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13 Attorneys for Plaintiffs

ORIGINAL
FILED
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 KATHERINE CODY; PATRICIA MOORE;
18 ROBERT WHARTON; APRIL ANTHONY;
19 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
20 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
HOUSING ADVOCATES, a California non-
21 profit public benefit corporation

22 Plaintiffs,

23 v.

24 CITY OF ALBANY; ALBANY POLICE
DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police,

25 Defendants.
26
27
28

CASE NO. **013-5270**

**DECLINATION TO PROCEED BEFORE
A MAGISTRATE JUDGE AND
REQUEST FOR REASSIGNMENT TO A
UNITED STATES DISTRICT JUDGE**

DECLINATION TO PROCEED BEFORE A MAGISTRATE JUDGE AND REQUEST FOR
REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE
CASE NO.



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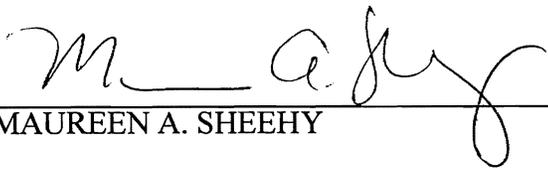
REQUEST FOR REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE

The undersigned party hereby declines to consent to the assignment of this case to a United States Magistrate Judge for trial and disposition and hereby requests the reassignment of this case to a United States District Judge.

DATED: November 12, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: 
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Attorneys for Plaintiffs

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PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police,

25 Defendants.
26

CASE NO.

**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

Pursuant to Federal Rule of Evidence 201, Plaintiffs respectfully request that the Court take judicial notice of the following public documents:

Exhibit	Description
1	Official minutes for Albany City Council Meeting (Mar. 1, 1999), pp. 5--6, <i>available at</i> http://www.albanyca.org/index.aspx?page=640 (“Agenda Page”).
2	Official minutes for Albany City Council Meeting (Mar. 15, 1999), pp. 3--5, <i>available at</i> Agenda Page.
3	Official minutes for Albany City Council Meeting (Apr. 5, 1999), pp. 4--6, <i>available at</i> Agenda Page.
4	Official minutes for Albany City Council Meeting (Oct. 4, 1999), pp. 3--5, <i>available at</i> Agenda Page.
5	Official minutes for Albany City Council Meeting (May 6, 2013), <i>available at</i> Agenda Page.
6	Official minutes for Albany City Council Meeting (Sep. 3, 2013), <i>available at</i> Agenda Page.
7	Albany Code § 8--4 (2013)
8	<i>Lakewood v. Steve Brigham</i> , No. L--2462--10 (N.J. Super. Ct. Law Div. Apr. 10, 2013) (Consent Order).
9	<i>Jeanne Zeitler</i> , Administrative Hearing City of Des Moines, Iowa, (January 31, 2013) (Decision and Order)
10	<i>California v. Hawthorne</i> , No. 577508 (Alameda Super. Ct. July 29, 2013) (order).
11	Richmond Ordinance 26--06 N.S. (June 27, 2006).
12	Albany City Council, <i>Waterfront & Bulb</i> , http://www.albanyca.org/index.aspx?page=891 (last visited Nov. 11, 2013).
13	<i>Des Moines v. Webster</i> , No. EQCE073786 (Iowa Dist. Ct. Oct. 18, 2013)
14	Berkeley Food and Housing Project, <i>Operation Dignity Proposed Scope of Work</i> <i>available</i>



	at http://albanyca.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id (last visited Nov. 11, 2013).
15	Press Release, Albany City Council, Albany Waterfront Park Transition Plan ACT (Oct. 8, 2013), available at http://www.albanyca.org/index.aspx?page=18& (last visited Nov. 11, 2013).
16	Albany Resolution 2013—60 available at http://www.albanyca.org/index.aspx?page=462 (last visited Oct. 21, 2013).
17	Official minutes for Albany City Council Meeting (Apr. 5, 1999), pp. 4--6, available at http://www.albanyca.org/index.aspx?page=640 .
18	Albany Administrative Procedures for the Removal of Temporary Shelters, Personal Property and Refuse (Sep. 2013).available at http://albanyca.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=1161
19	Letter from plaintiffs’ counsel responding to proposed plan for relocating Bulb residents to Albany City Attorney, Craig Labadie (Oct. 15, 2013) available at http://albanyca.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=1161
20	Albany Resolution 2013--48 (Sep. 3, 2013). Available at http://albanyca.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=1134
21	City of Albany’s Draft Budget: Transitional Housing and Clean-Up available at http://albanyca.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=11
22	The Lease and Agreement for Operation and Development of a Portion of the East Bay Shoreline Project in the City of Albany dated June 25, 1985.

Federal Rule of Evidence 201(b) provides that the Court may take judicial notice of a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Pursuant to Federal Rule of Evidence 201(c)(2), the Court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” For example, matters of public record, such as official city council meeting minutes



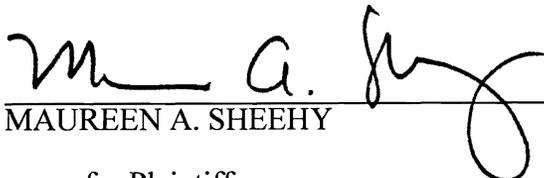
1 and local ordinances, are an appropriate subject of judicial notice. *See, e.g., Harris v. Cnty. of*
2 *Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012); *Long Beach Area Peace Network v. City of Long*
3 *Beach*, 574 F.3d 1011, 1026 at fn. 1 (9th Cir. 2009); *N. County Cmty. Alliance, Inc. v. Salazar*,
4 573 F.3d 738, 746 at fn. 1 (9th Cir. 2009).

5 Here, Plaintiffs have supplied the Court with (1) true and correct copies of official minutes
6 (or true and correct excerpts thereof) of meetings, (2) true and correct copies of municipal codes
7 and ordinances, (3) true and correct copies of court orders and administrative decisions, and (4) a
8 true and correct copy of a page from a municipality's website . Plaintiffs' submitted documents
9 are matters of public record and, accordingly, judicial notice is appropriate as to each of these
10 documents.

11 DATED: November 13, 2013

Respectfully submitted,

12 KILPATRICK TOWNSEND & STOCKTON LLP

13
14 By: 

15 MAUREEN A. SHEEHY

16 Attorneys for Plaintiffs

17 65759191v1

5-1. Ordinance #99-01 - Unclaimed and Surplus Property**MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member McManus and seconded by Council Member Ely to approve Ordinance #99-01 for Second Reading - Pass-to-Print.

AYES: Council Members Ely, Good, Maris, McManus & Mayor Thomsen

NOES: None

ABSENT: None

Motion carried and so ordered.

5-2. Ordinance #99-02 - Use of City Parks, Open Space & Recreational Areas.

(File #490-20)

The Assistant City Administrator reported that the City Council held worksessions to discuss issues regarding site security and individuals occupying public lands on the Albany Landfill. At the end of the worksession, the City Council directed staff to develop draft ordinance language which would address land uses that are not appropriate given the site.

The draft ordinance defines parks, open space and recreational areas. In response to concerns about health and safety the ordinance prohibits night use of the area and prohibits camping, fires, alcoholic beverages and activities that would construct any type of structure.

The draft ordinance has been reviewed by staff from the Albany Police Department and the East Bay Regional Park (EBRPD) District. As drafted, the proposed ordinance reflects East Bay Regional Park District's "interim" or "transitional" management plans for the Plateau Landfill area and incorporates language from existing EBRPD regulations for park closure, fires and camping. The draft ordinance was also reviewed by 18 individuals who reside on the Albany Landfill.

The Assistant City Administrator noted that enforcement of the proposed ordinance will entail costs associated with posting the area (signs), possible gating or fencing of the area and the staff costs associated with coordinating interim social service activities and patrolling the area. All of these costs are variable depending on the scope of the services and number of individuals who violate the ordinance once adopted.

There are two phases of costs associated with the Albany Landfill activities. The first costs are associated with activities that take place prior to the adoption and enforcement of the ordinance and those that will take place after the ordinance is effective.

Council Member Good asked about the cost of enforcing this ordinance and was told there is a significant trash problem at the Landfill, which will need to be dealt with. The City Administrator stated that the funding necessary can be funded through the operational budget, however, most of the cost associated with this project is the Assistant City Administrator's time which is devoted to this matter. Another major problem and cost is the enforcement issue.

5-2. Ordinance #99-02 - Use of City Parks, Open Space & Recreational Areas.

Council Member McManus asked how this ordinance differs from other laws governing parks. The City Attorney responded that he is not aware of any conflicts that would contradict this ordinance, however, he will check this out before the second reading.

Council Member McManus brought up the issue of dogs running loose in the parks which cause major sanitation problems when children and adults are playing in the same area.

A discussion followed between the City Council on the problem of dogs running off their leash in City parks. Council Member McManus believed there should be a section in the park ordinance which deals with dog enforcement.

Ms. Jewel Okawachi, 1124 Curtis, agreed with Council Member McManus indicating that this issue will be discussed at the Park & Recreation Commission meeting. Ms. Okawachi asked why the parks will be closed at 10 p.m. and the Assistant City Administrator responded to coincide with EBRPD policies.

Mr. Dario Meniketti, 951 Kains, spoke on the costs associated with this ordinance and asked that the taxpayer be thought of during this process. Mr. Meniketti suggested that drinking water be supplied at the Landfill.

Mr. James Carter, The Journal, asked a question about "squatting rights" and the City Attorney responded he did not believe these rights could be acquired on public property.

Council Member Good noted that he believes this ordinance is good and should be passed for first reading and the issue of dogs should be dealt with as a separate issue.

Council Member Maris asked that a date be established within the ordinance and the Assistant City Administrator stated the City is looking at the date of June 15 to be the effective date.

Council Member McManus reiterated his concern about having a section in this ordinance relating to dogs running off their leash. Council Member Good stated he did not believe the dog issue should be in this ordinance. However, would not oppose having an informational sheet that is given to people with this ordinance.

The City Attorney advised that the dog issue be dealt with separately otherwise the Council will spend too much time sorting through the issues.

Council Member Good suggested that this ordinance be sent to the Park & Recreation Commission for their comments. The City Administrator recommended if this is sent to the Park & Recreation Commission that they be given a time frame so that they don't spend too much time on the ordinance. Council Member Ely suggested that the date of June 15th be included in the ordinance so that the Park & Recreation Commission understands the time frame of this issue.

Council unanimously directed staff to send this ordinance to the Park & Recreation Commission for their comments and that it be scheduled for their next meeting. Also to refer the matter of dogs to the Park & Recreation Commission for their comments and recommendations.

3-5. Resolution #99-9

Council Member Maris stated that he is a block captain for EQPP and noted that people put in a lot of effort and time for this organization. However, recently the organization has not been getting the participation they had in the beginning. Council Member Maris urged everyone to get involved in EQPP and become prepared for a major disaster.

MOTION:

Moved by Council Member Good, seconded by Council Member Ely to approve the Consent Calendar as submitted.

AYES: Council Members Ely, Good, Maris, McManus & Mayor Thomsen

NOES: None

ABSENT: None

Motion carried and so ordered.

4. PRESENTATION/PUBLIC HEARING**5. UNFINISHED BUSINESS****5-1. Ordinance #99-02 - Use of City Parks, Open Space & Recreational Areas.**

(File #490-20)

The Assistant City Administrator reported that Ordinance #99-02 was referred to the Park & Recreation (P&R) Commission for their comments and review.

The P&R Commission believe it to be premature to recommend an overall ordinance for all open space and parks and recommended the following language: That the Ordinance be adopted only in reference to the Albany Landfill. The Ordinance should strike all references to City parks and recreational areas and define open space, for the purpose of this Ordinance, as those areas and portions located and referred to as the Albany Waterfront.

The P&R Commission is currently working with the Memorial Park Forum on issues such as hours of operation at Memorial Park. The P&R Commission believe they need more time for consideration and community comment before recommending broad policy changes for all of the park and recreational areas in Albany.

The Assistant City Administrator noted that a section has been added which speaks to enforcing the existing animal ordinance. The City Attorney stated that the penalty section has been substantially reworded. Council Member Ely commended the changes on the penalty section noting that a lot of thought went into the changes.

Mr. Dario Meniketti made the following suggestions: 1) Rules for the parks should be posted at the entrance. 2) No drinking, smoking, drugs or guns allowed in the parks. 3) No bike riding or horse riding in the park. 4) No nudity

5-1. Ordinance #99-02 - Use of City Parks, Open Space & Recreational Areas.

allowed in the park. 5) No undue noise. 6) Install a telephone. 7) No overnight sleeping. 8) No dogs allowed in the small parks. 9) In the larger parks dogs should be muzzled and on a leash and only one dog per person.

[Mayor Thomsen noted that the Council is only dealing with the Waterfront park at this time.] The other parks will be dealt with separately at a later date.

Mr. Evan Flavell, 846 Solano Avenue indicated that in Section 8-4.3, line 21/22 the P&R Commission recommendation is not included and needs to be corrected to indicate the Waterfront area only. Mr. Flavell asked if the Creekside Park is included under this ordinance.

[The City Attorney responded that the City has experienced some problems along the creek area, and if people are removed from the Waterfront they might relocate to other open space areas.]

Ms. Jewel Okawachi, P&R Chair, stated the Commission did not discuss the creek areas.

Council Member Good introduced Ordinance #99-02 - An Ordinance of the Albany City Council to Provide Regulations for the Use of City Parks, Open Space and Recreational Areas.

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Good and seconded by Council Member Ely to approve Ordinance #99-02 for First Reading.

ON THE QUESTION:

[Council Member Maris expressed concern about people relocating to Albany Hill after they are removed from the Waterfront. The Assistant City Administrator responded the Friends of Albany Hill have some of the same concerns. Council Member McManus believed there could be a liability problem if people are allowed to camp on Albany Hill.]

Council Member Maris requested that this Ordinance be posted and the Assistant City Administrator stated it will be posted at the City's three legal places, as well as the Waterfront.

Mayor Thomsen asked the time line of the P&R Commission for dealing with the rest of the parks. Ms. Jewel Okawachi responded that there is no set time line. There is a subcommittee that is working with the neighbors around Memorial Park.

Mayor Thomsen noted that the other park ordinance would have to be posted by May 15th to take affect the same time as Ordinance #99-02.

AMENDED MOTION:

Moved by Council Member McManus, seconded by Mayor Thomsen to amend the proposed ordinance to include Hilltop and Creekside Park.

4-1. Fire Chief Marc McGinn presenting the Fire Department Five-Year Report.

plan is in place and being "fine tuned" at this point; it should be completed by July 1999.

Council Member Maris commended the Fire Chief on the fine report as it keeps the Council and the community apprised of the function and operation of the department. He had a question about the Semi-Automatic External Defibrillation (SAED) program success rate mentioned on page 13 on the Five-Year Report. The Fire Chief stated that, while the thirty-four percent (34%) referred to is a State-based statistic, it applies to Albany, as well. Prior to having a paramedic team, the success rate was five to ten percent (5-10%) and has now increased to thirty-three percent (33%). Council Member Maris also asked what Bot Dots were. It was explained that these devices aided in determining the location of hydrants at night due to their reflective properties.

Fire Chief McGinn elaborated on the progress the Fire Department has made in a number of areas: disaster containers; improved Emergency Operations Center (E.O.C.) facility; outreach efforts to residents including disaster preparedness, annual smoke detector replacement and CPR classes. Specifically, the Fire Chief addressed the projections for displacement in the event of a disaster and provisions made for the residents of Albany. According to his statistical data, up to twenty-five percent of the city's population may be displaced should a disaster occur. He intends to obtain a third disaster container and will meet with the Parks and Recreation Commission to discuss its possible placement at Memorial Park.

Mayor Thomsen complimented the Fire Chief on his department's service to the City and his acknowledgment of the individuals who contributed to this report. Appreciation was expressed for their pro-active approach and the fine job they do informing the public.

5. UNFINISHED BUSINESS

5-1. Ordinance #99-02- An Ordinance of the Albany City Council to Provide Regulations for the City Waterfront, Albany Hill and Creekside Open Space or Park Areas. Second Reading - Pass-to-Print.

The Assistant City Administrator stated that Ordinance #99-02 reflected the changes requested by the City Council at the March 15, 1999 meeting. These changes include a clearer definition of the Albany Hill open space areas referred to in Section 1, 8-4.2. In addition, the Parks and Recreation Commission had requested the removal of Memorial Park and Terrace Park in the previously presented ordinance. The Parks and Recreation Commission is currently working on ordinance language for these parks and should have it completed within the next few months.

The second change noted relates to Hours of Operation and the Camping sections. The Friends of Albany Hill requested that night use of Albany Hill not be restricted to allow for evening activities such as stargazing. They also noted that the phrase "within any Waterfront or Albany Hill area" was inadvertently left out of the first sentence of Section 8-4.6, as it relates to Alcoholic Beverages. The Assistant City Administrator said this phrase would be added to the final ordinance.

5 -1. Ordinance #99-02- An Ordinance of the Albany City Council to Provide Regulations for the City Waterfront, Albany Hill and Creekside Open Space or Park Areas.

City Administrator, some Albany Hill residents are concerned about incidents involving those who consume alcohol on Albany Hill and cause a disturbance. Furthermore, she explained that much of this ordinance actually mirrors the East Bay Regional Park District regulations of their "interim" management ordinance. The City Administrator then reiterated the fact that the provisions applied to the Waterfront were extended to include Albany Hill to discourage individuals who may migrate there from the Waterfront. He also stated that this ordinance did not ban alcohol; there are allowances for obtaining a permit.

Council Member McManus referred to the last Council meeting where Ordinance #99-02 was introduced. He said discussion included an amendment to include "Hilltop" and Creekside Park. Mayor Thomsen echoed this and stated it was included in the minutes from the March 15, 1999 meeting. Council Member Good asked for clarification on what was being amended and Mayor Thomsen pointed out specifically what the amendment was. The ordinance should include "Albany Hill area" wherever a reference is made to the Waterfront area. In addition, page 3, line 12 will have "in any Waterfront or Albany Hill area" inserted as it relates to persons consuming alcoholic beverages. The City Attorney confirmed the requested language.

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member McManus and seconded by Council Member Ely to approve Ordinance #99-02 with the language reflecting inclusion of Hilltop and Creekside Park.

ON THE QUESTION:

Council Member Good asked what was being changed in the ordinance. Mayor Thomsen reaffirmed the minor changes that were being made at this meeting. In addition, the amendment to include "Hilltop" Park was voted on at the last meeting and the document presented at this meeting did not reflect that amendment.

VOTE ON ORIGINAL MOTION:

Mayor Thomsen recapped the motion: To approve Ordinance #99-02 for Second Reading, Pass-to-Print.

AYES: Council Members Ely, Good, Maris, McManus & Mayor Thomsen

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Maris complimented the Assistant City Administrator and City staff for the way a difficult issue is being handled and thank Mr. McElree for his help.

6. NEW BUSINESS

7. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

City Administrator Daren Fields introduced Lisa Purcell as the new General Clerk in the Community Development Department.

5. UNFINISHED BUSINESS

5-1. Ordinance #99-07 - Parks, Recreation & Open Space Areas
(File #920-20)

The City Administrator noted that this Ordinance was before the Council at the last Council meeting and was approved for first reading. The City Administrator noted the Ordinance is back for second reading - pass-to-print with no changes from the first reading. Both Park & Recreation Commission and City staff recommend approval of Ordinance #99-07.

Mr. Dario Meniketti, 951 Kains, expressed concern about the park closure time and the events that occur at the Veterans Building in Memorial Park. The City Administrator responded that the Ordinance states the Director of Recreation & Community Services can modify the closing hours of the park due to an event.

Council Member Ely asked if the Veterans organization ever calls the City notifying it of various events to be held at the Veterans Building. The City Administrator responded that the City is notified of many events.

Council Member McManus introduced Ordinance #99-07 - An Ordinance of the Albany City Council Relating to Parks, Recreation & Open Space Areas. Second Reading - Pass-to-Print.

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member McManus and seconded by Council Member Ely to approve Ordinance #99-07 for Second Reading - Pass-to-Print.

AYES: Council Members Ely, Good, Maris, McManus & Mayor Thomsen

NOES: None ABSENT: None

Motion carried and so ordered.

5-2. Resolution #99-47 - Cable T.V.
(File #1050-30)

The City Attorney explained that representatives from the Cable T.V. Company have again requested that this item be deferred until the next meeting. It was noted that the extending period would be October 5, 1999.

Council agreed to defer action until the next meeting.

6. NEW BUSINESS

6-1. Albany Landfill Update
(File #490-20)

The City Administrator reported that 1984 the City ceased its operations as a landfill operator. The City went to the Regional Water Quality Control Board requesting assistance on the Board's landfill closure requirements. The response from the Board

6-1. Albany Landfill Update

was a Closure Order that called for a "cap and seal" of the 36 acre site. However, cost estimates were recently placed at around \$4 million to meet the closure requirements.

For the past 14 years the City has attempted to amend the Closure Order with a series of tests and monitoring completed. After working diligently with representatives from the East Bay Regional Park District, Assemblywoman Dion Aroner's Office, members of the Waterfront Committee and representatives of Citizens for the Eastshore State Park a new Closure Order has been issued. The new Closure Order, dated September 15, 1999, calls for no "cap and seal", no filling of the Bay, no ongoing monitoring and testing (other than quarterly visual inspections) and recognition that the landfill is not affecting water quality of the Bay.

Therefore, instead of the original \$4 million cost, the City will only have about \$3,000 per year in inspection costs and reports. The end result is the replacement of an old Closure Order that was an environmental and financial burden with a new Closure Order that is environmentally sensitive and financially feasible within the framework and timeframe of the development of the entire Eastshore State Park.

The City Administrator reported that the next step for the Albany Landfill is to work toward implementing the Proposal for the Albany portion of the Eastshore State Park and ultimately include the Landfill into the Eastshore State Park.

Council Members Ely and McManus both expressed concern about the safety hazards at the Landfill and urged staff to clean this area.

The Assistant City Administrator reported on the Albany Waterfront homeless population. The Assistant City Administrator noted that Albany took a social service approach with six months of outreach to the people camped at the Waterfront. The process was divided into three phases: The first phase focused on social services for the individuals living in the encampment. These services included outreach teams, meals, a transitional emergency housing shelter, showers, medical assistance, storage facilities, portable restrooms and garbage service. The second phase was enforcement of the new Albany Waterfront Ordinance. This phase was divided into three segments that included an informational segment, a citation segment and an arrest/patrol segment. The final phase is ongoing patrol, enforcement and cleanup.

The Assistant City Administrator stated that a unique approach was taken with the animals left at the landfill once the people had been removed. The Assistant City Administrator commented that an Animal Rights Group came in and found homes for the abandoned dogs and cats and also provided health care for the animals.

The Assistant City Administrator reported that all the structures are down, however, the debris needs to be hauled away. The media gave Albany good coverage which helped with the problem and Golden Gate Fields provided the space for the temporary housing shelters.

The Police Department still has contact with 5 or 6 individuals who are playing cat and mouse at the Landfill. There is a lot of clean up that needs to be done including the installation of a swinging gate, annual trail maintenance, the removal of 3 boats and the installation of permanent signs.

6-1. Albany Landfill Update

Council Member Good stated that he was very impressed with the accomplishments and asked how much this cost the City. The Assistant City Administrator responded it cost approximately \$40,000 which excludes staff time.

Council Member Ely stated that he is amazed that the City stayed within the budget for this project and informed staff that he heard a lot of positive things about the way Albany handled this problem.

Council Member Maris noted that he witnessed some of the work that was done at the Landfill and was impressed with the compassion that was shown by all people involved. Council Member Maris stated that the City came off looking very good in the media.

Council Member Maris stated that the City needs to talk about how to recover the Bay Trail and the art work that needs to be dedicated.

Mayor Thomsen thanked staff for the great job in handling the Waterfront.

7. OTHER BUSINESS/ANNOUNCEMENT OF EVENT**8. GOOD OF THE CITY/PUBLIC FORUM**

For persons desiring to address the Council on an item that is not on the agenda. City policy limits each speaker to five minutes.

The Brown Act limits Council ability to take and/or discuss items which are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

Mayor Thomsen opened the Good of the City/Public Forum and asked if anyone would like to speak.

Mr. Dario Meniketti spoke on the following items: 1) Congratulated the High School Girls Volleyball Team. 2) Thanked the Fire Fighters for the donation to the Senior Center for a self operated blood pressure device and also thanked them for the bicycle helmet program. 3) Informed the Council that he would have to take some measures to correct a problem. The problem being the joint Planning Commission/City Council meeting which was held in the Council Chambers, however, the speakers were not hooked up to the microphones and nothing could be heard. Mr. Meniketti noted this happened at the last joint meeting and he had to go home.

There being no one else wishing to speak Mayor Thomsen closed the Good of the City/Public Forum.

9. ADJOURNMENT

8:45 p.m. - There being no further business before the City Council it was moved and seconded to adjourn the meeting.



CITY OF ALBANY

MINUTES OF THE ALBANY CITY COUNCIL
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
MONDAY, MAY 6, 2013

7:30 p.m.

CALL TO ORDER

Mayor Thomsen called the regular meeting of the Albany City Council to order on the above date.

1. **PLEDGE OF ALLEGIANCE**

Mayor Thomsen led the Pledge of Allegiance to the Flag.

2. **ROLL CALL**

Present: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

Absent: None

Staff Present: Beth Pollard, City Manager; Craig Labadie, City Attorney; Anne Hsu, Deputy City Clerk; Jeff Bond, Community Development Director; Isabelle Leduc, Recreation Supervisor; Ed Tubbs, Fire Chief; Kim Denton, City Treasurer; Penelope Leach, Assistant City Manager/Community Services Director.

3. **REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY**

4. **CONSENT CALENDAR**

4-1. Minutes, April 15, 2013

Staff recommendation: Approve

4-2. a. Ratification of City of Albany net payroll in the amount of \$184,851.72; taxes, benefits & withholdings in the amount of \$153,287.59. Total payroll in the amount of \$338,139.31. Payroll period: 4/5/2013

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$47,974.23; taxes, benefits & withholdings in the amount of \$34,647.20. Total payroll in the amount of \$82,621.43. Payroll period: 4/5/2013

c. Ratification of City of Albany net payroll in the amount of \$190,370.03; taxes, benefits & withholdings in the amount of \$265,741.99. Total payroll in the amount of \$456,122.02. Payroll period: 4/19/2013

d. Ratification of Albany Municipal Services JPA net payroll in the amount of \$46,601.64; taxes, benefits & withholdings in the amount of \$54,176.90. Total payroll in the amount of \$100,778.54. Payroll period: 4/19/2013

Staff recommendation: Ratify.

- 4-3. Ratification of bills, claims and demands against the City of Albany in the amount of: \$946,269.16 (3/29/2013); \$31,706.72 (4/1/2013); \$343,934.21 (4/12/2013)

Ratification of bills, claims and demands against the Albany Joint Powers Authority in the amount of: \$438.08 (3/29/2013); \$186.00 (4/12/2013)

Staff recommendation: Ratify

- 4-4. Ratification of Police & Fire Pension Plan payments in the amount of \$122,761.45 for the month April, 2013.

Staff recommendation: Ratify.

- 4-5. Fleet Vehicle Authorization to Lease

Staff recommendation: that the City Council approve Resolution No. 2013-18 authorizing the City Manager/designee to enter into a lease agreement with Enterprise Fleet Management for the lease of vehicles in lieu of replacement

- 4-6. Contract Agreement C13-8 with Cycles of Change for the provision of a Bicycle Program at the Albany Elementary Schools and Middle School

Staff recommendation: that the City Council authorize the City Manager to enter into Contract No. C13-8 with Cycles of Change in the amount of \$36,200 for the provision of a Bicycle Education Program during Physical Education (PE) and supplementary bike rodeos at the three elementary schools and Middle School in Albany for the next three school years

- 4-7. Resolution No. 2013-19 – A resolution of the Albany City Council accepting the gifts/donations for the Recreation & Community Services Department

Staff recommendation: that the City Council approve Resolution No. 2013-19 accepting donations to the Recreation & Community Services Department

4-8. Letter of Support for Senate Bill 254 – Mattress Recycling Bill

Recommendation: that the City Council approve a letter of support for SB 254

4-9. Resolution No. 2013-17 - a Resolution Authorizing the Examination of Transactions (Sales) and Use Tax Records

Staff recommendation: that City Council adopt Resolution No. 2013-17, a Resolution Authorizing the Examination of Transactions (Sales) and Use Tax Records

4-10. Resolution No. 2013-23 - a Resolution of the Albany City Council Adopting Certain License Fees Pursuant to Albany Municipal Code Sections 5-2.2, 5-2.3 and 5-2.5

Staff recommendation: that Council adopt Resolution 2013-23 in order to allow a daily business license rate or Peddlers and Solicitors, personally manufactured articles and produce

4-11. Transportation Development Act (TDA) Article 3 Allocation FY 13-14

Staff recommendation: that the Council approve Resolution No. 2013-21 requesting that the Metropolitan Transportation Commission (MTC) allocate Fiscal Year 2013/14 TDA Article 3 Pedestrian/Bicycle Project funds in the amount of \$15,394 to the City of Albany toward design of the Buchanan Bikeway Phase III

Mayor Thomsen asked if anyone would like to remove an item. Item 4-10 was pulled by the Council. Council Member Maass asked if the fee would apply to Solano Stroll Vendors. City Treasurer Kim Denton clarified that the Stroll Vendors have a sponsored event business license that covers all vendors at the Stroll. The fee would apply to food truck vendors at the Arts & Green Festival.

MOTION:

Moved by Council Member Atkinson, seconded by Vice Mayor Wile to approve the Consent Calendar as submitted.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

Mayor Thomsen opened the Good of the City/Public Forum/Announcements.

The following people spoke: Peggy McQuiad; Amy Smollens; Brian Parsley; Norm Ludwig.

A summary of comments is as follows: announced the Albany Police Activities League Bicycle Rodeo on Saturday May 18 at Cornell School; Albany Strollers & Rollers will be at the Bicycle Rodeo with the bike blender, announced Bike to Work Day and City Officials Bike to Work Day Ride; noted that it has been six months since the last election and encouraged the Council to agendize City Council health coverage to consider taking the same health care coverage as City employees; expressed concern with high speed vehicles along Pierce Street and interest in implementing Phase 1 of the Pierce Street Park project.

Council Member Maass announced that Miriam Walden has initiated a business education program at Albany High School and is seeking donations to support the program.

Vice Mayor Wile noted that the Council has approved the project at UC Village and that the City is interested in seeing the project move forward.

Mayor Thomsen acknowledged community volunteers Peter Shakow, Jason Alabanza, and Virginia Behm for their service. Mayor Thomsen also congratulated Josephine Marini who recently turned 100 years old.

6. PRESENTATION/PUBLIC HEARING

6-1. Proclamation in Honor of Saint Mary's College High School's Sesquicentennial Anniversary

Mayor Thomsen presented the Proclamation in honor of Saint Mary's College High School's Sesquicentennial Anniversary.

Brother Edmond expressed appreciation for the collaboration opportunities with the City.

6-2. Proclamation in Honor of Fire Chief Ed Tubbs' Service to the City of Albany

Mayor Thomsen presented the Proclamation in honor of Fire Chief Ed Tubbs' service to the City.

Fire Chief Ed Tubbs expressed appreciation to the City, Council, staff and the community.

6-3. Resolution No. 2013-22 - Modifying Mitigation Measure GCC-1 and the Mitigation Monitoring and Reporting Program for the University Village Mixed Use Development and Adopting an Addendum to the Environmental Impact Report (EIR)

Staff recommendation: that the City Council approve Resolution No. 2013-22 approving the EIR Addendum and amending Mitigation Measure GCC-1 and the MMRP for the University Village Mixed Use Development

Community Development Director Jeff Bond delivered the staff report. The City Council approved a series of policy-level actions associated with the University Village Mixed Use project in July 2012, including certification of an EIR for the project. Following certification of the EIR, two separate petitions for Writ of Mandate challenging the adequacy of the EIR were filed with the Alameda County Superior Court. The City and the University have jointly participated in the defense of the City Council's decision. A conditional settlement agreement has been approved in the case of Albany Strollers & Rollers/Carbon Neutral Albany v. City of Albany. In accordance with the settlement agreement the University has proposed modification to Mitigation Measure GCC-1. The settlement agreement is subject to the City Council's discretionary consideration and potential approval of the proposed modification to Mitigation Measure GCC-1. The proposed amendment clarifies that the following will occur: 1) Bike lanes and/or paths are incorporated into the project and that the bike facilities link to the community-wide network; and 2) The project incorporates on-site renewable energy generation, such as with the installation of solar panels. The proposed changes to Mitigation Measure GCC-1 are the only change proposed. Per CEQA Guidelines and CEQA case law, an EIR Addendum may be prepared to document any resulting changes to environmental impacts or mitigation measures. An addendum process may be used where the changes are technical or clarifying in nature.

The second case, Larsen/Rawlins v. City of Albany is proceeding. A ruling on the Larsen/Rawlins case is expected in early summer.

On Wednesday, May 8, 2013, the City's Planning and Zoning Commission will hold a study session to review the proposed senior housing and retail components to the University Village Mixed Use Project.

The following people spoke: Harry Chumsky, Albany Strollers & Rollers; Preston Jordan, Carbon Neutral Albany; Catherine Sutton, David Sanger.

A summary of comments is as follows: expressed appreciation for proposed changes to the mitigation measure; asked about the status of the second lawsuit regarding the project; expressed concern with the intended activities of Occupy the Farm and encouraged Council to take action on the item.

Craig Labadie City Attorney clarified that the agenda item tonight does not pertain to the second lawsuit. The status of the second lawsuit has been fully briefed, the administrative record has been prepared and a court hearing has been set for next Thursday, May 16 at the Alameda County Superior Court.

A summary of Council comments is as follows: legal action against the University impacts students and tuition rates; expressed appreciation for reaching a settlement agreement and expressed interest in moving the project forward; urged responsible citizens who know individuals who may be intending illegal acts to help dissuade them from such acts and for everyone to use the democratic process to express themselves.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Barnes to approve Resolution No. 2013-22 approving the EIR Addendum and amending Mitigation Measure GCC-1 and the MMRP for the University Village Mixed Use Development.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

7. UNFINISHED BUSINESS**7-1. Report from the Homeless Task Force on Policy Options for Ending Homelessness in Albany**

Staff recommendation: that the City Council discuss whether there is a consensus on a preferred option. If there is a consensus on an option, it is recommended that the Council:

- a. direct staff to issue a request for proposals for outreach and engagement services;
- b. request report back on implementation of preferred option; and
- c. provide direction on next steps for the Homeless Task Force

Community Development Director Jeff Bond delivered the staff report. The Homeless Task Force was created by the City Council on May 21, 2012, to recommend to Council options for policies and strategies to end Homelessness in Albany, and meet once a month for up to 18 months. The Task Force provided a progress report to Council on January 22, 2013, identifying four tasks: 1) Encourage the City Council to fund a survey of persons who are homeless living at the Bulb; 2) Explore the creation of a tool to survey those persons who are homeless and living in areas of town other than the Bulb; 3) Compile three to four policy options and strategies to end homelessness in Albany to present to the City Council; 4) Begin development of a draft survey instrument and methods to survey Albany's general public regarding policy options and strategies. The first step for providing homeless services is outreach and engagement with homeless individuals, whether in the encampment on the Bulb or elsewhere in the City to determine their needs and link them to organizations that can best help them. The second step in providing services is day-to-day case management.

