childhood daycare facility is located to the nearest point of the encampment, including its associated belongings.

BE IT FURTHER RESOLVED, the City Manager is authorized to take actions to deter re-encampment (after clearing an encampment involving any of the ~~six~~ seven instances enumerated above) through such means as hardscaping; signage that references state Penal Code Section 647(e); and/or enforcement through applicable state and local laws, even if a shelter offer is not practicable.

BE IT FURTHER RESOLVED, that the City Manager shall amend Administrative Regulation 10.2 to clarify that Temporary Non-Commercial (TNC) objects are prohibited within 600 feet of a licensed preschool/in-home early childhood daycare facility.

BE IT FURTHER RESOLVED, when multiple encampments throughout the City meet criteria for an encampment closure, the City Manager is authorized to use discretion in prioritizing the order in which the encampments are closed.

BE IT FURTHER RESOLVED, that the City Council determines that the Harrison Corridor (Harrison Street between Ninth and Seventh Streets, including Eighth Street north of Harrison) and the Second and Cedar area (Second Street between Cedar and Page, Cedar from Eastshore Highway to Fourth, and on Page and Jones Streets west of Fourth) meet all six of the seven health and safety exceptions as proscribed by the above-stated policy and should therefore be prioritized for enforcement.

A.R. NUMBER:	**10.2**
ORIGINAL DATE:	11/13/18
POSTED DATE:	11/26/18
PAGE 1 OF 4	PAGES

CITY OF BERKELEY ADMINISTRATIVE REGULATION

Subject: **Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120** on line

PURPOSE

This Regulation is intended to protect the City's substantial interests in access and safety on Sidewalks and Parklets for pedestrians and for persons with disabilities, aesthetically pleasing streetscapes, and vital commercial areas, all of which are critical to the City's economic and social well-being, in a manner consistent with the United States and California Constitutions, including the First, Fourth, Eighth, and Fourteenth Amendments.

This Regulation provides policy and procedures regarding placing Temporary Noncommercial (TNC) Objects on Sidewalks and Parklets, pursuant to Berkeley Municipal Code (BMC) § 14.48.120.

DEFINITIONS

"BART Access Corridor" is a Sidewalk, including a wide plaza area, on the same side of the street as a BART Station entrance, within 25 feet of such entrance. In the downtown area, the BART Access Corridor includes all sidewalk and plaza areas on the west side of Shattuck Avenue from Addison Street to Allston Way.

"Parklet" is defined as provided in BMC § 14.48.190.

"Path of Travel" is defined as:

- For Sidewalks which measure less than fourteen (14) feet in width, the Path of Travel is six (6) feet wide; this 6-foot wide strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.

- For Sidewalks which measure 14 feet or greater in width, the Path of Travel is ten (10) feet wide; This 10-foot strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.

"Sidewalk" is defined as provided in BMC § 1.04.010(18) as that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

"TNC Objects" are defined as provided in BMC § 14.48.120 as personal belongings:

1. In the immediate custody and control of a person or persons at substantially all times;

2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;

3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.

4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 for Objects in Transit or BMC § 14.48.150 for Sidewalk Café permits and City-installed furniture.

POLICY

A. Objects Subject to this Regulation

This Regulation applies to all Temporary Noncommercial (TNC) Objects. It does not apply to leafleting, hawking, peddling and similar activities to the extent those activities do not involve the placement of physical objects on the Sidewalk, or to TNC or other objects expressly permitted by the Berkeley Municipal Code.

B. TNC Objects Exempt from this Regulation:

The following categories of TNC Objects are exempt from this Regulation:

1. Mobility devices in use by pedestrians or individuals in wheelchairs; or

2. Blankets, cushions, mats, or other material providing cushioning ("Cushioning Material") while an individual is seated on such an item, which does not expand beyond 2' x 2' in size and is outside of the Path of Travel.

C. Time and Location Requirements for TNC Objects

1. TNC Objects - Residential Districts:

TNC Objects are prohibited on Sidewalks in Residential Districts, except Objects in Transit pursuant to BMC § 14.48.030 or as otherwise specifically authorized by the BMC.

2. TNC Objects - Commercial and Manufacturing Districts

a. TNC Objects shall not be left unattended for more than 2 hours.

b. TNC Objects may not be placed in Parklets.

c. TNC Objects must not interfere with access to and use of driveways, crosswalks, bus benches, bus stops, transit stops, bicycle racks, fire hydrants, faucet bibs,

utility boxes, public art installations, mailboxes, ATM machines, embedded trap doors, parking meters, parking payment machines, refuse or recycling cans, or pursuant to a City permit, construction materials, newspaper racks, or sidewalk café seating.

d. TNC Objects may not be placed in a location that interferes with access for individuals with disabilities such as curb and wheelchair ramps, or other features for disability access.

e. TNC Objects may not be placed in a location where they would obstruct, restrict, or hinder visibility of traffic devices or signs.

f. TNC Objects may not be placed at or adjacent to any blue or white curb.

g. TNC Objects may not be placed on a Sidewalk directly in front or within three feet of either side of a building entrance, from the building face to the curb edge of the Sidewalk, except between the hours of 10:00 p.m. and 7:00 a.m., if the building entrance will not be used during that period (i.e., not an apartment building entrance where people may be expected to enter and exit 24/7, and not the entrance to a restaurant or business that is open for customers or deliveries).

h. TNC Objects may not be placed within a BART Access Corridor, except objects in transit per 14.48.030 and other objects expressly allowed by the BMC.

D. ENFORCEMENT PROCEDURES

To the extent possible, given resources, the initial outreach may be made by homeless outreach staff; management and/or enforcement of TNC Objects may be initiated by Code Enforcement and/or Public Works staff.

To further implement BMC §§ 14.48.120(C) and (D), the City hereby adopts the following procedures:

1. If TNC Objects or Cushioning Material are located within the Path of Travel or in a BART Access Corridor, they must be immediately moved out of the Path of Travel or BART Access Corridor by their owner upon request of the enforcement officer. Should TNC objects not be immediately moved, such objects can be removed and stored by the City pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, and/or a citation may be issued.

2. For TNC Objects or accumulations of TNC Objects, enforcement of this Regulation shall be a low priority, except when:

    - TNC Objects have been in the same approximate location for 24 hours or more,

- More than two accumulations of TNC Objects occupy a single blockface, or
- TNC Objects pose a significant risk to health or safety.
- Within 600 feet of a K-12 public or private school with 25 or more students located in a residential district.

Enforcement officers may:

- Request that TNC Objects be reduced to a 9-square-foot footprint (measured as 3' x 3', 4' x 2.25', 9' x 1', etc.) and/or less than 5 feet in height,
- Request that TNC Objects be moved to another location,
- Subject to the notice requirements below, remove and store TNC Objects pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, or
- Issue an administrative citiation or infraction.

3. Except in the case of a significant health or safety risk:

   Prior to removal of TNC Objects, 24 hour written notice of intent to remove TNC Objects shall be provided, either by attaching such notice to, or directly adjacent to, such TNC Objects, or by providing notice to the owner.

   Removal of TNC Objects is a low priority between 10:00 p.m. and 7:00 am.

INTERPRETATION

This Regulation is intended to be consistent with the United States and California constitutions, and in the event a patent or latent ambiguity in this Chapter requires interpretation by the City or a Court, such interpretation shall, to the extent permissible, be consistent with relevant constitutional provisions.

RESPONSIBLE DEPARTMENT: City Manager **TO BE REVISED:** As needed	Approved by: BERKELEY CITY COUNCIL on October 16, 2018 D. Williams-Ridley City Manager

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION, et al.,

Plaintiffs,

v.

CITY OF BERKELEY, et al.,

Defendants.

Case No. 25-cv-01414-EMC

ORDER GRANTING IN PART AND DENYING IN PART CROSS-MOTIONS FOR SUMMARY JUDGMENT

Docket Nos. 219, 247, 255, 256, 278

I. INTRODUCTION

This case concerns Defendant City of Berkeley's efforts to close the encampment of unhoused residents located around Harrison Street & 8th Street in Berkeley, California ("Harrison Encampment" or "Encampment"). Plaintiffs are Frank Moore, an allegedly disabled individual who resides in the Encampment, and Berkeley Homeless Union ("BHU"), an organization that "provides direct support, organizes community defense efforts, and advocates for policy changes to protect unhoused individuals from displacement and discrimination."[1] First Amended Complaint ("FAC") (Dkt. 62) ¶¶ 40–41. BHU sued the City for injunctive relief, claiming that the City is discriminating against persons with disabilities in violation of the Americans with Disabilities Act ("ADA"), unlawfully seizing property in violation of the Fourth Amendment and Fourteenth Amendments, and violating the state-created danger doctrine. FAC ¶¶ 98–145.

Defendants are the City of Berkeley, as well as several City officials, including Paul Buddenhagen (the City Manager), Thomas Gregory (the City's ADA Program Coordinator), Peter

[1] Individual Plaintiff Frank Moore is hereby **DISMISSED** from the action for failure to prosecute as he has neither filed with, nor appeared before the Court since the filing of the Complaint and application for a TRO. See Fed. R. Civ. P. 41(b). Moreover, Mr. Moore is not one of the seven individuals whose requested relief is at issue in these cross-motions for summary judgment.

Radu (the Assistant to the City Manager for Neighborhood Services), and Okeya Vance-Dozier (field supervisor for the Berkeley Homeless Response Team). *Id.* ¶¶ 42–46. Defendants have taken action to abate the Encampment, citing, *inter alia*, a documented outbreak of leptospirosis bacteria within the Encampment. Doohan Declaration (Dkts. 194-3; 207-2).

This matter comes before the Court on parties' cross-motions for summary judgment. Defendants' SJ Motion (Dkt. 219); BHU's SJ Motion (Dkt. 247). The cross-motions concern the merits of: (1) seven BHU members' disability discrimination claims under the ADA, and (2) the constitutional property seizure and state-created danger claims asserted on behalf of all BHU members residing in the Encampment. For the reasons set forth below, the Court finds that the City failed as a matter of law to provide reasonable accommodations to certain disabled Encampment residents in connection with its planned abatement operations in violation of Title II of the ADA. In addition, the City's proposed abatement of certain vehicles used as primary shelter and enforcement of sidewalk space limitations would, absent compliance with the framework or protections set forth in this order, violate the Fourth and Fourteenth Amendment rights of BHU members. The Court otherwise rejects BHU's remaining claims.

Accordingly, BHU's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**, and Defendants' motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**.

II. BACKGROUND

A. Factual & Procedural Background

The following facts are undisputed except where otherwise noted.

The Harrison Encampment has been a fixture of Berkeley's urban environment for years, but the facts giving rise to this dispute appear to crystallize around 2023, when Berkeley's Environmental Health Division documented escalating hazards in the Harrison Encampment, including used syringes, raw sewage, and extensive rat burrows. Torres Declaration (Dkt. 56-4) ¶¶ 6–8. An April 22, 2025 inspection confirmed that the same conditions persisted and "constitute[d] an imminent hazard" to City workers and residents. *Id.* ¶ 8. In addition to these findings, Mr. Radu documented significant difficulties in maintaining the Encampment's

hospitability: "Put simply, no single encampment area has received more time and attention from the City than the Harrison Corridor." Radu Declaration, Ex. A (Dkt. 15). Defendants note that the City spent roughly five million dollars to fund a master lease of the Campus Motel to operate as a low-barrier non-congregate shelter for residents of the Harrison Corridor, that the Harrison Corridor was responsible for one in five total shelter offers to encampment residents throughout Berkeley, and that the Encampment was the source of hundreds of calls to the Berkeley Police and Fire Departments.[2] *Id.*; Defendants' Opposition to Motion for Preliminary Injunction (Dkt. 56) at 18.[3] Over the course of this litigation, the Court has received numerous declarations from surrounding community members and businesses complaining about hazardous conditions at the Harrison Encampment, including aggressive behavior and fights, thefts, uncontained fires, blocked roads and public rights of way, unleashed dogs, gun discharges, hazardous waste and debris including drug paraphernalia, and break-ins.[4] *See e.g.*, Dkts. 194, 198, 201.

On December 18, 2024, City Manager Paul Buddenhagen ordered a full closure of the Harrison Encampment. Radu Decl. (Dkt. 15) ¶ 6. The City posted notices around the Encampment in January 2025 directing all residents to leave within about one month, warning that the Encampment would be permanently closed, and that vehicles left behind "may be subject to tow and impounding" under California Vehicle Code §§ 22651 and 22669. City's January 7, 2025 Public Notice (Dkt. 13-1). A second identical notice was posted on January 31, 2025. City's Second Public Notice (Dkt. 13-3).

BHU subsequently sued Defendants to halt the City's scheduled abatement actions. Complaint (Dkt. 1). On February 14, 2025, Judge Gilliam granted a temporary restraining order ("TRO") enjoining Defendants from clearing and evicting the Encampment. Order Granting TRO

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[2] The City represents that all Plaintiffs in this action were offered a unit at the Campus Motel and declined. Plaintiffs do not dispute this characterization.

[3] The City has, at various times, supplied dumpsters and trash pickup, portable toilets, and mobile shower and laundry services to the Encampment. Radu Decl., Ex. A at 3.

[4] Plaintiffs respond that the Encampment conditions were exacerbated by the City's "own deliberate actions and refusal to cooperate," including the removal of a dumpster and the reduction of weekly garbage pickups to "random, unscheduled pickups once or twice a month." BHU Status Report (Dkt. 200) at 46–47.

(Dkt. 18). BHU later moved for a preliminary injunction to block the abatement, which was initially set for hearing on June 10, 2025. Order re Motion to Shorten Time (Dkt. 80).

On the morning of June 4, 2025, without notice or warning to BHU members or the Court, and just six days before the scheduled hearing on the preliminary injunction motion, the City began its abatement of the Harrison Encampment. Order Ceasing Abatement (Dkt. 89). BHU filed an *ex parte* application for an order to halt abatement, which the Court granted after an emergency hearing on the matter. *Id.* The Court emphasized the City's failure to provide adequate notice prior to commencing abatement operations against residents. Explanatory Order (Dkt. 90). And on June 10, 2025, the Court granted in part and denied in part BHU's motion for a preliminary injunction. Minute Entry, June 10, 2025 (Dkt. 104).

In so ruling, the Court found that BHU had associational standing. *Id.* at 2. It also found that BHU was "unlikely to succeed on its Fourteenth Amendment claim because it fails to demonstrate that the City's action will place its members residing in the Harrison Corridor in a state-created danger related to a loss of 1) 'bathrooms,' 2) 'access to food and water' such as from the 'Dorothy Day House,' 3) 'mutual protection' from 'community watch groups and buddy systems,' and 4) medical and case management services' from 'Lifelong Medical and Bay Area Community Services.'" *Id.* (citing Prado Declaration (Dkt. 72-2) ¶ 7). With respect to BHU's ADA claim, the Court held that BHU was "likely to succeed on its ADA claim that the City has not completed the interactive process to identify a reasonable accommodation for its members living in the Harrison Corridor for whom BHU has submitted accommodation requests." *Id.* The Court noted that "BHU's argument that the City has failed to provide a reasonable accommodation by refusing to allow BHU members to continue residing in the Harrison Corridor indefinitely or by failing to obtain interim permanent housing for these individuals is less certain because such accommodations could well constitute a fundamental alteration of the city's program to abate and close the encampment or place a burden on the City which cannot be met (there currently is limited housing availability)." *Id.*

The Court granted limited injunctive relief for residents on whose behalf BHU had submitted ADA accommodation requests. *Id.* Specifically, the Court provided the parties with

"60 days" to complete the interactive process for those BHU members residing in the Harrison Encampment who had submitted accommodation requests. *Id.* The Court ordered the parties to file a joint status report on the ADA interactive process within 60 days of the order. *Id.* No other residents were afforded such protection under the preliminary injunction. *Id.*; *see also* Order Reaffirming Preliminary Injunction (Dkt. 210). With respect to individuals falling outside the scope of the preliminary injunction, the Court ordered the City to provide "at least one week's notice before moving on [those residents] property." Minute Entry (Dkt. 104).

The interactive process was not completed within the 60-day timeline ordered by the Court. The parties have since engaged in bilateral discussions, including written correspondence and remote or in-person meetings. BHU does not dispute that the interactive process took place, but it argues that the process was not conducted in good faith, and that the City failed to adequately accommodate Plaintiffs. BHU's SJ Motion at 18–19.

After the June 10, 2025 preliminary injunction order, the City identified the existence and spread of leptospirosis around the Harrison Encampment. Leptospirosis is a bacterial disease generally spread by rat urine, which can diffuse through soil, mud, or standing water to contaminate the wider environment. Doohan Declaration (Dkt. 194-3) ¶ 4. It can cause high fever, headache, and, without treatment, kidney damage, meningitis, liver failure, trouble breathing, and death. *Id.* ¶ 5. It is particularly dangerous for pregnant persons and fetuses, and there have been several confirmed and suspected cases of leptospirosis in dogs in and around the Harrison Encampment, with one dog "strongly suspected to have died from" leptospirosis. *Id.* ¶¶ 6, 14. Tests on rats have proven the overwhelming prevalence of leptospirosis within the Encampment. *Id.* ¶¶ 12, 15. The presence of leptospirosis in the Encampment is a significant threat to the health and safety of Encampment residents and surrounding community members, including nearby businesses, an urban community farm, restaurants, and residential properties like the University Village which serves U.C. Berkeley students with families. 17, 22. Due to the Encampment's proximity to a creek, the risk is even more widespread. *Id.* Even prior to the discovery of leptospirosis in the Encampment, the Court noted in relation to the preliminary injunction order that as "health and safety hazards persist, the government's interest in closure

increases." Minute Entry (Dkt. 104).

This order resolves the cross-motions for summary judgment filed by BHU and the City. See Dkt. Nos. 219, 247. The Court's analysis is limited to the claims raised in the cross-motions, which concern the accommodation requests of the seven disabled individuals falling under the scope of the June 2025 preliminary injunction and the Court-ordered interactive process.[5] To the extent the Court's rulings extend to non-disabled BHU members in the Harrison Encampment, the order so specifies.

B. ADA Interactive Process

The City received ADA accommodation requests from seven Harrison Encampment residents prior to the Court's June 4, 2025 preliminary injunction order. The requests laid out specific disabilities experienced by each plaintiff, and their requested accommodations. The requests were submitted in early 2025, and they triggered the initiation of the interactive process with the City which, because of interruptions and impasses, has persisted for nearly 14 months. *See* Dkt. 253, Exs. A–K; Thomas Gregory Declaration (Dkt. 219-3), Ex. A. The City sent its final determinations on accommodation requests in early-January, 2026, denying almost all accommodation requests. Dkt. 253, Ex. I. The claimants' accommodation requests and City's responses to each are summarized below.

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[5] These individuals are: Merced Dominguez, Eric Keiser, Shareef Muwakkil, Lewanda Parnell, Yesica Prado, Erin Spencer, and Austin White.

At the March 6, 2026 hearing in the related case *Prado v. City of Berkeley*, No. 23-cv-04537-EMC, Plaintiffs informed the Court that 16 additional Harrison Encampment residents had submitted ADA accommodation requests related to the abatement. Dkt. 187. The Court declines to resolve the ADA accommodation claims of the 16 additional claimants as part of this ruling on summary judgment, as their claims were not briefed by the parties in relation to the cross-motions for summary judgment.

The 16 additional claimants are: Alice Barbee, Erik Alexander Johnson Coon, Hector Navarro, Jacob Clakley, Jason Charette, Jonny Ruel Holder, Kevin Martinez, Lisa Saechao-y-chain, Monique Williams, Quinton Cocklereese, Robbie Peddycoart, Robert Pearce, "Shawman," Thomas Barnett, Brenda Bolares, and Jermaine Lee White. Prado Declaration (Dkt. 272), Exs. A-C.

As noted elsewhere, the rights of these 16 individuals and other similarly situated will be informed by the analysis herein.

