



Office of the City Manager

October 7, 2024

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Re: Implementation of Berkeley's New Encampment Policy

On September 10, 2024, the City Council adopted Resolution No. 71, 513-N.S. "Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods, with the second reading approved by City Council on September 24, 2024." This action reflects the city's ongoing commitment to balancing compassion for unhoused residents with the need to maintain public health and safety. As part of the action taken that evening, the Council requested that the City Manager prepare this memorandum to clarify and explain city staff practices in engaging with service providers and encampment residents prior to any enforcement action. This memo serves to address the Council's request and provides further explanation of the city's approach to implementing the new encampment policy moving forward.

Overview of the Homeless Response Team

The Homeless Response Team (HRT) is coordinated by the Neighborhood Services Division in the City Manager's office, and is a multi-departmental effort to balance the needs and impacts of the people who live, work or visit the area of a particular encampment—including and especially the people living in that encampment. The collaborative effort includes staff from Public Works, Health, Housing & Community Services, City Attorney's Office, Police, Fire, and Parks, Recreation and Waterfront.

The HRT's primary mission is the implementation of the All Home Regional Action Plan, adopted in July, 2021 by the City Council as the city's strategic plan to address and dramatically reduce street homelessness. With this in mind, the Homeless Response Team holds itself to three primary goals:

1. *Our Residents are Sheltered.* The All Home Regional Action Plan seeks to reduce street homelessness by 75% through the provision of permanent and interim housing solutions. The HRT's primary objective is moving people from sidewalks to safety through meaningful outreach and service provisions.

2. *Dangerous encampments are not inevitable.* Even if people living in encampments are not interested in the shelter resources we have at our disposal, there are certain health and safety threats that must be mitigated—both for the health of the encampment residents and the community at large.
3. *Our City is Clean.* Even if an encampment does not need to be closed, people living unsheltered often have no place to throw away trash. Homeless encampments can also become magnets for illegal dumping. Our goal is to remove as much debris as possible to keep our streets safe and clean.

For more information on the Homeless Response Team and its performance outcomes, please see the June 4, 2024 off-agenda memo distributed to the City Council entitled, "Homeless Response Team Quarterly Data and Progress Report,"¹

Implementation Plans for Encampment Policy

Resolution No. 71,513-N.S. directs the City of Berkeley's Homeless Response Team 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." It authorizes enforcement of State and local laws at encampments when a shelter offer is not practicable only under six specific and relatively narrow 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;
- 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;
- 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.

¹ See: <https://berkeleyca.gov/sites/default/files/documents/2024-06-04%20Homeless%20Response%20Team%20Quarterly%20Data%20and%20Progress%20Report.pdf>

During the discussion of this policy item on September 10, comments by both staff and members of the Council clearly affirmed that the city is a “care first, jails last” jurisdiction, and that granting authority to the City Manager to enforce without shelter in no way should signal a broad departure from the HRT’s current approach, which is to:

- Assess encampments for relative health and safety impacts;
- Perform outreach to the people living in the encampment with the goal of ending their unsheltered status by connecting them to shelter, housing, and other resources; and
- Apply progressively intensive interventions to mitigate impacts of the encampment, such as garbage/debris removal service to the encampment, closing the encampment only when necessary for health/safety reasons and without the use of citation and arrest wherever possible.

Accordingly, and consistent with Council’s direction on September 10th, this will continue to be the practice of the HRT moving forward. Even if an encampment meets one of the health and safety exceptions enumerated in the resolution, staff will resort to enforcement only if all other service offers and attempts to achieve voluntary compliance have failed. Because encampments are comprised of human beings, each with different needs and mental states, effectuating this process requires a case-by-case approach and is not subject to predictable timelines.

Noticing and Engagement Practices

The Supreme Court’s *Grants Pass* ruling addressed the 8th Amendment question of whether shelter must be offered prior to closing an encampment. It made no determinations on the body of 4th Amendment case law pertaining to unreasonable search and seizure of personal property and 14th Amendment case law dictating due process and noticing requirements, nor does the City’s new encampment policy make any mention of changes to noticing and engagement requirements before closing any encampment.