Julie Winklestein and Gordon McCarter presented the Task Force Interim Report No. 2, including a summary of progress to date, and a series of options for addressing homelessness in Albany including pro/con analysis. Many of the identified options can be combined. The Task Force also recommends the Council express support for Assembly Bill 5 to help protect the rights of persons that are

homeless. The Task Force expressed an interest in developing a plan that is fair and equitable. The options identified by the Task Force include:

- 1) Alternatives that rely on existing policies and programs
 - 1.A. Housing First Model
 - 1.B. Enforce the Albany Municipal Code with limited support services
 - 1.C. Transitional or Permanent Housing in Albany
 - 1.D. Phased Transition
 - 1.E. Status Quo (Do Nothing)
- 2) Alternatives that rely on new City policies/program
 - 2.A. Dignity Village Model
 - 2.B Drop in Day Service Center in Albany

The following people spoke: Tony Susnack, Patricia Jones, Executive Director for Citizens for Eastshore State Park; Robert Cheasty, President of Citizens for Eastshore State Park; Brian Parker; Arthur Boone, Sierra Club; Edward Bennett; Nick Pilch; Rochelle Nason; Shirley Dean; Caryl O'Keefe; Norman LaForce; Brian Parsley; Catherine Sutton; Gordon McCarter; Bob Outis; Lisa Kleinbub; Brian Johns; Julie Winklestein; Francesco Papalia; Peggy McQuaid; Amber Lynn Whitson; David Sanger; Paul O'Curry; Bill Dann; Allan Maris; Barbara Chambers.

A summary of comments is as follows: announced the Richmond Regression Alliance – Saffron Strand that offers a support program for the homeless, announced a conference that will be held on May 17-18 by Safron Strand and the City of Richmond; expressed support for implementing the City's current laws and the General Plan for the Bulb to enforce no camping at the park; urged the City to assist persons who are homeless at the Bulb and to enforce the no camping regulations at the Bulb, current activity at the Bulb is in violation of the law; expressed appreciation for the work done by the Homeless Task Force, long-term occupancy of the Bulb is unacceptable and encouraged the Council to implement option 1.B as identified in the Homeless Task Force report to end camping at the Bulb; expressed support for outreach, census work and assistance with services as well as enforcing the no camping ordinance; the situation at the Bulb is a public health issue and puts the waters of the San Francisco Bay at risk, the Bulb is not fit for human habitation, encouraged the Council to take decisive action to ensure the growth of the homeless population of the Bulb does not increase; encouraged the Council to set a clear and definitive deadline to end camping at the Bulb such as 45 days, direct City staff to contact social service providers to begin outreach to the homeless on the Bulb, reaffirm commitment to Eastshore State Park, and establish a Council committee to begin talks with East Bay Park District to allow the District to manage the park; recommended selecting option 1.A and encouraged the City to focus on waterfront lands that the City owns; the request to enforce the no camping ordinance within 45 days is not realistic, option 1.A is likely the best option for the City; encouraged a gradual approach that ensures no new campers; expressed support for the dignity village model; encouraged the Council to consider people that are homeless within the City beyond just the Bulb;

services are being provided to the homeless at the Bulb; suggested focusing on helping the homeless and not the park; the Bulb residents want to work with the City to stop growth of the population on the Bulb and Bulb residents help maintain the Bulb; an Environmental Impact Report may be required for actions by the Council such as creation of a dignity village.

A summary of Council comments is as follows: thanked the members of the Task Force for their work including the pro/con analysis; expressed support for the Task Force to transition into an advocacy group, acknowledged that homelessness is an ongoing issue, expressed interest in providing outreach, offering services and enforcing the no camping ordinance, expressed concern with the concept of a dignity village; expressed interest with a approach that utilizes a combination of the options identified by the Task Force; expressed interest in a compassionate approach, expressed interest in ensuring a sustainable resolution, acknowledged that any resolution will require funding, suggested separating the park issue and the homeless issue, expressed interest in workable timeframes to move forward with a solution.

Vice Mayor Wile noted that she has over thirty years of professional experience as a social worker working with homeless people, and has worked for over six years with homeless at the Bulb to help transition them into housing. Vice Mayor Wile recommended: 1) the Task Force function as an independent community based organization to continue advocacy and support for Albany's homeless individuals; 2) the City issue a Request for Proposals (RFP) for a 3 month project to conduct outreach and support to homeless, particularly at the bulb in the amount of \$30,000 from Council discretionary funds with a report back from staff on the June 17th Council agenda, and that outreach begin in July and continue through the summer; 3) ask the Albany Police Department to begin enforcing the no overnight camping ordinance in all City parks beginning in October 2013; 4) that the Mayor, City Manager and Vice Mayor begin meetings with the East Bay Regional Park District and State Parks to reach agreement on the needed action to take to restore the Bulb to open parkland.

MOTION:

Moved by Vice Mayor Wile, seconded by Mayor Thomsen, to: 1) Suggest Task Force Members become advocates for the homeless through a community based organization; 2) Direct staff to issue a Request for Proposals (RFP) for outreach and engagement services for a period of 3 months funded by City Council discretionary funds in the amount of \$30,000, and that staff return to Council on June 17 regarding RFP selection; 3) ask the Police Department to enforce the no camping ordinance as of October 2013; 4) that the Mayor, Vice Mayor and City Manager meet with East Bay Regional Park District and State Parks to begin a process to make the area a park.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

8. NEW BUSINESS

8-1. Recreation & Community Services Facility/Program Reorganization

Staff recommendation: that Council approve the proposed renovation of the Senior Center House for the purpose of:

- a. Expanding Senior Services
- b. Relocating After School Teen Program from Memorial Park to the Senior Center House
- c. Expanding the After School Child Program to the Memorial Park facility

Assistant City Manager/Community Services Director Penelope Leach delivered the staff report. Based on evaluation of existing Recreation & Community Services programs and facility uses, there are three areas that need to be addressed: 1) After school child care for 1st – 5th graders; 2) teen services; and 3) senior services. The City purchased the property adjacent to the Senior Center in 2009 for the purpose of expanding the Senior Center. The project remains unfunded. Renovations can be made to the “Senior Center House” so the site can be used for recreation programs.

The teen center program would be relocated to the Senior Center House, and the current teen center location at Memorial Park would be made available for a second after school program for 1st – 5th graders. The Senior Center House would also include expanded programs for seniors in the mornings, early afternoons, evenings, weekends and during the summer. The Friends of Albany Seniors met with staff on April 3, and the Board expressed unanimous support for the proposal, with the understanding that storage space would continue to be made available for the annual White Elephant fundraiser.

The City’s Park and Recreation Commission has expressed support for the project. The City’s Planning & Zoning Commission approved a use permit for the Senior Center House with the recommendation that the backyard fence be repaired. The cost to renovate the Senior Center House is approximately \$127,055.

There was no public comment on this item.

A summary of Council comments is as follows: asked for clarification regarding the services to be offered for teens, asked for clarification regarding the project estimate and expressed support for the project.

MOTION:

Moved by Council Member Atkinson, seconded by Council Member Maass to approve the proposed renovation of the Senior Center House for the purpose of:

- a. Expanding Senior Services
- b. Relocating After School Teen Program from Memorial Park to the Senior Center House
- c. Expanding the After School Child Program to the Memorial Park facility

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

9. OTHER BUSINESS, REPORTS ON MEETINGS ATTENDED, ANNOUNCEMENT OF EVENTS/FUTURE AGENDA ITEMS.

Council Member Atkinson announced that she attended the Senior Center White Elephant Sale.

Council Member Barnes distributed two publications to the Council.

Mayor Thomsen announced that she attended the recent Alameda County Transportation Commission for discussion of the One Bay Area Program.

10. ADJOURNMENT

10:21 p.m. There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Nicole Almaguer, City Clerk.



Peggy Thomsen
Mayor

Attest:



Nicole Almaguer
City Clerk



CITY OF ALBANY

MINUTES OF THE ALBANY
CITY COUNCIL
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
TUESDAY, SEPTEMBER 3, 2013

7:00 p.m.

CLOSED SESSION

CALL TO ORDER

OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS

The following people spoke: Robert Lieber, David Sanger, Brian Parker.

A summary of comments is as follows: encouraged the Council to not feel threatened by the concern of litigation; over \$53,000 was spent defending the last wireless lawsuit, delaying the project is against federal regulations.

City Council convenes in the Council Chamber and then adjourns to Closed Session to discuss the following items:

1. Conference with legal counsel to discuss pending litigation pursuant to Government Code Section 54956.9(d)(1):

New Cingular Wireless PCS, LLC, D/B/A AT&T Mobility v. City of Albany
U.S District Court (No. Dist. Cal.) Case No. 3:13-cv-03984

7:30 p.m.

CALL TO ORDER

Mayor Thomsen called the regular meeting of the Albany City Council to order on the above date.

1. **PLEDGE OF ALLEGIANCE**

Council Member Maass led the Pledge of Allegiance to the Flag.

2. **ROLL CALL**

Present: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen

Absent: None.

(8/2/2013) \$283,461.47 (8/2/2013); \$57,888.56 (8/15/2013); \$195,692.10 (8/15/2013); \$185,732.25 (8/15/2013)

b. Ratification of bills, claims and demands against the Albany Joint Powers Authority in the amount of: \$737.65 (7/18/2013); \$994.38 (8/2/2013)

Staff recommendation: Ratify

- 4-4.** Vice Mayor Wile appointed Lisa Schneider to the Charter Review Committee, and Bart Grossman to the Social & Economic Justice Commission.

Staff recommendation: Information only

- 4-5.** a. Ratification of Police & Fire Pension Plan payments in the amount of \$115,677.01 for the month of July, 2013

b. Ratification of Police & Fire Pension Plan payments in the amount of \$115,150.77 for the month of August, 2013

Staff recommendation: Ratify

- 4-6.** Codornices Creek Habitat Restoration and Creation of Future Public Access Opportunity west of Kains Avenue

Staff recommendation: that Council approve Resolution #2013-46, supporting the Berkeley City Council action to submit a creek restoration grant application, in coordination with Albany, and interested creek advocacy groups

- 4-7.** Resolution No. 2013-47 In Support of Reducing Greenhouse Gas Pollution Under the Clean Air Act

Vice Mayor Wile recommendation: that the Council adopt Resolution No. 2013-47 In Support of Reducing Greenhouse Gas Pollution Under the Clean Air Act

- 4-8.** Fehr and Peers Contract for the development of the Albany Active Transportation Plan (ATP) Striping and Signage Project Plans

Staff recommendation: that Council authorize the City Manager to enter into Contract No. 13-16 with Fehr and Peers for \$55,170 for the design of the striping and signage projects included in the ATP. The proposal also includes an optional task for the design of additional traffic calming at the intersection of Solano and Santa Fe Avenues and at the intersection of Santa Fe and Washington Avenues

- 4-9.** Submittal of three applications for the Sustainable Communities Technical Assistance Program (SC-TAP) sponsored by Alameda County Transportation Commission (Alameda CTC)

facility at 1495 Solano Ave. and adopt findings affirming, with any modifications, the approval of Application #PA12-056, by AT&T Wireless

City Planner Anne Hersch delivered the staff report. The Planning & Zoning Commission approved a Design Review and Conditional Use Permit for a new roof-mounted AT&T Wireless facility at 1495 Solano Avenue on June 26, 2013. The project includes installation of twelve antennas contained within a tower element located over the archway entrance to the building, facing Solano Avenue.

The Municipal Code allows for outside technical review. Staff worked in collaboration with Peter Gruchawka, the City's primary consultant on wireless applications. Gruchawka reviewed the application and the matter was referred to a licensed engineer for further review per AT&T's request that the information be subject to a non-disclosure agreement with a licensed engineer. The consulting firm RCC was retained by the City to assist with review of the application.

Hersch identified the options for City Council action pursuant to the Planning and Zoning Code, in acting on a call for review:

1. Affirm the decision of the Planning and Zoning Commission without modification
(Resulting in approval of the project exactly as approved by the Commission.)
2. Affirm the decision of the Planning and Zoning Commission with modifications
(Resulting in approval of the project, incorporating additional findings or conditions of approval by the Council.)
3. Reverse the action of the Planning and Zoning Commission
(Resulting in denial of the application.)
4. Return the matter to the Planning and Zoning Commission
(Typically, with direction from the Council on key issues and direction on whether or not the Council wishes to review the application at a future meeting.)
5. Take no action.
(Resulting in approval of the project as approved by the Commission. Pursuant to the Planning and Zoning Code, a tie vote shall mean that no action is taken.)

It is expected that the City will incur substantial costs in litigation should the current application be denied. If the Council were to deny the application, findings would need to demonstrate there is not a significant gap in wireless coverage, and/or findings based on the design of the proposed structure.

Interim Finance Director Paul Rankin delivered the staff report. The Master Fee Schedule sets the level of fees for City permits, licenses, rentals and other services. Adjustments to the fee schedules were limited to changes in the Consumer Price Index (CPI) of 2.7 percent, and supplemented by additional review and analysis by staff.

Questions raised by Council: asked how the City's fees compared to neighboring cities.

Rankin responded to questions: fees are set according to the cost of conducting the work, various cities may have different codes or policies in place for setting fees.

Mayor Thomsen opened the public hearing.

The following people spoke: Catherine Sutton

A summary of comments is as follows: expressed concern with the fee for block parties.

Mayor Thomsen closed the public hearing.

MOTION: Moved by Vice Mayor Wile, seconded by Council Member Atkinson to approve Resolution No. 2013-39 – A Resolution of the Albany City Council establishing and amending the City of Albany Master Fee Schedule for various permits, services and fines effective September 4, 2013.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

8. UNFINISHED BUSINESS

8-1. Discussion and possible action regarding enforcement of the no camping Ordinance at the Albany Bulb

Staff recommendation: that the Council receive public input, discuss enforcement of the no camping Ordinance on the Bulb, and either reaffirm the direction provided at the May 6, 2013 Council meeting or provide other direction to staff as deemed appropriate.

Assistant City Manager/Community Services Director Penelope Leach delivered the staff report. The City Council created a Homeless Task Force to address the issue of homelessness in Albany on May 21, 2013. On May 6, 2013 the City Council took action to 1) Suggest Task Force Members become advocates for the homeless through a community based organization; 2) Direct staff to issue a Request for Proposals (RFP) for outreach and engagement services for a period of 3 months funded by City Council discretionary funds in the amount of \$30,000,

ALBANY MUNICIPAL CODE 8.4

8-4 PARKS, RECREATION, OPEN SPACE, WATERFRONT AND ALBANY HILL AREAS.

8-4.1 Purpose.

The purpose of this section is to provide regulations for the use of City parks, recreation, open space, waterfront and Albany Hill areas within the City of Albany. (Ord. #99-02, §1; Ord. #99-07, §1)

8-4.2 Definitions.

a. *Parks, recreation and open space areas* shall include but not be limited to those park and recreation areas commonly known as Memorial Park, Middle School Park, Terrace Park, the Dartmouth-Talbot Tot Lot, the Ohlone Greenway, the Key Route Strip, or other parks, recreation and open space areas of the City.

b. *Waterfront areas* shall include but not be limited to those public areas west of the freeway which lie between Albany's northern and southern borders.

c. *Albany Hill open space areas* shall mean and include but not be limited to all those public areas on Albany Hill including but not limited to public property areas abutting and contiguous to Cerrito Creek, and the area known as Creekside Park.

d. *Vehicle* shall mean and include any vehicle that is self-propelled or a device by which any person or property may be propelled, moved, or drawn upon a highway. Vehicle does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

e. *Bicycle* shall mean a device upon which any person may ride, propelled exclusively by human power through a system of belts, chains, or gears, and having one or more wheels.

(Ord. #99-02, §1; Ord. #99-07, §1; Ord. #00-06)

8-4.3 Hours of Operation.

a. No person shall use, remain in or enter upon any waterfront and Albany Hill area between 10:00 p.m. and 5:30 a.m., other than duly authorized City employees, persons participating in City sponsored activities or other activities which the City has provided prior written permission to utilize the waterfront area beyond the closing time. The hours of operation of specific facilities within any waterfront area may also be specified by the Director of the Recreation and Community Services Department.

- a. Dig or remove any soil, rock, sand, stones, trees, shrubs, plants or other wood and/or materials, or make any excavation;
- b. Construct or erect any building of any kind, whether permanent or temporary, or run or string any public service utility into, upon, or across such areas;
- c. Attach anything, whether rope, cable or otherwise, to any shrub, tree, fence rail, bridge, bench, or other structure;
- d. Place or cause to be placed in any waters of any fountains, streams or any other body of any substance, matter, or thing, liquid or solid which may result in pollution of said water;
- e. Fail to deposit refuse and/or rubbish in the receptacles provided. In the event receptacles are not available, all refuse and rubbish shall be carried away from such areas by the person responsible for its presence;
- f. Possess or set off any fireworks, or other incendiary devices;
- g. Store personal property; and
- h. Operate any vehicle/bicycle in the Albany Hill open space area (except for City maintenance and emergency services), excluding when designated by the City the area for a vehicle/bicycle path along Cerrito Creek or any paved public streets.
(Ord. #99-02, §1; Ord. #99-07, §1; Ord. 00-06)

LOWENSTEIN SANDLER LLP

Jeffrey J. Wild, Esq.
65 Livingston Avenue
Roseland, New Jersey 07068
973.597.2500

Counsel for the Homeless Individuals and the Atlantic City Rescue Mission

FILED
APR 10 2010
CHAMBERS OF JUDGE FOSTER
OCEAN COUNTY SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
Docket No.: L-2462-10

THE TOWNSHIP OF LAKEWOOD,

Plaintiff,

v.

STEVE BRIGHAM et al., including JOHN DOES
1-50,

Defendants/Counterclaimants/
Third-Party Plaintiffs,

v.

OCEAN COUNTY, THE OCEAN COUNTY
BOARD OF CHOSEN FREEHOLDERS
(currently, James F. Lacey, John P. Kelly, John C.
Bartlett, Jr., Gerry P. Little and Joseph H. Vicari),
and THE OCEAN COUNTY BOARD OF
SOCIAL SERVICES.

Third-Party Defendants.

CIVIL ACTION

CONSENT ORDER

THIS MATTER having been brought before the Court upon a motion by Bathgate, Wegener & Wolf, PC (Michael M. DiCicco, Esq. appearing), counsel for plaintiff Lakewood Township, and a cross-motion by Lowenstein Sandler LLP (Jeffrey J. Wild, Esq., and Zulima Farber, Esq., appearing), counsel for defendant/counterclaimant/third-party defendant Homeless Individuals and third-party plaintiff Atlantic City Rescue Mission, on notice to Berry, Sahradnik, Kotzas & Benson (John C. Sahradnik, Esq. and Garrick R. Slavick, Esq., appearing).

counsel for the County of Ocean and the Ocean County Board of Freeholders; Gilmore & Mountain (Jean L. Chyran, Esq., appearing), counsel for third-party defendant Ocean County Board of Social Services (the "Board"); and the Law Offices of Todd Wilson LLC (Todd Wilson, Esq., appearing), counsel for defendant Minister Steven A. Brigham ("Minister Brigham"); and for good cause shown;

IT IS on this day 10 of April, 2013 ORDERED that:

1. Property View. If and when the Court determines that it would be necessary or appropriate for the Court to visit and view the tent city of homeless individuals located at Lakewood that is accessible through a dirt path located at the corner of Cedarbridge Avenue and South Clover Street ("Tent City"), the Court will give prior notice to the parties with those counsel as to the appropriate date, time and logistics for any such property view. The Court does not deem such a property view necessary or appropriate at this time in light of the numerous photographs and other materials provided by the parties in connection with the motion and cross-motion.

2. Census of Tent City. That the parties disagree as to the accuracy of any census of the residents of Tent City (the "Census") taken by any party to this litigation at any time in the past, the Court directs that a census of the residents be conducted as follows: Census Taker. The census of the residents shall be conducted by Solutions for Homeless People Soon, Inc. ("STEPS"), which shall be assisted by a Licensed Social Worker ("LSW") or Licensed Clinical Social Worker (LCSW), who shall be defined by the New Jersey State Board of Examiners (hereafter, the "Social Worker"). The Social Worker shall be independent and shall not previously have rendered any paid or unpaid services to any of the parties to this litigation.

(b) Selection of Social Worker. As soon as practicable after entry of this Order, STEPS, counsel for Lakewood and counsel for the Homeless Individuals shall confer and seek to agree upon a Social Worker to assist with the census called for by this Order. To the extent that STEPS has a Social Worker on staff, that Social Worker may be selected by the

parties or the Court. In the event that these counsel are unable to agree upon the Social Worker to conduct the census, any party may ask the Court to appoint a Social Worker for this purpose.

(c) Compensation of Social Worker. Unless otherwise agreed by counsel for the parties or otherwise specified by the Court, the compensation of the Social Worker for conducting the Census in accordance with this Order shall be paid in equal shares by STEPS and counsel for the Homeless Individuals.

(d) Purpose of Census. The sole purpose of the census is to provide the parties to this action and the Court with an independent and accurate count and list of the Residents (as provided in paragraph 2(e) of this Order) as of the date when the census is conducted, as well as on the date when any updated census may be conducted in the future. This census shall be used by the parties to this action, their counsel and the Court to set a benchmark and provide a means to monitor any changes in the number or identity of the Residents, as a result of the screening procedures described in ¶ 2 of this Order (hereafter, the "Current Residents").

(e) Methodology and Privacy. STEPS and the Social Worker shall conduct any census pursuant to this Order in a manner that STEPS and the Social Worker agree, in their reasonable discretion, to determine to be appropriate to achieve the purpose set forth in ¶ 2(d) but also provide maximum protection for the privacy of the Residents, as required in ¶ 2(f). By way of example, for information, STEPS and the Social Worker are authorized to keep identifying information confidential to STEPS and the Social Worker and to identify Residents to counsel for the parties or the Court in any of the means for the protection of privacy permitted by Court Rules (such as identifying initials as permitted by R. 4:26-6, or pseudonyms, as permitted by R. 4:26-4) or any other procedures that STEPS and the Social Worker deem appropriate. By way of example, STEPS and the Social Worker may assign numbers to any currently inhabited tents in Tent City.

(f) Non-Solicitation of Future Homeless. Neither Minister Brigham nor the Current Residents shall solicit or take any steps to bring any new homeless individuals into Tent

City, i.e., any individuals who are not among the Current Residents identified through the process described in this ¶ 2 (hereafter, "Future Homeless").

(g) No Repopulation. No new residents shall occupy Tent City and Tent City shall not be repopulated except as expressly set forth in this Consent Order, provided however, that nothing in this Consent Order shall place any obligation on any Current Residents to enforce this Consent Order against any other of the Current Residents or any Future Homeless. Lakewood may also seek to bar Future Homeless from Tent City by application to this Court or other lawful means.

3. Screening of the Residents

(a) Applications for Assistance. Any Resident who is currently in Tent City shall be required to apply (or, if applicable, re-apply) to the Board for any Emergency Assistance or other benefits for which the Board may find the Resident eligible. Nothing in this Order shall compel any Resident to do so, but any Resident who refuses to so apply after being given a reasonable opportunity to do so shall be subject to ejection from Tent City by Lakewood. In the event that Lakewood determines that any Resident is subject to ejection for this reason, it may eject the Resident by application to this Court on notice to compel for the Homeless Individual.

(b) Acceptance of Offered Housing Option. Any Resident who is offered and able to accept safe and adequate indoor housing in Ocean County (hereafter, a "Viable Housing Option") shall no longer have a right to remain in Tent City. For purposes of this Order, a Viable Housing Option is a plan that provides for, and actually provides, at least one year in safe and adequate indoor housing in Ocean County. A Viable Housing Option may include a stay of 60 days or less in a motel or hotel room so long as that room meets the requirement of being safe and adequate (for example, by having adequate heat, access to a bathroom, and a means of preparing meals). A Viable Housing Option shall always include at least 305 days not spent in a motel or hotel room. Any issue as to whether a Viable Housing Option meets the definition under this Consent Order shall be resolved either by: (i) consultation

between counsel for Lakewood and counsel, if any, for any Current Resident(s) affected by that issue; or (ii) the Court. In the event that Lakewood believes that any Resident is subject to ejection for failure to accept a Viable Housing Option, it may seek to eject that Resident by application to this Court on notice to counsel for the Homeless Individuals. Residents may not be ejected, however, because the government deems them ineligible for assistance or declines to offer them a Viable Housing Option. In the event that any of the Current Residents leaves Tent City but for any reason cannot actually reside in safe and adequate housing for at least one year, based on reasons other than adjudicated illegal conduct by the Resident, any such Current Residents shall have a right to return to Tent City and remain there until they have accepted or set up residence in new housing offered through this Consent Order or a Viable Housing Option. Whenever a Current Resident vacates Tent City with the intent to reside in a Viable Housing Option and does in fact reside elsewhere for at least one week, any tent(s) occupied or used for storage by such Resident will be dismantled or otherwise removed by that Current Resident or, if not, may be dismantled or removed by Lakewood. Lakewood shall be entitled to possess and use the land on which Tent City is located until all Residents of Tent City are provided with a Viable Housing Option or ejected from Tent City in accordance with ¶ 3(a) or ¶ 3(b) of this Consent Order.

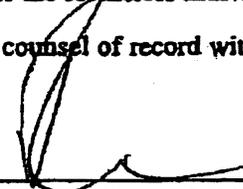
4. Privacy Protections/Prohibitions Against Misuse of Identifying Information. STEPS, the Social Worker, the parties and their counsel shall use any identifying information relating to the Residents (hereafter, "Identifying Information") only for the purposes set forth in this Order or any future Order of the Court and not for any other purpose whatsoever. By way of example (but not limitation), no person who receives any Identifying Information shall use any such information, directly or indirectly, to cause any Resident to be referred or prosecuted for civil or criminal proceedings or prosecution of any kind. Identifying information shall be disclosed to the governmental parties only upon the consent of the Resident or further Order of the Court. Except with the consent of the Resident or upon further Order of the Court, no Identifying Information shall be disclosed for any purpose to any person or entity besides the

parties and the Court. Any party may also apply at any time to this Court for additional protections, including (but not limited to) a protective order or order for filing under seal pursuant to R. 4:10-3.

5. **Efforts to Resolve Related Proceedings.** As soon as practicable after this Consent Order is entered, the Township of Lakewood shall cause to be dismissed all proceedings in any forum relating to any "Notices" (as defined in the Stipulation Regarding Application for Temporary Restraints signed by counsel on February 1, 2013 and previously entered by this Court). In addition, Lakewood shall not use any of its police power in any manner inconsistent with this Consent Order.

6. **Dismissal of Claims Involving Lakewood.** All claims that have been asserted by Lakewood in this action against the Current Residents, against any other homeless individuals who lived in Tent City prior to entry of this Consent Order and/or against Minister Brigham are hereby deemed dismissed with prejudice and without costs. All claims that were asserted against Lakewood in this action by the Tent City Rescue Mission, Minister Brigham and the Current Residents currently represented by the law firm of Lowenstein Sandler LLP are hereby deemed dismissed with prejudice and without costs. However, this Court retains jurisdiction to enforce this Consent Order, and nothing in this Consent Order shall preclude any party from seeking any remedy (including, but not limited to, rescission) in the event of a breach of this Consent Order by any other party. Furthermore, nothing in this Consent Order shall in any way settle, dismiss or in any way impair any claims that have been or may be asserted against Ocean County, the Ocean County Board of Chosen Freeholders and/or the Ocean County Board of Social Services (or any defenses that have been or may be asserted to any such claims).

7. **Service of Conformed Copies.** Counsel for the Homeless Individuals shall serve a conformed copy of this Consent Order on all counsel of record within five business days of receipt.



Hon. Joseph L. Foster, J.S.C.

THE PARTIES LISTED BELOW, THROUGH THEIR UNDERSIGNED COUNSEL,
CONSENT TO THE FORM AND ENTRY OF THIS CONSENT ORDER;

LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, NJ 07068
973-597-2500
Counsel for Homeless Individuals and the
Atlantic City Rescue Mission

By: 
Jeffrey J. Wild, Esq.

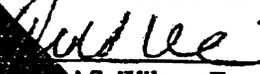
~~Dated: March~~ April 3, 2013

BATHGATE, WEGENER & WOLF, P.C.
One Airport Road
Post Office Box 2043
Lakewood, NJ 07701
732-363-0666
Counsel for Township of Lakewood

By: 
Michael M. DiCiccio, Esq.

Dated: March 21, 2013

THE LAW OFFICES OF TODD WILSON, LLC
614 Main St., Suite 201
Toms River, NJ 08753
732-349-0020
Counsel for Reverend Steven A. Brigham

By: 
Todd S. Wilson, Esq.

~~Dated: March~~ April 4, 2013

**City of Des Moines, Iowa
January 31, 2013 Administrative Hearing**

In re:)	
)	
JEANNE ZEITLER,)	DECISION AND ORDER
JAMES LOVELAND and)	AND
ERIC RANDALL,)	NOTICE OF RIGHT TO APPEAL
Appellants)	
)	
)	

Introduction and Parties

This is a hearing on an appeal from an encroachment violation notice. Attorney Charles A. D. Hill with Iowa Legal Aid appeared for the appellants. SuAnn Donovan, Zoning Enforcement Neighborhood Inspection Administrator with the City of Des Moines Community Development Department and Des Moines Assistant City Attorney Roger K. Brown appeared for the City of Des Moines (the "City").

Background

On January 17, 2013, the City posted notices at several area homeless encampments citing Section 102-615 the Municipal Code of the City of Des Moines, Iowa (the "Code"). One such notice was posted at an encampment located under the Martin Luther King Parkway Bridge and next to the Racoon River, where appellants reside in tents. The notice stated that the appellants are in violation of Code Section 102-615 "by encroaching (living/residing and storage of personal property) on City of Des Moines property." It also stated that the appellants must remove their personal property from this location before Tuesday, January 29, 2013 "or it will/may be removed and disposed of" by the City. The notice went on to warn: "Any unauthorized persons remaining or entering upon the public lands identified on Tuesday, January 29th, 2013, may be subject to immediate forcible removal an/or [sic] arrest." The notice states that the appellants were not to relocate to any other City of Des Moines property. The notice included an aerial photo with street names labeled and a circle marked around the Martin Luther King Jr. Parkway bridge. It also informed appellants of their right to contest the notice by filing a notice of appeal with the City Clerk by January 28, 2013. Additionally, the notice directed appellants to contact the office of Community

Development of the City of Des Moines if they had any questions, and gave the name of SuAnn Donovan with her contact address and phone number. Appellants and their attorney gave notice of their appeal at the City Clerk's office, and a hearing was set for January 31, 2013 at 9:30. The matter was so heard before the Administrative Hearing Officer.

Discussion

An encroachment is something which intrudes into public space, and has been defined under City Code Section 102-596: "[I]n addition to its usual meaning, [an encroachment] means any architectural projection, chimney, stairway, platform, step, railing, door, grate, vault, sign, banner, canopy, marquee, awning, newsrack, trash container, bench, areaway, obstruction, opening or structure." Code Section 102-605 states that encroachments onto city property may only be constructed, used or maintained upon or over the surface of any public property with a written license or lease obtained from the City under Article VIII of the Code. On December 7, 2012 the City's encroachment ordinance was amended to add "any tent or other material configured or used for habitation or shelter..." to the definition of things which constitute an "encroachment" under Code Section 102-596. Encroachments without the required license or lease are subject to removal under Code Section 102-615. Chapter 3 of the Code which sets out the City's administrative hearing process was also amended December 7, 2012 to restrict a hearing on appeal from a threatened removal action by the city:

Sec. 3-23. Limitations on hearings.

The hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be subject to the following restrictions and limitations:

...

(2) Section 102-615. Removal of encroachments.

The sole issue before the administrative hearing officer shall be whether the removal of the encroachment by the city was properly authorized pursuant to Article VIII of Chapter 102 of this Code. If it is determined that the removal was not properly authorized pursuant to Article VIII of Chapter 102 of this Code, or if the appellant alleges that the removed property was improperly disposed of by the city, the administrative hearing officer shall refer the matter to the city attorney for further consideration and processing as a claim against the city.

The City followed its own, newly amended ordinance in noticing the homeless individuals residing in encampments on public property. The notice posted by the City strictly adhered to the requirements of Code Section 102-615(b). In addition, Code

Section 102-615(c) allows immediate removal of an encroachment, without notice, if it "unreasonably endangers the safety of persons or property...." The City presented substantial evidence demonstrating the dangers inherent in a homeless encampment such as the one here in issue. Tom Patava, Fire Marshal with the City of Des Moines Fire Department, testified that his department is 20 times more likely to respond to a fire at a homeless camp as compared to a fire at a private residence. The lack of proper sanitation, the accumulation of junk and debris, open pit fires and propane tanks used for heating inside tents and cooking, all contribute to the unsafe conditions existing in the homeless camps. The homeless camps do not offer an even basic level of safety that is normally required for any residence according to testimony by Cody Christensen, Deputy Building Official in the Community Development Department for the City of Des Moines.

The City presented descriptions of the ways in which the homeless encampments are in violation of a multitude of other city ordinances, including the nuisance ordinances, a bonfire prohibition, and building and fire codes to name a few. These ordinances were not in issue in this case, however, as the sole ordinance cited by the city in its notice to the homeless camp inhabitants was Code Section 102-615. Reference to these ordinances does, however, support the city's contention that the conditions at the homeless camps are unsafe.

The brief submitted by the appellants' attorney raises several objections to the City's actions. This brief and the arguments advanced by Appellant's counsel show that Mr. Hill was not aware of the newly passed ordinance amendments. His objections that the City's actions were ultra vires, that the notice was confusing and vague, that the notice was lacking the contact information for the city engineer, etc., are not applicable given the amendments of which counsel was obviously unaware.

Appellant's attorney additionally raises the affirmative defenses of necessity and laches. The defense of necessity is a defense to liability for unlawful activity where the conduct cannot be avoided and one is justified in the particular conduct because it would prevent the occurrence of a harm that is more serious. The Assistant City Attorney responded to Appellants' attorney's defense of necessity argument by submitting a copy of an Iowa Supreme Court case, *State v. Walton*, 311 N.W.2d 113 (Iowa 1981), and dismissing the defense as inapplicable, stating, "It really doesn't fit. I don't think it deserves more discussion than that." Several courts across the country disagree with this opinion, applying the defense of necessity to violations of ordinances similar to the one here in issue. See, e.g., *In re Eichom*, 81 Cal. Rptr. 2d 535, 539-40 (Cal. Ct. App. 1998), (California Court of Appeal held that a homeless defendant may raise a necessity defense to violation of a municipal anti-camping ordinance); *Tobe v. City of Santa Ana*, 892 P.2d 1145, 1155 (Cal. 1995) (necessity defense might be available to persons who have no alternative to "camping" on private property); *Jones v. City Of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006) (acknowledging the potential

availability of a necessity defense for citizens charged with an ordinance prohibiting sitting, lying, or sleeping in public spaces).