1. Merced Dominguez

Merced Dominguez lives with degenerative spondylosis, which causes pain and limits mobility. Dkt. 253, Ex. A at 10. She relies on her RV as a form of shelter. *Id.* Because of her disability-related needs, Ms. Dominguez requested: (1) permission for her RV to stay at the Encampment and an exemption from towing despite her expired registration, because she has been unable to renew it "due to financial hardships"; (2) exemption from parking citations; (3) an exemption allowing her to keep garbage cans outside the RV on roadways or sidewalks; and (4) assistance in identifying programs through which she could access housing navigators without needing to enter shelter or transitional housing.

On January 6, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Ms. Dominguez's accommodation requests. Dkt. 253, Ex. I at 13. Mr. Buddenhagen noted that an in-person meeting had taken place in December 2025 with individuals representing Ms. Dominguez. *Id.*

With respect to the accommodation requests, the City denied her request for an exemption from towing because the request was based on financial limitations rather than disability-related needs. *Id.* The City also noted that the request was not for a reasonable accommodation because it would entail a fundamental alteration of the City's parking enforcement program, which was designed to promote public safety, access to public on-street parking, street maintenance, and the mitigation of impacts arising from long-term vehicle storage. *Id.* The City also denied her request for an exemption from citation for similar reasons, noting that the request is based on financial hardship rather than disability, and that individualized exemptions would constitute a fundamental alteration to the City's parking enforcement program which is designed to promote roadway safety, environmental compliance, and equitable parking access. *Id.*

Third, the City denied Ms. Dominguez's request for an exemption permitting her to store garbage cans outside her RV in violation of regulations limiting the placement of personal property on public rights-of-way. *Id.* at 14. The City explained that the limited footprint is a "fundamental operational feature[] of the City's sidewalk management policies" and that granting an exemption would constitute a fundamental alteration by authorizing use of a public right-of-

way inconsistent with the nature of the policy. *Id.* The City also explained that the leptospirosis outbreak makes the continued placement of garbage containers on the sidewalk a health hazard that interferes with City and County abatement efforts to mitigate rodent harborages. As part of this litigation, the City's Public Health Officer has explained that idle vehicles may act as rodent burrows, thereby exacerbating the leptospirosis outbreak, and the City represents that Ms. Dominguez's RV has not moved from its location for at least four years. Doohan Declaration (Dkt. 194) ¶ 21; Vance-Dozier Declaration (Dkt. 219-6) ¶¶ 3–4.

Finally, in response to her request for assistance with accessing a housing navigator, the City responded that it already "attempted to identify housing navigation programs for which Ms. Dominguez may be eligible" and that "[t]he City has been advised that Ms. Dominguez already has a housing navigator through Abode Services," but that her housing navigator has expressed that Ms. Dominguez insists on remaining in the Harrison Encampment "where she has lived for the past 10 years, which significantly narrows available housing options." *Id.*

2. Eric Keiser

Eric Keiser lives with schizophrenia, disorganized thinking, and chronic pain from a leg deformity that limits his mobility. BHU's SJ Motion at 7. Mr. Keiser requested (1) a stable, non-congregate ADA-compliant relocation option; (2) temporary permission to stay in the Encampment and an exemption from sidewalk space limitations; (3) a map identifying enforcement-free locations in the City; (4) physical assistance with lifting and moving his belongings; and (5) a single point of contact in the City. On January 6, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. Keiser's accommodation requests. Dkt. 253, Ex. I at 2. According to the City's final determination email, he requested accommodations in April 2025, but BHU did not respond to the City's requests to meet until late-December 2025. *Id.*

The City determined that a guarantee of non-congregate shelter was not a reasonable accommodation, because such housing is distributed subject to availability, eligibility criteria, and prioritization of limited resources. *Id.* The City directed Mr. Keiser to work with the City's Homeless Response Team ("HRT") to discuss available shelter options. *Id.* The City also

specified that it could not pause abatement until non-congregate shelter became available, because doing so would constitute a fundamental alteration to the City's encampment management program, which balances access to services along with the City's obligations to maintain public health, safety, and accessibility of publicly shared spaces. *Id.* The City similarly denied Mr. Keiser's request for temporary exemption from abatement, because its encampment abatement decisions are based on public health conditions, hazard severity, and community impacts, rather than availability of alternative shelter placements. *Id.* The City explained that a pause of enforcement pending the allocation of housing would constitute a fundamental alteration to the encampment management program, which is "designed to enable prompt intervention when encampments pose imminent risks to public health and safety." *Id.*

With respect to Mr. Keiser's request to stay in place without enforcement of sidewalk space regulations, the City explained that the municipal code, administrative regulations, City Council resolutions, public health and safety conditions, and legal requirements generally prohibit oversized structures along sidewalks. *Id.* While individuals may, under "limited circumstances" remain on sidewalks, they are not permitted to obstruct pedestrian access and may be subject to enforcement of health and safety regulations. *Id.* at 2–3. The City also explained that it could not pause enforcement at the Encampment, because such a pause would be a fundamental alteration to the City's response to the leptospirosis outbreak or other health and safety hazards. *See id.* at 3.

In response to Mr. Keiser's request for a map of enforcement-free zones, the City explained that "no map identifying enforcement-free locations exists in City records," and that creation of such a map would be an undue administrative burden requiring "extensive staff time, site-specific analysis, and physical measurement of sidewalks and public spaces throughout the City." *Id.* at 3. As an alternative, the City provided a summary of applicable regulations "to assist in understanding how enforcement decisions are made" but admitted that it could not provide any individualized guarantees regarding future enforcement actions. *Id.*

In response to Mr. Keiser's request for physical assistance with lifting and moving personal belongings, the City explained that it would ordinarily offer such assistance, but that the leptospirosis outbreak would render any such aid an undue administrative or financial burden,

because of the additional resources and risk borne by City departments and staff to keep personnel safe. The City also explained that the City does not require the provision of personalized or individualized assistance as a reasonable modification, and that such services would fundamentally alter the City's encampment management programs. *Id.* In other words, any such assistance provided in the past was voluntary and not mandatory under the ADA.

Finally, the City acknowledged that it could not "guarantee that a single, consistent staff member will always be available to communicate" and that such a guarantee would impose an undue administrative burden, but that the Homeless Response Team could "document that Mr. Keiser may become overwhelmed during enforcement encounters and may benefit from slower, repetitive communication when feasible. The City noted, however, that this approach cannot always be accommodated when conditions require prompt action to address public health or safety risks or when law enforcement must act to enforce the law." *Id.* at 3. The City's ADA Coordinator, Thomas Gregory, offered to meet with Mr. Keiser to discuss his requests in a low-stimulation setting, and stated that it "intends to provide notice prior to abatement and encourages Mr. Keiser to coordinate in advance with HRT regarding packing and storage. The City cannot guarantee that any enforcement related interaction in an outdoor encampment setting will be low stimulation due to the inherent nature of those environments." *Id.* at 4.

3. Shareef Muwakkil

Shareef Muwakkil lives with PTSD, chronic pain, and a history of heart attacks that impair his mobility. DeBree Declaration (Dkt. 120) ¶ 15–16. He benefits from "having a stable location to store survival items and maintain contact with his service providers." *Id.* ¶ 16.

In April 2025, Mr. Muwakkil requested (1) a pause on abatement until shelter or housing could be secured, (2) a map or list of locations to relocate to without risk of citation or abatement, (3) exemption from the nine-square-foot sidewalk limitation to allow a 10x12 foot tent due to his need for privacy and bicycle storage, (4) a consistent HRT point of contact trained in trauma-informed communication who would accompany any law enforcement encounter, and (5) exemptions from rules in any future shelter placement, including exemptions from curfews and restrictions on visitor access. Gregory Declaration (Dkt. 219-3), Ex. A.

On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. Muwakkil's accommodation requests. Dkt. 253, Ex. I at 21. Regarding a pause on enforcement, the City stated that the accommodation would pose both an undue administrative burden and cause a fundamental alteration to City programs, because the requested indefinite pause would hamstring the City's handling of the public health hazard. *Id.* The City denied Mr. Muwakkil's request for a map for the same reasons discussed in the above summary of Mr. Keiser's accommodations. *Id.* With respect to the sidewalk size limits, the City explained that City rules generally prohibit oversized structures, and that an exemption would constitute a fundamental alteration to the City's "regulatory framework governing the public right-of-way" which aim to facilitate pedestrian travel, emergency access, and general health and safety. *Id.* at 22. The City explained that the rules apply to the general public equally regardless of housing status, that there is no discretionary permit system for sidewalk structures, and that Mr. Muwakkil's specific request for a 10x12 foot structure would "occupy a substantial portion of the sidewalk and, on the majority of sidewalks throughout the City, would necessarily extend into the roadway," thereby impairing both access and ADA accessibility for pedestrians, but also public and emergency vehicle access and parking. *Id.*

The City committed to using "patient and respectful communication consistent with best practices and staff training," and to documenting Mr. Muwakkil's request for consistency in staff communications, but acknowledged that it could not "guarantee that a specific outreach worker, . . . will always be available." *Id.* Finally, the City determined that it could not ensure non-enforcement of shelter policies in future accommodations because shelter programs "have differing rules and operational constraints, and no specific placement is currently available," and "the City cannot pre-approve accommodations in the abstract." *Id.* The email stated that HRT would document the request however, which would be evaluated once shelter placement was offered. *Id.*

4. Lewanda Parnell

Lewanda Parnell experiences vertigo and uses a stroller as a mobility device to prevent falls. BHU's SJ Motion at 7. Because of her increased risk of falling, she requires assistance

packing and relocating her belongings. *Id.* Ms. Parnell requested the following accommodations: (1) permission to keep her customized tents without risk of removal; (2) the ability to remain in place, where she has access to community support and stability; (3) a designated ADA-compliant encampment area or indoor non-congregate living space; (4) temporary suspension of enforcement; and (5) physical assistance with relocation. Dkt. 253, Ex. A at 2; Gregory Declaration (Dkt. 219-3), Ex. A.

On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. Keiser's accommodation requests. Dkt. 253, Ex. I at 5. With respect to the first accommodation request, the City explained that it had "consistently stated that it is willing to work with Ms. Parnell to retain her customized tents during an abatement action, provided that a mutually agreed upon relocation plan and timeline are established," but that the City had not received a proposed relocation timeline. *Id.* The City stated that it could not indefinitely delay abatement activities due to "the absence of logistical agreement," but that HRT "remains willing to coordinate packing and storage of the tents once a relocation date is proposed, provided the tents do not present the health and safety hazards previously identified." *Id.*

The City denied Ms. Parnell's request to stay in place because such an exemption would impede public health management efforts and fundamentally alter the City's "encampment management and public health response programs," which rely on timely interventions against emerging risks. *Id.* at 6.

The City denied the request for an ADA-compliant encampment area because the City does not maintain a sanctioned encampment area and is not obligated to do so under the ADA. *Id.* The City stated that its encampment-related rules reflect balanced considerations of local rules and laws, public health conditions, and safety concerns. The City reiterated that Ms. Parnell could relocate, so long as she complied with sidewalk space limits and other rules concerning health and safety and nuisance conditions. *Id.* With respect to her request for an indoor non-congregate space, the City concluded that the provision of housing is not a reasonable accommodation under the ADA, but that the City would — as it must — consider reasonable accommodation requests once a shelter space for Ms. Parnell was made available. *Id.*

The City denied Ms. Parnell's request for a suspension of enforcement or abatement operations for the same reasons described above with respect to Mr. Muwakkil. *Id.* at 6–7. Finally, the City stated that it could offer some physical relocation or storage assistance to Ms. Parnell, but that the City's ability to assist was contingent on the public health situation and the relative safety of Ms. Parnell's specific items. *Id.* at 7. The City, however, reiterated that it was not required to provide personal relocation assistance "to an undetermined location that is not connected to a City program or service. *Id.*

5. Yesica Prado

Yesica Prado lives with ADHD and PTSD which both impact her executive functioning, emotional regulation, sensory processing, and the ability to handle sudden changes, including relocation. Dkt. 253, Ex. A at 17. As accommodations, Ms. Prado requested (1) permission to remain in her RV in its current location at the Encampment; (2) designation of an ADA parking zone for her RV; (3) access to a disability advocate to assist with executive dysfunction and logistics planning; and (4) exemption from citation and arrest due to disability-related limitations. *Id.*

On July 23, 2025, the City denied Ms. Prado's request for a disability advocate, stating that the City does not have "trained 'disability advocate' staff," referring her instead to the Center for Independent Living or the City's HRT staff to assist with the relocation process. Dkt. 253, Ex. D at 8. The City also denied Ms. Prado's request for exemption from law enforcement, stating that the RV must comply with California Vehicle Code requirements, local parking rules, and other regulations about storing personal items on sidewalks. *Id.* On January 5, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Ms. Prado's other accommodation requests. The City stated that exemption from parking enforcement rules would pose an undue administrative burden because the City's parking enforcement program relies on automated license plate recognition technology, and an individualized exemption requiring manual parking tracking for Ms. Prado would be a significant departure from norms and expense of resources: "Specifically, parking enforcement staff would be required to rely on manual and labor-intensive methods, such as maintaining paper logs of protected vehicles, physically marking

vehicles, returning to inspect those markings, and resolving disputes regarding whether a vehicle has moved. These manual methods lack the permanence, reliability, and data integrity of [automation-based] enforcement and in other contexts have led to increased disputes with members of the public regarding compliance." Dkt. 253, Ex. I at 19. The City also explained that the exemption would fundamentally alter the City's public right-of-way and parking management programs, turning a uniform, generally administrable set of standards into one focused on "individualized administration" focused on "authorizing prolonged use of the public right-of-way tied to personal circumstances. That shift would impair the City's ability to manage curbside access consistently, respond to changing conditions, and maintain fair and predictable access to limited public parking." *Id.* The City explained that the 72-hour parking limit is a "core component" of that program designed to enhance parking availability, emergency access, public health and safety, neighborhood impacts, and the City's ability to perform routine street maintenance. *Id.* at 20. The program is also intended to promote vehicle turnover, and "is not designed to accommodate extended or semi-permanent vehicle placement, even on an individualized basis, because doing so would undermine space turnover and the City's ability to address cumulative neighborhood, safety, and operational impacts." *Id.*

6. Erin Spencer

Erin Spencer experiences mobility impairments, PTSD, and ADHD, making compliance with abatement policies "impossible without direct assistance," in part due to his difficulties moving independently and with executive functioning, planning, and completing tasks. Dkt. 253, Ex. A at 13. Mr. Spencer requested the following accommodations: (1) City-identified relocation areas immune from abatement or law enforcement; (2) an exemption to the nine-square-foot sidewalk limit to allow his 20x30 tent for community gathering needs; (3) requests for physical assistance relocating, trash disposal, and portable toilets; (4) a three-step notice process, with notice given 30 days, 15, days, and three days before any law enforcement action; (5) a City-purchased or repurposed flatbed trailer; (6) trauma-informed law enforcement interactions; and (7) solar panels, charging access, and infrastructure modifications. *See id.*; Gregory Declaration, Ex. A. Mr. Spencer met with City staff in December 2025 as part of the interactive process. Dkt. 253,

Ex. I at 16.

On January 5, 2026, the City Manager, Paul Buddenhagen, sent the City's final determination regarding Mr. Spencer's other accommodation requests. *Id.* With respect to the first request, the City explained that during the interactive process meeting, Mr. Spencer "explained that he does not want to access any City shelters because he does not believe any would accommodate his needs, even though the City explained that accommodations can be made in City shelters to address disabilities." *Id.* The City then reiterated its basis for not providing maps of areas immune from enforcement, as described above in relation to Mr. Keiser. *Id.*

The City denied Mr. Spencer's request for an exemption from sidewalk space limits, explaining that the City had considered whether a smaller space could serve as a feasible alternative, but that "even a modest increase would still occupy a substantial portion of the sidewalk," impairing pedestrian access and ADA compliance, emergency access, vehicle travel and parking, and the City's ability to manage public health and safety risks. The City stated that a 20x30 space would require "a sidewalk at least 24 feet wide to prevent obstruction of the pedestrian path of travel, which is not available in most areas." *Id.* at 17. The City described the accommodation as a fundamental alteration to sidewalk management programs, and described the accommodation as a conversion of public streets and sidewalks into private, individualized spaces. *Id.* The City also explained that it imposes uniform citywide standards governing sidewalk use based on a balancing of various considerations, and that the City would not operate a "discretionary permitting system for sidewalk structures." *Id.*

The City neither granted nor denied Mr. Spencer's request for physical relocation assistance and storage, stating that it ordinarily provides such services but that the public health situation may result in limited assistance in moving and storing certain items. *Id.* The City explained that it is Mr. Spencer's responsibility to schedule any such assistance in advance through HRT. *Id.*

The City denied the request for trash collection or installation of portable restrooms, stating that such accommodations would constitute "a personal service rather than a reasonable accommodation," and that the services would be an undue administrative and financial burden

because the City would be required to dedicate staff to continuous, individualized support. *Id.*

The City denied Mr. Spencer's three-step notice request, stating that the ADA requires non-discrimination rather than extended or customized notice periods beyond what is necessary to allow a person to respond to enforcement. *Id.* The City explained that the proposal would constitute a fundamental alteration of enforcement procedures. *Id.* The City, however, explained that it would provide notice consistent with legal requirements, but that it could not guarantee multi-stage notice reminders as requested.

The City denied Mr. Spencer's request for a flatbed trailer, stating that this would require the creation of a new service or program, which is not required under the ADA. *Id.* The City instead stated that it "may offer access to existing shelter or storage programs, but is not obligated to provide new vehicles, trailers, or other personal items for encampment residents." *Id.*

The City stated that it could not guarantee trauma-informed interactions with law enforcement, and that the City was not required to restructure programs or assign personnel in a way that "fundamentally changes how the program operates." The City, however, committed to using patient and respectful communication consistent with training, and that HRT would document the request and known triggers to guide future interactions. *Id.* at 18. The City also stated that it could not guarantee that certain HRT staff or police officers would always be present, and that it could not prohibit certain staff from interacting with individuals, as that request "would mandate individualized staffing, scheduling, and resource allocation that the City cannot sustain without altering the core operation of its encampment management and law enforcement programs. . . . interfere[ing] with the City's ability to deploy staff where they are most needed." *Id.*

Finally, the City denied Mr. Spencer's request for solar panels, charging access, and other infrastructure, stating that this would be a fundamental alteration of City programs which do not guarantee any such resources. The City explained that granting this request would require the creation of new services, reallocation of staff and resources, and public redesign operations that extend beyond the scope of a reasonable accommodation. *Id.*

7. Austin White

Austin White experiences esophageal varices and is medically restricted from lifting more than 20 pounds. BHU's SJ Motion at 7. Plaintiffs explain that abatement and relocation without assistance would risk a life-threatening hemorrhage. *Id.* Mr. White appears to have only requested one accommodation: exemption from sidewalk space limitations to allow occupation of a 10x12 foot space. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Ex. I at 11. It appears the request was premised on the need to accommodate his two service dogs. *See* Dkt. 253, Ex. I at 11.

The parties held an in-person meeting in July 2025, and the City responded to the request that month stating that it could provide physical assistance with packing, lifting, and storing Mr. White's belongings. Dkt. 253, Ex. D at 2. This offer does not appear to have been accepted or rejected by BHU or Mr. White. *See id.* Mr. White also met with City staff in December 2025 as part of the interactive process.

On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. White's other accommodation requests. *Id.* The City denied Mr. White's request, stating that it considered whether an alternative, "modestly larger than nine square feet" could be feasible, but that any increase would be a fundamental alteration for the same reasons stated above, with respect to Mr. Keiser.

III. LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[W]hen parties submit cross-motions for summary judgment, each motion must be considered on its own merits." *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (alteration and internal quotation marks omitted). Thus, "[t]he court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." *Id.* (quoting Wright, et al., Federal Practice and Procedure § 2720, at 335–36 (3d ed. 1998)). However, the court must consider the evidence proffered by both sets of motions before ruling on either one. *Riverside Two*, 249 F.3d at 1135–36;

Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 960 (9th Cir. 2011) ("Because the parties filed cross-motions for summary judgment, we consider each party's evidence to evaluate whether summary judgment was appropriate.").