Public and written noticing before government intervention at an encampment are requirements that are spelled out in federal case law as well as various provisions of the Berkeley Municipal Code. Written notice is always required prior to an encampment closure, except in very rare circumstances where imminent hazards need immediate abatement and prior written noticing is not feasible or may unreasonably delay the necessary abatement action. (To date, the HRT has never encountered a circumstance in which it has needed to close an encampment without providing prior written notice.) Generally speaking, courts have found 72 hours is a reasonable prior lead time for written notice, but this may vary depending on the circumstances. City staff will continue to adhere to all requirements in prevailing case law and the Berkeley Municipal Code in implementing the new encampment policy.

Regarding the 4th and 14th Amendment protections for personal belongings, the HRT must and will continue to adhere to City storage policies for personal belongings at encampments, as described in Administrative Regulation 10.1. Implementing this policy takes time and city resources, both of which are limited, and is one of the factors that determines the pace with which encampments can be addressed in our community.

Collaboration with Service Providers

Weeks or even months before closing large or particularly complex encampments, the Homeless Response Team, for the past couple years, has assembled a weekly case conference of all City and County homeless service providers working in Berkeley. The goal of the case conference is to discuss the individuals known to be living in the encampment, identify service plans for these individuals, and mobilize a coordinated, multi-sector and multi-agency response to connect people to whatever resource (including and especially indoor placements) may be available to them prior to the encampment closure. Less than one week after Resolution No. 71,513-N.S. directed staff to prioritize closure of the Harrison St and 2nd/Cedar St encampment areas, the HRT started a case conference specifically for these named geographic areas, inviting providers working in these encampments and communicating the City's plans as transparently as possible. Staff plan to continue facilitating these case conferences and continuing existing collaborations on a regular basis until these two large encampments are resolved.

Constraints for Vehicles

Vehicle encampments, especially RVs, pose unique challenges for the City. There are no State or local laws making it illegal to dwell in a vehicle in Berkeley. Moreover, vehicles are governed by the California Vehicle Code (CVC), which supersedes any local ordinances. The CVC generally requires that all vehicles, even those deemed eligible for destruction, first be towed to impound. The tow companies with which the City contracts have limited space in their lots and are not always able to accommodate large vehicles such as RVs; moreover, they frequently refuse to accept them if they are filled with belongings that can create rodent harborage conditions. These external constraints have severely limited the City's ability to remove RVs from the street, even if the occupant has already moved into shelter and even if the vehicle has been declared a hazard pursuant to local laws. The Council's recent encampment policy does not affect this reality.

Additionally, a 2018 State law, AB 2876, and case law interpreting the 4th Amendment, make it illegal to tow a vehicle simply for compiling unpaid parking tickets or ignoring the 72-hour rule; absent some other valid 'community caretaking' justification, such as impediments to the safe flow of traffic or inoperability, towing a vehicle is considered an unconstitutional seizure of property under this law. The City has and will continue to enforce all parking regulations equally and on a complaint-driven basis, irrespective of

whether the vehicle is being used as shelter. Some vehicles will simply ignore our enforcement efforts, and not all of them are towable under State law. (It is important to understand that moving even a few feet constitutes compliance with the 72-hour rule. A validly-registered and operable RV that moves slightly when tagged by Parking Enforcement is in full compliance with all State and local laws, and there is nothing that can be done to force its removal.) Staff have seen some success with moving RV residents into shelter in the past, and we will continue our efforts to do so (alongside all other priorities on the street) in the future.

Moving Forward

Staff view Berkeley's new encampment policy as part of our broader commitment to creating safe, healthy, and compassionate communities. We will continue to prioritize a housing-first approach while addressing the immediate safety risks posed by encampments. The City remains dedicated to listening to all stakeholders—including unhoused residents, local businesses, and community advocates—as we implement this policy.

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

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