The Iowa Supreme Court recognizes the defense of necessity in Iowa (*Walton*, 311 N.W.2d at 114), although it has not specifically applied it to a case involving homeless camps. For guidance in determining whether the defense might apply in a given situation, the Court in *Walton* stated:

At least one commentator has suggested the following factors as a framework for analysis where the defendant is not personally at fault in creating the situation calling for the necessity to make a selection: (1) the harm avoided, (2) the harm done, (3) the defendant's intention to avoid the greater harm, (4) the relative value of the harm avoided and the harm done, and (5) optional courses of action and the imminence of disaster.

Walton, 311 N.W.2d at 115 (Iowa 1981), citing W. LaFave & A. Scott, Handbook on Criminal Law, s 50, at 385-88. (1972). The Court goes on to explain:

The necessity defense does not apply except in emergency situations where the threatened harm is immediate and the threatened disaster imminent. The defendant must be stripped of options by which he or she might avoid both evils.

Walton, 311 N.W.2d at 115. During the hearing, Deirdre Henriquez, Program Manager for the Advocacy Department at Primary Health Care Outreach, testified that she has been working with the homeless population in and around Des Moines since May 2001. She stated that the number of beds at the Central Iowa Shelter and Services was 100 for single men and 50 for women. The occupancy a couple of nights before the hearing was 174, with more expected due to the extreme cold. She testified that the overflow sleep on benches, sitting up.

Obviously, taking the tents away from the homeless people living in the encampments would leave them without protection from the elements, exposing them to extreme cold and threatening their lives. With no shelter beds available, this would also deprive these people of the basic necessity of adequate sleep. People do not sleep sitting up. The defense of necessity operates in this case to justify the appellants' lack of a license or lease for their encroachment. The harm avoided is greater than the harm done, where the threats of sleep deprivation and freezing to death are greater than the general unsafe conditions of the homeless camps. There do not appear to be any other options for these people. As Eric Randall, one of the homeless Appellants, stated during his testimony, he is not homeless by choice.

As the necessity defense would render removal of Appellants' property unauthorized under the circumstances presented in this case, this matter must be referred to the City Attorney for further consideration and processing as a claim against the City pursuant to City Code Section 3-23(2). The merits of the Appellants' other arguments, including the laches and constitutional arguments, need not be determined at this time.

Decision and Order

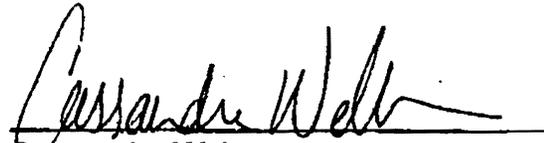
By a preponderance of all the evidence in the record it is found that a defense of necessity has been established and that removal of Appellants' property is not properly authorized.

This matter is referred to the City Attorney for further consideration and processing as a claim against the City pursuant to City Code Section 3-23(2).

Right of Appeal

This decision and order may be submitted for judicial review by filing an appropriate action in Polk County District Court within 30 days of the date of this ruling.

This written ruling is submitted on this 11th day of February, 2013 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.


Cassandra Webster
Administrative Hearing Officer

1 Osha Neumann_SB#127215
2 Attorney at Law
3 Neighborhood Justice Clinic
4 East Bay Community Law Center
5 3130 Shattuck Ave.
6 Berkeley, CA 94705
7 (510) 2q69-6615

8 Attorney for Mark Hawthorne

ENDORSED
FILED
ALAMEDA COUNTY

JUL 29 2013

CLERK OF THE SUPERIOR COURT
By Venus Lugo Deputy

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
10 WILEY W. MANUEL COURTHOUSE

11
12 PEOPLE OF THE STATE OF CALIFORNIA

13
14 Plaintiff,

15 v.

16 MARK HAWTHORNE

17 Defendant.

Case No. 577508

[PROPOSED] ORDER

Hearing Date: July 17, 2013

Time: 9:00 a.m.

Department: 115

18
19 People's Petition to Revoke Probation was regularly heard at the above date and time.

20 Appearing as attorneys were Michael Roemer for the People in Osha Neumann, for defendant Mark
21 Hawthorne. Argument having been heard,
22

23 **IT IS ORDERED that:**

24 People's Petition to Revoke Probation is denied.

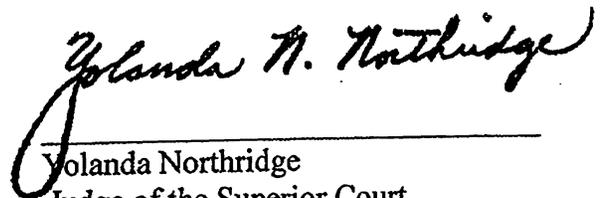
25 The People alleged that defendant violated the terms and conditions of his probation by
26 committing a violation of Penal Code section 647 subsection (e) in that he "lodged," on a public
27 sidewalk.
28

1 The court finds that People Code section 647 subsection (e) is unconstitutional on its face in
2 that it is so vague that persons of ordinary intelligence do not have a reason opportunity to know what
3 is prohibited and that because of its vagueness it invites arbitrary and discriminatory enforcement. It
4 therefore violates the due process clause of the 14th Amendment.
5

6 The court further notes that as applied to defendant who is homeless, the statute would be
7 unconstitutional as applied in that a person who is homeless with no choice, but to sleep in public and
8 to reside somewhere in public with his or her possessions cannot know when conduct which is
9 inextricably connected with the status of being homeless can result in his being charged with a
10 violation of the statute.
11

12 JUL 29 2013.

13 Date: _____

14 
15 _____
16 Yolanda Northridge
17 Judge of the Superior Court
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND AMENDING SECTION 11.96.030 OF THE CITY OF RICHMOND MUNICIPAL CODE TO PROVIDE FOR NOTIFICATION OF THE AVAILABILITY OF HOMELESS SHELTERS

Now, therefore, the City Council of the City of Richmond do ordain as follows:

SECTION 1. Section 11.96.030 of the City of Richmond Municipal Code is hereby amended to read as follows:

It shall be unlawful for any person to camp, sleep in or occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided:

- (a) Any street;
- (b) Any parking lot, public area or open spaces, improved or unimproved;

Provided, however, that no person shall be in violation of this Section unless:

- (a) The person is informed of the whereabouts of homeless shelters in the City of Richmond;**
- (b) Such shelter is actually available to such person; and**
- (c) Such person willingly refuses to stay in such shelter.**

SECTION 2. Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be effective 30 days after passage and adoption.

I certify that the foregoing was passed and adopted by the Council of the City of Richmond at a regular meeting held on June 27, 2006, by the following vote

AYES: Councilmembers Bates, Butt, Griffin, Marquez, McLaughlin, Rogers, Thurmond, Virmaontes, and Mayor Anderson

NOES: None

ABSTENTIONS: None

ABSENT: None

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

IRMA L. ANDERSON
Mayor

Approved as to form:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 26-06 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting held on June 27, 2006, and published in accordance.

Waterfront & Bulb

About the Waterfront & Bulb

At the end of Buchanan Street, just west of Interstate 80, lies the Albany waterfront. The contradictions and complexities of the site are easily apparent. Breathtaking views of San Francisco, the Golden Gate and San Francisco Bay bridges, Alcatraz, and Angel Island can all be seen from a shoreline that has changed little since its days as a landfill site for construction debris. The southern portion includes Golden Gate Fields Racetrack and its vast parking area – often empty as a result of changes in attendance over recent decades and the increased popularity of off-track betting. The land to the north is called the “Plateau.” This large, flat, open area looks somewhat like the “overflow” parking lot it once was, but a portion is now fenced off to protect a recently-created habitat for burrowing owls. To the west is land, known as the “Bulb,” which belongs to the city of Albany, but is planned to be incorporated into the Eastshore State Park – a park that includes, and protects, most of the undeveloped land on the Bay shoreline between the foot of the San Francisco Bay Bridge in Oakland and Richmond’s Marina Bay neighborhood. On the Bulb, foot paths wind their way between large slabs of broken concrete. Volunteer plants are mixed in with fanciful anonymous art and homemade structures created by a small, dedicated community that loves this “wild,” little peninsula.



History

The Albany waterfront is the result of a colorful history. It was first settled by members of an Ohlone Indian tribe - the Huchiun - who left behind shell mounds and grindstones by Cerrito Creek at the base of Albany Hill. The Native American population was displaced by Mexican and Spanish settlers in the early 1800s when a large area of the East Bay, including what is now the Albany waterfront – consisting mostly of a large salt marsh and an island called El Cerrito del Sur – was granted to Luís Maria Peralta in 1820 by the Spanish governor who controlled the region at the time. The Peralta family sold the island (which is now the site of the Golden Gate Fields grandstand) to John Fleming and what is left of that parcel is known today as Fleming Point. In 1879, the Giant Powder Company, suppliers of dynamite to the gold miners of the Sierra, selected Fleming Point as the company’s location after frequent accidental explosions made the company unwelcome in San Francisco. Dynamite factories dominated the Albany waterfront until 1905 when they were replaced with less explosive chemical factories.



The 1906 San Francisco Earthquake brought thousands of displaced San Franciscans to the East Bay. In those years, Berkeley residents used the edge of the marsh at Fleming Point as a garbage dump. History tells us that Albany was incorporated as a city to stop Berkeley from dumping its garbage there, making protection of the waterfront critical to the founding of the city (originally incorporated as Ocean View in 1908, and renamed Albany, in 1909.) Over time, the area between the shore and the island fused, eliminating El Cerrito del Sur, and creating what we know today as the Albany waterfront.

Voices to Vision: Shaping the Future of the Waterfront

In 2007, Albany decided to engage residents in a process that it hoped would help heal the divisions that have

emerged over site development issues in recent years, and also engage a broad cross-section of residents to come together to develop a shared vision for the waterfront. To create this vision, in the Spring of 2008 the city of Albany, through its Waterfront Committee, selected Fern Tiger Associates to design and implement a program to involve the broad Albany community in a participatory process through which the voices of Albany residents will formulate a clear and strategic vision for the future of the city's shoreline. Please visit the Voices to Vision website for more information about the vision for the future of the Waterfront.

Art at the Bulb

There are two public art installations at the Waterfront & Bulb area, "Heron" and "The Cove". "Heron" is a metal sculpture by Mark Canepa. The City in conjunction with the State Coastal Conservation paid \$10,000 for the sculpture in 1999. "The Cove" is also a sculpture made from recycled Solano Avenue sidewalk and created by Carlo Ferretti in 1999 for \$10,000.



The Bulb is home to a vast array of urban art including mural, stencil, graffiti, sculpture, and installation art. Sniff is a group of artists that have notably worked on the Bulb, painting large driftwood murals as well as erecting sculptures on the north west corner of The Bulb. Another Bulb landmark, referred to as "The Castle," is a large concrete, rebar and plaster shelter which sits on the south west corner of the Bulb, directly opposite the Golden Gate Bridge.

Dog Walking

The Bulb is a common recreational destination for East Bay dog owners. The Bulb's long, natural meander provides healthy exercise, while its location next to the Albany Waterfront is ideal for dog owners who enjoy beaches.

The particular camp in this case is located on the southwestern bank of the Raccoon River below the Martin Luther King Jr. Bridge near downtown Des Moines. On January 17, 2013, the City posted a notice to the occupants of the camp that any encroachments must be removed from city property before January 29, 2013, or the encroachments would be removed and disposed of by the city. The notice also stated that any unauthorized individuals on the property as of January 29, 2013, would be forcibly removed and possibly arrested. Occupants of the camp timely appealed the notice.

A hearing was held before Administrative Hearing Officer Cassandra Webster (“Officer Webster” or “the Officer”) on January 31, 2013. (Record at 2.) Su Ann Donovan (“Donovan”) testified for the City. (Record at 2.) Donovan testified that she is the zoning enforcement administrator for the City, and that homeless camps are not allowed on public space. (Record at 2–3.) Donovan testified that the City receives numerous complaints about homeless camps, including from local fire departments. (Record at 4.) Donovan testified that open flames in these camps lead to the Des Moines Fire Department responding to fires twenty times more frequently than in single family residence areas. (Record at 4.) Donovan testified that the use of propane for heat and cooking creates added risk for occupants and fire fighters. (Record at 5.)

Donovan testified about the cost of clean-up at these camps when fires occur, or after camps have been abandoned. (Record at 5–6.) Donovan testified about complaints from users the trails after being confronted by individuals living in camps, and complaints about the unsightliness of the camps. (Record at 7.) Donovan testified that the City recently constructed a new shelter to provide safe, sanitary, and alternative living arrangements for those who would otherwise live in these camps. (Record at 6–7.)

Donovan testified that the camp at issue was inspected on October 24, 2012, which inspection disclosed an accumulation of garbage and debris. (Record at 8–9.) The camp also lacked basic sanitation and failed to meet any codes for habitable space in the City. (Record at 11.) The camp violated a City ordinance which forbids the burning of material on public grounds, and violated an ordinance which forbids the storing of junk and debris outside of a building. (Record at 12.) The camp was also located in a floodway zone, not a residential zone. (Record at 12.) Donovan testified that the City posted a notice at the camp for the occupants to vacate and remove any encroachments by January 29, 2013. (Record at 9, Ex. 3.)

Tom Patava (“Patava”) testified that he is the Fire Marshall for the City. (Record at 14.) Patava testified that occupants in these camps often use propane for cooking and heating, which exposes camp occupants to possible carbon monoxide poisoning and fire hazards. (Record at 15.) Patava testified that camp occupants also use wood for cooking and heating, which creates a fire hazard. (Record at 16–17.) Patava testified that the location of these camps makes access difficult for emergency personnel, and that the camps create an increased hazard for emergency personnel given the location and the items typically kept in the camps. (Record at 17–19.)

Patava testified that, instead of issuing notice of violations of the City code, in past years emergency personnel have gone out to these camps and instructed the occupations on the proper safety procedures. (Record at 22.) Patava testified that, as to the camps site and occupants at issue in the hearing, he is unaware of any fire code violation at that camp site and has not personally observed the camp site. (Record at 23–25.)

Cody Christensen (“Christensen”) testified that he is a deputy building official in the community development department with the City. (Record at 26–27.) Christensen testified that camps, such as that in question at the hearing, do not meet minimum safety requirements set by

local codes. (Record at 27.) Christensen testified that the structures used, such as tents, often fail to protect occupants from adverse weather conditions. (Record at 28.) Christensen testified that the camps lack adequate cooking, bathing, and restroom facilities. (Record at 28.)

The camp occupants argued that they relied on both the defense of necessity, the defense of acquiescence, and laches in the hearing. (Record at 34–35.) The occupants argued that they could not go to the City’s homeless shelter because it was beyond capacity. (Record at 36.) The occupants argued that the City’s ordinance could only remove the encroachments, and not individuals. (Record at 42–43.)

Eric Randall (“Randall”) testified that he has been homeless for more than a year, and lives at the camp in question. (Record at 44–45.) Randall testified that he does not own the land, and that city officials and police have been to his camp before but did not mention requiring the occupants to leave. (Record at 45, 60.) Randall testified that he is concerned about having to leave the area because the shelter is not an option due to overcrowding, and he does not know where he will be able to store his personal belongings. (Record at 46.) Randall testified that his camp is tidy. (Record at 47.) When he first moved in, there was trash strewn about, but he and others worked to clean up the site and now keep the area clean and tidy. (Record at 47–48.) Randall testified that if he had known he would have to leave, he would not have amassed his belongings there, and that now he has no way to move all his belongings. (Record at 49–50.)

Deirdre Henriquez (“Henriquez”) testified that she is the program manager for the advocacy department at Primary Health Care Outreach, and has worked with homeless individuals since May of 2001. (Record at 61–62.) Henriquez testified that homeless camps have been in the City since at least 2001, and that reports provide some camps date back to 1983. (Record at 62.) Henriquez testified that, to her knowledge, the City has only tried to evict

individuals from homeless camp once previously. (Record at 63.) Henriquez testified that she is familiar with Central Iowa Shelter Services and regularly assists at the shelter. (Record at 63–64.) Henriquez testified that on the previous night, the shelter was over capacity with occupancy of 174. (Record at 64.) She testified that if all the homeless currently in the City had to go to the shelter, it would cause problems at the shelter including noise, food scarcity, rule breaking, and physical and mental health problems. (Record at 67–68.)

Donovan again testified. (Record at 69.) Donovan testified that the City could only exercise its power under the ordinance to remove tents and structures, and could not arrest camp occupants. (Record at 69–70.) Donovan testified that, regarding the timing of the encroachment removal, the City acted in its normal course. (Record at 72.)

In closing, the City argued that laches and estoppel did not apply against a governmental entity in the use of its property, and that the circumstances for the defense of necessity to apply were not present. (Record at 79–80.) The camp occupants, in closing, argued that imminent harm will result if the City removed the encroachments and forced the homeless camp occupants out. (Record at 85–86.)

Officer Webster filed a Decision and Order and Notice of Right to Appeal on February 11, 2013. (Dec. at 1.) Officer Webster found that City Code section 102-596 defines an “encroachment” as “. . . any architectural projection, chimney, stairway, platform, step, railing, door, grate, vault, sign, banner, canopy, marquee, awning, newsrack, trash container, bench, areaway, obstruction, opening or structure.” (Dec. at 2.) The Officer found that on December 7, 2012, the City amended the definition of encroachment in section 102-596 to include “any tent or other material configured or used for habitation or shelter.” (Dec. at 2.) The Officer found that encroachments without proper licenses were subject to removal under section 102-615. (Dec. at

2.) The Officer also found that, on December 7, 2012, the City amended the administrative hearing process regarding removal of encroachments by limiting the issue before any hearing officer to the question of “whether the removal of the encroachment by the city was properly authorized pursuant to Article VII of Chapter 2 of [the City code].” (Dec. at 2.)

Officer Webster found that the City presented substantial evidence demonstrating the dangers inherent in a homeless camp such as that at issue in the hearing. (Dec. at 3.) The Officer found that these camps violated multiple ordinances, which violations supported the City’s position that the camps were unsafe. (Dec. at 3.)

Officer Webster found that the City cited *State v. Walton*, 311 N.W.2d 113 (Iowa 1981) in arguing that the defense of necessity was inapplicable in this case. (Dec. at 3.) The Officer relied upon cases from other jurisdictions which provide that the defense of necessity may be raised as a defense to violations of city ordinances. (Dec. at 3.) The Officer also cited *Walton* in analyzing the defense of necessity. (Dec. at 4.) The Officer found that the defense operated in this case to justify the camp occupants’ lack of a license or lease for the encroachment. (Dec. at 4.) Officer Webster found that the harm avoided, exposure to extreme cold weather without the protection of tents and other personal belongings, outweighed the harm of the general unsafe conditions of the homeless camps. (Dec. at 4.) Officer Webster found by a preponderance of the evidence that the necessity defense rendered removal of the camp occupants’ property unauthorized in the case, and referred the matter back to the City Attorney pursuant to the new city ordinance section 3-23(2). (Dec. at 4–5.)

The City petitioned for a writ of certiorari, requesting that the court sustain the writ, annul the defense of necessity, and find that the City may remove the encroachments from the homeless camp. A hearing on the writ was held on August 30, 2013. At the hearing, the City

argued that the camp occupants failed to satisfy two elements of the necessity defense. The City argued that the occupants first constructed the encroachments months before the notice to remove was posted. The City argued that, as there was no necessity to enter onto the City's property when the encroachments were first constructed, the narrow defense of necessity is now unavailable. The City also argued that the defense is not perpetual, but may only be relied upon for the duration of the emergency. The City argued that no emergency existed when the encroachments were first built, and no emergency exists at the time of the district court hearing, as the weather was sufficiently warm to allow the camp occupants to relocate.

In response, Officer Webster argued that the filing the petition was a waste of judicial resources and that the City should have waited and posted the notice during more temperate weather. Officer Webster argued that, as set forth in *Walton*, the elements of the defense of necessity were met in this case, and that the Restatement 2d of Torts provides that the privilege to either enter or remain on land may be provided by a necessity. The Officer argued that the City amended the definition of "encroachment" only four and a half weeks before the notices were posted, both of which occurred during the winter. The Officer also pointed out a lack of evidence on the record regarding any other reasonable alternative. Coupled with the City's recent circumscription of the Officer's powers during the hearing, Officer Webster argued that the writ should be annulled as the proceedings below were neither illegal nor in excess of jurisdiction.

Occupants of the camp intervened at the hearing. The occupants argued that their rights to survive are superior to the City's property rights in this case, and that the City's attempt to evict the occupants exceeds the power granted by the City Council. The occupants argued that the posted notice did not meet statutory requirements, and that the occupants would be prejudiced by the City's delay in pursuing action against them. The occupants argued that they

had no choice other than to stay at the camp because the shelter was over capacity. The occupants argued that there is no evidence on the record demonstrating any other option for the camp occupants. Therefore, the occupants argued, they established the defense of necessity and the writ should be annulled.

II. STANDARD OF REVIEW

“A party may commence a certiorari action when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.” Iowa R. Civ. P. 1.1401. “The writ shall not be denied or annulled because the plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or the legality of the challenged acts, unless otherwise provided by statute.” Iowa R. Civ. P. 1.1403.

Unless otherwise provided by statute, the judgment on certiorari shall be limited to annulling the writ or to sustaining it, in whole or in part, to the extent the proceedings below were illegal or in excess of jurisdiction. The judgment shall prescribe the manner in which either party may proceed, and shall not substitute a different or amended decree or order for that being reviewed.

Iowa R. Civ. P. 1.1411.

“Relief through certiorari is strictly limited to questions of jurisdiction or illegality of the challenged acts.” *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 272 (Iowa 2009).

A writ of certiorari lies where an inferior tribunal, board, or official, exercising judicial functions, has exceeded its proper jurisdiction or otherwise acted illegally. In a certiorari action, the person seeking the writ has the burden of showing the inferior tribunal, board, or official exceeded its jurisdiction or otherwise acted illegally. The court's function is not to review findings of fact by a lower tribunal, board, or officer having jurisdiction of the matter if sustained by any competent and substantial evidence, unless it otherwise acted illegally. The findings of fact of the lower tribunal, board, or officer are binding if supported by substantial evidence.

Waddell v. Brooke, 684 N.W.2d 185, 189–90 (Iowa 2004) (internal citations omitted).

(1) One is privileged to enter or remain on land in the possession of another if it is or reasonably appears to be necessary to prevent serious harm to

(a) the actor, or his land or chattels, or

(b) the other or a third person, or the land or chattels of either, unless the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action.

(2) Where the entry is for the benefit of the actor or a third person, he is subject to liability for any harm done in the exercise of the privilege stated in Subsection (1) to any legally protected interest of the possessor in the land or connected with it, except where the threat of harm to avert which the entry is made is caused by the tortious conduct or contributory negligence of the possessor.

Restatement (Second) of Torts § 197 (1965).

The rationale of the necessity defense lies in defendant being required to choose the lesser of two evils and thus avoiding a greater harm by bringing about a lesser harm. At least one commentator has suggested the following factors as a framework for analysis where the defendant is not personally at fault in creating the situation calling for the necessity to make a selection: (1) the harm avoided, (2) the harm done, (3) the defendant's intention to avoid the greater harm, (4) the relative value of the harm avoided and the harm done, and (5) optional courses of action and the imminence of disaster.

State v. Walton, 311 N.W.2d 113, 115 (Iowa 1981).

“The necessity defense does not apply except in emergency situations where the threatened harm is immediate and the threatened disaster imminent. The defendant must be stripped of options by which he or she might avoid both evils.” *Id.*

III. ANALYSIS

As found by Officer Webster in the decision, the tents in the homeless camp were not encroachments under the City Code until December 7, 2012. Approximately four and a half weeks later, the City posted notice that the camp occupants must remove all encroachments or risk having the encroachments disposed of by the City, and risk being forcibly removed

themselves. Officer Webster interpreted Iowa law on the defense of necessity, and looked to persuasive precedent to determine that the defense could apply to violations of city ordinances. The Officer then found that avoiding the harm to the occupants of the homeless camp (being subjected to freezing temperatures with no protection from the elements) outweighed the harm to the City in allowing the continued placement of the encroachments on City property. The Officer found that, during the time the notice was posted and the occupants were to remove their belongings, the occupants would be left without shelter and other basic needs to protect themselves from winter weather. The Officer found that the occupants' basic needs could not be satisfied by any other means in this emergency situation where the threatened harm was immediate and imminent. Officer Webster further acted only within the newly circumscribed jurisdiction by concluding that the removal of the encroachments was not properly authorized, and by referring the matter back to the city attorney.

Here, the court finds that substantial evidence on the record supports Officer Webster's findings and well-reasoned decision. The court further finds that, under the limited review power provided in Iowa Rule of Civil Procedure 1.1411, the proceedings below were neither illegal nor in excess of Officer Webster's jurisdiction. The court specifically finds that it, just as Officer Webster in the hearing below, may not provide any time frame or circumstance after which the defense of necessity is no longer applicable given the limited jurisdiction granted to the court in rule 1.1411. The court concludes the writ must be annulled.

IV. JUDGMENT

IT IS THE ORDER OF THE COURT that the City of Des Moines, Iowa's Petition for Writ of Certiorari is denied and the WRIT IS ANNULLED.

Costs in this matter are taxed to the petitioner.

DATED: October 18, 2013

Copies to:

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Iowa Legal Aid
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Des Moines, IA 50309
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State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCE073786 CITY OF DES MOINES VS CASSANDRA WEBSTER ET AL

So Ordered

A handwritten signature in black ink that reads "Karen A. Romano".

**Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa**

CITY OF ALBANY WINTER SHELTER- 30 BEDS PER NIGHT FOR 6 MONTHS: \$154,000

Based on our phone conversation I revised the estimates to take into account the elimination of case managers and house specialist, and the elimination of tables and chairs to be provided by the City. The City would also provide the vehicle for food delivery. We are assuming that the location will be provided with a suitable heating system. Please keep in mind that these are preliminary estimates subject to adjustment. The budget could be further decreased by shortening the opening period.

The shelter would be opened from 5:30PM to 9:00AM. There would be 15 bunk beds available for a total of 30 clients per night.

The onsite staff would operate according to the following schedule for a total of 189 weekly hours

5:00PM-12:30AM 2 employees

12:00AM-8:30AM 1 employee

6:30AM-9:30AM 1 employee

We would rather have two employees at any given time for security purposes; however due to budget constrains the night shift would be covered by only one person. The majority of the activities will be concentrated during the first shift for intakes, meal services and clean up and early morning for meal service, sign off and clean up.

The hourly pay would be our minimum wage of \$15.

In addition to the onsite crew we would use a supervisor to oversee the operations and as liaison with the City for a total of 8 hours weekly.

Fringe benefits are estimated at 25% of gross wages.

Additional costs are listed below.

PERSONNEL		NOTES
Onsite	73,710	189 hrs weekly (4.725 FTE)
Supervisor	5,850	8 hrs weekly (0.2 FTE)
Subtotal	79,560	
Fringe benefits	19,890	25%
Total Personnel	99,450	
OPERATIONS		
Food	14,000	\$2.6 x day for breakfast and dinner
Supplies	5,000	garbage bags, disposable food trays/utensils, cleaning supplies, gloves, office supplies etc.
Cell phone	600	2 Metro PCS
Laundry services	8,000	clean sheets, pillow covers, towels provided daily by outside vendor
Hygiene kits	6,000	toothbrush, toothpaste, deodorant, hygiene pads, comb, hand sanitizer etc. 2,300 units
Blankets	1,350	90 units
Pillows	360	90 units
Bunk beds and mats	5,250	30 beds per night
Total Operations	40,560	
Subtotal	140,010	
OVERHEAD	14,001	10%
TOTAL	154,011	

In case we have to supply the vehicle for the delivery of meals there would be an additional cost of \$19,000. We will explore the possibility of obtaining a donated vehicle in which case the additional cost for routine maintenance, gas and insurance would be approximately \$7,000.

ALBANY CALIFORNIA



CITY OF ALBANY
1000 SAN PABLO AVENUE
ALBANY, CA 94706
www.AlbanyCA.org

PRESS RELEASE FOR IMMEDIATE RELEASE

Albany Waterfront Park Transition Plan “ACT”

October 8, 2013

The City of Albany continues to move forward with efforts to assist homeless on the Albany Bulb, and also provide an accessible public park. We are assisting homeless in Albany, and addressing unsafe, unsanitary conditions at our waterfront park. This is part of a larger effort to transition this area to the McLaughlin Eastshore State Park for the benefit of the entire region.

The “**Albany Waterfront Park Transition Plan**” will be presented to the City Council on October 21, 2013. The Transition Plan is intended to provide a comprehensive outline of City actions to continue to assist homeless on the Albany Bulb with transitional services and shelter, and includes next steps regarding transfer of the Albany Bulb to the McLaughlin Eastshore State Park.

The Transition Plan addresses three major goals “**ACT**”, and identifies how each goal will be achieved. Funding needed to carry out **ACT** is now estimated at \$500,000.

1. Assistance to Homeless including housing-centered outreach, transitional services, support, and shelter
2. Clean up of the Bulb
3. Transfer of the Bulb to McLaughlin Eastshore State Park

For more information:

Nicole Almaguer, Public Information Officer

nalmaguer@albanyca.org

ALBANY WATERFRONT PARK TRANSITION PLAN “ACT”

Assistance to Homeless including transitional services and shelter

- **Outreach & Engagement:** reaching out and connecting people with services has been ongoing over the past five months. City staff has frequented the Albany Bulb passing out informational flyers regarding available assistance programs and services. The Albany City Council approved a contract with Berkeley Food and Housing Project (BFHP) in June to provide outreach & engagement services on an ongoing basis to homeless within the City of Albany. The program “Project HOPE” - Housing Opportunities Expanded – is aimed at assisting homeless find housing and services. Over 60 people have met with BFHP, 40 have completed an assessment and 22 have shown some interest in housing. BFHP’s housing team is present at the Bulb every Tuesday and Thursday with a mobile laptop and printer to show photos and relevant information on available rental units. BFHP has shown over 16 available rental units. One person has successfully secured housing,
- **Ongoing Assistance Program:** with assistance from BFHP, the City held a “Services Fair” on October 3, 2013. The Services Fair included local service providers and nonprofit organizations that provide human and health service assistance to homeless. The Services Fair was attended by over 30 people, receiving information on local services, food, and clothing. The Albany City Council has extended the contract with BFHP through the end of the year to ensure ongoing outreach & engagement, and housing search and placement activities are provided to assist homeless in Albany.
- **Transitional Services:** the City is working to develop a mobile transition center. The center will provide assistance to homeless transitioning from the Albany Bulb. The City is working with local nonprofit service providers to help connect people with human and health services, food, clothing, housing and other transitional support. This action is intended to provide additional time and support to homeless transitioning from the Bulb.
- **Transitional Shelter:** the City is working to locate temporary shelter, including restroom and shower facilities, for homeless transitioning from the Albany Bulb. The shelter will be provided in proximity to the Albany Bulb, and is intended to ensure those relocating from the Bulb have a temporary alternative sheltered location.

The shelter will be staffed by a local nonprofit agency with expertise in both administering a temporary shelter and connecting people with resources to help support transitioning. This action is intended to help ensure homeless transitioning from the Bulb have a secure alternative shelter.

- **Temporary Kennel:** as part of the transitional shelter, kennel space for dogs and a dog run will be included.
- **Subsidized Rentals:** the City is also working to identify locations for a limited number of rental units to support homeless that may be able to contribute to a monthly rental. It is anticipated that the City would subsidize 40% of the rental unit, and a grant would subsidize another 30% of the rental. Currently, there is one potential location for this subsidized rental model.

Cleanup of the Bulb

- **2013 City Council Strategic Plan Goal:** Strategic Plan Goals are priority projects identified by the Albany City Council. One of the goals identified is to ***Improve accessibility for general public use of all of the Albany Bulb as a waterfront park.*** The metric demonstrating progress towards achieving the goal is that there is an increase in the number of visitors to the Bulb for use as a waterfront park.
- **Cleanup Activities:** the City will work with a cleanup contractor to provide assistance in cleaning up the Bulb area. The Cleanup will generally consist of removing trash, contaminated items, abandoned waste, biohazard items such as used needles, human excrement, and other soiled items. The cleanup will require an ongoing supply of dumpsters for trash as well as special receptacles for biohazard materials.
- **Storage of Personal Property Procedures:** Administrative procedures have been developed to follow when removing personal property and refuse illegally placed on public property in parks, recreation, open space, waterfront and Albany Hill areas within the City of Albany.
- **Storage Units:** The City is obtaining storage units intended to store personal belongings at no charge to the owner for up to 120 days. The property will be available to be reclaimed by the owner throughout the 120 day period.

- **Ongoing Maintenance:** park rules as outlined in the City's Municipal Code are posted in all public parks. As the Bulb area is transitioned, enforcement of park rules will be conducted to help ensure usability by all park goers.

Transfer of the Bulb to McLaughlin Eastshore State Park

- **2013 City Council Strategic Plan Goal:** Strategic Plan Goals are priority projects identified by the Albany City Council. One of the goals identified is to ***Develop a plan to transition the Bulb into Eastshore State Park***. The metric demonstrating progress towards achieving the goal is development of a Plan for the transitioning the park that is approved in concept by City Council and EBRPD.
- **Council Action:** on June 3, 2013, the Council authorized the Mayor, Vice Mayor and City Manager represent the City Council in discussions with the East Bay Regional Park District (EBRPD) and State Parks (State) for the purpose of planning the Albany Bulb as a park and planning the transfer of responsibility to the State. The ultimate goal is to carry out the language in the McLaughlin Eastshore State Park General Plan as well as the Proposal for the Albany Portion of Eastshore State Park to ensure the park is available and usable to all park goers.
- **Joint Approach:** as reported by Vice Mayor Wile at the September 3, 2013 City Council Meeting, a meeting was recently held between the City Manager, Mayor and Vice Mayor, East Bay Regional Park District (EBRPD) and State Parks Officials to discuss transition of the Bulb into McLaughlin Eastshore State Park. The meeting resulted in identification of next steps towards achieving the goal including development of a Memorandum of Understanding (MOU) between City and EBRPD. The Eastshore State Park General Plan will provide a framework on for the transition.
- **Memorandum of Understanding & Next Steps:** A draft MOU is under development as well as a Request for Proposals to prepare a transitional plan that will be presented to the City and EBRPD.