As a general matter, where the party moving for summary judgment would bear the burden of proof at trial, that moving party bears the initial burden of proof at summary judgment as to each material fact to be established in the complaint and must show that no reasonable jury could find other than for the moving party. *See S. California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003) (citing William W Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial (Rutter Group) § 14:124–127 (2001)). Where the moving party would not bear the burden at trial, the motion need only specify the basis for summary judgment and identify those portions of the record, if any, which it believes demonstrate the absence of a genuine issue of material fact on some essential element of the claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the opposing party to establish the existence of material disputes of fact that may affect the outcome of the case under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

IV. DISCUSSION

A. Associational Standing

Defendants argue that BHU lacks Article III standing. Defendants' SJ Motion (Dkt. 219) at 7–11. The Court previously held that BHU has associational standing:

> As an initial matter, regarding associational standing, BHU easily satisfies the first two prongs of the *Hunt* associational standing test. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344–45 (1977). Because BHU's Americans with Disabilities Act ("ADA") claim requires substantial individualized evidence, BHU does not clearly satisfy the third prong of the *Hunt* test. However, because the third prong is prudential, the Court allows BHU to bring its claims on behalf of its members.

Minute Entry, June 10, 2025 (Dkt. 104) at 2.

The Court sees no reason to revisit that holding, particularly as the issue of standing is on appeal before the Ninth Circuit, and the City has not requested an indicative ruling under Federal Rule of Civil Procedure ("FRCP") 62.1. *See* Defendant's SJ Motion; Defendant's Opposition

Brief; *see also* No. 26-842, DE 10 (City's Opening Brief).[6]

Accordingly, the Court maintains its prior ruling that claimants seeking relief are BHU members and that BHU has associational standing to bring legal claims on behalf of its members. Minute Entry, June 10, 2025 at 2.

B. ADA Legal Standard

BHU brings ADA claims on behalf of seven of its disabled members, and constitutional claims under the Fourth and Fourteenth Amendments on behalf of all of its members residing in the Harrison Encampment. The Court addresses each of the asserted claims organized by category of requested relief. First, the Court summarizes the applicable legal standards.

1. ADA Interactive Process

Under the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To prove that a public entity violated the ADA, a plaintiff must show "(1) he is a 'qualified individual with a disability'; (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities or was otherwise discriminated against by the public entity; [and] (3) such exclusion, denial of benefits, or discrimination was by reason of his disability." *Townsend v. Quasim*, 328 F.3d 511, 516 (9th Cir. 2003). Importantly, where there is a threatened exclusion or denial by reason of disability, a public entity must make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination based on disability." 28 C.F.R. § 35.130(b)(7); *see Where Do We Go Berkeley v. Cal. Dep't of Transp.*, 32 F.4th 852, 859–60 (9th Cir. 2022); *Ind. Living Ctr. Of*

[6] The Court notes that BHU alleges that each claimant is a member of BHU. *See* BHU SJ Motion at 3, 16–17; *see also* BHU Status Report (Dkt. 200) at 1–4, 11–35; Dkt. 253, Ex. C at 3 (City referring to "the eight BHU members who the City had identified as falling under the ambit of Judge Chen's preliminary injunction order."). The City has not submitted evidence contesting that the claimants in this action are BHU members, nor has the City filed an affidavit or declaration under FRCP 56(d) showing that it cannot present facts essential to justify its opposition on that point. *See* Defendants' SJ Motion (Dkt. 219); Defendants' Opposition Brief (Dkt. 256).

S. Cal. v. City of L.A., 973 F. Supp. 2d 1139, 1149 (C.D. Cal. 2013) (stating that public entities have "the affirmative duty" to 'make reasonable modifications . . . necessary to avoid discrimination on the basis of disability'").

To trigger the City's obligation to accommodate, a person must first satisfy the prima facie requirements: they must be a qualified individual with a disability, excluded from participation in or denied the benefits of a City program or service, by reason of that disability. *Where Do We Go Berkeley*, 32 F.4th at 860. As to the second element, the exclusion from participation need not be complete; a partial exclusion from participating in a part of the program may suffice. *See, e.g*, *Alexander v. Choate*, 469 U.S. 287, 300–01 (1985) (recognizing in Rehabilitation Act context that a benefit cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the "meaningful access to which they are entitled," and that reasonable accommodations within a program may be required to assure such access); *Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 738 (9th Cir. 2021) (recognizing Title II claims based on inaccessibility of specific components of a college's educational program, including textbooks and education technology); *Cal. Found. For Ind. Living Ctrs. v. Cnty. of Sac.*, 142 F. Supp. 3d 1035, 1058, 1063–64 (E.D. Cal. 2015) (holding that exclusion from certain aspects of airport services, including inadequate gate counter accommodations and emergency evacuation procedures constituted violations of the ADA); *Lieber v. Macy's West, Inc.*, 80 F. Supp. 2d 1065, 1075, 1080 (N.D. Cal. 1999) (holding that failure to maintain sufficiently wide pathways for fitting rooms and checkout areas violated Title III of the ADA); *Cohen v. City of Culver City*, 754 F.3d 690, 698–99 (reversing summary judgment for city and finding genuine dispute of material fact as to Title II violation where city permitted a vendor to block a curb ramp, preventing a disabled individual from accessing a sidewalk).[7]

Once those threshold elements are met, the City must engage in a fact-specific,

[7] That a complete exclusion from a program is not necessary is obvious from the conventional ADA jurisprudence. An ADA discrimination claim applies where, *e.g.*, only some areas of a store are not accessible because of lack of a compliant counter height or where there are steps without an accessible ramp to some portion of the store. A claim may lie where some but not all rooms in an office or courthouse are inaccessible.

individualized assessment to determine what accommodation, if any, is reasonable in order to ensure non-exclusion or denial of benefits. *McGary v. City of Portland*, 386 F.3d 1259, 1265–66 (9th Cir. 2004). This process requires the City to gather sufficient information from the individual requesting accommodations, as well as relevant City personnel, experts, or other sources of information sufficient to determine whether the requested accommodation would be reasonable. *See Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999). In assessing the reasonableness of a requested accommodation, the City must consider the particular needs of the person making the request. *See Duvall v. Kitsap*, 260 F.3d 1124, 1139–40 (9th Cir. 2001). The City may not summarily conclude that a requested accommodation is unreasonable without undergoing this investigative process.[8] *See id.* The assessment of the legal sufficiency of the entity's response to a request for accommodation under the ADA is discussed in greater detail below.

Before addressing the merits of the accommodation requests, the Court addresses BHU's threshold argument that the interactive process was procedurally deficient and the City failed to fulfill its obligations under the ADA. BHU's SJ Motion at 3–5, 18–19; BHU's Opposition Brief at 4–9. BHU raises three principal arguments: (1) the interactive process was not conducted in good faith, (2) final determinations were not rendered by an authorized official, and (3) the City's assessments were not sufficiently individualized. None of these arguments is ultimately availing. The Court then turns to the key substantive matters central to evaluating the merits of ADA accommodation requests.

a. Good Faith

The Court's June 10, 2025 preliminary injunction order directed the parties to complete the interactive process within sixty days. Minute Entry (Dkt. 104). That deadline was not met, though the record reflects that both parties bear some responsibility for the delay.

In any event, the Court has reviewed the correspondence between the parties and, although

[8] Because the Plaintiffs all submitted requests for accommodations in specific and direct terms, the Court does not need to determine whether claimants' disabilities were sufficiently open, obvious, and apparent that the City would be on notice of the need for reasonable accommodations even in the absence of concrete requests.

there are instances in which the City's conduct and written responses should have been more forthcoming and patient, the record as a whole reflects that the City engaged in written exchanges, conducted or offered live meetings (either in person or by telephone or video conference), solicited information from multiple City departments, and issued formal written determinations signed by the City Manager. *See* Dkt. 253, Exs. A–F, I–P. Although the interactive process was imperfect, the Court finds the interactive process was sufficiently complete.

Furthermore, as a legal matter, BHU's arguments as to bad faith cannot themselves sustain an ADA claim absent a showing that a reasonable accommodation was available and denied. The Ninth Circuit has held that failure to engage in the interactive process in good faith does not, by itself, give rise to liability — rather, the Court must first determine whether the public entity failed to provide a reasonable accommodation. *Snapp v. United Transp. Union*, 889 F.3d 1088, 1095 (9th Cir. 2018). The Court is aware that *Snapp* arose under Title I of the ADA, and that Title II's regulatory framework does not perfectly mirror Title I's interactive process requirements, but the central principle applies with equal force here: process deficiencies do not independently supply a basis for liability where no reasonable accommodation was improperly denied. *See id.*; *see also Howard v. HMK Holdings, LLC*, 2018 WL 3642131, at *9 (C.D. Cal. June 11, 2018) (Gee, J.) (holding in the FHAA context that "failure to engage in the interactive process is not an independent basis for liability under the FHAA, although such failure may be considered when determining whether the landlord denied a reasonable accommodation request in the first place"); *McClure v. Nat'l R.R. Passenger Corp.*, 2021 WL 4395812, at *9 (C.D. Cal. June 10, 2021) (ruling in the FEHA context that "FEHA does not impose liability for failure to engage in the interactive process when no reasonable accommodation is available").

Thus, the critical question for the Court is whether any reasonable accommodation requests were denied by the City. The Court addresses that question below, in its discussion of the merits of the ADA accommodation requests. Any process deficiencies are likewise resolved in conjunction with the merits of the accommodation requests.

b. Authority to Issue Final Determinations

BHU argues that some accommodation denials issued by Thomas Gregory, the City's

ADA Program Coordinator, were beyond the scope of his authority because 28 C.F.R. § 35.164 requires final decisions to be "made by the head of the public entity or his or her designee." BHU's SJ Motion at 3, BHU's Opposition Brief at 7. BHU is correct about the regulatory requirement, but not in its application to the facts here.

The final, operative determinations challenged in this action were each issued by Paul Buddenhagen, the City Manager. Dkt. 253, Ex. I. BHU appears to concede that Mr. Buddenhagen is the head of the public entity or a proper designee. *See* BHU's Opposition Brief at 7. And although earlier responses to some requests were sent by Mr. Gregory, he has declared under penalty of perjury that he regularly evaluates ADA accommodation requests and is "authorized by the City of Berkeley to make determinations as to whether requests for accommodations are reasonable under the ADA." Gregory Declaration (Dkt. 261) ¶ 4. As an official authorized to evaluate and decide ADA accommodation requests, Mr. Gregory is an appropriate "designee" for purposes of 28 C.F.R. § 35.164. Even assuming that determinations by Mr. Gregory were procedurally deficient, any such deficiency appears to have been cured by the issuance of final determinations by the Mr. Buddenhagen. Dkt. 253, Ex. I. BHU does not adequately explain why a subsequent, final determination by the undisputed proper official fails to satisfy applicable requirements.

c. The Individualized Assessments

BHU's final procedural argument is that the City's determinations were not sufficiently individualized. In other words, that the City applied uniform "boilerplate" denial reasoning and language regardless of the claimant's specific disabilities or needs in relation to the Encampment and the City's abatement. BHU's SJ Motion at 18–19. BHU's reasoning is that the City frequently relied on vague "fundamental alteration" or "undue administrative burden" rationales for denying accommodation requests, and Mr. Gregory stated that "impacts to the City are the same, regardless of the individual's disability or the nexus" in response to requests. *See id.*; BHU's Opposition Brief at 4–5.

The Court takes BHU's argument seriously, because an individualized inquiry is required under the ADA. *Weldeyohannes v. Wash.*, 162 F.4th 972, 976 (9th Cir. 2025). The record,

however, does not show anything akin to BHU's implication that the City mechanistically denied each request without review of the requester's individual circumstances. The City's final determinations identify the specific claimant's disabilities and accommodation requests, and explain in sufficient detail why each denied request would fundamentally alter or unduly burden a particular city program. Dkt. 253, Ex. I. The determinations are not identical – they address the various disabilities, programs impacted, and the specific requested modifications. For certain accommodations, like exemptions from sidewalk space limits, the City explained why a 10x20 foot or 20x30 foot space would impede pedestrian access, spill into the roadway, and pose a fundamental alteration to city programs. *Id.* With respect to accommodations concerning housing, shelter, designated staff persons, and related requests, the City referred to specific interactions with each requester, agreed to document each request to guide future interactions, and committed to future consideration of accommodation requests. *Id.*

Nor are the determinations improperly identical. The fact that several denials invoke the same legal defense, such as fundamental alteration of sidewalk management programs, is not dispositive in this context. Because multiple individuals requested the same type of accommodation (a pause on abatement or a map of enforcement-free zones), and because those requests would produce the same consequences for City programs regardless the identity of the requester or their disabilities, it is not improper or surprising that the City's fundamental alteration analysis reaches the same conclusion across the array of claimants and requests.

The Court finds that the City's determinations were, generally, sufficiently individualized. Where the same denial rationale applies across multiple claimants, that is not evidence of boilerplate reasoning, but rather a reflection of the fact that the same requested accommodation would produce the same programmatic consequences regardless of the identity of the person asking for it. The Court, however, evaluates each denied request on the merits below, and where the City's stated rationale is found to lack a sufficient basis as applied to a particular claimant's circumstances, the Court so notes.

2. Assessment of the Merits of ADA Accommodation Requests

Having now concluded that the interactive process was procedurally completed as a matter

of law, the Court turns to the legal standard governing the assessment of whether the City improperly denied requests for reasonable accommodations.

Plaintiffs must demonstrate that they have a disability, that the City is excluding them from participating in or denying benefits of a program as a result of their disability, and that they have requested an accommodation. *See Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1047 (9th Cir. 1999) (holding in the Title II context that the plaintiff "bears the initial burden of producing evidence that she is otherwise qualified. . . . The burden then shifts to the educational institution to produce evidence that the requested accommodation would require a fundamental or substantial modification of its program or standards. The school may also meet its burden by producing evidence that the requested accommodations, regardless of whether they are reasonable, would not enable the student to meet its academic standards"); *Sheehan v. City & Cnty. of S.F.*, 743 F.3d 1211, 1232–33 (9th Cir. 2014). The burden then shifts to the City to prove that the requested accommodation is unreasonable, or if reasonable, that the accommodation would nonetheless constitute a fundamental alteration to relevant programs or impose an undue administrative burden. *See, e.g.*, 28 C.F.R. § 35.164; *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 673 (2001); *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1217 (9th Cir. 2008).

A plaintiff's requests for accommodations must be reasonable and must allow the plaintiff meaningful access to City services and programs. *See Updike v. Multnomah Cnty.*, 870 F.3d 939, 954 (9th Cir. 2017). If a requested modification is unreasonable the requested accommodation may be denied; if the request is reasonable the governmental entity may nonetheless deny the request if granting the request would fundamentally alter the nature of a given program, or pose an undue administrative or financial burden. Public entities need not "create new programs that provide heretofore unprovided services to assist disabled persons." *Townsend*, 328 F.3d at 518. The inquiries into reasonableness and fundamental alteration are distinct. *See* 28 C.F.R. §§ 35.130(b)(7) & 35.164 (stating that a public entity must "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability" unless the public entity can demonstrate that the modification would fundamentally alter the nature of the service, program, or activity, or post an undue financial or

administrative burden); *Tenn. v. Lane*, 541 U.S. 509, 532 (2004); ("[I]n no event is the entity required to undertake measures that would impose an undue financial or administrative burden . . . or effect a fundamental alteration in the nature of the service."); *PGA Tour*, 532 U.S. 661, 673 (2001) (distinguishing between reasonableness inquiry and fundamental alteration analysis).

Evaluating the merits of a requested accommodation is a generally fact-intensive inquiry. *See Mayfield v. Mesa*, 131 F.4th 1100, 1110 (9th Cir. 2025); *Stephenson v. United Airlines*, 9 F. App'x 760, 763 (9th Cir. 2001) (mem.). The Court evaluates the claimants' needs and requests in light of the City's information-gathering efforts and coordination among experts and City departments to determine whether requests were reasonable and unlawfully denied. *See Updike*, 870 F.3d at 954.

Critical to the summary judgment motions herein are: (1) the correct definition of the City's relevant "program," (2) the analysis of the reasonableness of particular accommodation requests, and (3) the parameters of a "fundamental alteration" to that City program. Here, the Court provides clarity as to these disputed questions.

a. Relevant "Program"

A threshold issue must be resolved before addressing the merits of each request: what is the relevant City "program" against which the reasonableness of a proposed modification must be measured? *See Where Do We Go Berkeley*, 32 F.4th at 862. A stated program must be tethered to the actual activities the public entity performs. *Id.* at 861. Relatedly, the Court must assess whether the denial of a requested accommodation threatens to exclude a qualified individual with a disability from participation in, or the benefits of, that program. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130.

The City proposes to define "program" narrowly on a program-by-program approach, with "encampment management" or abatement as separate programs from discrete City services like the specific tasks of providing parking enforcement, sidewalk management, law enforcement, parking management, and housing and shelter provision. *See* Defendants' SJ Motion at 11–12; Gregory Declaration (Dkt. 219-3) ¶¶ 12, 16, 19–20 (defining the encampment management program as "intended to mitigate hazards efficiently and equitably for the public, not to provide

continuous personal services or enable indefinite use of public land," and distinguishing the encampment management program from the "sidewalk management program," parking enforcement programs shelter programs, and parking enforcement programs).

BHU and the *Prado* putative class, as amici, frame the relevant program broadly as the City's general response to and services for unhoused persons, and argue that under that broader program, the City's fundamental alteration defense is ineffectual. *See* BHU's SJ Motion at 25 (describing the City's Homeless Encampment Program as including the provision of shelter and permanent housing); Amicus Brief of *Prado* Plaintiffs (Dkt. 255) at 3–7 (describing the relevant program as the City's "homeless response program," which includes shelter and other services and benefits). Under this framing, accommodations for disabled unhoused individuals would only modestly modify the City's existing programs, rather than forcing additional services that would fundamentally alter them.

In a case such as this, the definition of "program" for purposes of the ADA turns in large part upon the actual uses and activities of the governmental agency's properties in question over time and the nature of the agency's mission. Thus, for instance, in *Where Do We Go Berkeley*, the Ninth Circuit defined Caltrans's relevant program narrowly, and in direct proportion to the limits of Caltrans's institutional mandate. 32 F.4th at 861–62. California law charges Caltrans with "full possession and control" of state highways and property acquired for state highway purposes, Cal. Sts. & High. Code § 90, and authorizes it to do "any act necessary, convenient or proper for the . . . maintenance or use of all highways." *Id.* § 92; *Where Do We Go Berkeley*, 32 F.4th at 855. Its properties are owned and maintained for transportation purposes, not for the provision of housing or social services. *See Where Do We Go Berkeley*, 32 F.4th at 855, 861 Consistent with that mission, the Ninth Circuit defined Caltrans's program for level 1 encampments as providing "72 hours' notice before clearing and possible coordination with local partners." *Id.* at 862. Critically, the court drew a firm outer limit — while Caltrans "collaborates with local partners to help people at the encampments connect with critical services and housing solutions," Caltrans itself "does not provide those services; it 'is not the appropriate entity to provide social services or relocation assistance.'" *Id.* at 861. Because those social and housing services fell outside

Caltrans's mission and the historic use of its properties, imposing a six-month delay in clearing high-risk encampments, while effectively requiring Caltrans to house people on its freeway-adjacent land until they found alternative housing, was construed as "creat[ing] new programs that provide heretofore unprovided services" and therefore constituted a fundamental alteration. *Id.* at 862 (quoting *Townsend*, 328 F.3d at 518).

In contrast to *Where Do We Go Berkeley*, the Ninth Circuit in *L.A. Alliance for Human Rights v. County of L.A.* which dealt with the unhoused, defined the applicable municipal programs more broadly: "Skid Row area sidewalks are a service, program, or activity of the City within the meaning of Title II of the ADA." 14 F.4th 947, 959 (9th Cir. 2021). This broader framework makes sense in the context of a city, as opposed to an agency singularly charged with providing transportation. In the context of a municipality, the Court focuses its inquiry on the range of services traditionally offered by the public entity: "The focus of the inquiry . . . is not so much on whether a particular public function can technically be characterized as a service, program, or activity, but whether it is a normal function of a governmental entity." *Where Do We Go Berkeley*, 32 F.4th at 861. The municipality's mission is a broad one.

The case at bar is more akin to *L.A. Alliance* than *Where Do We Go Berkeley.* The City of Berkeley is not an agency with a singular mission such as Caltrans, but a municipality that provides wide-ranging services to the public, including provision of housing, social services, and the maintenance of public property, streets, and sidewalks which have long functioned to serve numerous purposes (*e.g.*, facilitating transit and movement, permitting speech and protests, enhancing urban aesthetics, serving as places of abode for the unhoused, etc.).

The Court thus adopts a formulation which reflects the City's broad ranging activities and mission and which encompasses the concerns fairly raised by both parties herein. The relevant program is: **the City's maintenance of public roadways and sidewalks to ensure their functionality, orderly, use, and public health and safety. This includes use of roadways and sidewalks which serve as locations of abode for the unhoused**. The parameters of this program, so defined, account for the City's interest in abatement — including the provision of publicly accessible rights-of-way (one basic function of sidewalks and streets) and, *e.g.,* the mitigation of

the leptospirosis outbreak in the interest of maintaining health and safety on the streets and sidewalks. The definition also encompasses the fact that City streets and sidewalks have long been used as places of abode for the unhoused. The City's management of the program thus must consider, *inter alia*, not only the need for abatement to protect public health and allowing for transit and passage, but also the effects on unhoused disabled residents who, lacking access to available or accessible housing or shelter, seek to occupy portions of the public right-of-way.

The Court evaluates the requested accommodations against this broader definition of the City's roadway and sidewalk management program. The Court assesses the merits of each request in light of this program framework, with the City bearing the burden of demonstrating, with specificity, that the requested modification is unreasonable or would fundamentally alter or unduly burden that specific program.

b. Reasonable Accommodation

A reasonable accommodation is one that meaningfully resolves the disabled person's inability to access a program or service without undue practical difficulty for the entity providing the program or service. *See, e.g.*, *Choate*, 469 U.S. at 301 ("[T]o assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made."); *Clark v. Cal.*, 739 F. Supp. 2d 1168, 1177 (N.D. Cal. 2010) (Breyer, J.) (holding in the state prison and Title II context that "[t]o be 'reasonable' the accommodation or modification must give disabled prisoners 'meaningful access' to the service, program, or activity in question."). Weighed against the efficacy of the requested accommodation is the cost and burden of providing that accommodation. *See Martin v. PGA Tour, Inc.*, 204 F.3d 994, 999 (9th Cir. 2000) (holding in the Title III context that a reasonable accommodation "solves the problem of [plaintiff's] access to the competition . . . and is not a difficult practical matter"); *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1084 (9th Cir. 2004) (accommodation is reasonable under Title III where it does not impose "excessive financial costs nor an extensive administrative burden"); "'Reasonable' is a relational term: it evaluates the desirability of a particular accommodation according to the consequences that the accommodation will produce. This requires an inquiry not only into the benefits of the accommodation but into its costs as well." *Borkowski v. Valley Cent. Sch. Dist.*, 63

F.3d 131, 138 (2d Cir. 1995)

Critically, there must be a sufficient nexus between the claimant's disability and the accommodation sought: an accommodation that does not meaningfully address the disability-related limitation does not satisfy that standard. *See* 28 C.F.R. § 35.130(b)(7) (requiring accommodations "necessary to avoid discrimination on the basis of disability"); *Wisc. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006) ("Rehabilitation Act helps disabled individuals obtain access to benefits only when they would have difficulty obtaining those benefits 'by reason of' their disabilities, and not because of some quality that they share generally with the public."). A reasonable accommodation is one that meaningfully resolves the disabled person's inability to access a program or service without undue practical difficulty for the entity providing the program or service. *Martin*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084.

A qualified individual with a disability need not show that an accommodation would be the *most* effective accommodation, but merely that the accommodation would be effective. *See Mont. Med. Ass'n v. Knudsen*, 119 F.4th 618, 626 (9th Cir. 2024) ("We find instructive the Fifth Circuit's decision . . . 'plaintiffs are not entitled to their preferred accommodation, but only a reasonable accommodation.'"); *Wade v. Solis*, 2009 WL 1186638, at *17 (N.D. Cal. May 4, 2009) ("Wade is not entitled to the accommodation of his choice, but rather, one that is reasonable.").

In sum, where the requested accommodation does not meaningfully resolve the impediment to accessing a program or service, or where the practical or financial costs of a requested accommodation outweigh the benefits of increased access, the requested accommodation is unreasonable. *See PGA Tour*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084; *see also Borkowski*, 63 F.3d at 138.

Reasonableness is analytically distinct from the question of fundamental alteration, which the Court addresses next. *See PGA Tour*, 532 U.S. at 673 (noting first that there was no dispute that the requested accommodation was reasonable, then proceeding to determine whether the accommodation "would 'fundamentally alter' the nature of" the competition); *Pierce*, 526 F.3d at 1217 (holding that after the plaintiff establishes "the existence of a reasonable accommodation," the burden shifts to the public entity to "show that the requested accommodation would require a

fundamental alteration . . . .").

Even if a request is reasonable, where the defendant asserts that the accommodation would nonetheless constitute a fundamental alteration of the program or undue burden, the Court proceeds to the inquiry of whether the requested accommodation would in fact fundamentally alter the City's program or impose an undue burden.

c. Elements of a Fundamental Alteration

Another threshold matter that must be resolved before addressing the merits of the particular accommodation requests and the City's responses herein is the determination of when requested accommodations would fundamentally alter the City's program. The Court thus turns to the factors that must be evaluated in determining whether an accommodation in fact would pose a fundamental alteration to a program.

The central inquiry of the fundamental alteration analysis is whether the requested accommodation would "compromise[] the essential nature" of the program. *Choate*, 469 U.S. at 300; *see also PGA Tour*, 532 U.S. at 683 (defining an accommodation as a fundamental alteration if it "alter[s] such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally"); *Reed v. City of Emeryville*, 568 F. Supp.3d 1029, 1043 (N.D. Cal. 2021) (Orrick, J.) ("An alteration is fundamental if it would alter 'the essential nature' of the program."); *Smith v. City of Oakland*, 612 F. Supp. 3d 951, 962 (N.D. Cal. 2020) (Tigar, J.) (same). The question is not whether *any* disruption would result, but whether the accommodation would genuinely and substantially obstruct an entity's ability to deliver the program at issue. *See id.* The following five factor framework, derived from ADA precedent, guides the Court's analysis.

First, the analysis evaluates whether the proposed accommodation implicates a core or merely peripheral aspect of the challenged program. An accommodation that is "at best peripheral to the nature" of a program "might be waived in individual cases without working a fundamental alteration," while waiver of a truly essential rule, service, or function risks altering the essential nature of a program. *See PGA Tour*, 532 U.S. 661, 689 (2001) (holding that the PGA Tour was required to permit a disabled golfer to use a cart during competition because walking the course,

though a condition of tournament play, was peripheral to the essential nature of golf and its waiver therefore did not fundamentally alter the character of the competition). If an accommodation implicates only a peripheral aspect of the public entity's program, the accommodation cannot be deemed a fundamental alteration.

Second, the inquiry assesses the realistic impact of the specific claimant's individual request on the program, rather than the theoretical cumulative effect of the accommodation if it were applied generally. *See Martin*, 204 F.3d at 1001 ("The issue here is not whether use of carts generally would fundamentally alter the competition, but whether the use of a cart *by Martin* would do so. The evidence must 'focus [ ] on the *specifics* of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation.") (emphases added); *see also Birdwell v. Avalon*, 742 F. Supp. 3d 1024, 1041-42 (N.D. Cal. 2024) (Tigar, J.) (ruling in the ADA and FHAA context that a $150 rent waiver for a disabled resident would not constitute a fundamental burden in part because "receiving approximately $150 less in rent per month due to the accommodation would not interfere with AvalonBay's ability to turn a profit").

Third, the Court must examine how realistic the purported impact on the public entity's program would be. The Court will not entertain purely theoretical impacts without an adequate basis in concrete evidence. *See Crowder v. Kitagawa*, 81 F.3d 1480, 1486 n.2 (9th Cir. 1996) (stating in a case concerning alleged disability discrimination from a Hawai'i dog quarantine law that, in addition to the existence of reasonable alternatives to quarantining, "there is evidence that the risk of rabies being imported by guide dogs is low" and "the quarantine has not once in over 75 years detected a single case of rabies among imported dogs"); *see also Where Do We Go Berkeley*, 32 F.4th at 862 (ruling in the context of a program designed to "address risks to the public" that the fundamental alteration analysis also considers "the *probability* of worsening the risk if the agency is forced to alter its program") (emphasis added).

Fourth, as a related inquiry, a public entity must determine how substantial the impact of the accommodation would be. In other words, it must be clear that the requested accommodation would be significant enough to obstruct the entity's ability to carry out the program. *See Crowder*, 81 F.3d at 1486 n.2; *Choate*, 469 U.S. at 300 (the central inquiry of the fundamental alteration

analysis is whether the accommodation would "compromise[] the essential nature" of a program"); *Where Do We Go Berkeley*, 32 F.4th at 862.

Fifth, relatedly, the public entity must consider the availability of alternatives, and the likelihood that such alternatives could reasonably mitigate the obstructive impact of the accommodation while still serving the disabled individual. *See Crowder*, 81 F.3d at 1486 n.2 (stating that, in addition to the low risk of rabies being imported by guide dogs, "vaccine-based alternatives may be equally or more effective in preventing the importation of rabies"); *Duvall*, 260 F.3d at 1136 ("Mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement; the [ADA] creates a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.").

With a clear definition of the relevant City program and a framework against which to weigh the City's assertions of "fundamental alteration" in mind, the Court may proceed to evaluate the merits of each requested accommodation.

Because BHU asserts constitutional claims in addition to ADA claims, the Court addresses the applicable legal standards therefor.

C. Property Seizure Constitutional Standard

Plaintiffs assert that the City's abatement operations constitute an unlawful seizure and destruction of personal property in violation of the Fourth Amendment and the Fourteenth Amendment's Due Process Clause. The Fourth Amendment "protects two types of expectations, one involving 'searches,' the other 'seizures,'" with a seizure of property occurring when there is "some meaningful interference with an individual's possessory interests in that property." *Lavan v. City of L.A.*, 693 F.3d 1022, 1027 (9th Cir. 2012). At issue in the case at bar are seizures of property raised by the proposed abatement action.

The Ninth Circuit has held that even property temporarily left unattended on a public sidewalk is entitled to Fourth Amendment protection, and that a city may not seize and summarily destroy such property without first demonstrating an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or constitutes evidence of a

crime. *See id.* at 1024, 1030–31. The lawfulness of a seizure is also informed by the manner of execution, including whether the government summarily destroys property that could have instead been returned or whether intermediate measures could have been taken other than seizure and destruction. *See Lavan*, 693 F.3d at 1031 (concluding that even if seizure of unabandoned property would have been reasonable, summary destruction of that property would not be reasonable under the Fourth Amendment); *U.S. v. Jacobsen*, 466 U.S. 109, 124–25 (1984) ("[A] seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'"); *U.S. v. James Daniel Good Real Prop.*, 510 U.S. 43, 62 (1993) (holding that the government must demonstrate that less restrictive measures, including a lis pendens, restraining order, or bond, would be inadequate to protect its interests before seizing real property without prior notice and a hearing); *U.S. v. Hyde*, 287 F. Supp. 2d 1095, 1099 (N.D. Cal. 2003) (Chen, J.) (holding that where a less drastic alternative would fully preserve the government's stated interest, due process principles counsel in favor of pursuing the alternative over a more burdensome restraint).

The Fourteenth Amendment further affords procedural protections: the government "may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking." *Id.* at 1032 (quoting *Clement v. City of Glendale*, 518 F.3d 1090, 1093 (9th Cir. 2008)).

D. State-Created Danger Constitutional Standard

Plaintiffs argue that abatement of the Harrison Encampment will expose them to dangers they do not currently face by, *inter alia*, depriving them of access to restrooms, food, water, and basic sanitation services; dismantling the mutual protection and community support of the Encampment; removing medical and case management access; and displacing residents into unfamiliar environments without community support structures. BHU's SJ Motion at 19–22; FAC at 25–29.

The state-created danger doctrine, affording constitutional protection under the Due Process Clause of the Fourteenth Amendment, applies when a public entity engages in affirmative

conduct in placing the plaintiff in danger, and acts with deliberate indifference to a known or obvious danger. *Murguia v. Langdon*, 61 F.4th 1096, 1111 (9th Cir. 2023) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). Plaintiffs must also show that they face a particularized and foreseeable danger that they would not have otherwise faced. *Sinclair v. City of Seattle*, 61 F.4th 674, 680 (9th Cir. 2023).

The state-created danger doctrine applies narrowly to encampment abatements. Courts in this district have consistently held that the generalized dangers of homelessness preexist the state's actions in abating an encampment, and the state thus cannot be liable for "creating" dangers that it merely fails to resolve. *See, e.g.*, *Cobine v. City of Eureka*, 250 F. Supp. 3d 423, 433 (N.D. Cal. 2017) (White, J.) ("In the absence of particular allegations that the state action put the Plaintiffs in an inherently dangerous situation, the Court is bound to find that the generalized dangers of living on the street preexisted Plaintiffs' relocation . . . . Without allegations of intentional eviction during precarious weather or other facts indicating deliberate indifference to the safety and welfare of the population, the Court must dismiss the claim."); *Jensen v. Johnson*, 2025 WL 2443218, at *6 (N.D. Cal. July 28, 2025) (Thompson, J.) (holding that dangers preexisted state actions); *Scwarz v. Town of Fairfax*, 2025 WL 2410522, at *2–3 (N.D. Cal. Aug. 19, 2025) (Seeborg, J.) ("Plaintiffs fail to show actual, particularized dangers that they would not otherwise confront. The risks of camping outside and having little to no access to clean bathroom and vital services are certainly severe, but the state's action to abate the campsite in one particular location is not creating those risks."). The Ninth Circuit has, in recent non-binding statements, similarly been reluctant to apply state-created danger in the encampment context post-*Grants Pass*. *See Sacramento Homeless Union v. City of Sacramento*, 115 F.4th 1149, 1151–52 (9th Cir. 2024) (mem.) (Nelson, J., joined by Bumatay and VanDyke, JJ., respecting the denial of rehearing en banc) (stating that district court erred in finding state-created danger arising from sweeps during extreme heat); *cf. Penilla v. City of Huntington Park*, 115 F.3d 707, 708 (9th Cir. 1997) (officers finding decedent in emergency situation, canceling the request for paramedics to appear on the scene, and moving decedent into locked home); *DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 191 (1989) (social workers failing to remove boy from abusive father's

custody); *Wood v. Ostrander*, 879 F.2d 583, 586 (9th Cir. 1989) (officers arresting intoxicated husband but leaving wife stranded in unfamiliar location without keys to the car).

On the other hand, affirmative state conduct which places unhoused individuals in a worse condition in their unhoused state, such as removal of their protective belongings and shelters or placing them in locations which increase their exposure to the elements can constitute state-created dangers. *See, e.g.*, *Janosko v. City of Oakland*, 2023 WL 187499, at *3 (N.D. Cal. Jan. 13, 2023) (holding that removal of shelter "affirmatively expose[s] [unhoused plaintiffs] to harsher, more dangerous conditions"); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50 ("When Plaintiffs' shelter and personal belongings are destroyed, and they have no safe shelter alternative nor means to protect themselves from the elements, the state has made plaintiffs' conditions worse."); *Alfred v. City of Vallejo*, 2025 WL 435900, at *9 (E.D. Cal. Feb. 7, 2025) ("Removing Plaintiff's shelter while knowing Plaintiff has no alternatives is likely to expose her to more dangerous conditions than she currently faces by depriving her of protection rom the elements, . . . creating a known and particularized danger to Plaintiff's safety and welfare.").

The Court now turns to evaluating the merits of each category of relief sought by BHU members. The Court examines each request for relief under the ADA, property seizure, and state-created danger claims where appropriate. The facts relied upon herein are not genuinely disputed except as noted otherwise.

E. Merits of BHU's Claims for Accommodations/Relief

1. Relief Category #1: Indefinite Pause on Abatement, Right to Remain in Place, and Guarantee of Non-Congregate Housing or Specific Shelter Placements

a. Merits of ADA Accommodation Requests

Eric Keiser, Shareef Muwakkil, Lewanda Parnell, and Erin Spencer each request either that abatement be suspended until non-congregate shelter placements become available, or a guarantee from the City of non-congregate housing or specific shelter placements. Dkt. 253, Exs. A–B, I; Gregory Declaration (Dkt. 217-3), Ex. A; BHU Status Report (Dkt. 200).

Mr. Keiser cites mobility limitations and chronic pain from a car collision, and

schizophrenia impacting his executive functioning and ability to navigate the relocation process. *See* Dkt. 200 at 12. Mr. Muwakkil experiences mobility limitations from leg swelling and an ankle injury, and psychosis that contributes to executive functioning challenges limiting his ability to relocate without exacerbating symptoms. *See id.* Ms. Parnell cites physical limitations including vertigo and mental health impediments requiring community support to support her request. *Id.*, Ex. A at 2. And Mr. Spencer cites cognitive and mobility challenges, including sciatica and a displaced left hip, and PTSD and ADHD as necessitating this accommodation. *Id.* at 13.

The claimants' requests are both unreasonable and would pose a fundamental alteration to the relevant City program. Accordingly, for the reasons stated below, the Court **GRANTS** summary judgment in favor of the City with respect to this category of accommodations and **DENIES** BHU's cross-motion for summary judgment with respect to the same category of accommodations.

First, regarding the requests for an indefinite pause on abatement, the Court finds such an accommodation unreasonable. The reasonableness of a requested accommodation is assessed, in part, by weighing its practical costs against its expected benefits. *See Martin*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084; *Borkowski*, 63 F.3d at 138. The costs of the requested accommodation are concrete, immediate, and severe. The City's Public Health Officer has documented confirmed instances of leptospirosis in the Encampment, multiple suspected and confirmed cases in dogs, and contamination risks in surrounding soil and water, with proximity to a creek amplifying the potential range of exposure. Doohan Declaration (Dkt. 194-3). The Court noted in the June 2025 preliminary injunction order that "as health and safety hazards persist, the government's interest in closure increases." Minute Entry (Dkt. 104) at 2. Although BHU responds that the leptospirosis justification is largely pretextual, as no human has been confirmed to have contracted leptospirosis at the Encampment, BHU's SJ Motion at 14, BHU's attorneys at the hearing on BHU's motion did not appear to dispute the seriousness of the public health threat. The documented conditions — the prevalence of rats, contaminated soil, instances of standing water, creek drainage, and rodent harborage sites — establish a plausible and serious human health

risk exacerbated by encampment conditions. The finding of leptospirosis infections in rats and dogs is highly unusual and indicative of a serious health problem. *See* Doohan Declaration (Dkt. 194-3) ¶¶ 9, 16 (describing leptospirosis as a "neglected tropical disease" and explaining that "the presence of Lepto[spirosis] in dogs at the encampment demonstrates the imminent risk to human health because the method of transmission from infected rats to humans is essentially the same as for dogs"). The City is justified in addressing this public health concern with urgency.

BHU argues that targeted rat abatement and partial clearance could address the leptospirosis outbreak without displacing residents. *Id.* at 14–16. The Court requested briefing and the production of evidence on this very question. *See* Order Setting Briefing Schedule (Dkt. 202). While the availability of alternatives is one factor which informs the analysis, the ADA does not categorically require the City to adopt the *least restrictive* encampment management approach possible, and the City has submitted declarations from competent experts explaining that total abatement of the Encampment is necessary in order to effectuate eradication of the contagion. Doohan Declaration (Dkt. 194-3) ¶¶ 22, 24 (stating that eradication is necessary to mitigate the risk to Encampment residents and that alternatives short of total eradication "cannot adequately address the risks to human health posed by the presence of Lepto[spirosis] in the Harrison Street encampment"); Doohan Declaration (Dkt. 207-2) ¶¶ 6–7 (stating that "even successful partial measures . . . cannot adequately address the risks to human and dog health posed by the presence of Leptospirosis in the Harrison Street encampment" and that "even if it were theoretically possible to effectively abate the Leptospirosis contagion in the encampment while allowing some encampment residents to remain in place, it would not be safe or responsible to do so. This is because eradication usually involves laying poison bait for the rats. The poison itself is a potential hazard to humans and their pets, as are the rat carcasses after they have eaten the poison. Additionally, infected rat carcasses can spread Leptospirosis if not properly collected and disposed of"); Torres Declaration (Dkt. 219-7) ¶¶ 5–13. BHU has not countered this public health evidence sufficiently to create a factual doubt about the need for widespread abatement.