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RESOLUTION NO. 2013-60

A RESOLUTION OF THE ALBANY CITY COUNCIL AMENDING THE ADOPTED FISCAL YEAR 2013-2014 BUDGET AND APPROPRIATING FUNDS FOR THE IMPLEMENTATION OF THE ALBANY WATERFRONT PARK TRANSITION PLAN "ACT"

WHEREAS, the Albany City Council Strategic Plan, adopted in 2013 includes a goal to Maximize Park and Open Space including development of a plan to transition the Bulb into the McLaughlin Eastshore State Park and to improve accessibility for general public use of all of the Albany Bulb as a waterfront park; and

WHEREAS, recent action taken by the City Council on May 6, 2013, June 17, 2013 and September 3, 2013 authorized retaining the services of Berkeley Food and Housing Project for ongoing outreach & engagement to homeless within the City; directed the Police Department to enforce the no camping ordinance as of October 2013; and approved the Mayor, Vice Mayor and City Manager meet with East Bay Regional Park District and State Parks to begin a process transition the Albany Bulb to the McLaughlin Eastshore State Park; and

WHEREAS, the City of Albany continues to move forward with efforts to assist homeless on the Albany Bulb, and also provide an accessible public park; and

WHEREAS, the *"Albany Waterfront Park Transition Plan-ACT"* addresses three major goals for transitioning the Bulb *"ACT"*, and identifies how each goal will be achieved:

1. Assistance to Homeless including housing-centered outreach, transitional services, support, and shelter.
2. Clean up of the Bulb.
3. Transfer of the Bulb to McLaughlin Eastshore State Park; and



CITY OF ALBANY

MINUTES OF THE ALBANY CITY COUNCIL
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
MONDAY, OCTOBER 21, 2013

5:30 p.m. CLOSED SESSION

CALL TO ORDER

OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS

City Council convenes in the Council Chamber and then adjourns to Closed Session to discuss the following items:

1. Conference with legal counsel pursuant to Government Code Section 54956.9(d)(2) to discuss anticipated litigation against the City regarding the City's enforcement of Section 8-4 of the Albany Municipal Code (1 case).

The following people spoke: Catherine Sutton.

A summary of comments is as follows: encouraged the Council to consider the alternate proposal regarding the Albany Bulb.

6:00 p.m. SPECIAL MEETING

CALL TO ORDER

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**
3. **GENERAL PLAN HOUSING ELEMENT UPDATE REVIEW**
Authorize Staff to Make Final Revisions to the Draft Housing Element and Authorize Submittal of the Draft to the State Housing and Community Development Department for Review.

Planning & Zoning Commission recommendation: That Council review the draft 2007-2014 Housing Element and comments received from the public and the Commission, authorize staff to make final revisions to the draft Housing Element, authorize submittal of the draft to the State Housing and Community Development Department for review, and explore the use of former

redevelopment “boomerang” funds for implementation for inclusionary and transitional housing policies and programs.

Barry Miller, General Plan Consultant provided an overview and presentation of the Draft Housing Element, including summary of discussions held by the Planning & Zoning Commission.

The following people spoke: Deborah Collins, Public Interest Law Project; Laren Hansen; Public Interest Law Project; Caryl O’Keefe; Amber Whitson; David Levin, Bay Area Legal Aid; Francesco Papalia; Ann Miley.

A summary of comments is as follows: asked that the Council not authorize revisions unless the draft is available to the public for further review, interest in edits to Chapter 6 of the document; interest in the “boomerang” funds being allocated to extremely low income persons; expressed appreciation to staff and the Planning & Zoning Commission for the work on the draft Housing Element, and interest in including the potential for housing at the waterfront; noted that Albany is behind in completing the Housing Element; asked how the City could improve in the future to adequately develop and implement the Housing Element.

Barry Miller noted that the City has a limited availability of sites for affordable housing, that the economy for housing has been challenging, and the City’s strict parking standards are a disincentive.

A summary of Council comments is as follows: expressed appreciation for the work done by the Planning & Zoning Commission; acknowledged upcoming deadline to submit the draft Housing Element and noted that the next update will be done in the near future – 2014; affordable housing is a regional issue, there is a diminishing amount of space for housing and the economic downturn and regulatory constraints such as Measure D are challenging for the housing development market; expressed support for submitting to the State, and for looking further into the opportunities for using “boomerang” funds, expressed interest in adding housing adjacent to the commercial zones to revitalize businesses, expressed interest in amending Measure D.

Bond noted that a successful ballot measure regarding Measure D could potentially alleviate some of the development restrictions for housing.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Maass to authorize staff to make final revisions to the draft Housing Element, and authorize submittal of the draft to the State Housing and Community Development Department for review, and explore the use of former redevelopment “boomerang” funds for implementation for inclusionary and transitional housing policies and programs.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None
Motion carried and so ordered.

7:30 p.m. REGULAR COUNCIL MEETING

CALL TO ORDER

Mayor Thomsen called the regular meeting of the Albany City Council to order on the above date.

1. PLEDGE OF ALLEGIANCE

Mayor Thomsen led the Pledge of Allegiance to the Flag.

2. ROLL CALL

Present: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen

Absent: None.

3. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Thomsen reported that the Council received information from legal counsel and that no action was taken.

4. CONSENT CALENDAR

4-1. Minutes, October 7, 2013

Staff recommendation: Approve

4-2. a. Ratification of City of Albany net payroll in the amount of \$209,362.80; taxes, benefits & withholdings in the amount of \$170,966.83. Total payroll in the amount of \$380,329.63. Payroll period: 10/4/2013

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$41,515.26; taxes, benefits & withholdings in the amount of \$29,338.79. Total payroll in the amount of \$70,854.05. Payroll period: 10/4/2013

Staff recommendation: Ratify

4-3. Ratification of bills, claims and demands against the City of Albany in the amount of: \$347,928.76 (9/27/2013)

Staff recommendation: Ratify

4-4. Contract Amendment with Regional Government Solutions for Interim Finance Director

Staff recommendation: that the Council authorize the City Manager to execute an amendment to the agreement with Regional Government Services for Interim Finance Director Services

4-5. Resolution in Support of Proposition 13 Reform

Council Member Maass recommendation: that the Council adopt Resolution No. 2013-59 in Support of Efforts to Reform Proposition 13

Mayor Thomsen asked if anyone would like to remove an item. Item 4-5 was pulled by the public.

The following people spoke: Bob Outis.

A summary of comments is as follows: Proposition 13 also includes a parent-child exclusion allowing transfer of property to children that is not at the currently assessed value.

Council Member Maass noted that efforts to reform Proposition 13 currently focus on the commercial loopholes, however there are many other issues with Proposition 13 that should be addressed.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Maass to approve the Consent Calendar as submitted.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

5. PRESENTATION

- 5-1.** Proclamations in Recognition of the Albany Chamber of Commerce 2013 Citizen of the Year Caryl O'Keefe and Youth of the Year Thalia Tom
Mayor Thomsen presented the Proclamations to Caryl O'Keefe and Thalia Tom.

6. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

Mayor Thomsen opened the Good of the City/Public Forum/Announcements.

The following people spoke: Amber Whitson, Paul O'Curry, Lisa Kleinbub.

A summary of comments is as follows: asked where emergency shelter sites will be located; expressed concern with the crosswalk located on Masonic adjacent to the Senior Center and an interest in the Council referring the item to the Traffic & Safety Commission; expressed concern with time limits for public comment.

Mayor Thomsen announced the passing of Mary Wallmann, former Albany High School Librarian.

7. PUBLIC HEARING

7-1. Appeal of PA 13-044 726 Cerrito Street Design Review & Conditional Use Permit for a New Single-Family Home

Staff recommendation: that the City Council approve Resolution No. 2013-61 upholding the Planning & Zoning Commission decision approving Design Review and a Conditional Use Permit for a new single family home at 726 Cerrito St., and adopt findings affirming, with any modifications, the approval of Application #PA 13-044, by Linvill Pond Architects for Barrie Quan and Noel Diaz (property owners)

Community Development Director Jeff Bond requested that the staff recommendation be modified, with the appellant and applicant in agreement, to continue the item to a date uncertain once additional facts regarding the item are researched.

MOTION:

Moved by Council Member Barnes, seconded by Council Member Maass to continue the appeal hearing to a date uncertain.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

8. UNFINISHED BUSINESS

8-1. Proposed Albany Waterfront Park Transition Plan, language in 8-4 - No-Camping Ordinance, Planning and Zoning Code for Homeless Shelter

Staff recommendation: that Council:

1. Approve Resolution 2013-60 allocating up to \$531,000 for the Albany Waterfront Transitional Plan
 2. Authorize the City Manager or his designee to enter into a contract with Tucker Construction for the clean-up of the Bulb for up to \$100,000
 3. Authorize the City Manager or his designee to enter into a contract with Operation Dignity for up to \$154,000 for management of transitional housing for six months
- 3A. As an alternative to providing a mobile transition center operated by Operation Dignity, consider whether to authorize staff to prepare a homeless transition plan based on the written proposal by the attorneys for Albany Housing Advocates,

dated October 15, 2013

4. Direct staff to bring forward a technical, clarifying amendment to the No-Camping Ordinance to delete the word "loiter" from the Ordinance.
5. Approve Resolution of Intention to Amend the Planning and Zoning Code for Homeless Shelter

Assistant City Manager Penelope Leach delivered the staff report. Staff has drafted the Albany Waterfront Park Transition Plan - ACT to provide a comprehensive outline of City action to continue to assist homeless on the Albany Bulb with transitional services and shelter, and includes next steps regarding transfer of the Albany Bulb to the McLaughlin Eastshore State Park. As an alternative to the shelter described in the ACT plan, a proposed housing subsidy program has been submitted by the Albany Housing Advocates. Additionally, concern has been expressed by representatives of homeless advocacy groups about possible vagueness of some of the terms used in the City's No-Camping Ordinance, particularly the term "loiter" used in Albany Municipal Code section 8-4.4; therefore, staff is recommending that Council direct staff to bring forward technical, clarifying amendment to the No-Camping Ordinance to delete the work "loiter" from the Ordinance. Staff is also requesting approval of a Resolution of intention to amend the Planning and Zoning Code for Homeless Shelters.

The Albany Waterfront Park Transition Plan – ACT includes three major components: Assistance to Homeless including housing-centered outreach, transitional services, support, and shelter; Cleanup of the Bulb; Transfer of the Bulb to McLaughlin Eastshore State Park. The Plan also identifies how each of the major goals can be achieved.

Staff recommended addressing questions regarding items 1-3A together, then addressing items 4-5.

Council Member questions regarding 1-3A: noted that the cost for item 1 should be increased to \$570,000 to include showers for the transition center, and funds for an additional subsidized housing program; asked about costs for cleanup and management of cleanup; asked about work that went into developing the program and cost estimates.

Leach responded to questions: Gale Rossi is serving as a project manager regarding cleanup and also supervising the City's Public Works staff to ensure proper cleanup, collection, documentation and storage of items, Tucker Construction is highly experienced with cleanup projects of this nature. Leach provided an overview regarding the work staff has done to date.

The following people spoke: Root Barrett, Beverly Dove, Tony Suslak, Katherine Cody, Alan Eckert, Julie Winkelstein, Brian Joans, Lisa Kleinbub, Jay Adkisson, Shirley Dean, Paul O'Curry, Amber Whitson, Ellen Barth, Naomi, Anka, Mari Castaldi, Marc Mattonen, Glenn Bachelder, Patricia Moore, Edward Bennett,

Robert Cheasty, Norman LaForce, Francesco Papalia, Brian Parker, Luis, Megan, Eva, Bobby Anderson, Bob Outis, Forrest Logan, Ann Miley, Catherine Sutton, Kristin Lobos, Gordon McCarter, David Sanger, Rochelle Nason.

A summary of comments is as follows: expressed support for camping on the Bulb; expressed support for transitioning the Bulb to a park, encouraged those interested to look into services offered by Saffron Strand in Richmond; expressed interest in permanent help for homeless; expressed interest to solve problem collectively with Albany Housing Advocates; enforcement of the no-camping ordinance without housing criminalizes low and very low income people; expressed support for the Citizens of Eastshore State Park regarding transition of the Bulb to the McLaughlin Eastshore State Park; encouraged the Council to be aware of other homeless within the City beyond the Bulb; expressed support for the Albany Housing Advocates proposal; expressed support for the City's transition plan; asked about cost to transfer the property to the State; expressed support for a collaborative, amicable compromise; questioned rush to transition the Bulb to Eastshore State Park; asked why the topic of drug addiction is not being addressed; suggested allowing the Albany Housing Advocates proposal be modified to address City's concerns.

Mayor Thomsen announced that the Council received a letter from East Bay Community Law Center and Homeless Action Center over the weekend, and provided an overview of the proposal. Mayor Thomsen identified a number of issues with the proposal including methodology, responsible parties for the outcome and guarantee of the outcome, and that the proposal lacked specifics.

A summary of Council comments is as follows: the plan provided by the City is based on a significant amount of research while alternative plans are based upon beliefs and do not include specifics; expressed support for including \$35,000 for a housing subsidy program in addition to the transition center and \$30,000 for showers as part of the overall program; encouraged people to utilize the services and shelter to make a transition; noted the concern for tuberculosis risk at the Bulb, and that there are issues with illegal drugs at the Bulb, establishing a transition plan can help people to a safe environment; expressed concern with substance abuse at the Bulb, the City's plan is comprehensive and includes space for dogs, the plan is also constitutional as property storage procedures are clearly established and temporary shelter is being provided; selective enforcement of the no-camping ordinance is not supported, encouraged the proponents of the alternative proposal to conducting fundraising to implement the proposal, the portables will be made available to all homeless in Albany.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Barnes to

1. Approve Resolution 2013-60 allocating up to \$570,000 for the Albany Waterfront Transitional Plan, including \$35,000 for an additional housing subsidy program and \$30,000 for showers for the transition center.

2. Authorize the City Manager or his designee to enter into a contract with Tucker Construction for the clean-up of the Bulb for up to \$100,000
3. Authorize the City Manager or his designee to enter into a contract for a housing agreement if a housing subsidy materializes
4. Authorize the City Manager or his designee to enter into a contract with Operation Dignity for up to \$154,000 for management of transitional housing for six months

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

Additional public comment was received regarding items 4 and 5.

The following people spoke: Francesco Papalia, Bob Outis, Tony Suslak.

A summary of comments is as follows: expressed concern for the location of the temporary shelter, and interest in a daytime drop-in center; noted the City is out of compliance with the Housing Element; many cities are behind in meeting low income housing requirements.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Maass to Direct staff to bring forward a technical, clarifying amendment to the No-Camping Ordinance to delete the word "loiter" from the Ordinance.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Maass to Approve Resolution of Intention to Amend the Planning and Zoning Code for Homeless Shelter.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

8-2. Public Works Service Center – Report on Property Acquisition and Direction on Options for Financing and Construction of Building Improvements

Staff recommendation: that the Council:

1. Provide direction on modification of the soil contamination contingency for the acquisition of the 540 Cleveland parcel.
2. Approve a modified Option 2 concept design for the facility layout.
3. Conceptually approve recommended funding sources for the facility development including LLAD-88 revenues, General Fund revenues used for the existing lease, and new revenues from a lease with Clear Channel Outdoor.
4. Direct staff to initiate an amendment to the Zoning Ordinance to allow a Clear Channel electronic advertising sign on I-580
5. Conceptually approve the design/ build public facilities construction method and direct staff to commence drafting an ordinance to enable this method.
6. Direct staff to prepare a Request for Proposals for soliciting design/build development firms.
7. Authorize staff to prepare a Request for Proposals for design firms for the preparation of specifications for the new building.
8. Direct staff/design firm to analyze the feasibility of solar panels for the facility as part of the specifications development.

Interim City Manager Pat O’Keeffe delivered the staff report. The existing Public Works service center at 548 Cleveland is located in a leased facility that is inadequately sized for the public works operations. The lease will expire in January 2015. Following the receipt of an offer to sell from the current owner, the City entered into a Purchase and Sale Agreement on May 6th, 2013 for the potential acquisition of the 540 Cleveland parcel for a Public Works facility.

There are a number of contingencies in the purchase agreement that need to be resolved before the City can close escrow to acquire the property:

- Condition of title.
- Condition of property (including suitability of soils for the planned facility).
- Demolition of the existing building.
- Completion of remediation of toxic chemicals in the soil and groundwater.
- Obtaining a No Further Action Letter from Alameda County on the Toxic remediation.
- Obtaining insurance for future unknown toxic cleanup liabilities.

- Environmental review pursuant to CEQA.
- Availability of financing for property acquisition and building development.

A blended financing strategy is recommended, which will include ad sign lease revenues thereby reducing the amount of Landscape Lighting Assessment District (LLAD) revenues. It will also be necessary for the City to amend its Zoning Ordinance to allow the sign installation. As a result of financing constraints, the most viable option for constructing the facility is the design/build approach. Using design/ build the City would negotiate the elements to be included in the design and a guaranteed maximum price to be paid to the developer. At the conclusion of construction the City would enter into a lease with the developer for 25 – 30 years. The lease payments pay the developer back for the cost of constructing the improvements, and the City would receive ownership of the improvements at the end of the lease term for a nominal payment. Pending authorization, the project could potentially be completed for occupancy in August 2015.

Mayor Thomsen asked that items related to the billboard be voted on with a separate motion.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Barnes to

1. Provide direction on modification of the soil contamination contingency for the acquisition of the 540 Cleveland parcel.
2. Approve a modified Option 2 concept design for the facility layout.
3. Conceptually approve the design/ build public facilities construction method and direct staff to commence drafting an ordinance to enable this method.
4. Direct staff to prepare a Request for Proposals for soliciting design/build development firms.
5. Authorize staff to prepare a Request for Proposals for design firms for the preparation of specifications for the new building.
6. Direct staff/design firm to analyze the feasibility of solar panels for the facility as part of the specifications development.

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile, Mayor Thomsen.

ABSENT: None

NOES: None

Motion carried and so ordered.

MOTION:

Moved by Vice Mayor Wile, seconded by Council Member Maass to

1. Conceptually approve recommended funding sources for the facility development including LLAD-88 revenues, General Fund revenues used for the existing lease, and new revenues from a lease with Clear Channel Outdoor.
2. Direct staff to initiate an amendment to the Zoning Ordinance to allow a Clear Channel electronic advertising sign on I-580

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile.

ABSENT: None

NOES: None

Abstain: Mayor Thomsen.

Motion carried and so ordered.

9. NEW BUSINESS

10. OTHER BUSINESS, REPORTS ON MEETINGS ATTENDED, ANNOUNCEMENT OF EVENTS/FUTURE AGENDA ITEMS.

11. ADJOURNMENT

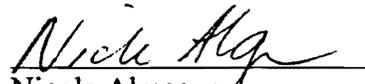
9:52 p.m. Mayor Thomsen adjourned the meeting in memory of Mary Wallmann.

Minutes submitted by Nicole Almaguer, City Clerk.



Peggy Thomsen
Mayor

Attest:



Nicole Almaguer
City Clerk



City of Albany

Administrative Procedures for the Removal of Temporary Shelters, Personal Property, and Refuse Illegally Placed on Public Property in Parks, Recreation, Open Space, Waterfront and Albany Hill Areas of the City.

September 2013

Purpose and Intent

The City of Albany has received numerous complaints regarding negative impacts on the public health, safety and general welfare arising out of illegal camping and storage of personal property on public property, particularly in the waterfront area commonly known as the Albany Bulb. The City's parks, recreation, open space, waterfront and Albany Hill areas are intended for daytime use by the general public, not for overnight occupancy or storage of personal property. Detrimental impacts from illegal camping on these public properties which are not designed for human habitation include lack of proper water and sanitary facilities, safety hazards for visitors and the inhabitants of substandard temporary structures, presence of trash and debris, criminal activities including illegal drug use, and other conditions which are inconsistent with the intended daytime use and enjoyment of these areas by the general public.

These administrative procedures address clean-up of temporary shelters, camping equipment, other personal property, and trash and debris which have been illegally stored or deposited on public property. It is the City's intent to abate these conditions in a compassionate manner which appropriately balances the interests of all park users, including persons residing in temporary shelters and persons wishing to enjoy public areas for daytime use, and fully complies with all local, State and federal laws. These procedures do not establish any individual right to erect temporary shelters, store personal property, or otherwise violate applicable City ordinances or State law.

Applicable Albany Municipal Code Provisions

The City's regulations governing use of parks, recreation, open space, waterfront and Albany Hill areas within the City of Albany are set forth in Chapter 8-4 of the Albany Municipal Code, attached hereto as Exhibit A. These procedures primarily focus on enforcement of the following portions of Chapter 8-4:

Section 8-4.4 Camping

No person shall set up tents, shacks, sleeping bags or any other shelter within any park, recreation, open space, waterfront or Albany Hill area for the purpose of overnight camping.

No person shall leave any tents, shacks, sleeping bags or any other shelter, structure or specialty vehicle to be use or could be used for overnight camping, including but not limited to house trailers, camp trailers, camp wagons, and any other mobile or stationary camper in any park, recreation, open space, waterfront or Albany Hill area.

Section 8-4.7 Unauthorized Activities

Unless authorized by permit, it is unlawful to do the following in any park, recreation, open space, waterfront or Albany Hill area:

- b. Construct or erect any building of any kind, whether permanent or temporary, or run or string any public service utility into, upon or across such areas.

- c. Attach anything, whether rope, cable or otherwise, to any shrub, tree, fence rail, bridge, bench, or other structure.
- d. Place or cause to be placed in any waters of any fountains, streams, or any other body of water any substance, matter, or thing, liquid or solid which may result in pollution of said water.
- e. Fail to deposit refuse and/or rubbish in the receptacles provided. In the event receptacles are not available, all refuse and rubbish shall be carried away from such areas by the person responsible for its presence.
- g. Store personal property.

Clean-up of Illegal Encampments in City Parks, Recreation, Open Space, Waterfront and Albany Hill Areas

A. Prior Notice

1. The following notice procedures shall apply to encampments inhabited by ten (10) or more individuals which have been in place for more than thirty (30) days:

Approximately fourteen (14) days prior to undertaking a clean-up, the City shall make reasonable efforts to provide informal notice to the inhabitants of an encampment through face-to-face communications and distribution of informational flyers as deemed appropriate.

At least seven (7) days prior to undertaking a clean-up, the City shall seek to provide a written notice of the intended clean-up by posting and/or distributing a written notice in substantially the form attached as Exhibit B. The posting and/or service of the notice shall be performed in a manner which is reasonably calculated to provide effective notice to any residents of adjacent temporary shelters or campsites. The notice shall describe the area subject to clean-up.

2. The following notice procedures shall apply to encampments which are either inhabited by fewer than ten (10) individuals or have been in place for fewer than thirty (30) days:

At least seventy-two (72) hours prior to undertaking a clean-up, the City shall seek to provide a written notice of the intended clean-up by posting and/or distributing a written notice in substantially the form attached as Exhibit B. The posting and/or service of the notice shall be performed in a manner which is reasonably calculated to provide effective notice to any residents of adjacent temporary shelters or campsites. The notice shall describe the area subject to clean-up.

B. Documentation of Site Conditions

The City will photograph the area where clean-up is to occur to document site conditions before and after the clean-up.

C. Removal of Trash, Debris and Hazardous Substances

The City will collect and dispose of any solid waste, trash, debris, junk, garbage, or refuse which does not reasonably appear to belong to any individual or if the apparent owner has expressly authorized disposal. The City will collect and dispose of any hazardous substances, hazardous waste, or infectious waste in accordance with applicable laws.

D. Collection, Storage and Disposition of Personal Property

The City will take reasonable precautions to prevent disposal or destruction of any items which appear to be the personal property of any individual. The City will not assume that property which is temporarily unattended has been discarded or abandoned. Reasonable doubt about whether property constitutes trash or debris, as opposed to personal property, shall be resolved in favor of the conclusion that the property has not been discarded or abandoned. When determining whether items should be classified as either trash or personal property, the City shall utilize the Guidelines for Property Identification attached as Exhibit C.

Personal property which is collected will be recorded using the Property Receipt and Release Form, attached as Exhibit D. After the removal of all personal property, the City shall post a written notice of property retrieval in substantially the form attached as Exhibit E. Personal property will be stored at no charge to the owner for a period of at least one hundred twenty (120) days, during which time the property will be available to be reclaimed by the owner. After the expiration of one hundred twenty (120) days, any unclaimed property may be donated, sold or discarded by the City as deemed appropriate.

E. Inspection and Removal of Illegal Structures

The Albany Building Official will inspect buildings and structures illegally erected on public property and take appropriate steps to abate these conditions.

8-4 PARKS, RECREATION, OPEN SPACE, WATERFRONT AND ALBANY HILL AREAS. (1999)

8-4.1 Purpose.

The purpose of this section is to provide regulations for the use of City parks, recreation, open space, waterfront and Albany Hill areas within the City of Albany. (Ord. #99-02, §1; Ord. #99-07, §1)

8-4.2 Definitions.

a. *Parks, recreation and open space areas* shall include but not be limited to those park and recreation areas commonly known as Memorial Park, Middle School Park, Terrace Park, the Dartmouth-Talbot Tot Lot, the Ohlone Greenway, the Key Route Strip, or other parks, recreation and open space areas of the City.

b. *Waterfront areas* shall include but not be limited to those public areas west of the freeway which lie between Albany's northern and southern borders.

c. *Albany Hill open space areas* shall mean and include but not be limited to all those public areas on Albany Hill including but not limited to public property areas abutting and contiguous to Cerrito Creek, and the area known as Creekside Park.

d. *Vehicle* shall mean and include any vehicle that is self-propelled or a device by which any person or property may be propelled, moved, or drawn upon a highway. Vehicle does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

e. *Bicycle* shall mean a device upon which any person may ride, propelled exclusively by human power through a system of belts, chains, or gears, and having one or more wheels.

(Ord. #99-02, §1; Ord. #99-07, §1; Ord. #00-06)

8-4.3 Hours of Operation.

a. No person shall use, remain in or enter upon any waterfront and Albany Hill area between 10:00 p.m. and 5:30 a.m., other than duly authorized City employees, persons participating in City sponsored activities or other activities which the City has provided prior written permission to utilize the waterfront area beyond the closing time. The hours of operation of specific facilities within any waterfront area may also be specified by the Director of the Recreation and Community Services Department.

b. No person shall use, remain in or enter into Memorial Park between 11:00 p.m. and 5:00 a.m., other than duly authorized City employees, persons participating in City sponsored activities or other activities which the City has provided prior written permission to utilize Memorial Park beyond the closing time. The Director of the Recreation and Community Services Department is authorized to modify the hours of operation for specific facilities within Memorial Park.

c. The City Council, by resolution or ordinance, may set hours of operations at other City parks or recreational areas.

(Ord. #99-02, §1; Ord. #99-07, §1; Ord. #2011-01)

8-4.4 Camping.

No person shall loiter, camp or lodge in any park, recreation, open space, waterfront or Albany Hill area. No person shall set up tents, shacks, sleeping bags or any other shelter within any park, recreation, open space, waterfront or Albany Hill area for the purpose of overnight camping. No person shall leave any tents, shacks, sleeping bags or any other shelter, structure or specialty vehicle to be used or could be used for overnight camping, including but not limited to house trailers, camp trailers, camp wagons, and any other mobile or stationary camper in any park, recreation, open space, waterfront or Albany Hill area. The restrictions contained within this section shall not apply to programs sponsored or co-sponsored by the City. (Ord. #99-02, §1; Ord. #99-07, §1)

8-4.5 Fires.

No person shall build, maintain or light any open outdoor fire within any park, recreation, open space, waterfront or Albany Hill area except within those facilities and/or areas provided and so designated for that purpose. Exceptions to this requirement must be obtained from the Albany Fire Chief. No person shall leave a fire unattended on City owned property. (Ord. #99-02, §1; Ord. #99-07, §1)

8-4.6 Alcoholic Beverages.

No person in any waterfront or Albany Hill area shall consume or have in his/her possession, custody or control, either open or unopened, any alcoholic beverage of any kind whatsoever, except when attending a function operated under an alcohol permit issued in accordance with the rules and regulations of the Department of Recreation and Community Services. No intoxicated person shall enter, remain or be within any waterfront or Albany Hill area. (Ord. #99-02, §1; Ord. #99-07, §1)

8-4.7 Unauthorized Activities.

Unless authorized by permit, it is unlawful to do the following in any park, recreation, open space, waterfront or Albany Hill area:

- a. Dig or remove any soil, rock, sand, stones, trees, shrubs, plants or other wood and/or materials, or make any excavation;
- b. Construct or erect any building of any kind, whether permanent or temporary, or run or string any public service utility into, upon, or across such areas;
- c. Attach anything, whether rope, cable or otherwise, to any shrub, tree, fence rail, bridge, bench, or other structure;
- d. Place or cause to be placed in any waters of any fountains, streams or any other body of any substance, matter, or thing, liquid or solid which may result in pollution of said water;
- e. Fail to deposit refuse and/or rubbish in the receptacles provided. In the event receptacles are not available, all refuse and rubbish shall be carried away from such areas by the person responsible for its presence;
- f. Possess or set off any fireworks, or other incendiary devices;
- g. Store personal property; and
- h. Operate any vehicle/bicycle in the Albany Hill open space area (except for City maintenance and emergency services), excluding when designated by the City the area for a vehicle/bicycle path along Cerrito Creek or any paved public streets.
(Ord. #99-02, §1; Ord. #99-07, §1; Ord. 00-06)

CITY OF ALBANY

NOTICE OF CODE ENFORCEMENT AND CLEAN-UP

The City of Albany will be enforcing provisions of the Albany Municipal Code which prohibit the placement or storage of temporary shelters, personal property, or trash and refuse on City parks, recreation, open space, waterfront or Albany Hill areas. The clean-up will take place in the vicinity of _____ at any time

Address or Description of Location

following expiration of seven (7) days/seventy-two (72) hours after the date of this Notice. Any individuals storing personal property within this area are in violation of Chapter 8-4 of the Albany Municipal Code. At the time the clean-up takes place, the City of Albany will remove any and all temporary shelters, personal property, and trash and refuse from this area.

Personal property will be stored without charge for a period of one hundred twenty (120) days. Individuals wishing to reclaim personal property collected by the City as part of this clean-up may do so by contacting:

_____ at _____

City Staff Name and Title

Phone Number

during the period of one hundred twenty (120) days following the date of the clean-up. Any items of personal property not claimed within that time may be disposed of by the City.

Continued violations may result in citation and/or arrest pursuant to the following laws:

- Albany Municipal Code Section 1-9 [violations of City ordinances punishable as infractions/misdemeanors],
- Albany Municipal Code Section 8-4 [prohibited activities in City parks, recreation, open space, waterfront or Albany Hill areas] and,
- California Penal Code Section 647(e) [lodging in a public or private place without permission of the owner].

Location of Notice: _____

Date of Notice: _____

CITY OF ALBANY

Guidelines for Property Identification

Unless an item is trash or poses an immediate threat to public health or safety it should be retained for storage as potential personal property. Items that are arranged in a manner that suggests ownership (e.g.: items that are neatly folded or stacked, stored off the ground, hung or clearly on display or packed in bag or box) should be retained for storage. **If there is any uncertainty regarding whether an item should be thrown away or stored, it should be stored.**

Examples of items to take to storage: *The following are examples of items that could be considered personal property and will be stored:*

- ID/Social Security cards
- Medications
- Photos/Photo Albums
- Personal Papers
- Watches & Jewelry
- Eyeglasses
- Books
- Tents & Sleeping Bags
- Pots & Pans
- Computers, Cell Phones & Electronics
- Tools
- Stoves & Generators
- Bicycles
- Purses/Backpacks/Briefcases/Duffel Bags
- Shoes & Clothing

Examples of items that are trash or pose a threat to public health or safety and will not be stored: *The following are examples of conditions that will cause an item (including those examples listed above) to be immediately disposed of:*

- **Dirty or Soiled:** items that smell, are stained with urine, bodily waste, or mud, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or that present a risk of biohazard (i.e. used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storage (i.e. car batteries, gasoline cans, and propane tanks)
- **Broken or Disassembled:** items that are broken, damaged, or stripped of parts (i.e. electronics stripped for copper, flat tires, stripped bikes, torn up clothes)
- **Weapons:** All weapons will be turned over to the Albany Police Department
- **Obvious Trash:** Food/beverage wrappers, tissue/paper/napkins, open household product containers

CITY OF ALBANY

NOTICE OF PROPERTY RETRIEVAL

On _____, 2013, at _____ a.m./p.m., the City of Albany conducted a
Date Time
clean-up at the following location: _____ and
Address or Description of Location
removed personal property that was left in the area. Individuals wishing to reclaim personal
property that may have been collected by the City as part of the clean-up may do so by
contacting _____ at _____ for a
City Staff Name and Title Phone Number
period of one hundred twenty (120) days following the date of the clean-up. If the property is
not claimed by _____, it will be disposed of by the City.
Date

Eighth Floor, Two Embarcadero Center
San Francisco, CA 94111
t 415 576 0200 f 415 576 0300

Maureen A. Sheehy
direct dial 415 273 7571
direct fax 415 723 7221
msheehy@kilpatricktownsend.com

October 15, 2013

VIA E-MAIL

Craig Labadie
City Attorney, City of Albany
1000 San Pablo Avenue
Albany CA 94706

Re: RESPONSE TO PROPOSED PLAN FOR RELOCATING BULB RESIDENTS

Dear Craig:

At your request, this letter outlines our proposal in support of the City of Albany's long term goal to relocate the Bulb residents and transfer the land to the McLaughlin East Shore State Park. As you know, the undersigned represent a number of Bulb residents as well as Albany Housing Advocates. We understand that you intend to share this letter with City staff as well as the Albany City Council.

We appreciate that the City appears to be putting considerable thought into how to transition the current Bulb residents off the Bulb, and how to provide them support in finding housing that meets their needs. We also appreciate that City is willing to commit significant funds to the project. Nevertheless, we have serious concerns about some elements of the City's proposed plan as currently formulated. As outlined in this letter, we believe that there is an alternative available to the City which would allow it to attain its long-term goal and is far more likely to be successful at moving Bulb residents into housing and avoiding litigation.

The plan currently being considered by the City calls for it to remove residents from the Bulb as soon as possible and offer them the opportunity to live in dormitory style portable units for six months. The cost of renting or purchasing those units will be roughly \$250,000. We believe that this plan is expensive and unworkable. There is a better way.

Under our proposal the City would first conduct a census of current Bulb residents, drawing on work already done by residents and BFHP. Identified current residents would agree to leave the Bulb no later than six months from when the plan is approved. The deadline would be hard and fast. There would be no "performance standard" for the City. The City would continue to contract with a service organization to work with the residents to get them into housing, but whether they got housing or not, within six months of approval, they would be gone.

The money that would be saved in our proposal could be used to provide direct housing assistance. The approximately \$250,000 that the city is contemplating spending on the portables would enable the City to provide a housing subsidy of \$700 a month to 29 people for a year. **This would mean housing nearly one-half of the Bulb residents for one year. Or all of them for six months.**¹ We believe the money could also be used to leverage additional funds that could be used for rapid rehousing.

We believe that renting or purchase of portable trailers is not a good use of the City's money. This plan will only work to provide shelter and keep these individuals off of the streets of Albany if people are willing to move into them. It is very clear to us from past experience and from conversations with current Bulb residents that this is not the case. This exact plan has been attempted once before and failed; homeless people were not housed and instead, over time, returned to the Bulb. In 1999, when Operation Dignity placed a portable trailer on the racetrack parking lot, people avoided it, even though they were faced with no alternative, but to sleep on the streets and doorsteps. The few people who tried living in it, left within days. And once the Bulb residents leave, it will be virtually impossible for any transitional services or support to reach them. The unsuccessful effort in 1999 will be repeated, with unfortunate consequences for everyone, the residents of the Bulb and the City.