In sum, the City has made a substantial and competent public health judgment that full Encampment closure is well-advised if not absolutely required as a public health measure; BHU

has offered no expert evidence to the contrary sufficient to raise a genuine issue of fact. Where the costs of the accommodation include direct, documented risk of harm to public health, the balance tips in favor of the City's abatement. A proposed accommodation of an indefinite pause on abatement realistically threatens the health and safety of not only the individual claimants herein, but the surrounding community as well. The proposed accommodation is not a reasonable one.

Second, the requests for non-congregate housing or guaranteed shelter placement as a precondition to abatement are both a fundamental alteration to the City's program and an unreasonable accommodation.

The accommodation request would constitute a fundamental alteration of the City's program and would require the city to create a new program. First, the request implicates a core, rather than peripheral, aspect of the City's program. Requiring that the City guarantee non-congregate placements before proceeding with abatement could delay abatement indefinitely and for a long period, and this strikes at the heart of the how the program of maintaining the streets operates, by effectively enjoining its ability to maintain streets and sidewalks consistent with public health until it can provide a kind of housing which is currently in scarce supply. An order postponing the needed abatement would work a substantial non-speculative obstruction of the City's effort to maintain public health and safety in this case. And the record facts establish beyond genuine dispute that such postponement would leave the City little or no effective alternative courses of action to address the health and safety problem posed by the leptospirosis outbreak. *See, e.g.*, Doohan Declaration (Dkts. 194-3; 207-2); Torres Declaration (Dkt. 219-7).

Moreover, requiring the City to allocate funds to provide new and additional non-congregate housing, while ideal, would effectively require the City to fund a new or different housing program. *Townsend*, 328 F.3d at 518 ("[P]ublic entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons."). The declarations of City personnel confirm that shelter placements are governed by eligibility, availability, prioritization criteria, and operational considerations, and that the City already makes shelter and housing programs available to BHU members on the same terms as other unhoused

Berkeley residents. Radu Declaration (Dkt. 219-4) ¶ 13; Defendants' SJ Motion at 15–16. Granting guaranteed placements to Encampment residents would necessarily displace other individuals awaiting shelter through the same system, would impose preferential treatment of some over others not in line with the City's priority process, thus interfering with the City's provision of housing as part of its relevant program. *See* Defendants' Opposition Brief at 2–3 (describing the requested accommodation as "a pass to jump ahead in line and receive non-congregate shelter placement at the City's expense, outside the Coordinated Entry System administered by Alameda County and governed by federal Housing and Urban Development Department regulations").

The record also establishes that non-congregate shelter is presently unavailable in sufficient quantity to satisfy the requests, and that the City is operating under a $32 million budget deficit and hiring freeze. Radu Declaration (Dkt. 219-4) ¶ 11; Radu Declaration (Dkt. 56-3) ¶ 5. Fiscal constraints are a serious factor that the Court must consider when evaluating the merits of a requested accommodation. *See Fortyune*, 364 F.3d at 1084. The City's prior expenditure of $5 million to fund a master lease of the Campus Motel, dedicated exclusively to Harrison Encampment residents, illustrates that scale of investment that even a single housing-adjacent accommodation would necessitate. *See* Radu Declaration, Ex. A (Dkt. 15-1) at 1. The ADA does not compel a public entity to guarantee a benefit it lacks the capacity to provide. *See Townsend*, 328 F.3d at 518; *Scwarz*, 2025 WL 2410522, at *4 ("[P]roviding new housing or the full slate of services Plaintiffs request would be an entirely new program.").

Even if not a fundamental alteration, these requests for accommodation are unreasonable. *See Fortyune*, 364 F.3d at 1084 (accommodation unreasonable where it imposes costs disproportionate to the access benefit it delivers); *Borkowski*, 63 F.3d at 138 ("'Reasonable' is a relational term: it evaluates the desirability of a particular accommodation according to the consequences that the accommodation will produce. This requires an inquiry not only into the benefits of the accommodation but into its costs as well."). The City is operating under a significant budget deficit, and the ADA does not require a financially constrained public entity to undertake an open-ended expenditure in pursuit of a benefit which may or may not actually benefit

particular individual claimants. *See id.*

For the foregoing reasons, given the facts not genuinely in dispute, the Court **GRANTS** summary judgment for the City on all claims seeking as an accommodation an indefinite pause on abatement or guarantees of housing or shelter placement. The Court **DENIES** BHU's cross-motion with respect to the same relief.

b. State-Created Danger Claim

BHU argues that repeated displacement constitutes state-created danger actionable under the Fourteenth Amendment.

In the June 10, 2025 minute entry on the preliminary injunction, the Court found that BHU was "unlikely to succeed on its Fourteenth Amendment [state-created danger] claim because it fails to demonstrate that the City's action will place its members residing in the Harrison Corridor in a state-created danger related to a loss of 1) "bathrooms," 2) "access to food and water" such as from the "Dorothy Day House," 3) "mutual protection" from "community watch groups and buddy systems," and 4) "medical and case management services" from "Lifelong Medical and Bay Area Community Services." Minute Entry (Dkt. 104) at 2. The factual record has not materially changed with respect to these theories. The summary judgment record reinforces the Court's prior assessment instead.

The fundamental problem with BHU's argument on state-created danger arising from abatement is that it conflates dangers inherent in living without shelter with dangers created by the City. The residents of the Harrison Encampment were unsheltered and thus subject to exposure, instability, lack of privacy, inadequate sanitation services, and distance from essential services — all before the City even announced its closure. The abatement does not transform housed individuals into unhoused ones; it displaces individuals who are already unsheltered from one location to others. *See Scwarz*, 2025 WL 2410522, at *3. The loss of a particular community arrangement could constitute a genuine hardship and is undeniably traumatic for many members of the Encampment. But it is not a danger for which the City can be held liable under the Fourteenth Amendment. Unlike situations where unhoused individuals have been displaced and stripped of their belongings during inclement weather, the abatement here was delayed due to

rainy weather, and Plaintiffs do not identify a particular risk of injury deliberately imposed by the defendants that would otherwise be absent but for the abatement options. *See* Defendants' Opposition to Second Ex Parte Application (Dkt. 273) at 4; *c.f. Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1102 (E.D. Cal. 2012) (city endangering unhoused residents by planning to demolish a shelter during "the winter months that would brin cold and freezing temperatures, rain, and other difficult physical conditions"); *Alfred v. City of Vallejo*, 2025 WL 435900, at *9 (E.D. Cal. Feb. 7, 2025) ("Removal of Plaintiff's shelter at this time also imposes an especially increased risk in light of the winter season when the temperature drops and rainfall increases.").

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on all claims related to an indefinite pause on abatement, right to remain in place, and a guarantee of non-congregate housing or specific shelter placements. The Court **DENIES** BHU's cross-motion for such relief.

2. Relief Category #2: Enforcement-Free Zones, City-Sanctioned or City-Owned Campsite, and Map or List of Enforcement-Free Areas

a. Merits of ADA Accommodation Requests

Eric Keiser, Shareef Muwakkil, Lewanda Parnell, and Erin Spencer request that the City (1) identify certain enforcement-free locations where they may relocate following abatement, (2) designate City-owned or City-sanctioned campsites for use after abatement, or (3) provide a map or list of areas within Berkeley where displaced Encampment residents may lawfully reside without fear of enforcement. *See* Dkt. 253, Exs. A–B, I; Gregory Declaration (Dkt. 219-3), Ex. A; BHU Status Report (Dkt. 200).

The claimants articulate the following disability-related bases for these requests. Mr. Keiser suffers from mobility impairments and schizophrenia which require predictability. BHU Status Report (Dkt. 200) at 21. "[S]udden displacement fractures his fragile sense of safety, flooding him with stress that worsens hallucinations . . . . The looming threat of citation, arrest or property destruction would keep him in a state of hypervigilance." *Id.* With respect to Mr. Muwakkil, his physical and mental disabilities make it a challenge to exist in "hazardous environments — such as uneven ground, longer distances from services and unsafe structures —

that would worsen his chronic leg swelling, risk re-injury to his unhealed ankle, and impose physical strain that could lead to a heart attack. Mentally, the lack of a stable, predictable place would induce severe anxiety and decision paralysis." *Id.* at 23. He also requires clear visual guidance and an enforcement-free zone because "he cannot navigate complex rules due to executive dysfunction." *Id.* at 24. Ms. Parnell lives with vertigo and difficulty balancing, as well as mental disabilities that impact her ability to complete tasks. *Id.* at 14. She requests a City-sanctioned camp and visual aid of permissible encampment sites because she relies on community for safety and is at risk of vertigo episodes or anxiety from repeated displacement. Finally, Mr. Spencer cites his mobility impairments, PTSD, and ADHD as reasons why he cannot independently relocate or comply with City laws in any future relocation site. Dkt. 253, Ex. A at 13.

These requests fail because claimants have not demonstrated a sufficient nexus between their asserted disabilities and the specific accommodations requested. To establish entitlement to a reasonable accommodation under Title II, a claimant must demonstrate not only that they are a qualified individual with a disability, but that the requested modification would meaningfully provide access to City services or programs otherwise unattainable. *See, e.g.*, *Choate*, 469 U.S. at 301 (a "reasonable accommodation" is one that gives a qualified plaintiff with disabilities "meaningful access" to the program or service); *Martin*, 204 F.3d at 999 ("Here, it is clear that permitting Martin to use a golf-cart is 'reasonable' in the sense that is *solves the problem of Martin's access to the competition*.") (emphasis added).

The Court does not take lightly the claimants' need for stability and predictability. Those needs are understandable. The disabilities at issue here may well bear on a person's capacity to navigate uncertainty, comply with regulatory requirements, and manage the logistics of relocation. The problem here is that the nexus between these disabilities and a pre-commitment to non-enforcement is not readily apparent. The risk of future enforcement against these individuals who move to a new location is speculative at this juncture. The City's enforcement criteria, which by the City's own account, are activated only by hazardous or obstructive conditions rather than the mere presence of unhoused campers. *See* Radu Declaration (Dkt. 219-4) ¶¶ 6–12. The City does

not categorically prohibit camping outdoors; it manages the public right-of-way by assessing specific risks posed to pedestrian access, public health, fire safety, and community welfare. *Id.* Compliance with those standards is not beyond reach solely by virtue of the disabilities described in the record. This is particularly so in view of the City's imposition of enforcement of overly restrictive limits on space occupied by unhoused individuals discussed below.

The Court acknowledges BHU's additional assertion that community proximity is itself a disability-related need — *i.e.*, that individuals with disabilities may depend on established mutual support networks for their day-to-day stability and safety. But the abatement order does not prohibit Encampment residents from relocating in proximity to one another or from reconstituting certain community arrangements elsewhere, in compliance with the City's balancing framework for enforcement. The City is not mandating isolation. *Cf. Boyd v. City of San Rafael*, 2023 WL 6960368 (N.D. Cal. Oct. 19, 2023) (municipal ordinance prohibiting clustering of unhoused residents). On this record, the need for community proximity does not translate into a disability-related necessity for advance designation of enforcement-free zones or City-sanctioned encampments at this juncture.

The request for a map or list of permissible relocation fares no better, for many of the same reasons. The City's enforcement program does not operate by categorizing locations as universally permissible or impermissible — it operates by assessing conditions on the ground and responding to hazardous or obstructive conditions as they arise. Radu Declaration (Dkt. 219-4) ¶¶ 6–12. And the Court takes the City at its word regarding enforcement — there is no city-wide ban on unhoused individuals, as many such individuals have been left to sleep on City sidewalks without disruption.

Given the City's stated policy that it does not have a City-wide ban on camping by the unhoused, the need for a map of "safe zones" is not substantially tied to the asserted disabilities. This is particularly so in light of the Court's holding, as noted, that the City may not enforce overly-restrictive space limitations on its sidewalks. To be sure, should the City engage in serial evictions after residents move from the Encampment, that could, at some point, give rise to a legal claim. But at this juncture, as noted below, such a claim is not ripe.

Accordingly, the Court **GRANTS** summary judgment in favor of the City on ADA claims related to non-enforcement, City-sanctioned or City-owned campsites, and a map of enforcement-free zones. The Court **DENIES** BHU's motion for such relief.

b. State-Created Danger Claim

BHU argues that failure to designate enforcement-free zones and consequent displacement of BHU members from the areas to which they relocate constitutes state-created danger actionable under the Fourteenth Amendment.

Again, much like the above analysis of BHU's state-created danger claim, the fundamental flaw with this argument is that it conflates dangers inherent in living without shelter with dangers created by the City.

However, at the March 11, 2026 hearing on BHU's request for a TRO, BHU argued that the City's *repeated* displacement of unhoused individuals constitutes a state-created danger by preventing the formation of stable community arrangements and forcing residents into recurring cycles of disruption. BHU's position, drawing on the minority's dissent in *Grants Pass*, is that the Due Process Clause may constrain cities from enacting anti-homelessness ordinances even after *Grants Pass* foreclosed Eighth Amendment challenges. *See Grants Pass*, 603 U.S. 520, 589 (Sotomayor, J., dissenting) ("Finally, the Court does not decide whether the Ordinances violate the Due Process Clause. . . . The Due Process Clause may well place constitutional limits on anti-homelessness ordinances."). The Court agrees with Justice Sotomayor's dissent that due process is a valid basis for future challenges to municipal anti-homelessness ordinances. However, in the case at bar, closing the Harrison Encampment because of the urgency of the leptospirosis outbreak does not necessarily foreclose residents from moving to other parts of the City where some degree of congregation may occur. While the City refuses to establish a sanctioned encampment elsewhere, as noted, it represents that it does not have a general policy barring residents from sleeping in public places, and there is no apparent policy limiting the number of unhoused persons from sleeping in any given area. *Cf. Boyd*, 2024 WL 3748334, at *4–5 (N.D. Cal. Aug. 7, 2024) ("The amended ordinance allows for clustering of individuals and campsites in a manner which mitigates the dangers potentially facing isolated unhoused individuals. . . . This addresses the due

process concerns identified by the Court."). Thus, this particular constitutional claim is not ripe at this juncture.

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on BHU's state-created danger claim related to enforcement-free relocation areas, City-sanctioned or City-owned campsites, and maps or lists of permissible relocation zones as a fundamental alteration to the City's existing program. The Court **DENIES** BHU's cross-motion for such relief. Again, the Court reserves judgment on whether a pattern of repeated displacement of unhoused disabled individuals across multiple locations could, on a more developed record, give rise to a viable ADA or constitutional claim. Nothing in this ruling necessarily forecloses future claims under different circumstances.

3. Relief Category #3: Safe Location to Relocate Vehicles, Towing Exemption, and Parking Relief

a. Merits of ADA Accommodation Requests

Merced Dominguez and Yesica Prado request certain ADA accommodations with respect to City enforcement of laws and regulations governing vehicle registration, operability, timed parking limits, and cleanliness standards. Eight of the fifteen total vehicles at the Encampment appear to be at risk of imminent enforcement action.[9] The Court first evaluates the merits of the ADA accommodation requests; the constitutional property seizure and state-created danger implications are subsequently addressed.

The Court first acknowledges the significant risk attached to the loss of a physical, movable shelter for persons with disabilities. "Those individuals face disproportionate harm if they are forced to move into public shelters or if they are too far from their medical providers and

[9] Six of the eight vehicles at risk of enforcement action are listed by license plates: (1) 202JYV, (2) 393967, (3) 6HML454, (4) 7PDU606, (5) BMJ499, (6) 9DVV381. *See Prado v. City of Berkeley*, No. 23-cv-04537-EMC, Radu Declaration (Dkt. 193); Response to Radu Declaration (Dkt. 199); Nicoletti Declaration (Dkt. 200); City Reply Brief (Dkt. 205). The remaining two are a gray station wagon and silver four-door vehicle unidentified by a license plate number. *Id.* The remaining vehicles were either not determined to be a public safety threat or were not subject to removal because they are parked outside the designated "No Parking" zone. *Id.* Accordingly, the Court does not issue a ruling with regard to the vehicles not at risk of imminent enforcement action because summary judgment would be premature.

social support networks. Individuals with mental health disabilities also risk serious exacerbation of their conditions if they lose their private, safe spaces." *Navarro v. City of Mountain View*, 2021 WL 5205598, at *2 (N.D. Cal. Nov. 9, 2021). In response, the City identifies potential public health and safety concerns associated with specific vehicles. *Prado*, No. 23-cv-04537-EMC, Radu Declaration (Dkt. 193); City Reply Brief (Dkt. 205). For example, rodent droppings and rodent burrows found near vehicles, vehicles serving as potential rodent harborage sites, and accumulation of sewage or personal property around vehicles. *Id.*

As a threshold matter, Ms. Prado's ADA claim is not viable. The Court previously dismissed Ms. Prado's challenge to the 72-hour parking enforcement rule in the related *Prado* action. No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 139) at 14–16 (holding that Ms. Prado did not demonstrate a sufficient nexus between her disabilities and the requested accommodation). Although Plaintiffs in that case subsequently filed a Third Amended Complaint, that complaint did not re-allege disability discrimination with respect to enforcement against Ms. Prado's RV. *See* No. 23-cv-04537-EMC, Third Amended Complaint (Dkt. 150). Any such claim is therefore waived, and the Court declines to revisit its prior holding.

The Court now proceeds to evaluate the merits of the accommodation request made by Ms. Dominguez.[10] Ms. Dominguez establishes a sufficient nexus between her respective disabilities and the inability to comply with the vehicle-related requirements at issue. Ms. Dominguez's degenerative spondylosis causes chronic pain and limits her mobility and ability to relocate her RV. Dkt. 253, Ex. A at 10. Further, the record reflects that Ms. Dominguez relies on her RV as shelter to "manage her chronic pain in a stable, accessible environment," and that the fear of

[10] The City partially denied Ms. Dominguez's accommodation request on the grounds that she advanced financial needs for accommodation, rather than disability-related bases. Dkt. 253, Ex. I at 13; Prado Declaration (Dkt. 272), Ex. G at 5. The Court does not find this rationale convincing. Ms. Dominguez's accommodation request explained how her disabilities impact her ability to comply with rules and regulations governing their vehicles. Dkt. 253, Ex. I at 10; Prado Declaration (Dkt. 272), Ex. G at 2–4. In any event, her disabilities are sufficiently open, obvious, and apparent as a result of her requests and the interactive process. *See, e.g.*, *Rimes v. Claire's Stores, Inc.*, 2024 WL 1461355, at *1 (9th Cir. Apr. 4, 2024) (mem.); *Carter v. Shreveport*, 144 F.4th 809, 814 (5th Cir. 2025) (knowledge of disability is satisfied where "the disability, resulting limitation[s], and necessary reasonable accommodation were open, obvious, and apparent to the entity's relevant agents") (brackets in original) (internal quotation marks omitted); *Martinez v. Cnty. of Alameda*, 2025 WL 1556410, at *10 (N.D. Cal. June 2, 2025).

parking enforcement and loss of her vehicle "keeps her in a state of perpetual insecurity of fear," exacerbating symptoms because she is incapable of walking long distances. BHU Status Report (Dkt. 200) at 11, 17–18. Ms. Dominguez's RV serves as her sole source of shelter, and being required to "relocate her RV, [and] repeatedly travel in search of alternative places to park" would "place significant strain on her spine" and exacerbate her pain and mobility limitations. *Id.* at 11; Brizzolara Declaration (Dkt. 279) ¶ 6. Ms. Dominguez requests an exemption from parking enforcement and towing, temporary stability in her current location, relocation to an ADA-compliant parking location, and a parking permit system allowing her to remain in a designated area.

There is a clear nexus between Ms. Dominguez's disabilities and the requested accommodations. Ms. Dominguez has stressed the centrality of her RV to her physical and mental wellbeing, and has expressed willingness to cooperate with the City by voluntarily relocating to a "legal parking area without risk of citation and towing." *Id.* at 17. Having established a nexus between Ms. Dominguez's disabilities and the threatened exclusion from a portion of the City's program (the streets), the burden shifts to the City to demonstrate that the requested modifications are unreasonable, would constitute a fundamental alteration of the relevant program, or would impose an undue burden. The City has not made that showing.

The requested accommodations, including temporary parking exemptions or renewable permits and assistance with vehicle relocation, may indeed implicate core aspects of the City's relevant program of maintaining public health and safety on public roadways. However, the City's submissions do not demonstrate that temporary, individualized exemptions and accommodations for an individual — or even a handful of disabled claimants — would substantially obstruct the City's management of the program. Again, the fundamental alteration inquiry must focus on the specific impact of accommodation the particular individuals seeking the accommodation, not the theoretical effect of granting such exemptions on a broader basis or city-wide. *Martin*, 204 F.3d at 1001; *see also Birdwell*, 742 F. Supp. 3d at 1041. The City has not established on this record a real and substantial obstruction of the City's program would result from granting the individual accommodations request of Ms. Dominguez.

The City's principal objection to exempting Ms. Dominguez from parking regulations is that doing so would undermine vehicle turnover, emergency access, and equitable curb use, and thus constitute a fundamental alteration. White Declaration (Dkt. 219-5) ¶¶ 14–19; Defendants' SJ Motion at 18–19. That concern is unpersuasive as applied to Ms. Dominguez's specific circumstances. The fundamental alteration inquiry must focus on the actual, concrete impact of accommodating Ms. Dominguez. *Martin*, 204 F.3d at 1001; *Birdwell*, 742 F. Supp. 3d at 1041. The record does not support a finding that Ms. Dominguez's stationary RV meaningfully disrupts parking turnover or emergency access. The City's own submissions acknowledge that the RV has remained in its current location for several years, without any accompanying showing of interference with traffic flow or emergency vehicle access. *See* Vance-Dozier Declaration (Dkt. 219-6) ¶¶ 3–6. The City enforces parking in a balanced, priority-based manner and concedes that not every violation triggers enforcement. Defendants' SJ Motion at 18 n.5. The City offers no evidence that Ms. Dominguez's continued presence at her current location has, in practice, impeded access. The fact that parking regulations serve important purposes does not mean that deviation from it for a handful of disabled individuals constitutes a fundamental alteration. *See Crowder*, 81 F.3d at 1486 n.2.

The City also opposes the accommodation request on operational grounds. The City contends that: "Parking enforcement relies on automated systems; manual tracking would be labor-intensive, less reliable, and increase disputes. Staff would need to manually monitor vehicles and make repeated, case-specific determinations, diverting personnel from broader police and public safety responsibilities, resulting [in] an undue administrative burden under Title II." Defendants' SJ Motion at 18. But, as noted above, in that same motion, the City states that it enforces parking in a measured, priority-based manner and concedes that not every violation triggers enforcement. *Id.* at 18 n.5. Moreover, the City points to nothing in the record which explains why it would not be feasible to input Ms. Dominguez's license plate into its existing automated system to flag her for exemption. *See Crowder*, 81 F.3d at 1486 n.2 (requiring a realistic, not merely theoretical showing of harm and consideration of alternatives); *Duvall*, 260 F.3d at 1139 (duty to consider claimant's specific needs in light of their disability). The City's

factual submissions fall short of the specificity required to sustain a fundamental alteration or undue burden defense.

Because the City has not, as a matter of law, demonstrated that the requested accommodations are unreasonable or would constitute a fundamental alteration or undue burden, the City's motion for summary judgment on Ms. Dominguez's vehicle-related disability accommodations is **DENIED** with respect to vehicle-related disability accommodations. BHU's cross-motion for summary judgment is **GRANTED** with respect to Ms. Dominguez's request for accommodations related to her vehicle.

b. Property Seizure Claim

Ms. Dominguez and Ms. Prado use their vehicles as shelter, dkt. 253, Ex. A at 10, 17, and as such their vehicles occupy a distinct status by virtue of this Court's prior holding in *Prado* that the City must concretely demonstrate that a vehicle obstructs traffic or presents a concrete threat to public health or safety before invoking the community caretaker doctrine. No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 23–27. Mere noncompliance with parking or operability requirements do not suffice to justify seizure or destruction of vehicles. *Id.* at 27; *see also Lavan*, 693 F.3d at 1025, 1029 ("Violation of a City ordinance does not vitiate the Fourth Amendment's protection of one's property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment."). The Court's prior ruling remains controlling here and bears emphasis, as the City now appears poised to tow, impound, and destroy a large number of cars within a wide "No Parking" zone in and around the Harrison Encampment. *See* No. 23-cv-04537-EMC, Radu Declaration (Dkt. 193); City Reply Brief (Dkt. 205).

To be sure, the City does have a substantial and legitimate interest and right to move, impound, and possibly destroy (under certain circumstances) vehicles which pose a demonstrable threat to public health. But the City's burden is to demonstrate such on an individual vehicle-by-vehicle basis. *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 26 ("The City has the burden to establish that the taking was warranted on a fact-specific basis.") (citing *U.S. v. Cervantes*, 703 F.3d 1135, 1144 (9th Cir. 2012)). Although the City has documented the

surrounding circumstances of individual vehicles which appear to pose a risk of harboring rats and the Leptospirosis bacteria, it has not demonstrated impoundment is warranted. Specifically, it has not demonstrated the health risk concerns as to each vehicle cannot be addressed by readily available less intrusive alternatives, such as: issuing nuisance abatement orders with compliance deadlines, prescribing specific remediation requirements such as targeted rodent treatments, sealing open engine compartments or other potential rodent harborage sites, removing debris or vegetation surrounding vehicles, permitting and facilitating voluntary relocation of vehicles out of the abatement zone, and assisting occupants with other means of bringing vehicles into compliance with health and safety standards.

The failure to consider available alternatives before taking the drastic step of impounding vehicles that serve as shelter is problematic. Numerous courts have considered the availability of less onerous alternatives in their constitutional analysis of this question. In *United States v. James Daniel Good Real Property*, the Supreme Court held that to establish the exigent circumstances necessary to justify seizure of real property without notice and an opportunity to be heard, the government must demonstrate that less restrictive measures — such as a lis pendens, restraining order, or bond — would not suffice to protect its interests in preventing the sale, destruction, or continued unlawful use of real property. 510 U.S. 43, 62 (1993). In *United States v. Hyde*, this district applied similar reasoning in ordering the substitution of one property subject to a government lis pendens for another, holding that where a less drastic alternative would fully preserve the government's stated interest, due process concerns counsel in favor of that alternative over a more burdensome restraint. 287 F. Supp. 2d 1095, 1099 (N.D. Cal. 2003) (Chen, J.).

In *Douglas v. Kriegsfeld Corp.*, the D.C. Court of Appeals held that under the Fair Housing Act, the "direct threat to health and safety" exception permitting denial of accommodations "does not come into play until after the trial court has evaluated the landlord's response to a requested accommodation and has determined, after a factual inquiry, that no reasonable accommodation could ameliorate the situation sufficiently to protect the health, safety, and property of others." 884 A.2d 1109, 1125 (D.C. 2005). The court there emphasized that a tenant asking for an accommodation to address a public health concern "seeks only time to clean

the apartment and show that she can keep it clean with government help — and thus to show that she can protect, no longer threat, the 'health' and 'safety' of others." *Id.* at 1127–28. Though *Douglas* rises in a different legal context, its structural logic applies to the immediate context too: property seized for threatening the health and safety of others. The mere existence of such concerns does not automatically authorize the most severe enforcement action available — the City must first determine whether intermediate remediation efforts could adequately address the identified hazards and, if not, explain why, before resorting to outright seizure and destruction. And in a prior order concerning abatement of the same Encampment, this Court denied BHU's motion for preliminary injunction but clarified that a resident's RV "shall not be moved or destroyed but may be cleaned and/or treated for pests." *Prado v. City of Berkeley*, No. 23-cv-04537-EMC, Order Denying Preliminary Injunction (Dkt. 26) at 17.

Residents here have expressed willingness to cooperate and assist the City in remediating health and safety risks. *See* BHU Status Report (Dkt. 200) at 17, 27 (Ms. Dominguez and Ms. Prado expressing willingness to relocate to an alternative parking location). It is incumbent on the City to explore these intermediate alternatives before defaulting to the most extreme option of impoundment and potential destruction.

The foregoing framework rests on the Fourth and Fourteenth Amendment's protection of property interests against unreasonable seizure; it does not depend on a disability-specific statute or accommodation doctrine thereunder. The constitutional requirement that the City make a specific, fact-based determination of a concrete threat to public health or safety and pursue reasonable, less restrictive alternatives before seizing a vehicle used as shelter applies to all BHU members residing in vehicles in the Harrison Encampment; the constitutional principle is not limited to those with documented disabilities.

Accordingly, the Court **GRANTS** BHU's motion for summary judgment on property seizure claims insofar as they relate to seizure, impoundment, and/or destruction of Ms. Dominguez or Ms. Prado's vehicles. The Court **DENIES** the City's motion with respect to the same claims. Before proceeding to impound or destroy any BHU member's vehicle without consent, the City must: (1) make a specific, fact-based determination — beyond mere parking

violations, inoperability, or expired registration — that the particular vehicle obstructs traffic or poses a concrete, individualized public health or safety threat; (2) provide the vehicle's owner with written notice of the specific findings, an opportunity to respond, and a reasonable opportunity to remediate the identified condition or voluntarily relocate the vehicle; (3) consider and pursue reasonable, less restrictive alternatives, including targeted cleaning, pest treatment, containment orders, and assisted relocation, or demonstrate with particularity why such alternatives are ineffective for the given vehicle and occupant. Only upon satisfaction of all three requirements may the City proceed to more drastic measures such as impoundment. Moreover, prior to the destruction of any vehicle, the City must further demonstrate that no alternative remedy can adequately mitigate the health or safety risk presented by the vehicle. The Court retains jurisdiction to evaluate whether the City has satisfied this framework on a vehicle-by-vehicle basis if a dispute arises.

c. State-Created Danger Claim

The Court has already explained that most of BHU's state-created danger arguments conflate dangers inherent in living without shelter with dangers created by the City, and thus the doctrine of state-created danger does not lie. The calculus materially shifts, however, for unhoused individuals who rely on their vehicles as primary shelter. For these individuals — including Ms. Dominguez, Ms. Prado, and other BHU members in the Harrison Encampment — the City's impoundment or destruction of their vehicles would not merely displace them from one outdoor location to another. It would transform them from persons who are *unhoused but sheltered* into persons who are *unhoused and unsheltered*, exposing them to the elements, the cold, and the absence of any private, secure space. That distinction is substantial and legally significant. *See Navarro*, 2021 WL 5205598, at *2 (recognizing significant harms to unhoused disabled individuals from seizure of vehicles). The affirmative act of seizing or destroying a vehicle that serves as a person's shelter is precisely the kind of specific, particularized government action that is subject to the state-created danger doctrine. *See Sinclair v. City of Seattle*, 61 F.4th 674, 682–83 (9th Cir. 2023) (distinguishing generalized from particularized dangers). And unlike the generalized dangers of displacement that pre-exist general Encampment abatement, the loss of

vehicular shelter is a foreseeable and concrete danger that would not exist but for the City's abatement action. *See, e.g.*, *Janosko v. City of Oakland*, 2023 WL 187499, at *3 (N.D. Cal. Jan. 13, 2023) (holding that removal of shelter "affirmatively expose[s] [unhoused plaintiffs] to harsher, more dangerous conditions"); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50 ("When Plaintiffs' shelter and personal belongings are destroyed, and they have no safe shelter alternative nor means to protect themselves from the elements, the state has made plaintiffs' conditions worse."); *Alfred v. City of Vallejo*, 2025 WL 435900, at *9 (E.D. Cal. Feb. 7, 2025).

The state-created danger analysis reinforces the graduated framework this Court adopts with respect to the seizure of vehicles under the Fourth Amendment and procedural due process. The Court has outlined a path through this dilemma: the City may address the public health hazards associated with vehicles through intermediate remediation steps: nuisance abatement orders, pest treatment, debris and vegetation, and assisted relocation, among many other options as noted above. If a claimant refuses to cooperate with those intermediate measures despite adequate notice and opportunity to do so, the analysis shifts. At that point, the City's interest in abating a genuine, persistent public health hazard — including the risks to the plaintiffs themselves of continuing to live in a contaminated environment — may outweigh the state-created danger arising from displacement. *See Penilla*, 115 F.3d at 710 (finding state-created danger where officers' conduct "placed [plaintiff] in a more dangerous position than the one in which they found him"). But absent such non-compliance following good-faith remediation efforts, the City may not proceed to the extreme step of vehicle seizure and destruction under the Fourth and Fourteenth Amendments.

Accordingly, the City's motion for summary judgment is **DENIED** on this claim and BHU's cross-motion for summary judgment is **GRANTED** as to the vehicular state-created danger claim.

4. Relief Category #4: Exemptions from Sidewalk and Street Space Limitations

a. Merits of ADA Accommodation Requests

Merced Dominguez, Shareef Muwakkil, Erin Spencer, Lewanda Parnell, and Austin White

request accommodations from the City's enforcement of Administrative Regulation 10.2 ("AR 10.2") and other code provisions that limit personal property on City rights-of-way to no more than a nine square feet area (the "3x3 rule") and require a path of travel of at least six feet on sidewalks under 14 feet wide, and a path of travel of 10 feet on wider sidewalks.[11] Dkt. 253, Exs. A–B; Gregory Declaration (Dkt. 219-3), Ex. A; White Declaration (Dkt. 219-5), Ex. A; BHU Status Report (Dkt. 200) at 36–39 (listing Ordinance 7,935-N.S., Municipal Code 14.48.020, and Municipal Code 14.48.160 as additional authorities limiting use of the sidewalk by Plaintiffs). For the reasons set forth below, the Court finds that the City has failed to carry its burden of demonstrating that reasonable modifications to the 3x3 rule is an unreasonable accommodation, would constitute a fundamental alteration to the relevant program, or would pose an undue burden. Accordingly, the Court **GRANTS** summary judgment in favor of Plaintiffs and **DENIES** Defendants' summary judgment motion insofar as it relates to exemptions from the 3x3 rule, subject to the parameters described below.

BHU submitted evidence establishing that most of the above claimants require a tent to manage their disability-related needs. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B, I; BHU Status Report (Dkt. 200); BHU SJ Motion at 12. These individualized needs vary in degree, and the record does not support a blanket entitlement to any particular tent dimension. Mr. White relies on two service and emotional support dogs to manage his mental health conditions, and BHU submits without contradiction that the 3x3 rule does not allow sufficient space for Mr. White to accommodate his dogs, medical equipment, and supplies necessary for his health. BHU's SJ Motion at 12; Brizzolara Declaration (Dkt. 279) ¶ 34. Ms. Parnell relies on a stroller as a mobility device to reduce her risk of falls arising from vertigo, and BHU submits that the 3x3 rule is insufficient to accommodate her necessary mobility device and allow her to maneuver safely. *Id.*; Brizzolara Declaration (Dkt. 279) ¶ 20. Mr. Muwakkil lives

[11] Ms. Dominguez requests an increase of sidewalk storage space of 21 square feet to keep garbage cans outside her RV. *See* Dkt. 253, Ex. I at 14; BHU Status Update (Dkt. 200) at 18. The record does not establish a nexus between her spondylosis and a need for additional sidewalk or road space. *See id.*, Exs. A–B, I; Gregory Declaration (Dkt. 219-3); deBree Declaration (Dkt. 120); Brizzolara Declaration (Dkt. 279); BHU Status Update (Dkt. 200). Accordingly, the request was properly denied.

with PTSD, psychosis, and chronic physical conditions that require a stable and enclosed environment. BHU's SJ Motion at 12; Brizzolara Declaration (Dkt. 279) ¶¶ 17–19. According to BHU, the 3x3 rule forces Mr. Muwakkil to be exposed to surrounding conditions that trigger symptoms and impair his ability to function. *Id.* Finally, Mr. Spencer lives with mobility impairments, PTSD, and ADHD, all of which require a stable and predictable environment to maintain daily functioning.[12] Brizzolara Declaration (Dkt. 279) ¶¶ 29–30.

BHU represents that no tent can fit within a 3x3 feet space, and the City does not dispute this characterization. Accordingly, blanket enforcement of the 3x3 rule would compromise BHU members' ability to use tents in a fashion that accounts for their disabilities. *See* BHU's SJ Motion at 6 (stating that 3x3 feet living area is not feasible and that no tent can fit within a nine-square-foot area).

AR 10.2 is the City's universally applicable framework for managing personal property placed on public sidewalks and parklets. White Declaration (Dkt. 219-5), Ex. A. Its stated purpose is to protect pedestrian access, disability access, and aesthetically pleasing streetscapes. *Id.* The regulation applies citywide to all users of the public right-of-way. *See id.* As the Court has defined it, the relevant program is the City's maintenance of public roadways and sidewalks to ensure functionality, orderly use, and public health and safety — a program that accounts both for the City's interest in maintaining accessible rights-of-way and for the effects of abatement on unhoused disabled residents who, lacking access to available or accessible housing or shelter, seek to occupy portions of that public right-of-way.

As an initial matter, the Court finds that the request for an accommodation in the form of a reasonable modification to the 3x3 rule to accommodate individual claimants' shelter is reasonable and not an undue burden. The accommodations sought required the City to engage in one of several options, including case-by-case review with medical documentation or modified placement

[12] Mr. Spencer also maintains that he requires a 20x30 foot tent for "community support." As noted in this order, the record does not establish entitlement to any particular tent size, and the City must instead undergo an individualized analysis to determine a reasonable occupation of space.

on wider sidewalks to avoid blocking access. *See* BHU SJ Motion at 12; Dkt. 253, Exs. A–B; Gregory Declaration (Dkt. 219-3), BHU Status Report (Dkt. 200). Each option could have conceivably resolved the access problem faced by claimants (namely, the inability of disabled individuals to occupy a livable space on a public right-of-way) without undue practical difficulty. *See Martin*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084. The request is modest and reasonable. As BHU represents, it is virtually impossible for a person to sleep within a 3x3 foot square. BHU's SJ Motion at 6. And there is no evidence that any tent providing shelter can fit within such a 3x3 space. *See id.* The City could have provided some modification of allowable space and still allow for safe passage on at least some sidewalks. But the City has refused to make any such accommodation, even though it has not demonstrated that such an accommodation would constitute a fundamental alteration or impose an undue burden on the City.

Providing for some flexibility in enforcing the rigid adherence to an unfeasible size limit in order to accommodate the needs of these individuals would not have required new infrastructure, dedicated staffing, or systemic change to operations. The City does not point to any concrete financial cost associated with this requested accommodation, and its undue burden arguments are limited to generalized assertions of administrative complexity, including individualized monitoring, repeated assessments, and location-specific exemptions. *See* Defendants' SJ Motion at 16; Defendants' Opposition Brief at 12–13; Gregory Declaration (Dkt. 219-3) ¶¶ 14–17. These are the same operations that the City already performs in managing public rights-of-way. Radu Declaration (Dkt. 219-4) ¶ 6. As to the fundamental alteration analysis, the City has not shown that the purported impacts, where relief is afforded to the individuals at issue, are realistic and substantial. *See Crowder*, 81 F.3d at 1486 n.2; *Martin*, 204 F.3d at 1001.

The City's fundamental alteration defense rests principally on a theoretical fear rather than a demonstrated operational reality. When pressed at the hearing on the cross-motions, the City was unable to represent definitively whether a reasonable modification of the 3x3 rule would necessarily obstruct passage on the sidewalks. Given that most sidewalks are 12 feet or more in width, the City does not demonstrate that a modest increase to 3x3 feet cannot be accommodated without obstructing reasonably safe passage on sidewalks (*e.g.*, the six-foot path that the City's

ordinance now provides for most sidewalks). *See* White Declaration (Dkt. 219-5) ¶¶ 3–13, Ex. A; *cf. Crowder*, 81 F.3d at 1486 n.2 (declining to accept theoretical impacts unsupported by concrete evidence); *Martin*, 204 F.3d at 1001 (the inquiry must focus on specific circumstances, not generalized concerns.).