The dormitory-style trailers proposed by the City also have significant health risks for the Bulb residents. Many Bulb residents have histories of trauma. Many have mental health issues and cognitive impairments. These conditions make congregated living dangerous and traumatizing, and could raise legal issues around disability access. The people we have talked to on the Bulb do not understand why they should be required to move twice, once from their current homes, and then from the temporary alternative space that the City designates. On the Bulb, they retain their autonomy and their access to their most important personal belongings. They will have that same autonomy and access in the housing we hope they will be able to obtain using the funds this proposal makes available to them. We agree with their concerns about moving twice, and believe that the most successful and cost-effective approach here will be to move Bulb residents directly to permanent housing.

In our proposal the City would commit to do two things: 1) use the \$250,000 that was to be spent on portable units and instead direct this money for housing subsidies for the Bulb residents; 2) leverage the City's investment with other programs and grants that may be available through other sources, with the goal of being able to fund one year of housing for all the Bulb residents. If in six months, there are Bulb residents who remain actively involved in a housing search who are not yet housed, we would propose that any unspent monies earmarked by the City for use as housing subsidies be used to move these residents into short term housing (i.e., SRO or other short-term arrangement) while the search for more permanent housing can be completed. But in any event, these residents would not remain at the Bulb.

¹ According to the several agencies we have consulted, the average housing subsidy is expected to be \$700 a month or \$8,400 for a year per person. This amount is combined with a portion of the resident's other income, typically 30% of their General Assistance or disability benefits to fully fund their housing costs.

To implement this project, the City would contract with an agency to administer the housing subsidy program, to locate housing for the residents and to provide other essential support services, such as obtaining IDs for the residents lacking them and getting eligible residents signed up for either General Assistance and/or disability benefits. We believe that there are several agencies that would be equipped to administer and run this program, including Alameda County Behavioral Health Care Services (ACBHCS), which already runs a housing subsidy program. Our preliminary conversations with ACBHCS and Everyone Home about running the subsidy program have been promising. In addition, other agencies such as Bonita House or the Trust Clinic have experience and a successful track record of moving homeless residents into housing and using a housing first support model. These agencies could supplement the work that would be done under the contract by the Berkeley Food and Housing Project. ACBHCS and Everyone Home staff has agreed to meet with City staff so that the City can better understand how such programs work and can be successful. ACBHCS and Everyone Home have agreed that with sufficient resources from the City, it might be possible to leverage additional dollars from County healthcare funding streams, provided that none of the money that the city would be using is Federal funding. Although we don't have confirmation, it might also be possible for the City of Berkeley to provide needed infrastructure for the provision of services if the City of Albany is committing money for housing subsidies.

There are three steps we recommend the City take while it is considering this proposal. The first is to direct to do a complete confidential census and needs assessment of all of the Bulb residents using information already gathered by Berkeley Food and Housing Project and the Bulb residents themselves. The second is to identify the agency/team that would administer the program and supply the individual case management services for each of the Bulb residents. Finally, the City would work intensively to explore, with the assistance of the knowledgeable agencies in the area, what additional funds/grants may be available to help provide housing subsidies for the residents. In the meantime, we are supportive of having the City immediately come onto the Bulb and clean up abandoned campsites that exist.

We believe this plan is an opportunity to avoid litigation and achieve the twin results of relocating people from the Bulb, and providing the resources they need to obtain alternative housing. It avoids the situation in which the City would destroy their current homes, leaving them with no choice, if they are to remain in Albany, but to violate its laws, or give up the right to privacy that they have been able to exercise while living on the Bulb.

We understand the City wishes to move as expeditiously as possible to begin the transfer of the Bulb to the State so that it can be integrated into the McLaughlin East Shore State Park, but we believe that it is well worth spending the small amount of additional time that this plan allows to wind down an occupancy of the Bulb that has been ongoing for at least 14 years. Our proposed plan permits the money that would be spent on the purchase or rental of portables and the staffing of a temporary shelter to be used to provide sustainable long-term housing for the current residents of the Bulb, who otherwise have every likelihood of remaining homeless, perhaps even on the streets of Albany. It would avoid litigation with its unpredictable outcome and certain cost. Further, it has the potential to avoid a confrontation that could result if people are involuntarily removed from the Bulb, their homes destroyed and their possessions taken.

Such a confrontation has the potential of requiring expensive police resources. Perhaps most importantly, no one has put forward a public justification for urgent action in a shorter time span. No detriment has been identified.

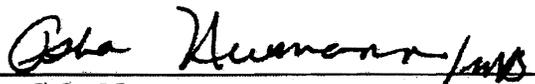
We understand that there are some elements within the City that are impatient, but the certainty this plan permits should go a long way to allaying their concern. During the winter months in which people would be living on the Bulb a winding down would take place. People for whom housing was found would agree not to return. New people would not be permitted to take up residence on the Bulb. Cleanup of abandoned camps could take place. People who remain would agree to work to clean up their campsites, and when they leave would assist in removing the traces of their footprint that are left, thus reducing the cost of cleanup.

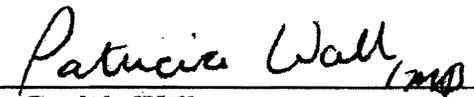
We urge the City to use the money it is prepared to invest in its ACT plan in a way that is best designed to meet its goals. We continue to urge the City to invest in affordable housing. We appreciate your willingness to amend your camping ordinance to delete the unconstitutional provisions. We know it may take more than six months for some Bulb residents to find housing, but put forward this proposal as a reasonable compromise.

Sincerely,

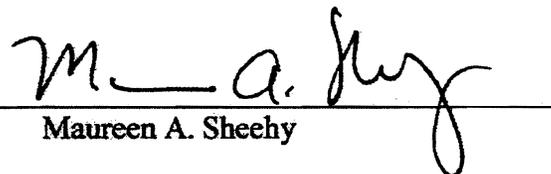
EAST BAY COMMUNITY LAW CENTER

HOMELESS ACTION CENTER

By: 
Osha Neumann

By: 
Patricia Wall

KILPATRICK TOWNSEND & STOCKTON LLP

By: 
Maureen A. Sheehy

cc: Gregory W. Stepanicich

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RESOLUTION NO.2013-48

A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXTEND THE CITY'S CONTRACT AGREEMENT WITH BERKELEY FOOD AND HOUSING PROJECT TO CONTINUE THE HOMELESS OUTREACH AND ENGAGEMENT PROGRAM CITYWIDE UNTIL THE END OF 2013 AT A COST NOT TO EXCEED \$30,000

WHEREAS, on May 6, 2013 the City Council directed staff to issue a Request for Proposals (RFP) for an organization to conduct outreach and engagement services for a period of three months to people in Albany who are homeless, in the amount of approximately \$30,000 from City Council discretionary funds; and

WHEREAS, on June 17, 2013 the City Council Authorized the City Manager to enter into a Professional Services Agreement for a Homeless Outreach and Engagement Program with Berkeley Food and Housing Project (BFHP) for \$30,000; and

WHEREAS, BFHP serves a highly vulnerable population of long-term disabled homeless, unstably housed and indigent residents through a multi-site, multi-service continuum of care; and

WHEREAS, BFHP has developed an outreach and engagement program called Project HOPE – Housing Opportunities Expanded, which is a comprehensive approach to help people who are homeless in Albany move from a state of homelessness to becoming permanently and stably housed in collaboration with the Solano Community Church (SCC) staff and volunteers; and

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WHEREAS, the current contract with BFHP ends September 18, 2013, and extending the contract could allow BFHP to continue to build upon the work they have done and to pursue offering housing assistance, it is recommended; and

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Albany hereby authorizes the City Manager to extend the City's Contract Agreement with Berkeley Food and Housing Project to continue the Homeless Outreach and Engagement Program citywide until the end of 2013 at a cost not to exceed \$30,000.


MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

RESOLUTION NO. 2013-48

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 3rd day of September, 2013, by the following votes:

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile & Mayor Thomsen

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

**WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 4th
day of September, 2013.**

**Eileen Harrington
DEPUTY CITY CLERK**

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.

DRAFT BUDGET: Transitional Housing and Clean-Up

page 1 of 2	Budgeted	Comments
Project Management Clean-up	24,985.00	Gale Rossi Sept - Nov
Tucker Construction	100,000.00	10 days clean-up of the larger camps
Dumpsters	46,480.00	34 dumpsters (empty and bring back 2-3 per day)
Sub Total Clean-up	171,465.00	
Storage Containers	2,890.00	\$289 per month per container. Need 2 containers for 5 months ; lowest of 5 quotes
Sub Total Storage	2,890.00	
Portables	74,000.00	Includes installation and skirting for 2 portables (sell after use)
Toilets	5,525.00	\$900 per month for 6 months (rental) includes \$125 for delivery
Pump out toilets once per week	2,400.00	\$100 per pump
Generator	16,000.00	Generator (sell afer use)
Gas for generator	25,200.00	24 gallons per day
Pull station and horn - outside alarm	2,000.00	
excavation/removal of foilage	11,000.00	site prep of City property
cage for air cond unitl to protect copper wire	1,600.00	to prevent theft of copper wire
cage for propane tank	1,000.00	protection for tanks
Electrical Hookup	10,000.00	Electrical hookup
Water	8,000.00	Estimated cost for 6 months
Dog Kennels	5,200.00	Rental for 6 months - 2000 feet @\$2.60 per foot (includes delivery, installation, and pick-up)
Sub Total Shelter	161,925.00	
Project Management for participants (staff, food, beds, etc)	154,000.00	staff during open hours, food, beds and bedding, laundry, janitorial for buildings, Will get quote from BFHP on Monday
Custodial Service	15,000.00	clean trailers everyday, 7 days per week -getting quote
Sub Total Professional Serves	169,000.00	
TOTAL	505,280	
Resell of purchased items	(50,000.00)	Generator (10K), trailers (40K)

1 THE LEASE AND AGREEMENT FOR
2 OPERATION AND DEVELOPMENT OF A PORTION OF THE
3 EAST BAY SHORELINE PROJECT
4 IN THE
5 CITY OF ALBANY

6 This agreement is made and entered into this 1st day of May 1985, by
7 and between the State of California, acting through its Department of Parks
8 and Recreation, ("STATE"), and the City of Albany ("CITY").

9 RECITALS:

10
11 The parties wish to transfer jurisdiction over certain City-owned
12 land to State to create State's East Bay Shoreline Project, and to provide
13 \$2,500,000 for stabilization and development of that property, and
14

15 The parties wish to provide for the responsibility and the
16 procedures for construction of improvements, operation, and maintenance of the
17 East Bay Shoreline Project land within the City of Albany.

18
19 In consideration of mutual covenants contained herein, the parties
20 to this agreement hereby agree as follows:

21
22 1. CITY hereby grants to STATE and STATE hereby accepts from CITY an
23 estate for years ("lease"), for a term of sixty-six (66) years beginning on
24 June 1, 1985 and ending on May 31, 2051, both dates inclusive, in the real
25 property in the City of Albany, County of Alameda, State of California,
26 described on Exhibit "A" attached (the site), which exhibit by this reference
27 is incorporated herein, without the obligation to pay rent therefor. The site

1 shall be used by STATE as a portion of its East Bay Shoreline Project for
2 purposes of the State Park System.

3
4 CITY reserves the right to enter said premises for any purpose
5 required to meet its obligation and duties under the Porter Cologne Water
6 Quality Control Act (Water Code Section 1300 et seq.) and to extent
7 applicable, the Federal Water Pollution Control Act Amendments of 1972
8 (Pub. L. No. 92-500, 86 Stats. 816 (1972); 33 USC Section 1251 et seq.) and to
9 comply with any and all requirements of all State and Federal authorities now
10 in force or which may be in force pertaining to conditions resulting from the
11 operation, maintenance, or use of the site prior to the beginning of the term
12 of this lease.

13
14 2. CITY agrees to construct and reconstruct, replace and maintain in
15 good repair during term of this lease, until STATE assumes responsibility for
16 operation of the project, at no cost to the STATE through CITY procedures an
17 access road across parcel "3" as described on Exhibit "A" and the road to the
18 Marina (see below) as shown on Exhibit "C". After assumption of operation by
19 STATE, costs of development and maintenance will be shared proportionately to
20 use allocated to marina and to other park use, unless STATE also operates
21 marina, in which case, STATE will pay all costs for road.

22
23 3. The STATE shall pay to the CITY not more than \$2,500,000 for design
24 and construction relative to the closing and sealing of the site. This
25 initial development shall consist of sea walls, filling, and grading of said

26 ---

27 ---

1 premises as necessary to close and seal the landfill located on the site, plus
2 basic public access as required by The Bay Conservation and Development
3 Commission.

4
5 4. It is the intent of the CITY and the STATE that actions and
6 expenditures under this agreement shall not be contrary to the provisions of
7 Sections 1(d) and (2) of Chapter 211, Statutes of 1919 as amended by
8 Chapter 1223, Statutes of 1977. To this end, the provisions of this agreement
9 for carrying out the Albany Waterfront Plan may be submitted to the State
10 Lands Commission in accordance with the procedures of Sections 3, 5, and 6(d)
11 of that Act.

12
13 5. CITY further agrees, (1) in exercising any reserved rights of
14 performing any work of access road provision, closure and sealing, or
15 operation and maintenance, to restore, at no cost to STATE, the surface of the
16 site and any damaged STATE improvements to the conditions which existed prior
17 to CITY's entry thereon for said purposes; (2) to carry out said work in a
18 manner that will cause the least interference with the use of the site by
19 STATE; and (3) to indemnify, hold harmless, and defend STATE, its officers,
20 agents, and employees against any liability, claims, demands, damages, costs,
21 expenses, and liability cost arising out of said work, entry, or exercise of
22 said reserved rights and said requirements, or in connection therewith,
23 including any claims, demands, damages, costs, expenses, and liability cost of
24 STATE to any tenant, concessionaire, contractor, or sublessee of said premises.

25
26 6. CITY may, by its own forces or by contract, undertake projects for
27 the development, construction, or improvement of the site, in accordance with

1 the General Plan for the East Bay Shoreline Project as approved by the State
2 Park and Recreation Commission. Plans and specifications for any such project
3 shall be submitted to STATE for approval. No such project shall be commenced
4 by CITY's own forces or contracts awarded prior to STATE approval of such
5 plans and specifications. STATE has the right to disapprove such plans and
6 specifications if not consistent with the General Plan or STATE standards.
7 Said development, construction, or improvement may be made by CITY only after
8 the State Park and Recreation Commission has approved the General Plan, except
9 for development contemplated by Public Resources Code Section 5002.(c). CITY
10 shall not, during the term of said lease, without prior written approval of
11 STATE, remove, move, demolish, or alter in any manner, any improvements,
12 natural features, or accretions existing on the site on the effective date of
13 this agreement or subsequently occurring.

14
15 7. CITY shall not be obligated to proceed further to carry out the work
16 described in paragraph 3 above (hereafter, "initial development") if the
17 lowest responsible bid (bids) it receives for said work exceeds the amounts
18 specified in paragraph 3, unless this contract is amended in writing to
19 increase said amounts. CITY may, but is not obligated under this contract,
20 use funds derived from other sources for said work.

21
22 8. STATE shall be under no obligation to pay any funds under this
23 agreement if the State Public Works Board or the State Department of Finance
24 do not authorize expenditures of funds for the initial development for
25 whatever reason. CITY shall not be obligated to proceed if said Public Works
26 Board or Department of Finance do not authorize said expenditure.

27 ---

1 9. After STATE has approved in writing the preliminary plans, and after
2 the Public Works Board and the State Department of Finance have authorized the
3 expenditure of funds for the initial development, CITY may request in writing
4 the advance of said funds for the purposes of constructing said initial
5 development and the STATE shall release said funds.

6
7 10. The initial development shall be constructed in accordance with the
8 working drawings approved in writing by STATE.

9
10 11. Fixtures and improvements erected on the site by CITY in accordance
11 with said working drawings approved by STATE hereunder shall on completion
12 become a part of the realty and shall be subject to the lease in paragraph 1
13 above.

14
15 12. STATE reserves the right, in addition to any other right it may
16 have, to inspect the work for the initial development and perform audits
17 during normal working hours at its discretion as needed to determine that
18 STATE's funds are being expended in accordance with the intent of this
19 agreement.

20
21 13. All materials, supplies, and equipment purchased with funds provided
22 by STATE for completion of the initial development which are not expended
23 shall be retained and accounted for by CITY for use in connection with further
24 development or disposed of as directed by STATE, at STATE's option. Proceeds
25 of any such disposal shall be paid to STATE upon demand by STATE.

26 ---
27 ---

1 14. In the event the actual cost to complete the initial development
2 does not exceed the amount advanced to CITY under this agreement, CITY shall
3 within ninety (90) days of completion of said work refund to STATE the
4 difference between the actual costs and the amount (including the interest
5 thereon) advanced to CITY under this agreement.

6
7 15. CITY shall use the funds (and any interest thereon) advanced under
8 this agreement solely for the initial development. CITY shall place the
9 monies advanced and the interest thereon in a separate interest-bearing
10 account.

11
12 16. A set of "as-built" drawings showing the type and location of all
13 improvements for the initial development made under this agreement will be
14 submitted to STATE within six (6) months of completion of said construction.

15
16 17. Said initial development shall be accomplished by CITY by the same
17 method and manner as for CITY projects. CITY shall strictly account for the
18 funds disbursed by STATE to CITY under this agreement. CITY shall maintain
19 satisfactory financial accounts, documents, and records relating to the cost,
20 disbursement, and receipts with respect to the work and the funds therefor and
21 shall make them available to STATE in CITY's offices for auditing at
22 reasonable times and shall retain them for three (3) years following the
23 completion of the work. The parties shall be subject to the examination and
24 audit of the State Auditor General for a period of three (3) years after final
25 payment or completion of work under this agreement.

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1 MARINA

2

3 18. CITY further reserves, subject to the terms set forth below, (a) the
4 right to construct, operate, maintain, reconstruct, repair, and replace a
5 marina (as hereinafter defined) on the real property described on Exhibit "B"
6 attached, which exhibit by this reference is incorporated herein, and (b) an
7 easement for a road for access to said marina and underground utilities
8 including, but not limited to, sewer, gas, water, telephone, and electric
9 power lines along the route designated on said Exhibit "B" and Parcel 3
10 referred to in Exhibit "A". For purpose of this paragraph, marina is defined
11 to mean: floating boat docks with utilities, onshore vehicle parking,
12 showers, restrooms, boat launching ramps, harbor master's office, utilities,
13 access roads, landscaping and irrigation, incidental dredging, breakwaters,
14 and riprap.

15

16 19. At all times during the term of this agreement, STATE may enter
17 concession agreements, in accordance with the General Plan, for facilities
18 such as are usually included in a marina, such as a chandlery, fish and bait
19 shop, restaurants, and other similar facilities, all as shown on the Albany
20 Waterfront Plan, attached as Exhibit "C".

21

22 20. The CITY agrees to pay, towards the maintenance and operation of the
23 total park facilities developed, all revenues from leases above and beyond
24 mutually agreed upon expenses, such as loan payments and necessary maintenance
25 costs. Revenues as used in this paragraph and this agreement do not include
26 general tax revenues flowing to the CITY, such as sales taxes, gas taxes, and
27 property taxes.

1 21. CITY shall keep true and accurate books and records showing all of
2 its business transactions in separate records of account for the marina
3 operation in a manner acceptable to STATE, and the STATE shall have the right
4 through its representative and all reasonable times, to examine such books and
5 records. CITY hereby agrees that all such records and instruments are
6 available to the STATE.
7

8 22. CITY will submit to the STATE, no later than sixty (60) days after
9 the close of each fiscal year, July 1 through June 30, during the term of this
10 lease and no later than sixty (60) days after the end of said term, or in the
11 event the marina operation is terminated, for the period not previously
12 reported, a profit and loss statement audited by a Certified Public Accountant
13 or Public Accountant licensed by the State of California. Said statement
14 shall contain an appropriate certification that all gross receipts during the
15 yearly accounting period covered by said statement shall have been duly and
16 properly reported to the STATE. The term "gross receipts", wherever used in
17 this contract, is intended to and shall mean all monies, property, or any
18 other thing of value received by CITY and any concessionaire or operator, if
19 other than CITY, through the operation of said marina or from any other
20 business carried on or upon said marina premises, or any portion thereof, or
21 from any other use of said marina premises or any portion thereof by CITY
22 without any deduction or deductions; it being understood, however, that the
23 term "gross receipts" shall not include any sales taxes, gas taxes, or
24 property taxes or similar taxes imposed by any governmental entity and paid to
25 the CITY, directly or indirectly.

26 ---
27 ---

1 23. CITY agrees to participate in the installation of necessary
2 utilities for marina purposes.

3

4 24. STATE agrees to allocate rental proceeds for concession agreements
5 entered under paragraph 19 above to development, maintenance, and operation of
6 the East Bay Shoreline Project including the marina, and to account for such
7 proceeds as provided for in paragraph 21.

8

9 OPERATIONS:

10

11 25. CITY shall be responsible for a period beginning on the date first
12 above appearing and ending on the last day of the term of said lease or the
13 date of service of the written notice of termination by STATE as specified in
14 paragraph 33 below, whichever occurs first, for the care, maintenance,
15 operation, and control of said premises for the purposes of the State Park
16 System. During said period, CITY shall pay all costs of maintaining,
17 controlling, and operating said property by the CITY for said purposes and
18 STATE shall not, during said period, be liable for the costs of said care,
19 maintenance, control, or operation. CITY may assign its rights to operate the
20 premises to another public agency upon its assumption of CITY's obligations
21 hereunder, and subject to STATE approval.

22

23 26. During the period of CITY's operation, maintenance, and control,
24 said premises shall, at all times, be accessible and subject to the use and
25 enjoyment of all citizens of the State of California, and all other persons
26 entitled to use and enjoy the same, subject, however, in the manner of such
27 use and enjoyment, to the control of CITY in conformity with this agreement.

1 CITY may adopt rules and regulations for the use and enjoyment of said
2 premises. Any such rules and regulations so adopted shall conform to and be
3 consistent with the rules and regulations adopted by STATE and generally
4 applicable to the State Park System, and the statutes applicable, specifically
5 including, but not limited to, Public Resources Code Sections 5080.30 and
6 following.

7
8 27. Any charges, fees, or collections made by CITY for services,
9 benefits, or accommodations to the general public, shall be limited to actual
10 needs for operation, maintenance, and control for said premises for the safety
11 and convenience of the general public in the use and enjoyment of said
12 premises and commercialization for profit shall not be engaged in by CITY.
13 The City Treasurer of City of Albany shall be the depository and have custody
14 of all money of City derived from whatever source from said premises during
15 said period.

16
17 28. No pesticides, herbicides, or fungicides may be used on the site or
18 the access road that are not approved in writing by STATE prior to use. Any
19 such use shall be in accord with STATE's policies thereon.

20
21 29. Subject to prior approval in writing by STATE, CITY may grant
22 concessions in or upon said property consistent with the use by the general
23 public thereof for the State Park System purposes to which it is classified.
24 The rights of the public to the use and enjoyment of said property shall
25 thereupon be limited by such concession agreements. All such concessions

26 ---

27 ---

1 shall be granted in substantial compliance with the general plan and Public
2 Resources Code Sections 5080.20, 5080.33, and 5080.34 and subject to the terms
3 of this agreement.

4
5 30. All income received and all expenditures made by the CITY in
6 relation to concessions, special services, and all other matters incident to
7 the operation, maintenance, and control of said premises shall be reported
8 annually to the STATE. All income and fees (excluding taxes as discussed
9 above) so received by CITY shall be used for operation, maintenance, and
10 control of said premises and on service of said notice of termination under
11 paragraph 33 below, the unencumbered balance thereof shall be transferred to
12 STATE for its use in connection with said premises. The books, records, and
13 accounts kept by City applying to the operation of said premises shall, at all
14 reasonable times, be open for audit or inspection by STATE.

15
16 31. The CITY shall not let, sublet, or grant any license or permit or
17 concession with respect to the use and occupancy of said premises or any
18 portion thereof, without the written consent of STATE first had and obtained.

19
20 32. It is further agreed and understood between the parties hereto that
21 any development, beach erosion control, or protection work which may be
22 undertaken by STATE or the United States of America, along or on said
23 property, in the manner provided by law or under the rules of STATE, shall
24 not, in any way, be construed as constituting a termination of this agreement
25 or in any way affecting same.

26 ---

27 ---

1 STATE shall have the right to enter into agreements for such work
2 during the term hereof and to go upon said property or to authorize any
3 person, firm, or corporation to go upon said property for the purpose of such
4 construction, beach erosion protection, or control work, or the doing of other
5 public work for the improvement or development of said property, provided that
6 STATE shall give CITY written notice of its intention to do any of the work
7 herein mentioned before such work is undertaken.

8
9 33. When the STATE shall determine that an integrated shoreline park has
10 been developed to its satisfaction linking said premises with the site of
11 The East Bay Shoreline Project located on land in the City of Berkeley, the
12 STATE shall serve written notice on CITY of the termination of CITY's rights
13 and/or duties to care for, maintain, operate, and control the site. At such
14 time as the STATE assumes the duties to care for, maintain, operate, and
15 control the site, the STATE shall indemnify, hold harmless, and defend CITY,
16 its officers, agents, and employees against any and all claims, demands,
17 damages, costs, expenses, and liabilities arising out of the STATE'S duties to
18 care for, maintain, operate, and control the site, except for liability
19 arising out of the concurrent or sole negligence of CITY, its officers,
20 agents, or employees, which claims, demands, or causes of action arise under
21 Government Code Section 895.2 or otherwise.

22
23 GENERAL PROVISIONS:

24
25 34. Discrimination against any person because of the race, color,
26 religion, sex, marital status, national origin, or ancestry of that person is
27 expressly prohibited.

1 35. CITY hereby waives all claims and recourse against the STATE,
2 including the right to contribution for loss or damage to persons or property
3 arising from, growing out of, or in any way connected with or incident to this
4 agreement except claims from the concurrent or sole negligence of STATE, its
5 officers, agents, and employees.
6

7 CITY shall indemnify, hold harmless, and defend STATE, its officers,
8 agents, and employees against any and all claims, demands, damages, costs,
9 expenses, and liabilities arising out of: (1) the acquisition, development,
10 or construction of the site described herein, (2) the care, maintenance,
11 operation, development, and control of said premises under paragraph 25 above,
12 (3) the development, construction, maintenance, control, and operation of the
13 marina, or (4) the condition, maintenance, or use prior to the beginning date
14 of said lease of the property described herein, except for (1) liability
15 arising out of the concurrent or sole negligence of STATE, its officers,
16 agents, or employees, which claims, demands, or causes of action arise under
17 Government Code Section 895.2 or otherwise.
18

19 In the event STATE is named as co-defendant in a legal action, under
20 the provisions of the Government Code Sections 810 et seq., and CITY is served
21 with process in such legal action, then CITY shall notify STATE of such fact
22 and if such action relates to other than negligent acts or omissions, in
23 respect to said property by STATE, CITY shall represent STATE in such legal
24 action unless STATE undertakes to represent itself as co-defendant in such
25 legal action in which event STATE shall bear its own litigation costs,
26 expenses, and attorney's fees.
27

1 In the event judgment is entered against STATE and CITY because of
2 the concurrent negligence of STATE and CITY, their officers, agents, or
3 employees, an apportionment of liability to pay such judgment shall be made by
4 a court of competent jurisdiction. Neither party shall request a jury
5 apportionment.

6
7 36. Any notice, demand, or request required or authorized by this
8 agreement to be given or made to or upon STATE shall be deemed properly given
9 or made if delivered by certified mail, postage prepaid, to State of
10 California, Department of Parks and Recreation, P.O. Box 2390, Sacramento,
11 California 95811.

12
13 37. The notice, demand, or request required or authorized by this
14 agreement to be made to or upon CITY shall be deemed properly given or made if
15 delivered by certified mail, postage prepaid, to City of Albany, Office of
16 City Administration, 1000 San Pablo Avenue, Albany, California 94706.

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38. All debts, liabilities, and obligations of the CITY shall be the debts, liabilities, and obligations of the CITY and not of the STATE.

CITY OF ALBANY
By: *Henry Kruse*
HENRY KRUSE, MAYOR
Date: June 25, 1985
By: _____
Date: _____

APPROVED:
DEPARTMENT OF GENERAL SERVICES

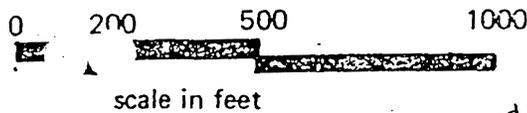
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FORM	POLICY	BUDGET
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Department of General Services
APPROVED
Elizabeth Yost
By *Elizabeth Yost*
OCT 22 1985
ELIZABETH YOST
Chief Executive Director

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
WM. S. BRINER, DIRECTOR
By: *Wm S Briner*
Title: DIRECTOR
Date: June 25, 1985

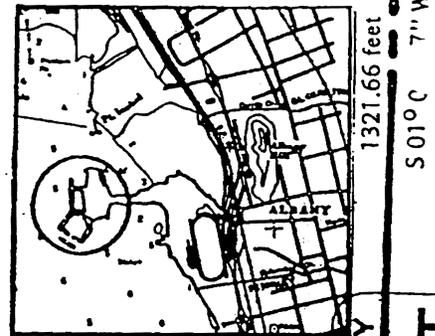
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409.57 feet

S 88° 51' 53" E

Alameda County Boundary N 75° 19' 34" E
Contra Costa County Boundary 1636.95 feet
Richmond City Boundary
Albany City Boundary



Vicinity Map

CITY OF ALBANY
Lease Parcels
EXHIBIT

Santa Fe Improvement Co.

City of Albany
PARCEL 1

N 01° 08' 07" E, 876.29 feet

S 88° 51' 53" E, 661.58 feet

N 01° 08' 07" E, 661.08 feet

Proposed PARK

Proposed CONCESSIONS

Proposed MARINA

State of California

661.05 feet

N 88° 51' 53" W

Santa Fe Improvement Co.

Proposed ACCESS

1322.17 feet

S 01° 08' 07" W

CITY OF ALBANY PARCEL 3

Santa Fe Improvement

Description of lands granted to the City of Albany by Ch. 1223/77 which affect Section 66656 of the Government Code:

Three parcels of tide and submerged lands situated in and adjacent to the bed of San Francisco Bay, Alameda County, State of California, more particularly described as follows:
PARCEL 1

COMMENCING at point "A" as shown on the Map of the Grant to the City of Albany, recorded July 24, 1963, in book 43 of Maps, page 12A, Alameda County Records, said point "A" having California Zone 2 coordinated of X = 1,469,703.82 feet and y = 511,851.40 feet, thence along the northerly boundary of said Grant S 74° 21' 53" E, 2573.92 feet to point "B" as shown on said map and being the TRUE POINT OF BEGINNING, thence continuing along the boundary of said grant the following ten courses as shown on map.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

PARCEL 2

BEGINNING at Point "J" as shown on said Map of Grant to the City of Albany, recorded July 24, 1963, said point "J" having California Zone 2 coordinates of x = 1,474,154.14 feet and y = 510,458.00 feet, thence along the boundary of said grant the following two courses as shown on map.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

PARCEL 3

All of that certain parcel of land described as Parcel 1 in deed to the City of Albany, recorded January 15, 1942, in Liber 4159, page 296, Alameda County Records.

N 88° 51' 53" W, 1550.05 feet

City of Albany
PARCEL 2

S 32° 12' 53" E, 1582.80 feet

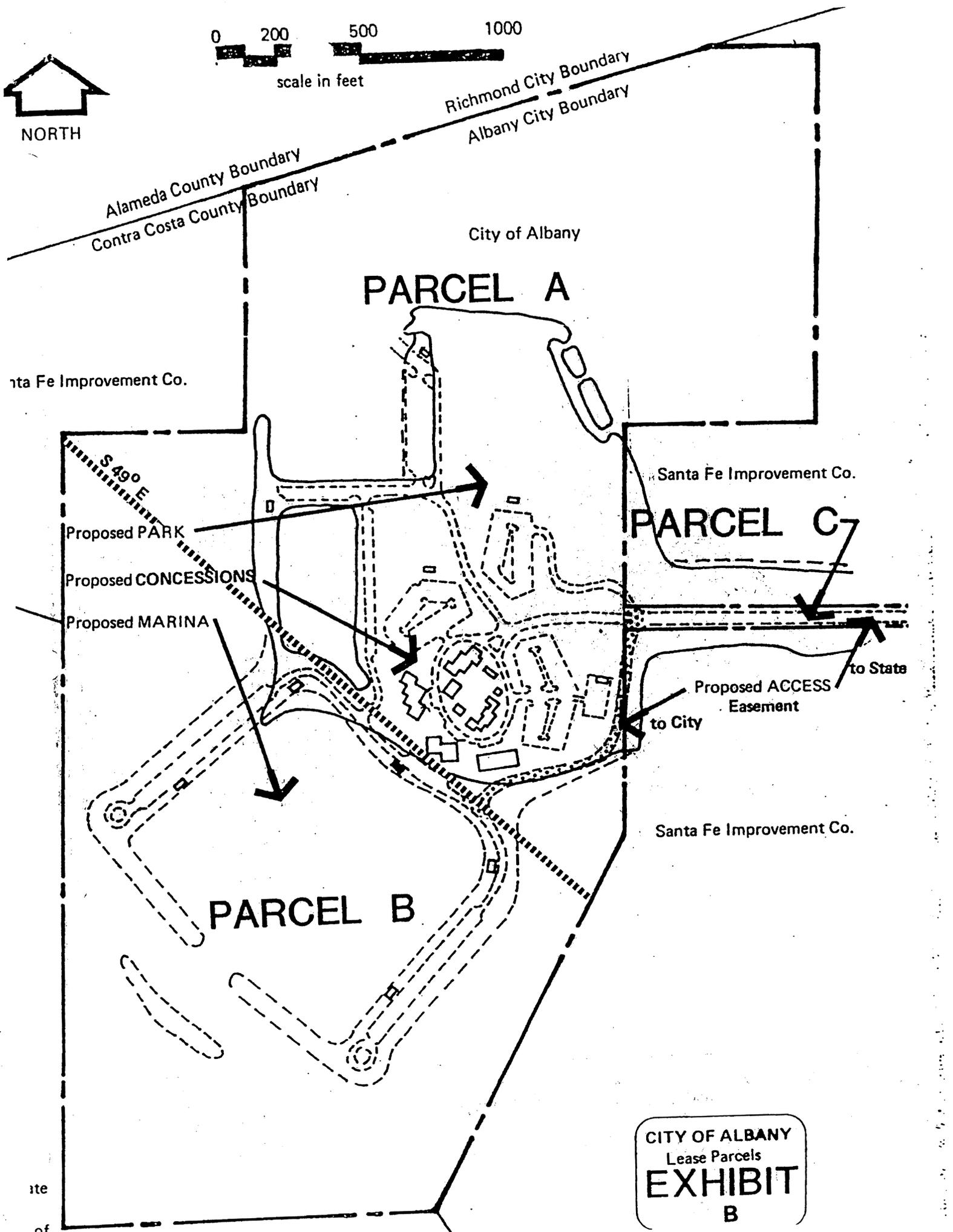
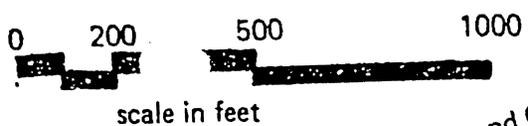
City of Albany

N 28° 20' 17" E, 1487.26 feet

N 88° 51' 53" W, 1305.22 feet

State

of California



Alameda County Boundary
Contra Costa County Boundary

Richmond City Boundary
Albany City Boundary

City of Albany

PARCEL A

Santa Fe Improvement Co.

Santa Fe Improvement Co.

PARCEL C

Proposed PARK

Proposed CONCESSIONS

Proposed MARINA

Proposed ACCESS Easement
to City
to State

Santa Fe Improvement Co.

PARCEL B

CITY OF ALBANY
Lease Parcels
EXHIBIT
B

ite
of
California



0 200 300

2-LANE LAUNCHING RAMP

INITIAL

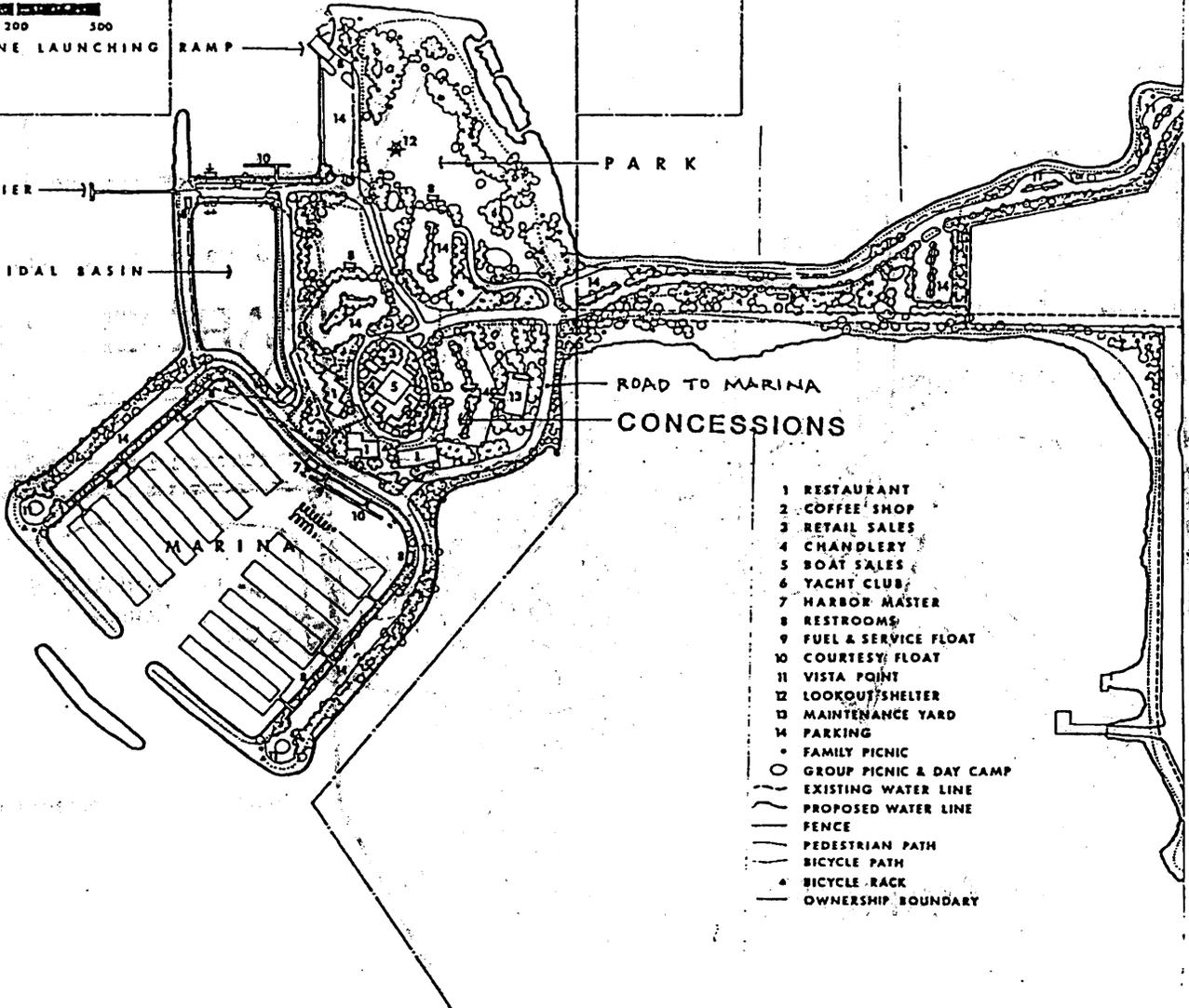
FISHING PIER

TIDAL BASIN

PARK

ROAD TO MARINA

CONCESSIONS



- 1 RESTAURANT
- 2 COFFEE SHOP
- 3 RETAIL SALES
- 4 CHANDLERY
- 5 BOAT SALES
- 6 YACHT CLUB
- 7 HARBOR MASTER
- 8 RESTROOMS
- 9 FUEL & SERVICE FLOAT
- 10 COURTESY FLOAT
- 11 VISTA POINT
- 12 LOOKOUT/SHELTER
- 13 MAINTENANCE YARD
- 14 PARKING
- FAMILY PICNIC
- GROUP PICNIC & DAY CAMP
- EXISTING WATER LINE
- - - PROPOSED WATER LINE
- FENCE
- PEDESTRIAN PATH
- BICYCLE PATH
- BICYCLE RACK
- OWNERSHIP BOUNDARY



City of Albany
PUBLIC WORKS DEPT.

ALBANY
WATERFRONT
PLAN

DRAWN

RSG

APPVD.

DATE/REV.

5-85

EXHIBIT

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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 KATHERINE CODY; PATRICIA MOORE;
17 ROBERT WHARTON; APRIL ANTHONY;
LARRY CABRERA; JOSEPH ROSE;
18 STEPHANIE RINGSTAD; ALEXANDER
RICHARD WILSON, TAMARA ROBINSON,
19 PHILIP WILLIAM LEWIS and ALBANY
HOUSING ADVOCATES, a California non-
20 profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
DEPARTMENT; and MIKE MCQUISTON, in
24 his official capacity as Chief of Police,

25 Defendants.

CASE NO.

**PLAINTIFFS' EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date:
Time:
Department:
Judge:

Complaint Filed:



TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION.....1

II. THE CITY PLANS TO START EVICTING RESIDENTS, SEIZING BELONGINGS AND DEMOLISHING SHELTERS IN LESS THAN TEN DAYS2

III. THE BALANCE OF THE HARDSHIPS TIPS SHARPLY IN FAVOR OF ISSUING A TEMPORARY RESTRAINING ORDER.....3

 A. If The TRO Is Denied, The Bulb Residents Will Suffer Physical and Psychological Hardship, Criminalization of Their Status, and the Destruction of Their Only Homes4

 1. The Bulb Offers Its Residents Shelter, Privacy and Safety4

 2. The City’s Evacuation of the Bulb, and Its Unsuitable Temporary Trailers, Put the Residents’ Health in Jeopardy6

 3. Apart from the Temporary Trailers, Albany Offers No Alternative Shelter or Affordable Housing8

 4. The City’s Plan Will Result in the Summary Demolition of Homes and the Deprivation of Bulb Residents’ Basic Rights to Privacy and Due Process.....9

 5. Displaced to the Streets, Albany’s Homeless Population Faces Arrest, Imprisonment, and Physical Assault as well as Dire Threats to their Mental and Physical Health10

 B. If The TRO Is Granted, the City’s Hardship Will Be Minor, and the Public Interest Will Not Be Significantly Affected.....10

IV. THE LOSS OF THEIR SHELTER AND COMMUNITY WILL CAUSE THE BULB RESIDENTS IRREPARABLE HARM12

 A. The City’s Threatened Constitutional Violations Are Irreparable Injuries in Themselves.....12

 B. The Residents Will Suffer Irreparable Harm to Their Health and Property12

V. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS13

 A. The City’s Plan Violates the Eighth Amendment Because It Criminalizes the Status of Homelessness.....14



TABLE OF CONTENTS
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

B.	The City’s Plan Violates the Americans With Disabilities Act, Since Its Temporary Shelters Cannot Accommodate Physically and Mentally Impaired Bulb Residents	16
C.	Enforcement of the City’s Ordinance Violates Substantive Due Process by Knowingly Subjecting the Bulb Residents to Danger to their Physical Health and Safety	19
D.	The City’s Plan Will Result in the Summary Demolition of the Residents’ Shelters Without Hearing and therefore Violates the Due Process Clause of the Fourteenth Amendment.....	20
E.	The City’s Plan Illegally Burdens Plaintiffs’ Constitutional Rights to Privacy	22
VI.	PLAINTIFFS SHOULD NOT BE REQUIRED TO POST BOND	24
VII.	CONCLUSION.....	25



TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Alaska v. Native Vill. of Venetie,
856 F.2d 1384 (9th Cir. 1988)..... 3

Alliance for Wild Rockies v. Cottrell,
632 F.3d 1127 (9th Cir. 2012)..... 13

Associated General Contractors v. Coalition For Economic Equity,
950 F.2d 1401 (9th Cir. 1991)..... 12

CALHO v. City of Santa Monica,
88 Cal. App. 4th 451 (2001)..... 23

California ex rel. Van De Kamp v. Tahoe Regional Planning Agency,
766 F.2d 1319 (9th Cir. 1985), *modified*, 775 F.2d 998 (9th Cir. 1985) 25

Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills,
321 F.3d 878 (9th Cir. 2003)..... 24

DeShaney v. Winnebago County Dep't of Soc. Serv.,
489 U.S. 189 (1989) 19

Dickey v. Florida,
398 U.S. 30 (1970) 14

Dunlap v. Ass'n of Bay Area Gov'ts,
996 F. Supp. 962 (N.D. Cal. 1998) 17

Sanchez, 914 F. Supp. 2d at 1062 20

Fuentes v. Shevin,
407 U.S. 67 (1972) 22

Ground Zero Ctr for Nonviolent Action v. U.S. Dep't. of the Navy,
918 F. Supp. 2d 1132 (W.D. Wash. 2013)..... 11

Hill v. NCAA,
7 Cal. 4th 1 (1994) 23

Ingraham v. Wright,
430 U.S. 651 (1977) 14, 19

Johnson v. City of Dallas,
860 F. Supp. 344 (N.D. Tex. 1994), *rev'd on standing grounds*, 61 F.3d 442 (5th Cir.
1995) 14



TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Jones v. City of Los Angeles</i> ,	
4	444 F.3d 1118 (9th Cir. 2006) (“ <i>Jones</i> ”), vacated by settlement, 505 F.3d 1006 (9th Cir. 2007)	14, 15, 16
5	<i>Jorgensen v. Cassidy</i> ,	
6	320 F.3d 906 (9th Cir. 2003).....	25
7	<i>Kennedy v. City of Ridgefield</i> ,	
8	439 F.3d 1055 (9th Cir. 2006).....	19
9	<i>Kincaid v. City of Fresno</i> ,	
10	2006 WL 3542732 (E.D. Cal. Dec. 8, 2006).....	9, 21
11	<i>Lands Council v. McNair</i> ,	
12	537 F.3d 981 (9th Cir. 2008) (<i>en banc</i>)	13
13	<i>Lavan v. City of Los Angeles</i> ,	
14	693 F.3d 1022 (9th Cir. 2012) (“ <i>Lavan IP</i> ”).....	passim
15	<i>Lavan v. City of Los Angeles</i> ,	
16	797 F. Supp. 2d 1005 (C.D. Cal 2011) (“ <i>Lavan P</i> ”), affirmed, 693 F.3d 1022 (“ <i>Lavan IP</i> ”).....	9, 12
17	<i>McGary v. City of Portland</i> ,	
18	386 F.3d 1259 (9th Cir. 2004).....	18, 19
19	<i>Miller v. Carlson</i> ,	
20	768 F.Supp. 1331 (N.D. Cal. 1991)	25
21	<i>Minard Run Oil Co. v. U.S. Forest Serv.</i> ,	
22	670 F.3d 236 (3d Cir. 2011).....	11
23	<i>Monterey Mech. Co. v. Wilson</i> ,	
24	125 F.3d 702 (9 th Cir. 1997).....	12
25	<i>Munger v. City of Glasgow Police Dept.</i> ,	
26	227 F.3d 1082 (9th Cir. 2000).....	20
27	<i>Native Songbird Care & Conservation v. Lahood</i> ,	
28	2013 U.S. Dist. LEXIS 93120 (N.D. Cal. July 2, 2013).....	10
	<i>Nken v. Holder</i> ,	
	556 U.S. 418 (2009).....	10, 11
	<i>Orantes-Hernandez v. Smith</i> ,	
	541 F. Supp. 351 (C.D. Cal. 1982).....	25



TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Porto v. City of Laguna Beach,</i>	
4	2013 WL 2251004 (C.D. Cal. May 21, 2013)	15
5	<i>Pottinger v. City of Miami,</i>	
6	810 F.Supp. 1551 (S.D. Fla. Nov. 16, 1992).....	passim
7	<i>Powell v. Texas,</i>	
8	392 U.S. 514 (1968).....	14, 15
9	<i>Robbins v. Super. Ct.,</i>	
10	38 Cal.3d 199 (1985)	22, 23, 24
11	<i>Robinson v. California,</i>	
12	370 U.S. 660 (1962).....	14, 15
13	<i>Rocky Mountain Farmers Union v. Goldstene,</i>	
14	843 F. Supp. 2d 1071 (E.D. Cal. 2011), <i>aff'd in part and rev'd in part on other grounds</i>	
15	<i>sub nom. Rocky Mountain Farmers Union v. Corey,</i> 730 F.3d 1070 (9th Cir. 2013).....	12
16	<i>Rodde v. Bonta,</i>	
17	357 F.3d 988 (9 th Cir. 2004).....	13, 18
18	<i>Sanchez v. City of Fresno,</i>	
19	914 F. Supp. 2d 1079 (E.D. Cal. 2012).....	5, 20
20	<i>Sierra On-Line, Inc. v. Phoenix Software, Inc.,</i>	
21	739 F.2d 1415 (9th Cir. 1984).....	3
22	<i>State v. Mooney,</i>	
23	218 Conn. 85 (1991)	10, 12, 23
24	<i>Ticketmaster L.L.C. v. RAG Techs., Inc.,</i>	
25	507 F. Supp. 2d 1096 (C.D. Cal. 2007).....	24
26	<i>Tobe v. Santa Ana,</i>	
27	9 Cal. 4th 1069 (1995)	14
28	<i>U.S. v. Sandoval,</i>	
	200 F.3d 659 (9th Cir. 2000).....	23
	<i>United States v. James Daniel Good Real Prop.,</i>	
	510 U.S. 43 (1993).....	20
	<i>United States v. James Daniel Good Real Prop.,</i>	
	510 U.S. at 53.....	21, 22



TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Winter v. Natural Res. Def. Council, Inc.</i> ,	
4	555 U.S. 7, 129 S.Ct. 365 (2008).....	4
5	<i>Wood v. Ostrander</i> ,	
6	879 F.2d 583 (9th Cir. 1977).....	19
7	STATUTES	
8	28 CFR § 35.150.....	16
9	42 U.S.C. § 12102.....	17
10	Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 <i>et seq.</i>	passim
11	Cal. Code Regs. tit. 22 § 98250 <i>et seq.</i>	16
12	Cal. Gov't Code § 11135(b).....	16
13	Cal. Gov't Code § 11135 <i>et seq.</i>	16
14	Cal. Penal Code § 647.....	15
15	Cal. Penal Code §§ 647(e) and 647c.....	15
16	Cal. Penal Code § 647c.....	15
17	Albany Municipal Code ch. 12	21
18	Albany Municipal Code Section 8-4.....	17, 19
19	Albany Municipal Code section 8-4.....	2
20	Albany Municipal Code section 8-4.4.....	2
21	Albany Municipal Code §§ 12-5 and 18.1-12	22
22	Albany Municipal Code Section 647(e).....	15
23	OTHER AUTHORITIES	
24	Cal. Const. art. 1, § 1.....	2
25	Federal Rule of Civil Procedure 65.....	2
26	Federal Rule of Civil Procedure 65(c)	24, 25
27	Fourteenth Amendment.....	5, 19, 20
28		



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Local Rules 65-1 and 7-10	2
<i>Options for Ending Homelessness in Albany, available at</i> http://albanyca.granicus.com/MetaViewer.php?	24
U.S. Const. amend. IV, VIII and XIV	2
U.S. Const., amend. VIII	12, 14, 15



1 **I. INTRODUCTION**

2 Plaintiffs seek a temporary restraining order and preliminary injunction to stop the City of
3 Albany from evicting residents from their homes on the Albany Bulb, the 40 acre tip of an
4 overgrown landfill jutting into the San Francisco Bay where they have lived as a community for
5 many years. If the City is allowed to proceed, the Bulb residents face a grim choice: leave town,
6 stay for a few months in emergency communal portables, or face arrest sleeping in doorways or on
7 city streets. Once they have moved out, the City will seize and clear away their remaining
8 possessions, keeping them for collection for a limited time; it will then summarily destroy their
9 shelters, denying them the elementary due process that it would grant to any other resident whose
10 home it seeks to demolish.

11 Plaintiffs are homeless, as are the 50 or so other people the City plans to evict. Some have
12 lived on the Bulb for fourteen years or more. It offers them physical safety, protection from the
13 elements, and a sense of pride and self-sufficiency that they could not find anywhere else. They
14 especially value the privacy and seclusion of their shelters—the closest thing to homes that they
15 have—which they have taken much time and effort to build. Like other chronically homeless
16 people all over the country, many Bulb residents suffer from physical and mental disorders which
17 make ordinary living a constant struggle. At the Bulb, they have the stability, privacy and social
18 support they need to help them get through the day.

19 The City now plans to uproot this long-established community. In exchange for the
20 demolition of their shelters, it offers the Bulb residents six months' emergency accommodation:
21 two communal trailers have been parked near the entrance to their former home on the Bulb, with
22 room for thirty people to sleep on bunk beds, supervised by an outside contractor. For the Bulb's
23 disabled and mentally ill residents, these conditions are not only unsuitable, but dangerous. Some
24 have weak immune systems which would make them acutely vulnerable to tuberculosis and other
25 infectious diseases. For others, living in close quarters would trigger their psychological disorders,
26 damage their emotional stability, or bring back traumatic experiences of being housed in
27 institutions. But even if the City's accommodation were remotely adequate, at least 30 residents
28 will nevertheless be turned away, since there is no room for them. If their homes are destroyed,



1 most Bulb residents will be forced to sleep in doorways and on sidewalks, where they will face
2 arrest, physical violence, and exposure to the winter weather.

3 Cities in the Bay Area usually have some space, however limited, where homeless people
4 can find shelter. Albany has none: there is not a single shelter bed, transitional house, or available
5 unit of low-income subsidized housing in the entire city. Instead, it has treated the Bulb as its *de*
6 *facto* homeless shelter. Police officers have threatened homeless people with criminal sanctions
7 unless they move to the Bulb. For fourteen years, the City has allowed and encouraged homeless
8 people to move there. Its new plan puts a stop to that. Homelessness in Albany will be effectively
9 criminalized: apart from the City's inadequate temporary shelters, there will be nowhere for a
10 homeless person to sleep in Albany without risking citation, arrest and prosecution.

11 Pursuant to Federal Rule of Civil Procedure 65 and Local Rules 65-1 and 7-10, Plaintiffs
12 move *ex parte* to halt the eviction of the Bulb residents. A temporary restraining order and
13 preliminary injunction are necessary to protect the fundamental rights of Plaintiffs and other
14 homeless residents of Albany under the Fourth, Eighth and Fourteenth Amendments to the United
15 States Constitution, Article I, section I of the California Constitution, and state and federal law.

16 **II. THE CITY PLANS TO START EVICTING RESIDENTS, SEIZING BELONGINGS** 17 **AND DEMOLISHING SHELTERS IN LESS THAN TEN DAYS**

18 On May 6, 2013, the Albany City Council voted to begin enforcing section 8-4 of the
19 Albany Municipal Code (“the ordinance”), which forbids, among other things, camping and
20 lodging on public land, reversing its longstanding policy of non-enforcement.¹ (Request for
21 Judicial Notice (“RJN”, Exh. 5 § 7-1.) Their principal target was the community of about 60

22 ¹ Albany Municipal Code section 8-4.4 provides:

23 No person shall loiter, camp or lodge in any park, recreation, open space,
24 waterfront or Albany Hill area. No person shall set up tents, shacks, sleeping
25 bags or any other shelter within any park, recreation, open space, waterfront
26 or Albany Hill area for the purpose of overnight camping. No person shall
27 leave any tents, shacks, sleeping bags or any other shelter, structure or
28 specialty vehicle to be used or could be used [sic] for overnight camping,
including but not limited to house trailers, camp trailers, camp wagons, and
any other mobile or stationary camper in any park, recreation, open space,
waterfront or Albany Hill area. The restrictions contained within this section
shall not apply to programs sponsored or co-sponsored by the City.



1 homeless people living on the Albany Bulb. Whitson, ¶16. The City also entered into a \$30,000
2 contract with Berkeley Food and Housing Project (“BFHP”) for outreach and engagement services
3 to homeless people.

4 At a council meeting four months later, the Council heard BFHP’s progress report on
5 “Albany Project HOPE,” its housing program for Bulb residents. (RJN, Exh. 6 § 8–2.) Out of 33
6 residents assessed, none had been housed. (Whitson ¶ 12, Exh. A) BFHP’s Director of Client
7 Services explained that more time was needed. (See RJN, Exh. 6 § 8–2.) Nevertheless, the City
8 Council re-affirmed its decision to evict the Bulb residents the following month. It also awarded
9 BFHP another \$30,000, renewing its contract until the end of the year. (*Id.* §§ 8–1, 8-2.) In
10 October, the City issued a press release indicating that BFHP had succeeded in housing one
11 person. (RJN Exh. 15.)

12 On October 21, 2013, the City Council passed a final resolution to evict homeless residents
13 from the Bulb. (RJN Exh. 16 § 8–1.) It appropriated \$570,000 for this purpose: of that sum,
14 \$2,890 is to be spent on temporary storage of property, and \$46,480 for the rental of thirty-four
15 dumpsters—more than half a dumpster for each resident. (RJN, Exh. 14.)² The communal trailers
16 have now been put in place, and will be ready as soon as November 15, 2013. (Whitson ¶ 20.) At
17 that point, the City intends to put its plan into action. (*Id.*)

18 **III. THE BALANCE OF THE HARDSHIPS TIPS SHARPLY IN FAVOR OF ISSUING** 19 **A TEMPORARY RESTRAINING ORDER**

20 A temporary restraining order, like a preliminary injunction, is a way to preserve the status
21 quo and prevent irreparable injury to a party before judgment. *Sierra On-Line, Inc. v. Phoenix*
22 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). In the Ninth Circuit, the standard for
23 obtaining both forms of relief is the same. *See Alaska v. Native Vill. of Venetie*, 856 F.2d 1384,
24 1389 (9th Cir. 1988). Plaintiffs are entitled to both a restraining order and a preliminary injunction

25 ² Plaintiffs’ counsel put forward an alternative proposal to the City which was rejected by the City
26 Council into a vote at its October 21, 2013 meeting. Plaintiffs had proposed that the money being
27 appropriated for the purchase of trailers and the operation of the shelter for six months instead be
28 directed to housing subsidies to be utilized by Bulb residents to allow them access to affordable
housing. Plaintiffs’ complete proposal is attached to the Request for Judicial Notice as Exhibit 19.



1 if they can show that (1) irreparable harm is likely; (2) the balance of hardships tips in favor of
2 issuing an injunction; (3) that success on the merits is likely; and (4) that an injunction is in the
3 public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 374
4 (2008). In the 9th Circuit, the second and third factors are judged on a “sliding scale;” the greater
5 the hardship to the Plaintiffs, the lesser the required showing of success on the merits to obtain a
6 preliminary injunction.

7 In this case, the balance of the hardships is clear. On one side of the scales is the City’s
8 administrative inconvenience in delaying its plans; an injunction would not compel it to take any
9 positive action, and it is no more injured by the continued presence of the Bulb residents than it
10 has been for the past fourteen years. On the other side are the Bulb residents’ most basic rights: the
11 right to privacy in their homes on the Bulb, the right to due process before their homes are
12 destroyed, and the right not to be criminalized for sleeping and sheltering from the winter
13 weather. The inadequacy of the City’s alternative temporary shelters also puts their mental health
14 and physical safety at risk.

15 **A. If The TRO Is Denied, The Bulb Residents Will Suffer Physical and**
16 **Psychological Hardship, Criminalization of Their Status, and the Destruction**
17 **of Their Only Homes**

18 The hardship the Bulb residents would suffer if the TRO is denied can best be seen by
19 comparing how they are living now with how they will be forced to live after the City carries out
20 its plan.

21 **1. The Bulb Offers Its Residents Shelter, Privacy and Safety**

22 The City puts it best: Plaintiffs are part of a “small, dedicated community that loves this
23 ‘wild’ little peninsula.” (RJN Exh. 12.) The residents feel safe and welcome in the neighborhood
24 they have established together over the years. (*See, e.g.*, Declaration of Edward Choate III
25 (“Choate”) ¶ 6; Declaration of Robert Wharton (“Wharton”) ¶ 12.) As resident Philip Lewis puts
26 it, “I feel like the people on the Bulb are my family. This is a safe place for me to live . . . I think
27 of the Bulb as my home.” (Declaration of Philip William Lewis (“Lewis”) ¶ 6.) The residents help
28 each other in numerous small ways: when one resident’s disability forces him to lie down all day,
his brother and friends bring him food and drink. (Declaration of Joe Rose (“Rose”) ¶ 10.) Other



1 residents clean up the land, extract and recycle rebar and other metal debris, and pick up trash.
2 (See Declaration of Marc Gordon Mattonen (“Mattonen”) ¶ 7; Declaration of Patricia Moore
3 (“Moore”) ¶ 5; Declaration of Thomas Barnett (“Barnett”) ¶ 5.) One resident, Bob Anderson, has
4 built a small gym for residents to use. (Declaration of Bob Anderson (“Anderson”) ¶ 7); another
5 manages a small library, which the residents have put together and which has been running for
6 more than ten years (Declaration of Julie Sutton (“Sutton”) ¶ 6). The residents have also set up a
7 “share box” that contains clothing items, cooking items, personal items that residents donate for
8 others to take for free. (Whitson ¶ 17.)

9 Residents take pride in the shelters they have built. Some are simple tents (*see, e.g.*
10 Declaration of April Anthony (“Anthony”) ¶ 5); others are more elaborate structures, built out of
11 wood, pallets, canvas, and chunks of concrete (*see, e.g.*, Declaration of Danielle Evans (“Evans”)
12 ¶ 5; Moore ¶ 6). They are built not just for sleeping, but also for working, socializing, preparing
13 meals, storage of valuables and privacy from the outside world. (*See e.g.*, Moore ¶ 6; Barnett ¶ 6-
14 8; Lewis ¶ 7.) One resident describes the process of building her shelter: “[o]ur place at the Bulb
15 began as a ‘tent’ but very soon grew into a ‘home.’ . . . We made a little kitchen and slowly began
16 creating a habitable home, insulating it for the winter, making it as rainproof as possible, and
17 adding rooms to make it comfortable and warm. . . . [It] not only meets our daily needs but
18 provides us with security, peace of mind, and a degree of wellness and happiness that I never
19 expected. (Evans ¶ 4.) Their rights in these shelters, and the property they contain, are recognized
20 and protected by the Fourteenth Amendment. *See Lavan v. City of Los Angeles*, 693 F.3d 1022,
21 1032 (9th Cir. 2012) (“*Lavan II*”); *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079 (E.D. Cal.
22 2012).

23 The residents have also contributed to the City’s cultural life. As the City’s website notes,
24 the Bulb “is home to a vast array of urban art including mural, stencil, graffiti, sculpture, and
25 installation art.” (RJN, Exh. 12.) Some of these pieces were produced by homeless residents. The
26 City itself describes one resident’s installation as a “landmark.” (*Id.*) (“Another Bulb landmark,
27 referred to as the ‘Castle,’ is a large concrete, rebar and plaster shelter which sits on the south west
28 corner of the Bulb, directly opposite the Golden Gate Bridge.”) This castle—built fifteen years



1 ago by current resident Marc Mattonen—has featured in the local press, and appears as a tourist
2 attraction on Google Maps.

3 Although the Bulb is their home, none of the residents have come here by choice. Some
4 have lost their houses to foreclosure or to family disputes. (*See, e.g.*, Rose ¶ 3, Declaration of
5 Stephanie Ringstad (“Ringstad”) ¶ 3, Declaration of Larry Cabrera (“Cabrera”) ¶ 3.) Many have
6 struggled in vain to find employment. (*See e.g.*, Declaration of Glenn Bachelder (“Bachelder”) ¶
7 2; Choate ¶ 3 (former serviceman); Declaration of David Justus (“Justus”) ¶ 3 (tool and die maker,
8 qualified graphic designer); Ringstad ¶ 3 (graphic designer and administrative assistant).) Some
9 have lost their jobs because of physical disability or mental illness. (*See e.g.*; Cabrera ¶ 6
10 (asbestosis).) And some have experienced profound traumas: a stabbing assault, followed by a
11 blood transfusion contaminated with hepatitis C (*see* Declaration of Katherine Cody ¶¶ 10-12);
12 multiple gunshot wounds (*see* Declaration of Don Bowen (“Bowen”) ¶ 9); sexual assault (*see*
13 Ringstad ¶ 4); a childhood spent in juvenile halls and mental institutions (*see* Moore ¶ 11); and the
14 loss of a husband and a teenage son in a boating accident (*see* Moore ¶ 6). All of them have found
15 comfort and support in the Bulb’s social network.

16 **2. The City’s Evacuation of the Bulb, and Its Unsuitable Temporary** 17 **Trailers, Put the Residents’ Health in Jeopardy**

18 The City plans to evict residents from the Bulb, seize their possessions and demolish their
19 shelters.³ To compensate them for their loss, the City offers thirty beds in two portable trailers, for
20 a period of six months. (RJN, Exh. 14.) These portables are not only inadequate to meet the Bulb
21 residents’ basic needs: they are dangerous to their health. Dr. Barry Zevin, a physician with
22 twenty-five years of experience studying and treating homeless communities, points out a clear
23 public health risk which the City’s plan has overlooked: the risk of a tuberculosis outbreak.
24 (Declaration of Dr. Barry Zevin (“Zevin”) ¶¶ 12-14.) It is particularly acute in the case of residents
25 who are already immunosuppressed and vulnerable to disease. (*Id.* ¶ 14.) Tamara Robinson, a 23-
26 year-old resident with AIDS and hepatitis C, cannot sleep in communal trailers for fear of
27 becoming sick. (Declaration of Tamara Robinson (“Robinson”) ¶ 11.) The same is true for Don

28 ³ The City, through its vendor, has also offered at least one Bulb resident a one-way ticket out of town. (Cabrera , ¶ 8)



1 Bowen, a resident with terminal liver disease induced by hepatitis C: a simple cold could lead to
2 influenza, or worse. (Bowen ¶¶ 9-12.) Other residents have similar health problems. (Cody ¶¶ 10-
3 14; Robinson ¶ 11; Zevin ¶ 14.) Dr. Zevin further explains the impossibility of ventilating the
4 communal trailers adequately without making the shelters either too cold to sleep in, or
5 prohibitively expensive to run. (Zevin ¶¶ 13-14.) Other Plaintiffs experience significant physical
6 disabilities, including a hip injury which impairs mobility and requires daytime rest (Rose ¶¶ 10-
7 11), and lung disease (Cabrera ¶¶ 6, 16.). Finally, some Bulb residents utilize service animals
8 which would not be allowed in the shelter. (Wilson ¶¶ 10, 14, Exh. B.) Alexander Wilson, for
9 example, has a service dog that helps prevent seizures and alert him if a seizure is coming. (*Id.* ¶
10 10.)

11 In addition, many Bulb residents, including Plaintiffs, suffer from mental disabilities which
12 foreclose their ability to utilize the shelter or threaten for further harm their mental health if they
13 do. (Zevin ¶¶ 15-17.) Lesleigh Franklin, Ph.D., a licensed clinical psychologist, has made several
14 diagnoses. (Franklin ¶¶ 1-5.) They include post-traumatic stress disorder (*id.* ¶ 11), attention-
15 deficit hyperactivity disorder (*id.* ¶ 10), major depressive disorder (*id.* ¶¶ 9, 11, 12), and antisocial
16 personality traits such as paranoia (*id.* ¶ 9). Dr. Franklin explains that the shelters would induce
17 “decompensation” (*id.* ¶ 14), aggressive and violent outbursts (*id.* ¶ 9), difficulty interacting with
18 other residents (*id.* ¶ 10), the re-experiencing of past trauma (*id.* ¶ 11), and many other ill-effects.
19 Even if the City’s temporary shelters could find room for them, these disturbing symptoms make it
20 doubtful that they could be accommodated for long. (Zevin ¶ 15.)

21 Moreover, Phillip Lewis has previously been diagnosed with schizoid personality disorder
22 and depression (Lewis ¶¶ 11); others have been diagnosed with post-traumatic stress disorder
23 (“PTSD”), depression and/or psychosis (Wharton ¶ 10), (Franklin ¶ 11) (Zevin ¶ 16); April
24 Anthony with bipolar disorder, anxiety and depression (Anthony ¶ 8); Stephanie Ringstad with
25 depression (Franklin ¶ 12). A number of Bulb residents suffer from claustrophobia and related
26 anxiety disorders (Declaration of Alexander Wilson (“Wilson”) ¶¶ 5, 9, 14-15; Barnett ¶¶ 9, 11),
27 making a shelter composed of bunk beds in confined quarters unsuitable. (Franklin ¶¶ 8, 14.)
28



1 long waiting lists for subsidized housing, make the search almost impossible. (*See, e.g.*, Rose ¶ 7–
2 8; Declaration of Joseph Walter Jr. (“Walter”) ¶ 8; Moore ¶ 12.) The BFHP have often promised
3 to find housing for Bulb residents, but have not been successful . (Anthony ¶¶ 11-12; Wilson ¶ 13;
4 Whitson ¶ 11.) The apartments it has offered mostly rent for \$600 per month, far beyond the
5 residents’ means. (*Id.*) The challenge is so great that a BFHP caseworker tasked with finding
6 housing for the Bulb residents has told them that she cannot even find housing herself. (Anderson
7 ¶¶ 8-9.) There are models which have been successful in moving homeless individuals into
8 housing. (*See* Zevin ¶¶ 28-34.) These models require time, more time than has been allotted so far,
9 and money for the appropriate staff to build trust with the population it is seeking to serve, more
10 than the \$60,000 allocated to BFHP for its program. (*Id.*; Cheema ¶¶ 11, 16.)