Specific record evidence highlights the deficiencies in the City's reasoning. The White Declaration asserts that a 10x12 foot tent would occupy the full six-foot walkway on a typical 12-foot residential sidewalk, leaving only two feet of clearance (assuming a four-foot offset). White Declaration (Dkt. 219-5) ¶¶ 8, 10. A 10x12 foot tent is a legitimate concern on a 12-foot sidewalk. But the White Declaration also knowledges that commercial district sidewalks sometimes exceed 12 feet in width. *Id.* ¶ 11. The City's response to this fact — that commercial sidewalks contain trees, waste receptacles, bicycle racks, and other infrastructure at higher density — is asserted without supporting data on actual available clearances on specific sidewalks. *See id.* The Gregory Declaration likewise offers only a conclusory statement that no feasible alternatives exist, without any documented analysis of whether certain sidewalk segments in the City could accommodate tents larger than three feet in width, while maintaining the required path of travel (*e.g.*, six feet). Gregory Declaration (Dkt. 219-3) ¶¶ 14–17. Generalized assertions of infeasibility, unaccompanied by analysis of particular locations or modest size increases fall short of the concrete, realistic showing required to sustain a fundamental alteration defense.

The record does not establish that a modification would genuinely obstruct the City's ability to carry out its right-of-way management program. The City already employs a balanced, priority-based enforcement framework that permits it to assess conditions on a case-by-case basis. Radu Declaration (Dkt. 219-4) ¶ 6. Applying that same flexible framework to accommodate disabled individuals (by allowing tents wider than three feet) asks the City to do nothing more than what it already does. *Cf. Townsend*, 328 F.3d at 518 (holding that public entity need not create *new* programs as a disability accommodation).

Hence, the Court concludes that the City has failed to comply with the ADA in denying the reasonable accommodation needed by the individuals involved herein. The Court's ruling does not require the City categorically to allow all 10x12 or 20x30 foot tents. The ADA does require

an effective and reasonable accommodation based on specific individual needs and circumstances. The City may choose to proceed with the interactive process and identify sidewalk segments within the City where existing widths permit a larger tent footprint while maintaining a reasonably required path of travel (*e.g.*, six feet). Alternatively, the City may choose to provide compliant tents that meet the claimants' disability-related needs. The City retains authority, of course, to enforce AR 10.2 and other rules governing use of sidewalks where an individual's belongings actually obstruct pedestrian passage or emergency access, or present a concrete public health or safety hazard. But the City's categoric refusal, as it has done here, to grant variances from, and modifications of, the 3x3 rule without regard to individual needs related to discrete disabilities constitutes a denial of reasonable accommodation in violation of the ADA.

For the foregoing reasons, the Court **GRANTS** BHU's motion for summary judgment with respect to sidewalk space accommodation requests, and **DENIES** the City's motion for summary judgment on the same issue. The Court's ruling on the 3x3 rule does not, however, relieve BHU members of all space-related constraints, nor does it necessarily displace the path of travel requirements set forth in A.R. 10.2. Those requirements serve legitimate purposes, including pedestrian safety and accessibility. The Court concludes that the path of travel requirements under A.R. 10.2 are part of the individualized assessment that the City must conduct for each claimant. When evaluating what modified space allocation is reasonable for a given claimant at a given location, the City must account for the claimant's disability-related needs, the actual width and physical characteristics of the sidewalk in question, and the public interest in maintaining a reasonable path of travel. The City retains authority to deny a proposed placement that, on the specific facts of a given location, would obstruct pedestrian passage or emergency access — but it may not invoke those concerns categorically and without individualized analysis.

b. State-Created Danger

The state-created danger doctrine also has force to the extent the City removes tents from unhoused individuals by operation of the 3x3 rule. Where the net effect of the abatement and application of other City laws, rules, or policy, through no fault of the resident, is the removal of shelter, the City through its affirmative conduct, would be placing residents in a greater position of

danger than they had previously faced. *See, e.g.*, *Janosko v. City of Oakland*, 2023 WL 187499, at *3 (N.D. Cal. Jan. 13, 2023); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50; *Alfred v. City of Vallejo*, 2025 WL 435900, at *9 (E.D. Cal. Feb. 7, 2025). Thus, enforcement of the 3x3 rule, by effectively prohibiting tents, would place those residents currently enjoying shelter of a tent in a position of increased danger. Hence, under this constitutional doctrine, the City is restrained from enforcing the space limitation in a manner that prevents BHU members from maintaining a tent so long as the tent does not unreasonably interfere with sidewalk passage. This ruling concerns a constitutional minimum governing abatement and therefore applies to all BHU members who reside in the Harrison Encampment, regardless of disability status.

For the foregoing reasons, the Court **GRANTS** BHU's motion for summary judgment with respect to the state-created danger as it relates to enforcement of the 3x3 rule, and **DENIES** the City's cross-motion as to the same claim.

5. Relief Category #5: Physical Relocation Assistance, Storage, and Non-Destruction of Property

a. Merits of ADA Accommodation Requests

Erin Spencer, Lewanda Parnell, Shareef Muwakkil, Eric Keiser, and Austin White — claimants with physical disabilities impairing mobility, or cognitive and psychiatric disabilities impairing executive functioning — request that the City provide physical assistance in packing and moving their belongings and store their personal property. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B; BHU Status Update (Dkt. 200); BHU SJ Motion at 7.

All five claimants live with physical disabilities that limit mobility and/or the ability to lift, carry, or move their personal belongings. *Id.* Mr. Keiser has permanent mobility limitations and chronic pain from a vehicle collision, as well as schizophrenia which limits his executive functioning and ability to plan and organize, all of which make it unlikely that he could "safely transport essential items such as medications, personal documents, and survival equipment necessary for his health and safety." Brizzolara Declaration (Dkt. 279) ¶¶ 13–16. Mr. Muwakkil experiences swelling in his legs, a heart valve condition restricting his ability to lift and carry

objects safely, and mental conditions that impact his executive functioning and ability to plan, organize, or manage tasks including relocation. *Id.* ¶¶ 17–18. Without physical assistance, he is at risk of "cardiac strain, falls, and worsening mobility impairments, as well as significant psychological stress, intensified by bipolar disorder and psychosis. *Id.* ¶ 19. Ms. Parnell lives with vertigo and loss of balance, impacting her ability to lift or carry heavy objects without assistance and putting her at increased "risk of falls and injury." *Id.* ¶ 22. Mr. Spencer has several physical injuries limiting his ability to walk or carry objects. *Id.* ¶ 30. Thus, being forced to move his belongings alone would create "a substantial likelihood of intensified pain, falls, and other injury." *Id.* ¶ 31. Finally, Mr. White lives with esophageal varices and the risk of a life-threatening hemorrhage, as well as a wrist injury that all limit his ability to lift and move personal belongings. *Id.* ¶¶ 33–34. He is "medically restricted from lifting objects heavier than approximately twenty pounds." *Id.*

As a result of their disabilities, all the claimants request similar accommodations: Mr. Keiser, Mr. Spencer, and Mr. White request physical assistance with lifting and moving to a new location. *Id.* Mr. Muwakkil requests assistance with lifting and transporting personal belongings in a manner scheduled in advance to avoid "last-minute hardship." *Id.* And Ms. Parnell requests physical assistance with packing and transportation assistance to a new location. Mr. Spencer, Ms. Parnell, and Mr. Keiser also request storage of their personal belongings. Dkt. 253, Exs. A–B, I.

The City represents that it already offers limited moving assistance and 90-day storage as an accommodation, conditioned on public health guidance. Gregory Declaration (Dkt. 219-3) ¶ 10–12; Radu Declaration (Dkt. 219-4) ¶ 4. But the City further states that, in light of the leptospirosis outbreak and risk that items are contaminated with rat urine or mud, it cannot assist with physical relocation or storage of personal property. Defendants' SJ Motion at 13 ("[M]oving or sorting items that constitute rodent harborages present an undue risk to City staff."); Torres Declaration (Dkt. 219-7) ¶ 14. For the reasons set forth below, the Court finds that certain accommodations are reasonable, do not constitute a fundamental alteration to the relevant City program, and do not impose an undue burden — subject to public health guidance. Accordingly,

the Court **GRANTS** summary judgment in favor of Plaintiffs and **DENIES** Defendants' cross-motion with respect to this category of accommodation requests.

The accommodations requested here are modest. Claimants are not asking for ongoing personal services, but rather assistance in the context of a one-time abatement action. Claimants have submitted evidence documenting how their specific physical and mental disabilities bear directly on their inability to comply with standard abatement notices and procedures. These are not generalized disability allegations, but specific, medically grounded claims establishing that a standard order for Encampment residents to self-pack and self-relocate within a defined temporal window is simply not achievable by particular individuals without accommodation. The nexus to disability is clear, and the following claimants have satisfied their initial burden of identifying a reasonable accommodation.

The City already provides limited moving assistance, including packing, lifting, and transport, as part of standard abatement operations, and stores non-hazardous property. *See* Defendants' SJ Motion at 23–24; Gregory Declaration (Dkt. 219-3) ¶¶ 8–11. Extending those same services to a small number of claimants whose disabilities have been specifically documented through the interactive process is reasonable because it would allow those individuals to access City services and programs. 28 C.F.R. § 35.130(b)(7). The services would involve no new programs or infrastructure, as such services have been offered in the past. Indeed, the City offered exactly this assistance to Mr. White in 2025, and represented to Ms. Parnell that it was willing to coordinate packing and storage once a relocation timeline was proposed. Dkt. 253, Ex. D at 2; Ex. I at 5, 7. The fact that the City already provides this service as a matter of standard practice diminishes any argument that extending it to a small number of specifically identified disabled claimants would constitute a fundamental alteration. And extending an existing service to additional eligible individuals is a modification of a program, not the creation of a new one. *Cf. Townsend*, 328 F.3d at 518.

The Court acknowledges that the leptospirosis outbreak imposes real constraints on both the moving assistance and storage options. The Torres Declaration explains that personal items contaminated with rat urine may harbor dangerous bacteria for up to 30 days, and that sorting or

storing such items creates contamination risks for City personnel and facilities that standard PPE is not designed to address. Torres Declaration (Dkt. 219-7) ¶¶ 7, 14. The Gregory Declaration likewise notes that wet or muddy items may be hazardous. Gregory Declaration (Dkt. 219-3) ¶ 11. The Court accepts this argument and agrees that the City is not required to put its own staff at unreasonable risk. *See* 28 C.F.R. § 35.139(a) ("This part does not require a public entity to permit an individual to participate in any benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others."). While the leptospirosis outbreak complicates the situation, it does not eliminate the City's obligation in full. Accordingly, the City is not required to physically handle or store items that are observably wet, waterlogged, muddy, or porous in a manner that could render them likely carriers of biological contamination. Dry and intact items that are not observably contaminated shall be moved with assistance and/or stored. Generalized assertions that the Encampment as a whole presents leptospirosis risks do not satisfy the City's burden of demonstrating, as a matter of law, that all physical assistance is impossible for any of these individuals.

With respect to storage, the City's administrative regulations already provide a framework for storage of personal property: property removed during encampment operations must be held for at least 14 days; items with a resale value of $100 or more must be held for 90 days; and items used for shelter must be retained for 45 days regardless of value. Radu Declaration (Dkt. 219-4), Ex. A (Administrative Regulation 10.1). The City further represents that it sorts and inventories non-hazardous property and provides residents with notice and contact information for retrieval. Radu Declaration (Dkt. 219-4) ¶ 14 ("Residents are given notice of what property the City is able to store prior to or at the time of an abatement. . . . Non-hazardous and storable property (e.g. not wet or moldy) is sorted and stored, and staff complete Property Inventory Forms detailing what has been stored or discarded, including photographs. If property is stored, City staff leave a Notice of Stored Belongings where property was removed and stored. The City only discards property that is comingled with hazards such as feces, rodents, and needles, or otherwise cannot be stored under our policy (e.g. wet or moldy items)."); *see also* Dkt. 253, Ex. A at 15 (City offering storage services to Mr. Spencer before leptospirosis outbreak). Like packing assistance, storage is

therefore an existing service, not a new program.

Of course, the leptospirosis constraints apply here as well. The City does not need to store items that are observably at risk of contamination. But the City has not demonstrated that the entirety of each claimant's property — such as medical equipment and mobility devices which are not wet or soggy — is likely contaminated, and the record reflects that the City has in the past been able to sort, document, and store non-hazardous items during abatement operations, even when it is intermingled with potentially hazardous materials. *Id.* On this record, the City has not shown as a matter of law that storage of non-contaminated personal property is infeasible for these particular claimants.

With respect to property that appears to be at risk of leptospirosis contamination and thus cannot be moved or stored by City workers, such property will be destroyed under the City's abatement program. However, a reasonable accommodation under those circumstances would be to replace destroyed property that is essential to survival: *i.e.* tents, sleeping gear (such as sleeping bags), and basic clothing. Providing such minimal but essential property would permit disabled residents to move in compliance with the abatement order while preserving their basic health and safety. This substantial benefit easily outweighs the relatively modest cost of providing a few basic necessities to those residents who need them and thus would not be an unreasonable administrative burden. Nor given the relatively modest cost, would such fundamental alter the City's program of administering safe and healthy streets in their use by the unhoused. It would be a far cry from, *e.g.*, having to establish a large city-sanctioned encampment or providing non-aggregate shelter.

Accordingly, the City is required to replace essential survival equipment — including tents, sleeping gear, and clothing — belonging to a qualified claimant and destroyed pursuant to an abatement.

The City argued at the March 20, 2026 hearing that providing replacement tents or sleeping bags is the equivalent of sanctioning camping on public property. This position is not persuasive. A tent furnished individually as a replacement for destroyed or unrecoverable essential gear does not establish or inevitably lead to the establishment of a large encampment.

This accommodation is merely a replacement for property lost as a practical consequence of a disability-related inability to comply with the abatement process.

Accordingly, the Court **GRANTS** summary judgment in favor of BHU with respect to physical assistance and storage claims and **DENIES** Defendants' cross-motion for the same. This ruling applies only to claimants who have established, through the interactive process, an inability to independently pack and relocate their belongings during abatement due to physical or cognitive disabilities. For such individuals, the City must (1) provide physical packing and moving assistance to the extent permissible under public health guidance and (2) store non-contaminated personal property for 90 days. The City retains full discretion to decline to handle or store items that are observably wet, muddy, or plausibly contaminated with leptospirosis, and to fashion safety mechanisms to ensure the health and wellness of its personnel. But any essential survival property not moved or stored subject to destruction must be replaced.

b. Property Seizure Claim

The Court's ADA analysis above largely resolves the property seizure claims of the claimants who have established disability-related inabilities to independently pack and relocate their belongings. The constitutional analysis tracks the ADA analysis: the City may not summarily destroy property that a disabled claimant was unable to self-remove by reason of their disability without first providing moving assistance and storage for non-contaminated items, or replacement of essential survival property destroyed as a result of the abatement. The framework and requirements set forth above in the Court's ADA ruling govern this claim as well, and the Court incorporates that analysis by reference here.

For the general population of Encampment residents who have not submitted disability accommodation requests, the Court finds that the City's procedures generally satisfy constitutional requirements. This is not a case of abatement without warning. The City posted public notices of encampment closure throughout the Harrison Encampment beginning in January 2025, directing residents to vacate within one month, specifying the consequences for property left behind, and providing contact information, storage retrieval procedures, disability accommodation processes, and appeal procedures. City's First Public Notice (Dkt. 13-1) (posted on January 7, 2025 and

notifying residents of compliance deadline of February 10); City's Second Public Notice (Dkt. 13-3) (reminder of compliance deadline posted on January 31, 2025). The more recent February 2026 notices similarly provided more than one month of advance warning with similar information, though the abatement notices state that property storage is not possible due to public health concerns. Ex Parte Application for Emergency Hearing (Dkt. 248), Ex. A. From this record, it is clear that this is not a case of abatement without warning. *Cf. Sullivan v. City of Berkeley*, 383 F. Supp. 3d 976, 982 (N.D. Cal. 2019) (Alsup, J.) (holding that 72-hour notice, and even less notice when health and safety was at stake, was adequate).

The leptospirosis outbreak creates a legitimate basis for the City to treat certain contaminated items as posing an immediate threat to public health and the health of City personnel, which *Lavan* recognized as valid grounds for destruction without extended storage. *See Lavan*, 693 F.3d at 1027, 1033; Doohan Declaration (Dkt. 194-3) ¶¶ 4–5, 21; Doohan Declaration (Dkt. 207-2) ¶ 3; Torres Declaration (Dkt. 219-7) ¶ 14. And for those individuals who do not have a disability preventing them from moving their supplies, they do not suffer the same risk as those with disabilities of having their survival property destroyed because of their inability to move it.

Accordingly, for the remainder of the Encampment's residents, BHU's motion for summary judgment on the property seizure claim is **DENIED** and the City's cross-motion on the same claim is **GRANTED**.

c. State-Created Danger Claim

For the reasons set forth above, in section IV(B)(7)(b), the state-created danger doctrine also has force as applied to the City forcing residents to move because of the abatement and refusing them the ability to take their tents to another site within the City because of the 3x3 rule. *See, e.g.*, *Janosko v. City of Oakland*, 2023 WL 187499, at *3 (N.D. Cal. Jan. 13, 2023); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50; *Alfred v. City of Vallejo*, 2025 WL 435900, at *9 (E.D. Cal. Feb. 7, 2025). Unless the City allows for the retention of existing tents or shelter, considers reasonable accommodations allowing for continued shelter, or provides a replacement tent or shelter that allows for shelter while maintaining sufficient sidewalk passage (*e.g.*, six feet), the City would violate that BHU members' due process right under the state-

created danger doctrine.

6. Relief Category #6: Requests for Sanitation Services and Infrastructure

a. Merits of ADA Accommodation Requests

Erin Spencer and Austin White request that the City provide ongoing individualized services as a disability accommodation, including access to portable restrooms, trash receptacles, regular waste collection, clean water, solar panels, and battery packs or public USB charging ports wherever they relocate. *See* Gregory Declaration (Dkt. 219-3), Ex. A; BHU Status Report (Dkt. 200); Dkt. 253, Exs. A–B, I. The Court finds that these requests are unreasonable and accordingly **GRANTS** summary judgment in favor of the City on this category of accommodation requests.

The principal problem is that of nexus: Mr. Spencer's mobility impairments, PTSD, and ADHD, and Mr. White's esophageal varices and wrist injury bear directly on their ability to lift, carry, and navigate the logistics of relocation. But neither disability has a clear relationship to an ongoing need for the City to install and maintain infrastructure for their individualized use. The ADA requires accommodations that are necessary to avoid discrimination on the basis of disability, 28 C.F.R. § 35.130(b)(7), and the connection between these claimants' specific disabilities and the requested infrastructure is too attenuated to satisfy the standard. Moreover, even if a nexus could be adequately established, the practical burden of the accommodation would substantially outweigh any access benefit it delivers. Providing ongoing, individualized sanitation and utility infrastructure at an undetermined future location — wherever the claimant may relocate — would require the City to dedicate significant staff and material resources on a continuous and open-ended basis.

Accordingly, the requested accommodation is unreasonable and summary judgment is **GRANTED** for the City on these claims and **DENIED** with respect to BHU's cross-motion for the same relief.

b. State-Created Danger Claim

BHU raises the distinct argument that the City's removal of dumpsters and reduction of sanitation services at the Encampment affirmatively worsened conditions. BHU's SJ Motion at 20–22. The Court rejects this theory. Any prior provision of sanitation services to the Harrison

Encampment was voluntary and is not part of the status quo for purposes of applying the state-created danger doctrine. *See Sampson v. Fresno Police Officers*, 2021 WL 1060506, at *7 (E.D. Cal. Mar. 19, 2021) ("[A] state actor cannot be held liable for failing to mitigate an already existing dangerous situation *not instigated by state action*.") (emphasis added).

7. Relief Category # 7: Cognitive and Communication Accommodations and Navigation Services

a. Merits of ADA Accommodation Requests

Eric Keiser, Shareef Muwakkil, and Austin White request accommodations related to cognitive and communication needs arising from psychiatric and cognitive disabilities. The specific requests include assignment of a designated staff person, step-by-step relocation instructions, and low-stimulation meetings. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B, I; BHU Status Report (Dkt. 200).