11 **4. The City’s Plan Will Result in the Summary Demolition of Homes and**
12 **the Deprivation of Bulb Residents’ Basic Rights to Privacy and Due**
13 **Process**

14 The City’s guidelines for enforcing the ordinance call for the demolition of shelters and the
15 seizure of property, to be stored for a limited time. (RJN Exh. 18.) Many residents are reminded of
16 the City’s previous crackdowns on the Bulb community, when “items were littered on the ground
17 and everything had been bulldozed and thrown in the dumpster.” (Cody ¶ 3). Recent decisions
18 have shown the increasing awareness of homeless people’s property interest in their shelters and
19 belongings: “value is in the eye of the beholder . . . one man’s junk is another man’s treasure.”
20 *Kincaid v. City of Fresno*, 2006 WL 3542732, at *379 (E.D. Cal. Dec. 8, 2006) (citing *Pottinger v.*
21 *City of Miami*, 810 F.Supp. 1551, 1556 (S.D. Fla. Nov. 16, 1992)). The City’s history of enforcing
22 the ordinance does not bode well. One resident recalls: “[t]he city had people plow over all of our
23 belongings. My camp, stove, and clothes were totally destroyed.” (Bachelder ¶ 2.) Perhaps the best
24 evidence of what the City plans to do with property on the Bulb is its own clean-up budget: it has
25 allocated fifteen times more money on trash disposal than on property storage.

26 Homeless people’s property, however meager it may seem to an outsider, often
27 “represent[s] everything they own.” *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1016
28 (C.D. Cal 2011) (“*Lavan I*”), *affirmed*, 693 F.3d 1022 (“*Lavan II*”); *accord Pottinger*, 810 F.Supp.
at 1559 (“a homeless person’s personal property is generally all he owns; therefore, while it may



1 look like ‘junk’ to some people, its value should not be discounted.”). Their shelters usually serve
2 as their “last shred of privacy from the prying eyes of outsiders.” *Lavan II* (quoting *State v.*
3 *Mooney*, 218 Conn. 85 (1991)). The hardship the Bulb residents will suffer from the City’s plan is
4 comparable to the hardship any other Albany citizen would suffer if his home and most of his
5 possessions were summarily seized or destroyed. The denial of a TRO would make this hardship a
6 reality.

7 **5. Displaced to the Streets, Albany’s Homeless Population Faces Arrest,**
8 **Imprisonment, and Physical Assault as well as Dire Threats to their**
9 **Mental and Physical Health**

10 Homeless people are familiar with being cycled through the criminal justice system. They
11 are cited for sleeping in public; when they cannot pay the fine or miss a court date, a warrant is
12 issued; they then face the prospect of arrest and imprisonment. (Boden ¶ 11.) Arrest and brief
13 incarceration becomes routine. (Zevin ¶ 24.) Moreover, warrants often bar them from public
14 assistance and impedes their search for work and housing: homelessness becomes a trap from
15 which it is difficult to escape. (Boden ¶ 11.) On the streets, homeless people are notoriously
16 vulnerable to physical violence, especially when they move into a new area. (Zevin ¶¶ 22-23.) In
17 addition, sleeping without a shelter, particularly in winter, will create a wide variety of health
18 threats, especially for those Bulb residents whose health is already fragile. (Zevin ¶ 26.) The loss
19 of their homes and the social support network Bulb residents currently enjoy is likely also to have
20 serious consequences on their mental health. (*Id.* ¶ 27.) In some cases, the forced removal of the
21 Bulb residents, including Plaintiffs, from their established home and community could be life-
22 threatening. (*Id.* ¶¶ 27 and 26.)

23 **B. If The TRO Is Granted, the City’s Hardship Will Be Minor, and the Public**
24 **Interest Will Not Be Significantly Affected**

25 The Bulb residents will lose almost everything if the TRO is denied. But the City will lose
26 very little if it is granted. “[The two preliminary injunction] factors, harm to the opposing party
27 and the public interest, merge when the Government is the opposing party.” *Native Songbird Care*
28 *& Conservation v. Lahood*, 2013 U.S. Dist. LEXIS 93120 at #43 (N.D. Cal. July 2, 2013) (quoting
Nken v. Holder, 556 U.S. 418, 435 (2009)). “The Court considers the balance of harm and the



1 public interest together.” *Ground Zero Ctr for Nonviolent Action v. U.S. Dep’t. of the Navy*, 918 F.
2 Supp. 2d 1132, 1155 (W.D. Wash. 2013) (citing *Nken*, 556 U.S. at 435); *accord Minard Run Oil*
3 *Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011).

4 The principal public interest that the Court considers, therefore, is the hardship the City
5 would suffer from a temporary halt to its clearance plans. There is nothing time-sensitive about its
6 plans, and indeed it may be aided by a delay: it will give BFHP a chance to find housing for the
7 residents. Clearing the Bulb would disperse the community across Albany and beyond during the
8 daytime, making BFHP’s outreach program much more difficult to run.

9 For fourteen years, except for a flurry of citations in 2008 which the City subsequently
10 withdrew, Albany has not enforced its anti-camping ordinance on the Bulb. (Declaration of Osha
11 Neumann (“Neumann”) ¶6, Exh. C.)⁴ Indeed, homeless people found sleeping in the City streets
12 have been woken up by the police and threatened with citations unless they moved to the Bulb.
13 (Robinson ¶¶ 7-9; Barnett ¶ 4.) The police regularly patrolled the shelters and talked to the
14 residents, giving them reason to believe that their presence was sanctioned by the City. (Whitson ¶
15 15, Exh. B.) After years of moving homeless people *onto* the Bulb, the City can hardly maintain
16 that it has a sudden and urgent need to move homeless people *off* the Bulb, still less to
17 permanently destroy their shelters.⁵

18 What matters is not the City’s reason for enforcing the ordinance at all, but for enforcing it
19 *now*, as winter approaches, with its outreach program still on the ground. There is no special harm
20 that the City would suffer from a temporary halt to its plans—only the same harm that it has
21 tolerated, and sometimes willingly taken on, for the past fourteen years.⁶ However serious that

22 ⁴ As recently as December 2012, Police Chief McQuiston acknowledged at a Homeless Task
23 Force Meeting that he had been instructed to not enforce the anti-camping ordinance. (Whitson ¶
24 15, Exh. B.)

25 ⁵ The City’s plan to enforce the ordinance will likely cost it more than it would cost to move them
26 into housing. (Zevin ¶ 35.) The cost of housing chronically homeless people is less than the cost
27 of prosecuting and incarcerating them and treating them for the damage to their health that results
28 from leaving them on the streets. (*Id.*) Those costs will be borne by taxpayers, either in Albany or
in the neighboring cities which will absorb its displaced homeless population.

⁶ The City’s expressed intent in evicting residents from the Bulb is to facilitate the transfer of the
Bulb to the State for inclusion in the McLachlan East Shore State Park. A contract for the transfer
to the State was signed in 1985. (RJN, Exh. 22.) The term of the contract runs to 2051. Since
PLAINTIFFS’ EPA FOR TRO AND OSC RE PRELIMINARY INJUNCTION; MEMO P&A IN
SUPPORT



1 harm is, it cannot justify the City's sudden haste. The balance of the hardships therefore tips
2 sharply in Plaintiffs' favor.

3 **IV. THE LOSS OF THEIR SHELTER AND COMMUNITY WILL CAUSE THE BULB**
4 **RESIDENTS IRREPARABLE HARM**

5 **A. The City's Threatened Constitutional Violations Are Irreparable Injuries in**
6 **Themselves**

7 In the Ninth Circuit, "an alleged constitutional infringement will often alone constitute
8 irreparable harm." *Monterey Mech. Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997) (quoting
9 *Associated Gen. Contractors v. Coalition For Economic Equity*, 950 F.2d 1401, 1412 (9th Cir.
10 1991)); *Rocky Mountain Farmers Union v. Goldstene*, 843 F. Supp. 2d 1071, 1104 (E.D. Cal.
11 2011) ("[c]onstitutional violations are presumptively irreparable"), *aff'd in part and rev'd in part*
12 *on other grounds sub nom. Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir.
13 2013). When a federal district court in California enjoined the city's policy of seizing homeless
14 people's belongings, it found that their injuries were irreparable purely because they were
15 constitutional violations. *Lavan I*, 797 F. Supp. 2d at 1019.

16 As discussed above, the City's plan to clear the Bulb residents involves a cluster of
17 constitutional violations: it simultaneously immediately threatens the health and welfare of the
18 Bulb residents without a compelling State interest, deprives the residents of a property interest
19 without due process, violates their Eighth Amendment rights, and burdens their right to privacy.
20 As in *Lavan I*, each of these injuries is presumptively irreparable. Since their injuries are not
21 economic in nature, *see Associated Gen. Contractors*, 950 F.2d at 1410 n.8 (reserving question of
22 irreparability where damage was economic), the presumption is not defeated.

23 **B. The Residents Will Suffer Irreparable Harm to Their Health and Property**

24 The Bulb residents' injuries are not only irreparable as a matter of constitutional law: they
25 are irreparable in fact. They face serious risks to their mental health and physical safety, the
26 criminalization of their mere presence in Albany, and the loss of their "last shred of privacy from
27 the prying eyes of outsiders." *Lavan II*, 693 F.3d at 1028 (quoting *State v. Mooney*, 588 A.2d 148,

28 1985, the City has made no move to proceed with the transfer, and has not articulated any urgency
that requires the eviction of residents in the winter.



1 161 (1991)). No award of damages could compensate them for these losses. Once demolished and
2 discarded, their shelters and possessions cannot be brought back into existence: even if they
3 succeed in this litigation, they will be forced to start afresh. The City cannot retrospectively cure
4 the risk of physical and mental harm its plan subjects them to. The harm the City threatens to
5 inflict would be irreparable even if it did not also violate the residents' constitutional rights.

6 **V. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

7 When deciding whether to grant restraining orders and preliminary injunctions, courts in
8 the Ninth Circuit operate a "sliding scale" test. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d
9 1127, 1131–32 (9th Cir. 2012). The greater the hardship a plaintiff will suffer, the lesser the
10 showing of success on the merits he must make. As long as the irreparable-harm and public-
11 interest requirements are satisfied, "[a] preliminary injunction is appropriate when a plaintiff
12 demonstrates . . . that serious questions going to the merits were raised and the balance of
13 hardships tips sharply in the plaintiff's favor." *Id.* at 1134–35 (quoting *Lands Council v. McNair*,
14 537 F.3d 981, 986 (9th Cir. 2008) (*en banc*)).

15 The "serious questions" standard applies even when an injunction is sought against a local
16 government enforcing its own law. *Rodde v. Bonta*, 357 F.3d 988, 994 n.8 (9th Cir. 2004). In
17 *Rodde*, the plaintiffs sued the County of Los Angeles under the Americans with Disabilities Act
18 (ADA), 42 U.S.C. § 12132 *et seq.*, seeking to enjoin the closure of a hospital. "The County
19 maintain[ed] that the plaintiffs cannot simply raise *serious questions*, but instead must show a
20 *strong likelihood of success on the merits* because they seek to enjoin legislative action." *Id.* The
21 Ninth Circuit rejected this argument, and affirmed the lower court's adoption of the "serious
22 questions" standard. *Id.*

23 Because losing their homes and shelters will cause them such severe hardship, the
24 plaintiffs need only show that serious questions exist about the legality of the City's plan. But in
25 this case, the City's plans are not merely questionable: they clearly violate the Bulb residents'
26 rights under both the Constitution and federal statutes. The Plaintiffs are therefore likely to
27 succeed on the merits of their case.

28



1 addicted to the use of narcotics” (370 U.S. at 661), the second with a conviction for violating a
2 Texas law that forbade “public drunkenness” (392 U.S. at 530). Carefully analyzing these
3 decisions, the *Jones* court concluded that five of the nine Justices in *Powell* supported the
4 principle that the Eighth Amendment prohibits the state from punishing an involuntary act or
5 condition if it is the unavoidable consequence of one's status or being. *Jones*, 444 F.3d at 1135.
6 “[T]he involuntariness of the act or condition [a city] criminalizes is the critical factor delineating
7 a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable
8 result of that status, from acts or conditions that can be criminalized consistent with the Eighth
9 Amendment.” *Jones*, 444 F.3d at 1132.

10 In Albany, homeless people are caught between the anti-camping ordinance and two state
11 statutes: sections 647(e) and 647c of the California Penal Code.¹⁰ Bulb residents, including
12 Plaintiffs, have been cited before under the City ordinance and will most certainly be cited again.
13 (Neumann ¶ 6, Exh. B.) To avoid arrest, they must move to the streets and sidewalks. But they
14 will then risk citation for violating state law. Section 647(e) prohibits “lodging” on public or
15 private property without the owner’s permission. Section 647c prohibits “willfully and
16 maliciously” obstructing streets, sidewalks and public places. Despite this malice requirement, the
17 Albany Police Department has threatened to cite people for merely sleeping in public, or by the
18 side of the street with one arm on the sidewalk. (Barnett ¶ 4; Robinson ¶¶ 7, 9.)¹¹ Police have used
19 the threat of criminal sanctions to order people on to the Bulb. (*Id.*) *Cf. Porto v. City of Laguna*

20
21 ¹⁰ Cal. Penal Code § 647 provides, in relevant part:

22 Except as provided in subdivision (l), every person who commits any of the following acts
is guilty of disorderly conduct, a misdemeanor: . . .

23 (e) Who lodges in any building, structure, vehicle, or place, whether public or private,
without the permission of the owner or person entitled to the possession or in control of it.

24 Cal. Penal Code § 647c provides, in relevant part:

25 Every person who willfully and maliciously obstructs the free movement of any person on
26 any street, sidewalk, or other public place or on or in any place open to the public is guilty
of a misdemeanor.

27 ¹¹ It might be said that the malice requirement gives the Bulb residents a perfect defense,
28 eliminating their need to resort to the Eighth Amendment. The *Jones* court rejected this argument,
as applied to the defense of necessity, as “legally, factually, and realistically untenable.” 444 F.3d
at 1126.



1 *Beach*, 2013 WL 2251004 (C.D. Cal. May 21, 2013) (plaintiff not ordered to move; merely
2 warned and given “courtesy notice”). Now that the City is forcing the homeless population *off* the
3 Bulb, those of them who cannot be accommodated in the City’s temporary shelters—at least
4 thirty, considering the lack of space—will not be able to sleep anywhere in Albany without being
5 cited, and eventually arrested and jailed. (Boden ¶¶ 10-11.)

6 In six months Albany will have no shelter, but it will have laws on the books that make it
7 essentially impossible for a homeless person to perform the functions necessary for his or her
8 survival without breaking the law. That will be the situation immediately for all those who find all
9 the bunk beds taken, or for those whose disability makes it impossible for them to go into shelters
10 in the first place. “The City . . . apparently believe[s] that [homeless appellants] can avoid sitting,
11 lying, and sleeping for days, weeks, or months at a time to comply with the City’s ordinance, as if
12 human beings could remain in perpetual motion. That being an impossibility, by criminalizing
13 sitting, lying, and sleeping, the City is in fact criminalizing Appellants’ status as homeless
14 individuals.” *Jones*, 444 F.3d at 1136–37.

15 **B. The City’s Plan Violates the Americans With Disabilities Act, Since Its**
16 **Temporary Shelters Cannot Accommodate Physically and Mentally Impaired**
17 **Bulb Residents**

18 The ADA, 42 U.S.C. § 12132 *et seq.*, Section 504, 29 U.S.C. § 794, Cal. Gov’t Code
19 § 11135 *et seq.*, and related state regulations, Cal. Code Regs. tit. 22 § 98250 *et seq.* prohibit
20 discrimination on the basis of disability in public benefits programs. 28 CFR § 35.150. These
21 statutes guarantee that qualified persons with disabilities shall not be excluded from participation
22 in a public program, nor denied its services by reason of their disabilities.¹² The California
23 Government Code affirms the applicability of the ADA except where state law offers greater
24 protection. Cal. Gov’t Code § 11135(b). The ADA not only protects against disparate treatment, it
25 also creates an affirmative duty to provide special, preferred treatment or “reasonable

26 ¹² Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, provides that:

27 [N]o qualified individual with a disability shall, by reason of such disability,
28 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.



1 accommodations”. *Dunlap v. Ass’n of Bay Area Gov’ts*, 996 F. Supp. 962, 965 (N.D. Cal. 1998).
2 Under the ADA, a public entity like the City of Albany is required to provide disabled persons
3 with “meaningful access” to enjoy the benefits of its programs and services. The City’s public
4 services must affirmatively consider the needs of disabled persons like Plaintiffs and the other
5 Bulb residents who are qualified recipients of such services.

6 The term: “disability” includes persons with physical and mental impairments that
7 substantially limit one or more major life activities. 42 U.S.C. § 12102. Many of the residents of
8 the Bulb are “qualified individuals with disabilities” under the ADA. (Whitson ¶ 16.) A resident’s
9 survey found that of the sixty-two Bulb residents who participated in the survey, thirty-five self-
10 reported as experiencing from one or more disabilities. (*Id.*) One-half of these residents were
11 currently receiving either Supplemental Security Income (SSI) or Social Security Disability
12 Income (SSDI) based on their disability. (*Id.*) Among the disabilities present among the Bulb
13 residents are terminal liver disease, partial blindness, chronic pain, Hepatitis C, AIDS, PTSD,
14 clinical depression, anxiety, claustrophobia, paranoid schizophrenia, and bipolar disorder. (*Id.*)
15 Medical records further corroborate the disabilities suffered by Bulb residents. (Franklin ¶¶ 9-12.)

16 The City of Albany’s plan to enforce Municipal Code Section 8-4 and thereby close its
17 only *de facto* shelter offers no accessible alternative for disabled Bulb residents. In describing its
18 “transitional shelter” program, the City states that it is

19 ...intended to ensure that individuals who are inhabiting the Bulb when the City begins
20 enforcing its no camping and curfew ordinances have an alternative sheltered location
during their transition off the Bulb.

21 (Whitson Exh. E.) The shelter, which will be available only from 5:30 PM to 9 AM, consists of
22 communal dormitory style trailers which will house 30 people. *Id.* No accommodation is made
23 for people with disabilities that preclude them from utilizing the trailers. Alexander Wilson, for
24 example, suffers from claustrophobia and seizures, and uses a certified service dog for his seizures
25 that will not be allowed in the dormitory. (Wilson ¶ 10.) Stephanie Ringstad has been diagnosed
26 with Major Depressive Disorder and has a history of trauma and experiences panic attacks.

27 (Franklin ¶ 12.) Katherine Cody and Tamara Robinson both have Hepatitis C, which suppresses
28 their immune system and makes it dangerous if they are exposed to viruses. (Cody ¶ 19, Robinson



1 ¶ 11.) For Wilson, Ringstad, Cody, Robinson, Bowen and for other people with disabilities who
2 are homeless, the trailers/dormitories offered by Albany are inaccessible. (Zevin ¶¶ 15-19,
3 Franklin ¶ 14.)

4 For these residents, Albany provides no reasonable accommodation and the City's plan to
5 evict the Bulb residents violates the ADA. The Ninth Circuit upheld the imposition of a
6 preliminary injunction pursuant to Title II of the ADA prohibiting a county from closing a hospital
7 due to budget shortages, after having consolidated services for the disabled in that hospital.
8 *Rodde*, 357 F. 3d at 998. The *Rodde* court found that rehabilitative services and treatment for
9 complex and disabling medical conditions could not be provided effectively anywhere else in the
10 county system and upheld a preliminary injunction that prevented closure of the hospital. *Id.* At
11 1000. Because the County was eliminating certain necessary medical services for the disabled at
12 the same time it was continuing to provide medical services for the non-disabled population, the
13 County's proposed closure threatened a violation of Title II of the ADA and was enjoined. *Id.*
14 Here, defendants' proposed closing of the *de facto* homeless shelter on the Bulb, by evicting the
15 residents and offering them, in its place, a communal trailer that is not only inaccessible, but
16 dangerous, to disabled Bulb residents, likewise violates Title II of the ADA.¹³

17 The Ninth Circuit has held that a City's enforcement of a facially neutral municipal code
18 provision without reasonable accommodation for a disabled resident states a claim under Title II
19 of the ADA. In *McGary v. City of Portland*, 386 F.3d 1259 (9th Cir. 2004), the Ninth Circuit
20 ruled that the City of Portland could be held liable under Title II of the ADA for seeking
21 enforcement of a nuisance abatement law against a resident suffering from AIDS who was unable
22 to complete a cleanup of his yard by the stated deadline due to his disabilities. As the Ninth

23 _____
24 ¹³ The communal bunkhouses offered by the City are not only inaccessible for a significant
25 number of Bulb residents, they also create serious health risks for them as well as the public at
26 large. Dr. Barry Zevin, MD, who is the Board President of the Coalition on Homelessness in San
27 Francisco and who has worked with the homeless population in San Francisco for much of his
28 career, describes that the trailers/dormitories put at serious risk immuno-suppressed Bulb
residents, including people with disabilities related to HIV, diabetes, chronic alcoholism as well as
people with poor nutrition. (Zevin ¶14.) In addition, because the trailers are not well-ventilated,
congregating the Bulb residents creates a major public health hazard from the substantial risk of a
tuberculosis break-out. (Zevin ¶ 13.)



1 Circuit stated, “The regulations interpreting the ADA support our conclusion that compliance with
2 municipal code enforcement can constitute a benefit of the services, programs or activities of a
3 public entity under Title II [of the ADA].” 386 F.3d at 1269. The City’s failure to offer any
4 reasonable accommodation for McGary gave rise to a claim under Title II.

5 Given its lack of any accommodation for the disabled residents of the Bulb, the City’s
6 enforcement of Municipal Code Section 8–4 violates Title II of the ADA. Not only will the
7 disabled Bulb residents lose their only permanent shelter, in the absence of an alternative, they
8 will scatter far and wide, likely outside of Albany given the risk of criminal citation, and will be
9 unable to access the admittedly limited support in finding housing offered by the City via Berkeley
10 Food and Housing Project.

11 **C. Enforcement of the City’s Ordinance Violates Substantive Due Process by**
12 **Knowingly Subjecting the Bulb Residents to Danger to their Physical Health**
13 **and Safety**

14 The Fourteenth Amendment protects the right to bodily integrity. *See, e.g., Ingraham*, 430
15 U.S. at 673–74. “[A]lthough the state’s failure to protect an individual against private violence
16 does not generally violate the guarantee of due process, it can where the state action ‘affirmatively
17 place[s] the plaintiff in a position of danger,’ that is, where state action creates or exposes an
18 individual to a danger which he or she would not have otherwise faced.” *Kennedy v. City of*
19 *Ridgefield*, 439 F.3d 1055, 1060 (9th Cir. 2006) (citing *DeShaney v. Winnebago Cnty. Dep’t of*
20 *Soc. Servs.*, 489 U.S. 189, 197, 201 (1989); *Wood v. Ostrander*, 879 F.2d 583, 589–90 (9th Cir.
21 1977)) (right against state-created dangers “clearly established”). In many danger-creation cases,
22 the risk has already turned into a reality. *See e.g. Wood*, 879 F.2d at 586, *Kennedy*, 439 F.3d at
23 1057 That is perhaps because many state-created dangers are not threatened in advance. But
24 nothing in the Ninth Circuit’s danger-creation doctrine requires that a court presented with an
25 obvious danger must wait until it results in damage. Rather, in these danger-creation cases, the
26 Ninth Circuit considers two factors: whether the danger was affirmatively created by state action,
27 and whether the state acted with deliberate indifference to a known danger (or one so obvious that
28 knowledge may be inferred). *See id.* at 1062–64.

Under the City’s plan, around 30 Bulb residents, if not more, will be forced out of their



1 homes by the City as winter approaches. Other people in Albany will enjoy the winter holidays
2 with their families in warmth and comfort; the Bulb residents will endure wind, rain and freezing
3 temperatures in the streets outside. The risks they face are much like the risks faced by the
4 homeless plaintiffs in *Sanchez v. City of Fresno*, who were deprived of their shelter and property
5 during the winter months. 914 F. Supp. 2d 1079, 1102 (E.D. Cal. 2012) (denying motion to
6 dismiss danger-creation claim). None of these risks is obscure or speculative; they are all
7 immediate and obvious, and in some instances will be life-threatening. (Zevin ¶¶ 13–14, 26–7,
8 36.) The City disregards them. It acts affirmatively, knowing that the residents have nowhere else
9 to go, and knowing the dangers they will be exposed to. It puts them “in a situation that was more
10 dangerous than the one in which they found [them].” *Sanchez*, 914 F. Supp. 2d *Id.* at 1062 (citing
11 *Munger v. City of Glasgow Police Dep’t.*, 227 F.3d 1082, 1086 (9th Cir. 2000) (finding violation
12 where police officers ejected plaintiff from a bar during a cold night, causing him to die of
13 hypothermia). In doing so, it violates the Fourteenth Amendment’s Due Process Clause.

14 **D. The City’s Plan Will Result in the Summary Demolition of the Residents’**
15 **Shelters Without Hearing and therefore Violates the Due Process Clause of the**
16 **Fourteenth Amendment**

17 The City threatens to permanently deprive the Bulb residents of their shelters without
18 affording them a basic element of due process: the opportunity to be heard. Only in “extraordinary
19 situations” can such a drastic measure be taken without running afoul of the Fourteenth
20 Amendment. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). No such
21 circumstances are present here. The City should be enjoined from demolishing the Bulb residents’
22 shelters — their most important possession — until it grants them the process it would grant any
23 other resident whose home it seeks to condemn: a predeprivation hearing, at which they may argue
24 against the City’s plans, suggest other means of abatement, or, at the very least, argue for a delay
25 before a viable alternative can be found.

26 “If there has ever been any doubt in this Circuit that a homeless person’s unabandoned
27 possessions are ‘property’ within the meaning of the Fourteenth Amendment, that doubt was put
28 to rest by the Ninth Circuit’s September 2012 [d]ecision in *Lavan v. City of Los Angeles*.”
Sanchez, 914 F.Supp.2d at 1103. As *Lavan II* makes clear, this is no less true when the property is



1 left in a public place in violation of an ordinance. 693 F.3d at 1032. In that case, the City of Los
2 Angeles appealed an injunction which prevented it from seizing and destroying unattended
3 property illegally left on the sidewalk. *Id.* at 1023–24. Its argument was that leaving property on
4 public land without permission puts it beyond the protection of the Due Process clause. *Id.* at
5 1031. The Ninth Circuit castigated Los Angeles for “completely misunderstand[ing] the role of
6 due process,” and held that “[e]ven if Appellees had violated a city ordinance, their previously-
7 recognized property interest is not thereby eliminated.” *Id.* at 1032.

8 The same is true for the residents’ shelters, their most important possessions. In its non-
9 binding guidelines for clearing the Bulb, the City makes special provisions for “buildings and
10 structures” which violate the ordinance. (RJN, Exh. 18.) It directs the Albany Building Official to
11 inspect them and “take appropriate steps to abate these conditions.” (*Id.* at p. 4.) The caption of
12 this guideline—“Inspection and Removal of Illegal Structures”—shows what steps the City has in
13 mind. (*Id.*) But in truth, the only “appropriate step” for the City is compliance with the due process
14 requirements upheld in *Lavan II*; the residents of the Bulb have a constitutionally protected
15 interest in their property which the City’s guidelines cannot overrule.

16 The City’s planned enforcement of its ordinance threatens to infringe this elementary right
17 to due process, since it gives the residents of the Bulb no opportunity to argue their case, either
18 before a court, or at the nuisance and building-code tribunals it has established for the other
19 residents of Albany. *See* Albany Code ch. 12. *Lavan II* recognized the devastating impact of these
20 summary “clean-up” efforts on vulnerable homeless populations. 693 F.3d at 1032 (citing
21 *Pottinger*, 810 F.Supp. at 1559). Another California case, *Kincaid v. Fresno*, found the city’s
22 clearance of a homeless shelter “constitutionally inadequate” for lack of notice and an opportunity
23 to be heard. No. 1:06-cv-1445, 2006 WL 3542732, at *38 (C.D. Cal Dec. 8, 2006) (city destroyed
24 shelters with inadequate notice and no hearing). These authorities counsel that City should be
25 enjoined from inflicting this harm before the Bulb residents have had an opportunity to be heard
26 by a neutral decision-maker.

27 *Lavan II* applies to homeless individuals the general rule stated by the Supreme Court in
28 *James Daniel Good*: they must receive notice and an opportunity to be heard before the



1 Government deprives them of property. 510 U.S. at 53 (“The right to prior notice and a hearing is
2 central to the Constitution’s command of due process.”) This rule can only be dispensed with in
3 “extraordinary situations where some valid governmental interest is at stake that justifies
4 postponing the hearing until after the event.” *Id.* (citing *Fuentes v. Shevin*, 407 U.S. 67, 91
5 (1972)). The Court stressed in *Fuentes* that such situations “must be truly unusual,” 407 U.S. at
6 90, and spelled out three requirements which had been present every time it had previously
7 sanctioned pre-hearing deprivation: “First, in each case, the seizure has been directly necessary to
8 secure an important governmental or general interest. Second, there has been a special need for
9 very prompt action. Third . . . the person initiating the seizure has been a government official
10 responsible for determining, under the standards of a narrowly drawn statute, that it was necessary
11 and justified in the particular instance.” *Id.* at 91. None of these requirements are met here.

12 A clear alternative exists to summary demolition. Albany should give the Bulb residents
13 the same opportunity to be heard at an administrative hearing it provides other residents when it
14 seeks to condemn their homes. See Albany Municipal Code §§ 12–5 and 18.1–12 (setting out two
15 different hearing procedures). There, at a hearing they may defend their right to remain in their
16 homes, suggest alternative abatement plans, reach a settlement with the City, or (at the very least)
17 urge a delay to allow them to find shelters which can accommodate them for more than a few
18 months, which have space for all of them, and which are compliant with the ADA.

19 **E. The City’s Plan Illegally Burdens Plaintiffs’ Constitutional Rights to Privacy**

20 The City seeks to impose an impermissible choice on the Bulb residents: agree to waive
21 their right to privacy by accepting the City’s offer of temporary shelter in a portable or face
22 criminal sanction (as well as the risks to their health and safety) by sleeping on City streets. The
23 City’s conditioning of the receipt of a public benefit in this manner is illegal. *Robbins v. Super.*
24 *Ct.*, 38 Cal.3d 199 (1985). In *Robbins*, the Supreme Court of California found that requiring
25 welfare recipients to live in county housing in order to continue receiving welfare benefits
26 infringed their constitutional right to privacy. The Court found that the government cannot
27 condition “receipt of a public benefit” “upon the waiver of a constitutional right” without meeting
28 the “heavy burden of demonstrating the practical necessity for the limitation”. *Id.* at 213.



1 As in *Robbins*, in order to receive the “benefits” of the City’s shelter (which includes
2 meals, showers and a dog kennel) and meaningfully take advantage of its housing subsidy,
3 Plaintiffs are being “forced to live in a particular location without the freedom to choose [their]
4 own living companions.” *Id.* at 213. Despite the government's protests, the Court in *Robbins*
5 declared that “[t]he denial of the fundamental right to privacy for impoverished citizens is no less
6 intolerable simply because they are poor.” *Id.* at 215.

7 Plaintiffs have made their homes on the Bulb; they built dwellings that keep them safe
8 from the elements as well as the eyes of their neighbors and passers-by. They decide who can
9 enter their homes and when. They share their homes with others, as they wish. They organize and
10 arrange their homes in a way that has meaning to them. California’s right to privacy is associated
11 with the right to live as one wishes in one’s home. *See, e.g., Hill v. NCAA*, 7 Cal. 4th 1 (1994);
12 *CALHO v. City of Santa Monica*, 88 Cal. App. 4th 451, 459 (2001) (“In short, the right to privacy
13 includes the right to be left alone in our homes.”).

14 Like the plaintiffs in *Robbins*, Plaintiffs who seek to utilize the benefits offered by the
15 City’s shelter program will be required to cede control over when and with whom they live and
16 sleep and when and where they have visitors, rights they currently enjoy in their homes on the
17 Bulb.¹⁴ Even if the court were to overlook the psychological impact and physical danger that
18 accompany life in the portables, the loss of control over a wide range of personal decisions cannot
19 be ignored.” *Robbins*, 36 Cal. 3d at 207. They will only have access to their beds during
20 prescribed hours and will be required to live under the rules imposed by others. They will have no

21 ¹⁴ Plaintiffs’ right to privacy is not lessened by the fact that they are homeless and have made their
22 homes on public land. *U.S. v. Sandoval*, 200 F.3d 659 (9th Cir. 2000). *Sandoval* affirmed that “a
23 person can have an objectively reasonable expectation of privacy in a tent on private property” and
24 that the right extended to both public land and government owned land. *Id.* Courts around the
25 country that have considered the issue have indicated that the privacy rights of homeless people
26 are not extinguished merely because they live on public land or in public spaces. *See Lavan II*,
27 693 F.3d 1022 (9th Cir. 2012) (“Appellees’ expectation of privacy in their unabandoned shelters
28 and effects may well have been reasonable. ... A sane, decent, civilized society must provide
some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some
inviolable place which is a man's castle.”). *See also Pottinger* at 1571-72 (S.D. Fl. 1992) (homeless
individuals had a reasonable expectation of privacy in their property, despite it being on public
land); *Mooney*, 218 Conn. 85, 111-12 (Ct. 1991) (recognizing right to privacy in a place “the
defendant regarded as his home, and that he maintained as such, however roughly”)



1 say in they in intimate contact with, and they will have no ability to seclude themselves from the
2 presence and observations of others.

3 It is the City's burden to demonstrate that conditioning public benefits on waiver of the
4 right to privacy is constitutional. *Robbins*, 36 Cal.3d at 213. The City must show that: (1) the
5 condition reasonably relates to the purposes of the benefit; (2) the value to the public from
6 imposition of the condition manifestly outweighs any resulting impairment of the constitutional
7 right; (3) there is no available alternative means that could maintain the integrity of the benefits
8 program without severely restricting a constitutional right." *Id.* The City cannot meet any of these
9 elements.

10 Here, the requirement that Plaintiffs give up their right to privacy is not reasonably related
11 to the purpose of Albany's action, which is to transfer the Bulb to the State. There is no value to
12 the public in forcing Plaintiffs to give up their Constitutional right to privacy that outweighs the
13 resulting impairment of that right. Finally, there are alternatives available less subversive of
14 Plaintiffs' Constitutional rights, such as the plan that counsel for Plaintiffs proposed to allow
15 people to remain on the Bulb for six months and use the money saved to provide appropriate
16 sustainable long-term housing. Other alternatives were presented in Albany's Homelessness Task
17 Force's interim report to the Council on May 6, 2013 (*see* Homeless Task Force, *Options for*
18 *Ending Homelessness in Albany*, available at [http://albanyca.granicus.com/MetaViewer.php?](http://albanyca.granicus.com/MetaViewer.php?meta_id=65499&view=&showpdf=1)
19 [meta_id=65499&view=&showpdf=1](http://albanyca.granicus.com/MetaViewer.php?meta_id=65499&view=&showpdf=1) (last visited Nov. 11, 2013)).

20 VI. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST BOND

21 Federal Rule of Civil Procedure 65(c) provides that a bond should be posted "in an amount
22 that the court considers proper to pay the costs and damages sustained by any party found to have
23 been wrongfully enjoined or restrained." A bond "may not be required, or may be minimal,"
24 however, "when the harm to the enjoined party is slight or where the movant has demonstrated a
25 likelihood of success." *See Ticketmaster L.L.C. v. RAG Techs., Inc.*, 507 F. Supp. 2d 1096, 1116
26 (C.D. Cal. 2007); *see also Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878,
27 882 (9th Cir. 2003) ("bond amount may be zero if there is no evidence the party will suffer
28 damages from the injunction.").