The Court finds that the City has reasonably accommodated these claimants through the interactive process and accordingly **GRANTS** summary judgment in favor of the City on this category of accommodation requests and **DENIES** BHU's cross-motion.

Most of these accommodations involve modifications to how the City communicates with individuals, rather than to substantive program outcomes. With respect to communication accommodations, including written instructions, low-stimulation meeting formats, and consistency in City staff points of contact, the City's final determinations represent meaningful engagement. The City committed to documenting each claimant's communication needs and known triggers in HRT records and to use patient and respectful communication consistent with best practices and staff training. Dkt. 253, Ex. I. For claimants whose psychiatric conditions are demonstrably affected by unfamiliar or high-stimulation official interactions, the documentation and commitment to proceed accordingly is a reasonable accommodation, as it addresses the disability-related barrier. The denial of *guaranteed* assignment of specific staff members is also reasonable — requiring the City to ensure a designated individual is always available for a given claimant's interactions would require individualized staffing that field operations cannot reasonably accommodate. Moreover, such an accommodation would prevent deployment of staff where

needed in exigent circumstances. Dkt. 253, Ex. I at 18. Given the steps to which the City already committed, comparing the incremental benefit of this request against the cost and burden of providing individually dedicated staff, the Court concludes that the City has demonstrated an undue administrative burden.

Finally, Ms. Dominguez requested connection to a housing navigator. The City represents, without contradiction from BHU, that she is already served by a housing navigator through Abode Services. Dkt. 253, Ex. I at 14. Thus, this claim is moot.

For the foregoing reasons, summary judgment is **GRANTED** for the City and **DENIED** for Plaintiffs on communication accommodation claims, subject to the expectation that documented commitments to certain communication accommodations and protocols are honored.

8. Relief Category #8: Advance Written Notice Before Abatement

Erin Spencer requests a multi-step notice process, including notice thirty, fifteen, and then three days before any enforcement action is taken against him. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B, I; BHU Status Report (Dkt. 200). BHU explains that due to his PTSD and ADHD, his executive functioning and ability to organize, plan, and complete tasks independently is impaired. Brizzolara Declaration (Dkt. 279) ¶ 30.

The Court finds that the proposed phased notice requirement is unreasonable. The City has already provided over a month's notice of abatement. Given the legitimate and urgent health concerns of the City and the process already afforded residents by way of advance notice, the request is not reasonable. The leptospirosis outbreak at the Harrison Encampment requires an urgent public health response, as do subsequent health and safety risks that arise after abatement. *See* Doohan Declaration (Dkts. 194-3; 207-2). The essential nature of the City's program is the ability to respond flexibly and with appropriate speed to evolving hazards.

The foregoing does not relieve the City of its existing constitutional obligations with respect to notice and opportunity to be heard. Courts in this circuit have applied a minimum 72-hour written advance notice requirement and meaningful opportunity to be heard before their possessions may be taken or destroyed. *See, e.g.*, *Lavan*, 693 F.3d at 1032; *Sullivan v. City of Berkeley*, 383 F. Supp. 3d 976, 981–83 (N.D. Cal. 2019).

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on BHU's request for a mandatory 30-day or multi-step advance notice requirement as an ADA accommodation, and **DENIES** BHU's cross-motion with respect to that request. The City's constitutional obligations remain fully in effect and are not disturbed by this ruling.

9. Relief Category #9: Permission to Retain Emotional Support and Service Animals

Austin White requests permission for his two "emotional support and service dogs" to remain with him during and after relocation. BHU Status Report (Dkt. 200). Mr. White has mental health conditions that "impair executive functioning, including difficulties . . . maintaining trust in institutional interactions. . . . Mr. White relies on the companionship of his two emotional support and service dogs, which are critical to managing his mental health symptoms and maintaining emotional stability. The presence of these animals provides essential psychological support and helps him regulate anxiety and stress." Brizzolara Declaration (Dkt. 279) ¶ 34.

The record does not reflect whether the City granted or denied this accommodation request. And there is no indication that the City plans to separate Mr. White from his emotional support or service dogs.

Accordingly, this matter is not ripe for resolution and the Court does not rule on the cross-motions for summary judgment with respect to this claim.

F. Qualified Immunity of Individual Defendants

The City contends that individual defendants are entitled to qualified immunity with respect to the property seizure and state-created danger claims. Defendants' SJ Motion at 24–25. Specifically, the City argues that qualified immunity is available because no individual defendants' conduct violated a "clearly established right." *Id.*

BHU's complaint seeks only injunctive relief, and not damages. *See* FAC. Accordingly, individual Defendants are not entitled to qualified immunity in this action. *See, e.g.*, *Hydrick v. Hunter*, 669 F.3d 937, 939–40 (9th Cir. 2012) ("Qualified immunity is only an immunity from a suit for money damages, and does not provide immunity from a suit seeking declaratory or injunctive relief."); *Ctr. For Bio-Ethical Reform, Inc. v. L.A. Cnty. Sheriff Dep't*, 533 F.3d 780, 794 (9th Cir. 2008) ("The individual defendants, however, have qualified immunity from a

damages action. As this immunity does not extend to injunctive relief, we remand for the district court to consider Plaintiffs' request for injunctive relief . . . .") (internal citation omitted).

Accordingly, the doctrine of qualified immunity does not apply to the case at bar.

V. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** and BHU's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** consistent with the above analysis. The Court directs the parties as follows, with respect to each category of requested relief:

1. Indefinite pause on abatement, right to remain in place, and guarantee of non-congregate housing or specific shelter placements

Summary judgment is **GRANTED** for the City and **DENIED** for BHU on the ADA and state-created danger claims. The City may proceed with abatement without first securing non-congregate housing or shelter placements for BHU members. BHU members are not entitled to remain in place pending housing availability.

2. Enforcement-free zones, city-sanctioned or city-owned campsites, and maps or lists of permissible relocation areas

Summary judgment is **GRANTED** for the City and **DENIED** for BHU on the ADA and state-created danger claims. The City is not required to designate, create, or identify, enforcement-free relocation zones or City-sanctioned campsites. BHU members may relocate to permissible locations of their choosing subject to the City's existing conditions-based enforcement framework. This ruling is without prejudice to any future legal challenge, should the City engage in a pattern of serial enforcement actions against relocated residents in a manner that effectively denies them any lawful location to seek shelter. The Court reserves judgment on whether a pattern of such displacement across multiple locations could, on a more developed record, give rise to a viable ADA or constitutional claim.

3. Safe location to relocate vehicles, towing exemptions, and parking relief

Summary judgment is **GRANTED** for BHU with respect to Ms. Dominguez's requested accommodation and **DENIED** for the City for the same relief. The City may not tow, impound, or

destroy Ms. Dominguez's RV without first re-engaging her through the interactive process and providing reasonable accommodations with respect to her RV.

Summary judgment is also **GRANTED** for BHU and **DENIED** for the City with respect to the property seizure and state-created danger claims as they relate to BHU members' vehicles. Before impounding or destroying any vehicle used by a BHU member as primary shelter in the Harrison Encampment, the City must make a specific, fact-based determination that a particular vehicle obstructs traffic or poses a concrete, individualized health or safety threat; provide that vehicle's owner with written notice of those findings and provide a reasonable opportunity to remediate the identified condition or voluntarily relocate the vehicle; and consider and pursue less restrictive alternatives, including targeted cleaning, pest treatment, assisted relocation of the vehicle, or other reasonably available mitigating measures. Outright destruction requires the additional showing that no reasonable alternative remedies other than destruction could mitigate the identified hazard. Should the City pursue mitigating measures in compliance with this order, but encounter demonstrated non-compliance by a vehicle resident which prevents the pursuit of less intrusive alternatives, the City may be found to have met its obligations hereunder. The Court retains jurisdiction to evaluate compliance with this framework on a vehicle-by-vehicle basis.

4. Exemptions from sidewalk and street space limitations

Summary judgment is **GRANTED** for BHU and **DENIED** for the City with respect to the categorical enforcement of the 3x3 rule as applied to Mr. Muwakkil, Mr. Spencer, Ms. Parnell, and Mr. White. The City must conduct an individualized assessment for each claimant that accounts for the claimant's specific disability-related shelter needs; the actual dimensions and physical characteristics of the sidewalk or right-of-way in question; and the public interest in maintaining a regulatorily-mandated path of travel. In this regard, the ordinance's prescribed six-foot minimum path for most sidewalks is presumptively reasonable and sufficient. The City may deny a proposed tent placement that would, on the specific facts, obstruct pedestrian passage or emergency access, but may not invoke such concerns categorically and without individualized analysis of the disabled claimant's needs. This ruling does not entitle any claimant to any particular tent dimension.

With respect to non-disabled BHU members in the Harrison Encampment, where the net effect of abatement and application of other City laws, rules, or policies — through no fault of the resident — results in the loss of shelter (*e.g.*, loss of their tent), the City's acts constitute a state-created danger unless the City allows for the retention of existing tents or shelter, considers reasonable accommodations allowing for continued shelter, or provides a replacement tent or shelter that does not obstruct reasonable sidewalk passage (*e.g.*, six feet).

5. Physical relocation assistance, storage, and non-destruction of property

Summary judgment is **GRANTED** for BHU and **DENIED** for the City with respect to the ADA claims of Mr. Keiser, Mr. Muwakkil, Ms. Parnell, Mr. Spencer, and Mr. White. For each disabled claimant, the City must provide physical packing and moving assistance to the extent permissible under applicable public health guidance; sort and store non-contaminated property for a minimum of 90 days consistent with the City's existing regulations; and replace any essential survival property (*e.g.*, tent, sleeping equipment, and basic clothing) that is destroyed pursuant to abatement because such property could not be safely moved or stored. The City retains full discretion to decline to handle or store items that are observably wet, muddy, or plausibly contaminated with leptospirosis, and to implement appropriate safety protocols to protect City personnel.

Summary judgment is also **DENIED** for BHU and **GRANTED** for the City with respect to constitutional property seizure claims of non-disabled BHU members except as otherwise provided herein. BHU has not established as a matter of law that the City's notice and storage procedures are constitutionally deficient for residents capable of self-relocating and that their property is subject to unconstitutional destruction given their ability to move it except as provided herein with respect to, *e.g.*, the destruction of tents required by the abatement.

With respect to non-disabled residents, the City may not enforce the 3x3 rule in a manner that prevents BHU members from maintaining a tent, so long as the tent does not unreasonably interfere with sidewalk passage (*e.g.*, less than six feet).

6. Requests for sanitation services and infrastructure

Summary judgment is **GRANTED** for the City and **DENIED** for BHU on both the ADA

and state-created danger claims. The City is not required to install or maintain any individualized sanitation or utility infrastructure.

7. Cognitive and communication accommodations and navigation services

Summary judgment is **GRANTED** for the City and **DENIED** for BHU. The City must honor its documented commitments made during the interactive process: documenting each claimant's communication needs and known triggers and employing patient, low-stimulation communication consistent with staff training. The City is not required to take further action with respect to these requests. Ms. Dominguez's request for a housing navigator is moot.

8. Advance written notice before abatement

Summary judgment is **GRANTED** for the City and **DENIED** for BHU with respect to Mr. Spencer's request for a phased notice requirement as an ADA accommodation. The City has already provided extensive advance notice. The City must, however, comply with existing constitutional minimums governing abatement.

9. Permission to retain emotional support and service animals

The claim is not yet ripe. There is no indication that the City intends to separate Mr. White from his animals. The Court reserves jurisdiction to address this claim if a ripe dispute arises.

IT IS SO ORDERED.

Dated: April 3, 2026

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

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Attorneys for Defendant
CITY OF BERKELEY

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION, et al.

Plaintiffs,

v.

CITY OF BERKELEY, THOMAS GREGORY, PAUL BUDDENHAGEN, PETER RADU, OKEYA VANCE, RASHI KESERWANI, DOES 1-10,

Defendant.

Case No. 3:25-CV-01414-EMC

SUPPLEMENTAL DECLARATION OF THOMAS GREGORY IN SUPPORT OF DEFENDANT CITY OF BERKELEY'S STATUS UPDATE

I, Thomas Gregory, declare as follows:

1. I have personal knowledge of the facts described herein. If called as a witness, I could and would testify competently and truthfully to the facts set forth in this declaration.

2. I am the City's ADA Program Coordinator and work within the City's Public Works Department. I have a Juris Doctor degree from the University of California, Davis—School of Law. I am also a Certified ADA Coordinator through the Americans with Disabilities Act ("ADA") Coordinator Training Certification Program ("ACTCP") at the Great Plains ADA Center. This certification verifies that I have completed training in ADA regulations and

guidelines.

3. In response to the Court's September 14, 2026 order, I worked with colleagues in the Public Works Department to prepare the diagram of the two proposed accommodation locations at Fourth and Camelia Street.

4. The diagram is based on an overhead image from Google Maps and has been marked and annotated to depict the information requested by the Court, including the dimensions of the sidewalks; proposed emergency and pedestrian access areas; adjacent vehicle parking and applicable ingress and egress setbacks; relevant construction, fire, utility, emergency, and pedestrian access areas; the distance from the proposed accommodation locations to Duck's Nest Preschool; the drop-off and pick-up zones used by the preschool; and the dead-end vehicle turning radius in relation to the proposed locations.

5. I worked with Public Works colleagues to identify and depict the relevant measurements, locations, and other information reflected in the diagram. The annotations and measurements shown on the diagram reflect information available to the City and information obtained during the City's assessment of the proposed accommodation locations. To the extent the diagram identifies Duck's Nest Preschool's drop-off and pick-up zones, that information was provided by the preschool, as described in the accompanying declaration of Deputy City Manager David White.

6. A true and correct copy of the diagram prepared in response to the Court's September 14, 2026 order is attached hereto as Exhibit A.

7. I also consulted with the Deputy Fire Marshal regarding the dead-end vehicle turning radius identified in paragraph 1(g) of the Court's order. The Deputy Fire Marshal advised that a turning radius is not required for fire apparatus at this location because fire apparatus would back out of the dead-end roadway. She further advised that large delivery trucks travel to and from Trumer Brewery and, because the roadway is closed to through traffic, may use the open roadway area to turn around. She stated that the Fire Department's concern is that no items obstruct the roadway.

8. A true and correct copy of the email in which the Deputy Fire Marshal provided

this information is attached hereto as Exhibit B.

9. Based on measurements I helped to take during this Court's previously ordered walkthroughs with BHU, the City previously informed Berkeley Homeless Union representatives that the allowable footprints for the two sites assessed at this location were: 32 feet in length and 75 inches (6.25 feet) in width for the first location closest to the railroad fence and next to a red curb, to allow for both emergency access and pedestrian access; and 161 feet in length and 4.5 feet in width in the area of the curb that is not red, to allow for both pedestrian access and vehicle ingress and egress.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 18, 2026, in Berkeley, California.

Signed by:
Thomas Gregory
02C11A761E5E439...

THOMAS GREGORY

EXHIBIT A

Camelia Street between UPRR and 4th Street

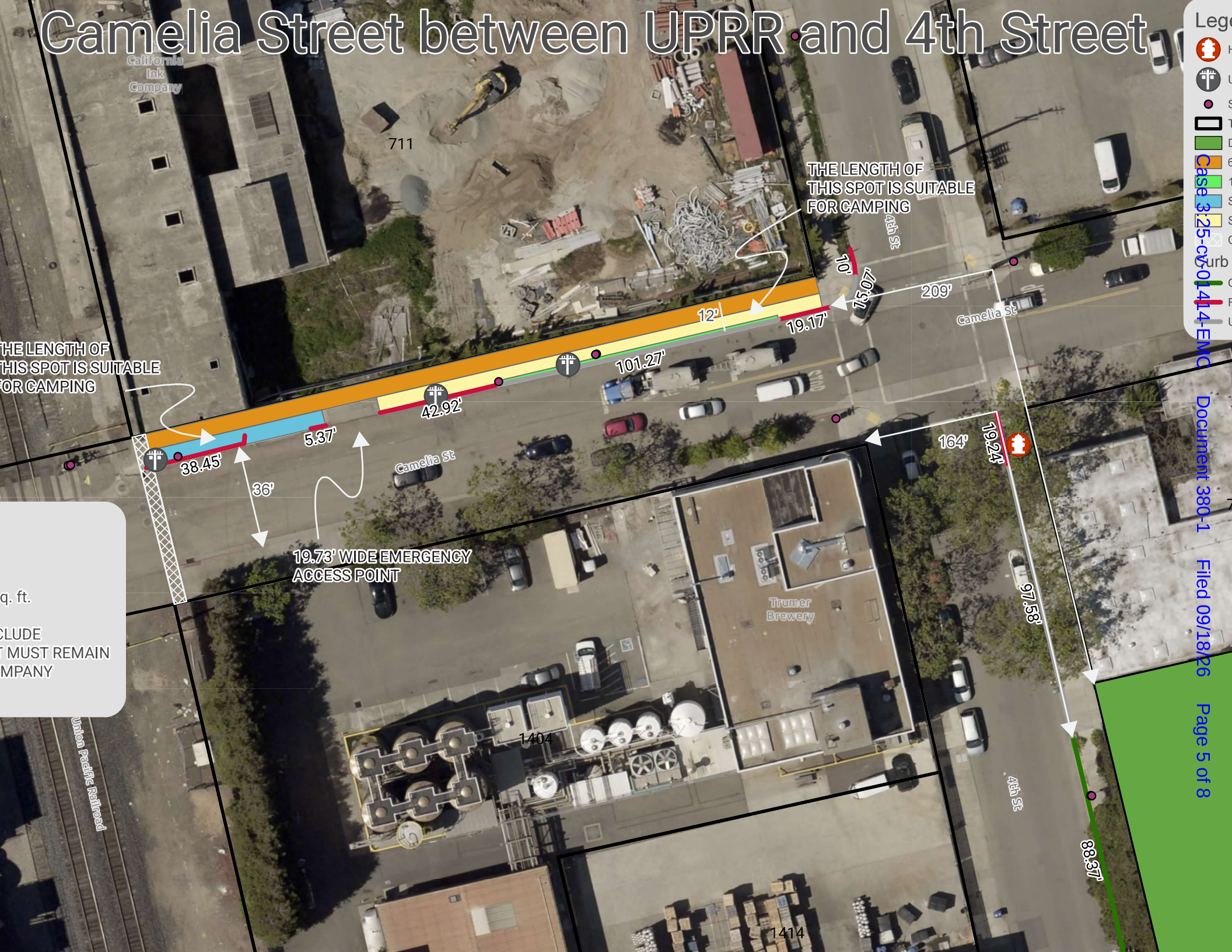


EXHIBIT B

From: Shaffer-Killey, Shannon
To: Gregory, Thomas; Tan, Zhong
Cc: Amiri, Wahid; Scott, Nubyaan; Stephens, Sara; Helmbrecht, Mark
Subject: RE: URGENT: Advance staging & unpermitted encampment expansion at 4th & Camelia / 9th & Camelia (Case No. 3:25-cv-01414-EMC)
Date: Wednesday, September 16, 2026 1:52:32 PM

Shannon Shaffer-Killey

Deputy Fire Marshal

City of Berkeley Fire Department

Direct Line: 510-981-5587

Cell Phone: 510-774-1380

1250 9th Street

Berkeley, CA 94710

From: Gregory, Thomas <TGregory@berkeleyca.gov>
Sent: Wednesday, September 16, 2026 10:06 AM
To: Shaffer-Killey, Shannon <SShaffer-Killey@berkeleyca.gov>; Tan, Zhong <ZTan@berkeleyca.gov>
Cc: Amiri, Wahid <WAmiri@berkeleyca.gov>; Scott, Nubyaan <NScott@berkeleyca.gov>; Stephens, Sara <sstephens@berkeleyca.gov>; Helmbrecht, Mark <MHelmbrecht@berkeleyca.gov> **Subject:** URGENT: Advance staging & unpermitted encampment expansion at 4th & Camelia / 9th & Camelia (Case No. 3:25-cv-01414-EMC)

Thomas Gregory / ADA Program Coordinator
City of Berkeley, Public Works Department
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