1 Plaintiffs have no assets and cannot reasonably post a bond even if one were justified in
2 this case. Plaintiffs respectfully request that this Court decline to impose a bond requirement. *See,*
3 *e.g., Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (“We have recognized that Rule
4 65(c) invests the district court with discretion as to the amount of security required, if any.”) By
5 their nature, Plaintiffs are destitute and cannot afford to pay for a bond. *See, e.g., California ex rel.*
6 *Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1325–26 (9th Cir. 1985),
7 *modified*, 775 F.2d 998 (9th Cir. 1985) (court properly waived bond when non-profit was “unable
8 to post a substantial bond”); *Miller v. Carlson*, 768 F.Supp. 1331, 1340–41 (N.D. Cal. 1991)
9 (waiving bond for indigent); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n.42 (C.D. Cal.
10 1982) (waiving bond where action was brought by destitute plaintiff). Further, there is “no realistic
11 likelihood of harm to the defendant[s] from enjoining [their] conduct.” *Jorgensen*, 320 F.3d at
12 919. Nor is there any prospect that any of Defendants’ legitimate interests will be infringed by
13 preventing the imminent enforcement of the Ordinance and waiting for the Court’s determination
14 of the constitutionality of the City’s plans for evicting the residents of the Bulb. Indeed, Albany
15 (and its tax-paying residents) will be *spared* the expense of operating a portable shelter and other
16 incidental expenses if the Court later concludes that the City’s plans are illegal in the first place.
17 Accordingly, Plaintiffs respectfully submit that no bond is required under the circumstances and
18 request that the Court grant the requested TRO without bond.

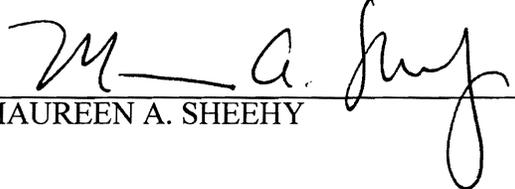
19 **VII. CONCLUSION**

20 In light of the foregoing, Plaintiffs respectfully request that the Court grant the relief in the
21 Proposed Order submitted with this Motion.

22 DATED: November 13, 2013

Respectfully submitted,

23 KILPATRICK TOWNSEND & STOCKTON LLP

24 By: 
25 _____

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DATED: November 13, 2013

EAST BAY COMMUNITY LAW CENTER

By: *Osha Neumann /ms*
OSHA NEUMANN

DATED: November 13, 2013

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13 Attorneys for Plaintiffs

14
15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
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27
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CASE NO.

DECLARATION OF BOB ANDERSON

DECLARATION OF BOB ANDERSON
CASE NO.

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DECLARATION OF BOB ANDERSON

I, Bob Anderson, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless, and I reside at the Albany Bulb in Albany, California. I have been out at the Bulb probably about two years. I first started coming out here with my dog to visit.

3. Before the Bulb, I lived on 8th Street in Berkeley. I was staying with my mother. When she moved away, I could not find any affordable housing, so I became homeless. I could not survive sleeping on the street or sidewalk, so I came out to the Bulb.

4. I have serious mental illness. I suffer from paranoid schizophrenia. I experience paranoia that people may be stealing from me and it is difficult for me to develop trust. I am also bipolar.

5. When I am around lots of people, it worsens my paranoid schizophrenia. I have outbursts and think that people are trying to steal from me. I would not be able to stay in the dormitory trailers with people that I do not know well or trust because I would constantly be paranoid of people. I also feel very uncomfortable in small, enclosed spaces. I also need a lot of private space. In my current shelter, I am able to be by myself.

6. I have been receiving SSI assistance for these disabilities for about three years. I get about \$900, and if I move into housing, I will get less. I was on food stamps about three years ago for six months. In the past, I received General Assistance of \$140. I found that applying for those programs by myself was complicated. You have to have something that shows that you are in the system, and it was hard to find everything that I needed.

1
2 7. To successfully manage my mental illness, I need to live in a therapeutic
3 and loving community and support network. I would not do well if I had to live by myself,
4 away from a community. I have found living at the Bulb, next to the ocean and the breeze,
5 to be a very therapeutic environment. Living out here, my mind has moved in a positive
6 direction. I feel that taking care of myself and becoming self-sufficient has helped me to
7 get on track. I have been able to do things that I never thought I could do, like set up a gym
8 for people at the camp to use and taking care of people's dogs. I love building, and have
9 been able to build my own shelter out here, which I am very proud of. I spent over a year
10 building it. I see people who you wouldn't think could be self-sufficient, who look crazy,
11 start to change and develop relationships and see their own gifts. It has been very
12 beneficial for me to be able to help others to take care of themselves. I can take care of
13 myself here in a way that I was never able to do before. I want to stay on that track.

14 8. Steve from the Solano Community Church comes out every Thursday and
15 gives us compassion and loving support, along with pizzas and sodas.

16 9. Berkeley Food and Housing came out here in July. The lady who works
17 for them said that she is trying to get Section Eight housing for herself, and we figured if
18 the lady working for them can't get housing, what's the chance we will? Working with
19 them to find housing was very discouraging. When I spoke with them, they did not have
20 anything available for me.

21 10. If I were evicted from the Bulb, I would have nowhere to go. I would have
22 to sleep on the streets, which is not a good place for me. My paranoid schizophrenia would
23 likely worsen, and I would lose the mental health benefits that I have been able to gain
24 from living out here. I would lose the compassion and loving support network that I have
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gained from being out here. I am very concerned about what might happen to me, and it has been causing me a lot of stress.

11. Last week, I was coming home to the Bulb after ten o'clock at night. The East Bay Regional Park Police explained to me that the road I was using belongs to the park, and no one can pass through the park after ten. I was coming back to the Bulb, so they gave me a warning, and told me that next time I would get a ticket.

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

Executed this 21st day of September, 2013 at Albany, California.

By: 
BOB ANDERSON

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24 DEPARTMENT; and MIKE MCQUISTON, in
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25 Defendants.
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CASE NO.

DECLARATION OF RUTH CASHMERE

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DECLARATION OF RUTH CASHMERE

I, Ruth Cashmere, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I have been an Albany resident for fourteen years. I have a background in criminal justice. I have worked in Washington D.C. under the Clinton Administration in the Justice Department. I worked for the Marin Housing Authority as the Family Self-Sufficiency Coordinator, and I worked specifically with public housing residents. I am a city of Albany Housing Commissioner. I served on the Albany/Berkeley Mental Health Commission, and I am a former chair of Albany Social and Economic Justice Commission. I was appointed by the City of Albany to serve on the Homeless Task Force. This year I attended the National Association of Housing and Redevelopment Official's 2013 Legislative Conference.

3. As a housing commissioner, I meet with other commissioners once a month. After the meeting on June 12th, 2013, I approached Chris Gouig, the Executive Director of Alameda County Housing Authority and the Northern California representative for the California Association of Housing Authorities, and we briefly spoke about the Albany Bulb and the homeless population in Albany. Ms. Gouig indicated that she had met with a City of Albany official. Subsequent to this conversation, I sent her an email in which I asked her to summarize the availability of subsidized housing, the timelines, the ten-year waitlist, the process of when the waitlist opens, the details of the process, and the Veteran's Affairs Supportive Housing (VASH) funds and other resources other than HUD private or nonprofit agencies that provide housing for the homeless. A true copy of my email and Ms. Gouig's response is attached here as Exhibit A.

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2 4. In Ms. Gouig's email of June 13, 2013, in response to my own, she stated
3 that on March 20, 2013 she had met with Elaine deColigney, the Alameda County
4 Homeless Director, and Isabelle Leduc, the City of Albany Recreation Supervisor. The
5 meeting was at the Alameda County HCD office on Winton Avenue in Hayward. Ms.
6 Gouig wrote that Isabelle informed those at the meeting that the Alameda City Council had
7 prioritized helping the homeless move from the Bulb so that the Bulb could be
8 incorporated into part of a park. Ms. Gouig and other county staff told Isabelle that the
9 county does not have any resources with which to help Bulb residents find housing; the
10 Section 8 waiting list is closed and had been for over ten years. They explained that anyone
11 not already on the list would not be able to get assistance. Ms. Gouig writes that she is
12 uncertain when the Section 8 waitlist will open, that it was last open in 2001, and that
13 "getting on the list doesn't mean someone gets housed right away...we're down to the least
14 several hundred but they've been waiting for 12 years."

15 5. Attached hereto as Exhibit B is a weekly rental listing of subsidized
16 housing provided by the Housing Authority of the County of Alameda which was attached
17 to Ms. Gouig's email. It shows that Albany has sixteen units of subsidized housing at
18 Creekside Apartments on San Pablo Avenue. It shows that the waiting list is not open. I
19 know from my personal knowledge that there are no vacancies.

20 6. Attached hereto as Exhibit C is a report of Section 8 Contracts and
21 Housing Assistance Program Vouchers issued by Alameda County Housing Authority,
22 divided by city for June and August 2013. In August 2013, there were no households in
23 Albany with Section 8 certificates and 34 households with vouchers. This is the lowest
24 number of any city in Alameda County. As the chart shows, the number of households
25 with vouchers has declined since June 2011 in which 45 households had vouchers. These

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reports were provided to me by the Housing Authority of the County of Alameda as part of packets prepared for the month Housing Commission meeting.

7. After receiving the email attached from Chris Gouig, I forwarded it to Albany City councilwoman Joanne Wile and asked that it be passed on to other City Council members.

8. I spoke at the June 17, 2013, Albany City Council meeting and in my speech related the contents of the email I had been sent by Ms. Gouig. I explained that there was a lack of available subsidized housing and a twelve-year waitlist for Section 8 housing. Earlier on the same day, I forwarded the e-mail I had been sent by Ms. Gouig to Albany City Council member, Joanne Wile, along with a request that she, in turn, forward it to other Council members and share the information with them. Attached hereto as Exhibit D is a true copy of the e-mail that I sent to Joanne Wile.

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

Executed this 25th day of September, 2013 at Berkeley, California.

By: Ruth Cashmere
Ruth Cashmere

Chris:

Thank you for speaking with me after the Housing Commission meeting today. Due to limited time after the meeting would you please give me a brief summary of the City of Albany official you spoke with and the discussion regarding the Albany Bulb and the homeless population in Albany.

Also based on our conversation today would you please discuss and give an overview on the availability of subsidized housing, time lines, the ten year waiting list etc. we discussed. The Process when the waiting list opens and what exactly that means. In addition please VASH funds and any other resources other than HUD private or nonprofit agencies that provide housing for the homeless (and the very low income). Thank you very much.

Ruth Cashmere



Housing Authority of the
County of Alameda

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SAVE PAPER - Please do not print this e-mail unless absolutely necessary.

AdditionalPropertiesJune2013posted.pdf
95K



Fwd: Albany Bulb/Homeless in Albany/subsidized housing

2 messages

From: chrisg@haca.net
To: Cashmere510@aol.com
Sent: 6/13/2013 4:42:24 P.M. Pacific Daylight Time
Subj: RE: Albany Bulb/Homeless in Albany/subsidized housing

Ruth: On May 20, at the invitation of Elaine deColigny, the Alameda County Homeless Director, I attended a meeting with Elaine, other Alameda County HCD staff and Isabelle Leduc, your Recreation Supervisor. The meeting was at the County HCD offices on Winton Avenue in Hayward. Isabelle told us that your city council had prioritized helping the homeless move from the Bulb so that the Bulb could be incorporated into a park trail system. The council had set aside a modest amount of funding to contract with a non-profit organization that would work with the Bulb homeless to enable them to move. I think Isabelle had issued an RFP or maybe was going to be issuing an RFP to select the non-profit.

County staff and I told Isabelle that we didn't have any housing resources for the Bulb homeless. I described the impacts of sequestration on our S8 program. I explained that our S8 list was closed and had been closed for over 10 years. Therefore, there was no way for someone who wasn't already on the list to get assistance. I told her that the VASH (Veterans Affairs Supportive Housing) program was the one program where new vouchers were provided to housing authorities but that the referral came thru the VA, not the housing authority's waiting list. If any Bulb person is a vet they could enter the VA system and if the VA determined they were eligible for the VASH program they could refer them either to us or the Oakland HA (it depends on the VA caseload jurisdiction boundaries).

There are a number of non-profit organizations in the Bay Area that own affordable housing—Eden Housing, Satellite/AHA, Bridge, Mid-pen, Christian Church Homes, etc. They all have waiting lists which open from time to time. There are a number of ways to determine what's available—calling Eden I&R, calling 2-1-1, contacting Alameda County HCD. I've attached our listing that we give out when folks call. The non-profit that the city will contract with will know all this.

I'm not sure when our Section 8 wait list will open; we're hoping sometime late this year. It was last open in 2001. Getting on the list doesn't mean someone gets housed right away—just look at the current list—we're down to the last several hundred but they've been waiting 12 years. The S8 program isn't an entitlement program and operates only with the funding congress provides. Nationally, it's estimated that only 25% of those who are eligible for housing assistance get it, so you can see that the majority of people are not served.

B

Housing Authority of the County of Alameda
Weekly Rental Listing - Additional Properties

June 2013
Page 1 of 9

NOTE:

1. The number listed for total units and the number for each bedroom size does not signify that these are vacant or available.
2. Properties listed MAY have waiting lists that may or may not be open
3. Properties listed MAY have eligibility / occupancy requirements

City	Project Name and Address	Occupancy	Handicap Accessible 	Total Units	Bedroom Size						Wait List Open?	Project Receiving Tax Credits?
					Studio	1	2	3	4	5		
Albany	CREEKSIDE APTS 1155 SAN PABLO AVE. ALBANY, CA 94706-2215 (510)525-4425	FAMILY	YES	16		6	6	4				YES
Castro Valley	GROVE WAY 2576/90 GROVE WAY CASTRO VALLEY, CA (510)537-3170	FAMILY		8								
Castro Valley	LORENZO CREEK APTS 22198 CENTER ST CASTRO VALLEY, CA. (510)881-0800	DISABLED HOMELESS	YES	28		9	13	6				YES
Castro Valley	STROBRIDGE CT APTS 2100 WILBEAM AVE CASTRO VALLEY, CA											YES
Dublin	CAMELLIA PLACE 5450 DEMARCUS BLVD. DUBLIN, CA 94568 (925)829-4900	ELDERLY	YES	112								YES
Dublin	DUBLIN RANCH SR. APTS KEEGAN ST & FINNIAN WAY DUBLIN, CA	ELDERLY										YES
Dublin	FAIRWAY FAMILY APTS 4161 KEEGAN ST DUBLIN, CA	FAMILY										YES
Dublin	PARK SIERRA APTS 6450 DOUGHERTY RD DUBLIN, CA 94568 (925)560-0050	FAMILY	YES	283		X	X					YES
Dublin	WEXFORD WAY 6900 MARIPOSA CIRCLE DUBLIN, CA 94568 (925)999-8439	FAMILY		130							YES	
Dublin	WICKLOW SQ SR. APTS. 6700 AMADOR VALLEY BLVD. DUBLIN, CA. 94568 (925)556-9424	ELDERLY	YES	54							YES	YES
Emeryville	AVALON SR. APTS. 3850-72 SAN PABLO AVE EMERYVILLE, CA 94608 (510)923-0211	ELDERLY		67								YES
Emeryville	BAKERY LOFTS 4600 ADELIN ST EMERYVILLE, CA 94608 (510)635-2385	FAMILY		57								
Emeryville	BAY BRIDGE APTS 1034 36TH ST EMERYVILLE, CA 94608 (510)769-1496	DISABLED	YES	6	6							

HOUSING AUTHORITY OF THE COUNTY OF ALAMEDA

Section 8 Contract and HAP Report for the month of August 2013

City	Certificates		Vouchers		August 2013 TOTAL		August 2012	August 2011
	Number	HAP*	Number	HAP**	Number	HAP		
Albany	-	\$ -	34	\$ 35,292	34	\$ 35,292	39	43
Castro Valley	14	\$ 12,334	216	\$ 224,208	230	\$ 236,542	242	255
Dublin	2	\$ 1,762	358	\$ 371,604	360	\$ 373,366	290	299
Emeryville	6	\$ 5,286	105	\$ 108,990	111	\$ 114,276	116	108
Fremont	29	\$ 25,549	1,268	\$ 1,316,184	1,297	\$ 1,341,733	1,400	1,404
Hayward	114	\$ 100,434	2,401	\$ 2,492,238	2,515	\$ 2,592,672	2,599	2,512
Newark	2	\$ 1,762	263	\$ 272,994	265	\$ 274,756	279	290
Pleasanton	4	\$ 3,524	126	\$ 130,788	130	\$ 134,312	147	165
San Leandro	16	\$ 14,096	1,468	\$ 1,523,784	1,484	\$ 1,537,880	1,428	1,410
San Lorenzo	2	\$ 1,762	232	\$ 240,816	234	\$ 242,578	220	208
Union City	4	\$ 3,524	818	\$ 849,084	822	\$ 852,608	782	729
TOTALS	193	\$170,033.00	7,289	\$7,565,982.00	7,482	\$7,736,015.00	7,542	7,423

* Based on an average August Housing Assistance Payment (HAP) of \$881 per certificate contract

**Based on an average August Housing Assistance Payment (HAP) of \$1038 per voucher contract

HOUSING AUTHORITY OF THE COUNTY OF ALAMEDA

Section 8 Contract and HAP Report for the Month of June 2013

City	Certificates		Vouchers		June 2013 TOTAL		June 2012	June 2011
	Number	HAP*	Number	HAP**	Number	HAP		
Albany	-	\$ -	36	\$ 37,584	36	\$ 37,584	39	45
Castro Valley	14	\$ 12,334	219	\$ 228,636	233	\$ 240,970	246	251
Dublin	2	\$ 1,762	358	\$ 373,752	360	\$ 375,514	300	294
Emeryville	6	\$ 5,286	108	\$ 112,752	114	\$ 118,038	118	100
Fremont	30	\$ 26,430	1,290	\$ 1,346,760	1,320	\$ 1,373,190	1,419	1,419
Hayward	112	\$ 98,672	2,421	\$ 2,527,524	2,533	\$ 2,626,196	2,579	2,494
Newark	2	\$ 1,762	272	\$ 283,968	274	\$ 285,730	283	295
Pleasanton	4	\$ 3,524	128	\$ 133,632	132	\$ 137,156	153	163
San Leandro	16	\$ 14,096	1,440	\$ 1,503,360	1,456	\$ 1,517,456	1,417	1,405
San Lorenzo	2	\$ 1,762	232	\$ 242,208	234	\$ 243,970	218	208
Union City	4	\$ 3,524	828	\$ 864,432	832	\$ 867,956	773	733
TOTALS	192	\$169,152.00	7,332	\$7,654,608.00	7,524	\$ 7,823,760	7545	7407

**Based on an average June Housing Assistance Payment (HAP) of \$881 per certificate contract*

***Based on an average June Housing Assistance Payment (HAP) of \$1044 per voucher contract*

END



Albany Bulb/Homeless in Albany/subsidized housing

From: Cashmere510@aol.com
To: jwile46@gmail.com
Sent: 6/17/2013 9:07:34 A.M. Pacific Daylight Time
Subj: Fwd: Albany Bulb/Homeless in Albany/subsidized housing

Joanne:

After the last Housing Commission meeting on June 12th, I spoke briefly with Chris Gouig,, Executive Director of the Alameda Housing Authority (Please scroll down to see my initial inquiry).

As a housing commissioner I am aware of the lack of availability of subsidized housing in general, however I wanted to discuss challenges faced by Bulb residents and the Albany homeless population at large.

I thought it would be helpful to hear directly from Chris Gouig regarding the length of time just to be put on a waiting list to receive housing (ten years) and any further information that might be useful. I believe the second paragraph is the most informative. Also attached to the email are additional housing resources.

Please forward and share with other Council members. Hopefully you will find this information helpful.

Thank you

Ruth Cashmere

From: chrisg@haca.net
To: Cashmere510@aol.com
Sent: 6/13/2013 4:42:24 P.M. Pacific Daylight Time
Subj: RE: Albany Bulb/Homeless in Albany/subsidized housing

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I'm not sure when our Section 8 wait list will open; we're hoping sometime late this year. It was last open in 2001. Getting on the list doesn't mean someone gets housed right away— just look at the current list—we're down to the last several hundred but they've been waiting 12 years. The S8 program isn't an entitlement program and operates only with the funding congress provides. Nationally, it's estimated that only 25% of those who are eligible for housing assistance get it, so you can see that the majority of people are not served.

I've attached our current list; also the link. Chris

<http://www.haca.net/index.php/rental-listings>

Christine Gouig

Executive Director

Alameda County Housing Authority

22941 Atherton St.

Hayward, CA 94541

510-727-8513

chrisg@haca.net

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19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26
27
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CASE NO.

DECLARATION OF KATHERINE CODY

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DECLARATION OF KATHERINE CODY

I, Katherine Cody, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at the Bulb in Albany, California. I have resided at the Bulb since 2007. I have been homeless since 2007 and have no family I can live with. I have a tent shelter at the Bulb that keeps me warm and dry and I consider this my home. Photographs of my home there are attached as Exhibit A.

3. In 2007 an officer came to my tent and shouted, "Albany Police!" and told me to come outside. I came out and saw he was in full body armor with an AR-15. Shocked, I put my hands up and asked what he wanted. He told me that I was camping illegally, that I had to get out, and that he would come back in a few days to make sure I had left. I had no place to go, so I took down my tent and hid it in the bushes. For nearly a week, I slept in a sleeping bag on the ground with my dogs on a leash attached to my wrist. I was scared that they would arrest me and shoot my dogs. A week later, more officers came back, armed with guns, and told me to leave again. They told me I could leave some personal possessions there until I could find transportation to get them out. I left a locked trunk with precious personal items in it and left the Bulb. When I returned, my items were littered on the ground and everything had been bulldozed and thrown into the dumpster. Several days later, the officers returned again and told me that they were no longer kicking people out and that I could stay there.

4. Since the officers told me, in 2007, that it was okay to stay there, I believed that I could stay at the Bulb for as long as I needed to and that it was officially

1 authorized by the City for me to stay there permanently. I was very surprised when I heard
2 this May that the City wanted to kick us out.

3
4 5. From 2009 to 2010, I left the Bulb to start living in a housing cooperative
5 in Berkeley. The cooperative quickly fell apart and then I started living in my van. I lived
6 in the van with my dogs for several months. The van broke down and I couldn't afford to
7 fix it so I traded it in for another van.

8
9 6. I desperately searched for housing while I was living in my van. I knew
10 my van was not going to make it, so I looked on Craigslist and called and visited at least
11 fifty apartments or rooms. I looked at places throughout the East Bay Area. I could not find
12 any housing that I could afford, so in 2010 I had to move back to the Bulb. I have now
13 been here since 2010.

14
15 7. While I was living in my van, an Albany police officer approached me and
16 asked me why I was not on the Bulb, and that I should get back there.

17
18 8. I also tried to get on the waiting list for Section 8. There was a lottery and
19 about 150 spaces available. I went to my friend's house to use her computer to apply for a
20 space. I logged on two minutes after the lottery began and it was already full. There were
21 sixty thousand responses, I believe. I always keep my ear out for something affordable, but
22 I haven't been able to find anything.

23
24 9. I once tried living in a homeless shelter, in the early 1990s, but at the
25 shelter I was threatened. Some residents of the homeless shelter told me they would beat
me if I did not pay them a "tax," so I left the shelter.

10
11 10. In the early 1990s, before living at the Bulb, I was the victim of a violent
12 crime. I was accosted by two men, at night, who attempted to rob me and stabbed me. I

1
2 landed in the middle of the street and called out for help, but no one came. Eventually my
3 friend showed up and called the police.

4 11. I have Post-Traumatic Stress Disorder and anxiety resulting from this
5 incident.

6 12. After I was stabbed, I was taken to a hospital. My spleen was removed,
7 and I received a blood transfusion. The blood was contaminated, and I contracted Hepatitis
8 C. The disease prevents me from eating and drinking processed foods, which would cause
9 my liver to swell. It also causes fatigue, increased susceptibility to illness, and joint pain,
10 making it difficult to walk at times.

11 13. I also suffer from melancholy, which means that I am frequently sad. At
12 the Bulb, I have a close community of friends who are always nearby if I need a shoulder
13 to cry on. They also help by bringing me water and food. I also help others by cooking for
14 those who cannot cook for themselves.

15 14. I receive SSI for my disability – I cannot work because of my Hepatitis C.
16 I get \$950.40 per month. When I move indoors, they will take \$120 away. I have no other
17 source of income.

18 15. My friend (who was also terminally ill and on hospice care, and has since
19 died) and I sought help from Berkeley Food and Housing to find a two-bedroom apartment
20 together. They originally told me that there was no housing subsidy available. On
21 September 20, 2013, they came and told me they would be able to subsidize three months
22 of housing, if they could find me a place to stay. At the end of three months, I would have
23 to be able to afford to afford all the rent. So far, they have not found a place for me to live.
24 Many times, during the hours they say they are here, they are not here. I have felt that they
25 are not listening to us and they do not care about our problems. Recently they have said

1 they would take me to get my proof of income from social security, but they had
2 reservations about whether they could find a place to rent for me, because of my dogs. I
3 feel I need my dogs for safety and my mental health. They said they had an idea to put to
4 the City of Albany about me and Patricia Moore, but they wouldn't say what it was.
5

6 16. In September 2013, two workers from the City of Albany came by and
7 told me that I needed to start packing up my stuff. They told me that they would be
8 returning with plastic bags. They said that I should put my stuff in the bags, and write my
9 name on the tags, and that it would be stored for me until I found a place to keep it.

10 17. I have with me at the Bulb a bed, a large table and chairs, several rugs, a
11 chest of drawers, a bookcase and books, stainless steel shelves, a stove and oven, pots and
12 pans, solar panels, bedding, clothes, and artwork. I also have a kennel and dog house for
13 my dogs. Photographs of some of these possessions, as well as my kitchen and living
14 quarters, are attached as Exhibit A. Most of these possessions would not fit in plastic bags.

15 18. If I were forced to leave the Bulb, I would want to bring these possessions
16 with me. If I had to sleep elsewhere, I would not want to abandon or lose my tent,
17 furniture, kitchen, and other things.

18 19. Because of my Hepatitis C, I have a very weak immune system and cannot
19 fight off a cold or flu. Living in a dormitory, sleeping with dozens of other people next to
20 me, would be dangerous to my health. I also have to get up frequently in the night because
21 of the Hepatitis C. It would be hard and disruptive to do this in a dormitory, especially if
22 those who ran the shelter prevented us from leaving the trailer after a certain time.

23 20. I also need to have shelter during the day. My age and Hepatitis C make
24 me easily fatigued, and I often need to take naps during the day. In the dormitory trailers, I
25

1 will have nowhere to rest during the day or get out of the rain. Being outside would make
2 me more susceptible to illness.

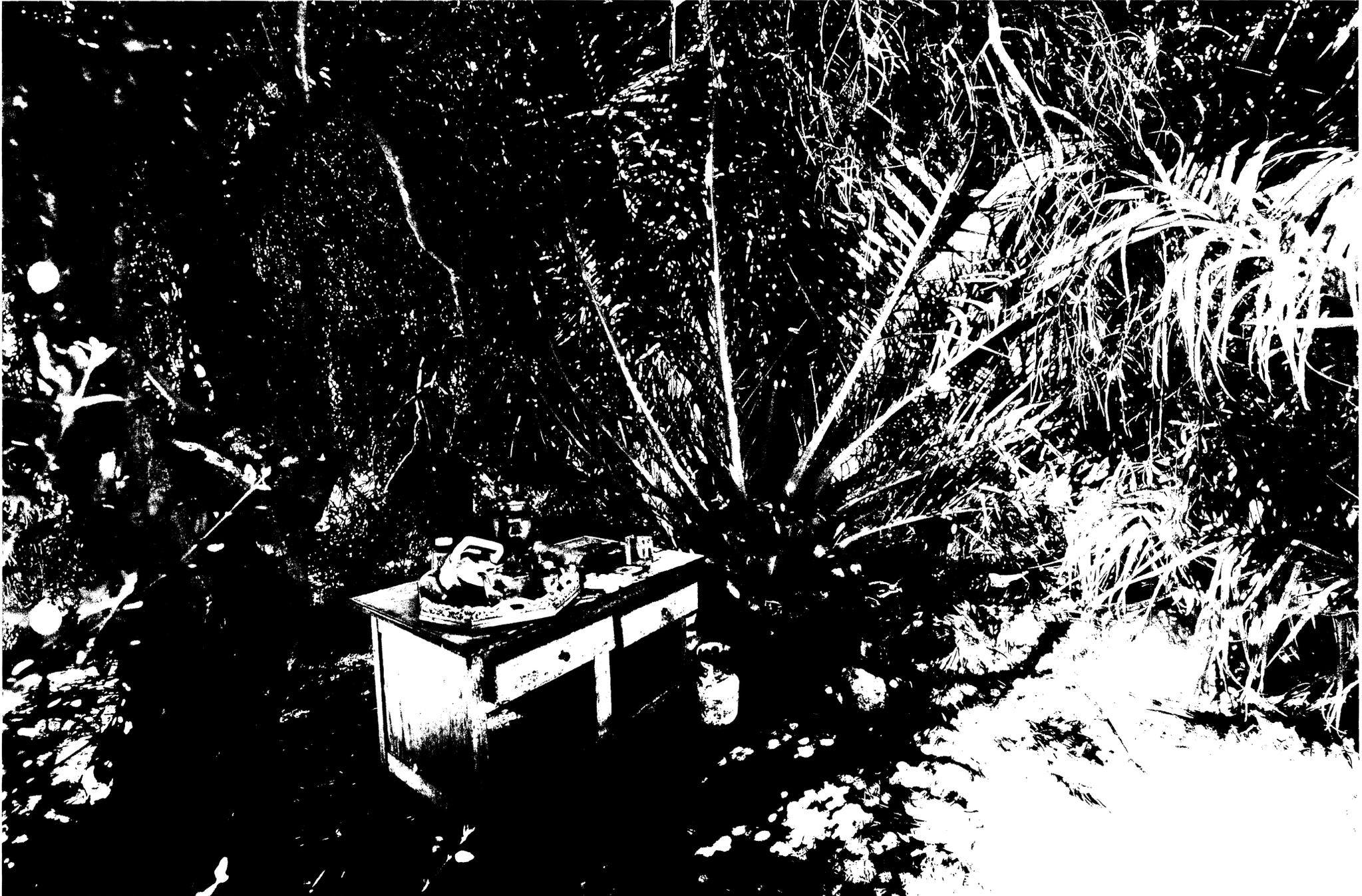
3 21. Also, because of my Hepatitis C, I need a very special diet and must
4 prepare my own food. For example, I cannot eat processed food. If I lived in the
5 dormitories, I would have no place to cook my own food. I would have no place to
6 store my cooking materials and food.

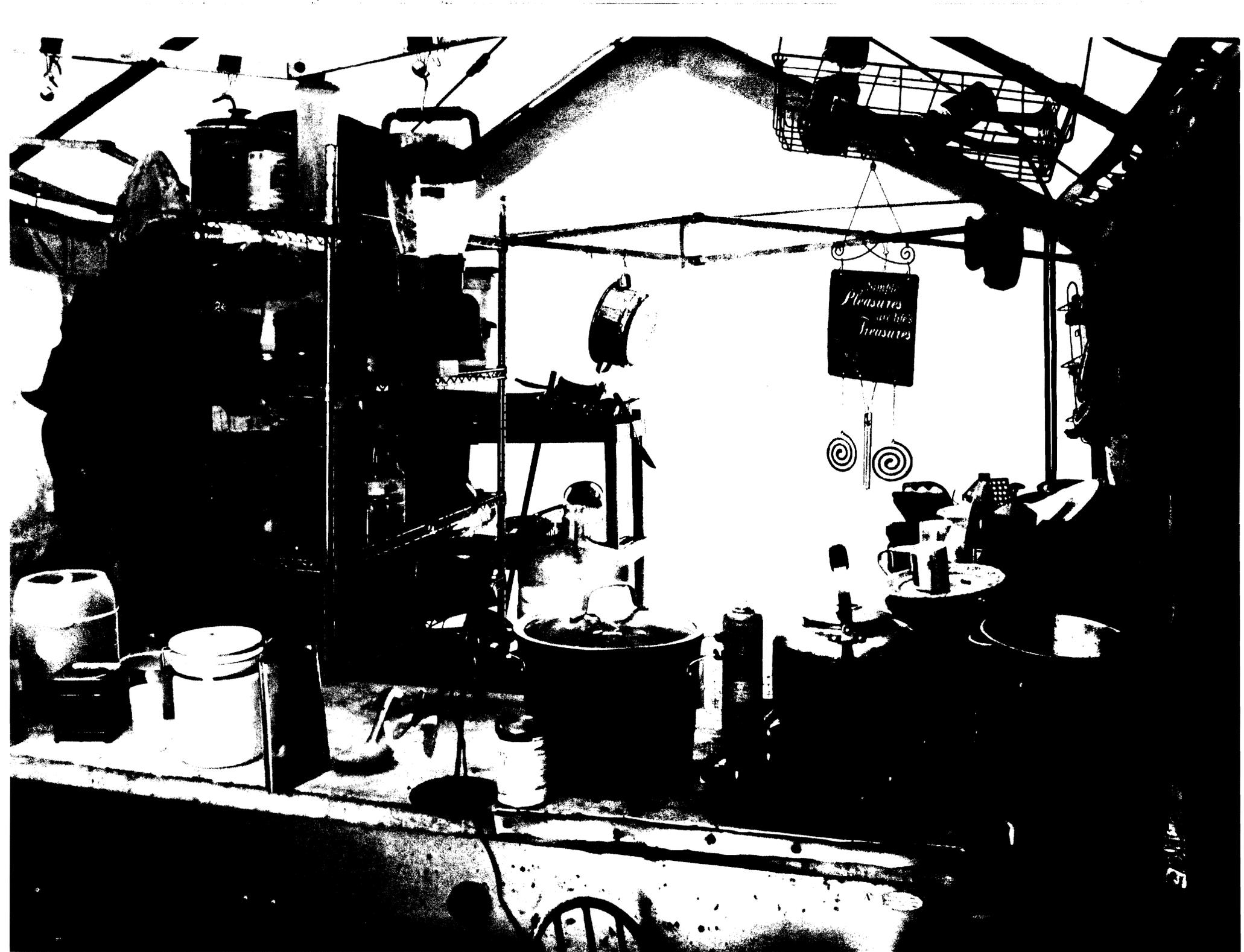
7 22. My PTSD and anxiety from being stabbed and attacked in the shelter
8 would make entering the trailer-dormitories very difficult for me. PTSD makes it very
9 difficult to cope with change, and causes a lot of anxiety. My companion animals help me
10 to cope, but in the dormitory I would not be able to have them with me. I am also afraid of
11 being attacked in the dormitory, similar to when I stayed in the shelter the last time.
12 Although there are many people at the Bulb that I am very close with, I would not be able
13 to sleep next to people that I do not know. It would be frightening and stressful, and
14 without my dogs, I could not handle it. I also need to have privacy, where I can go to be by
15 myself to calm down if necessary.
16

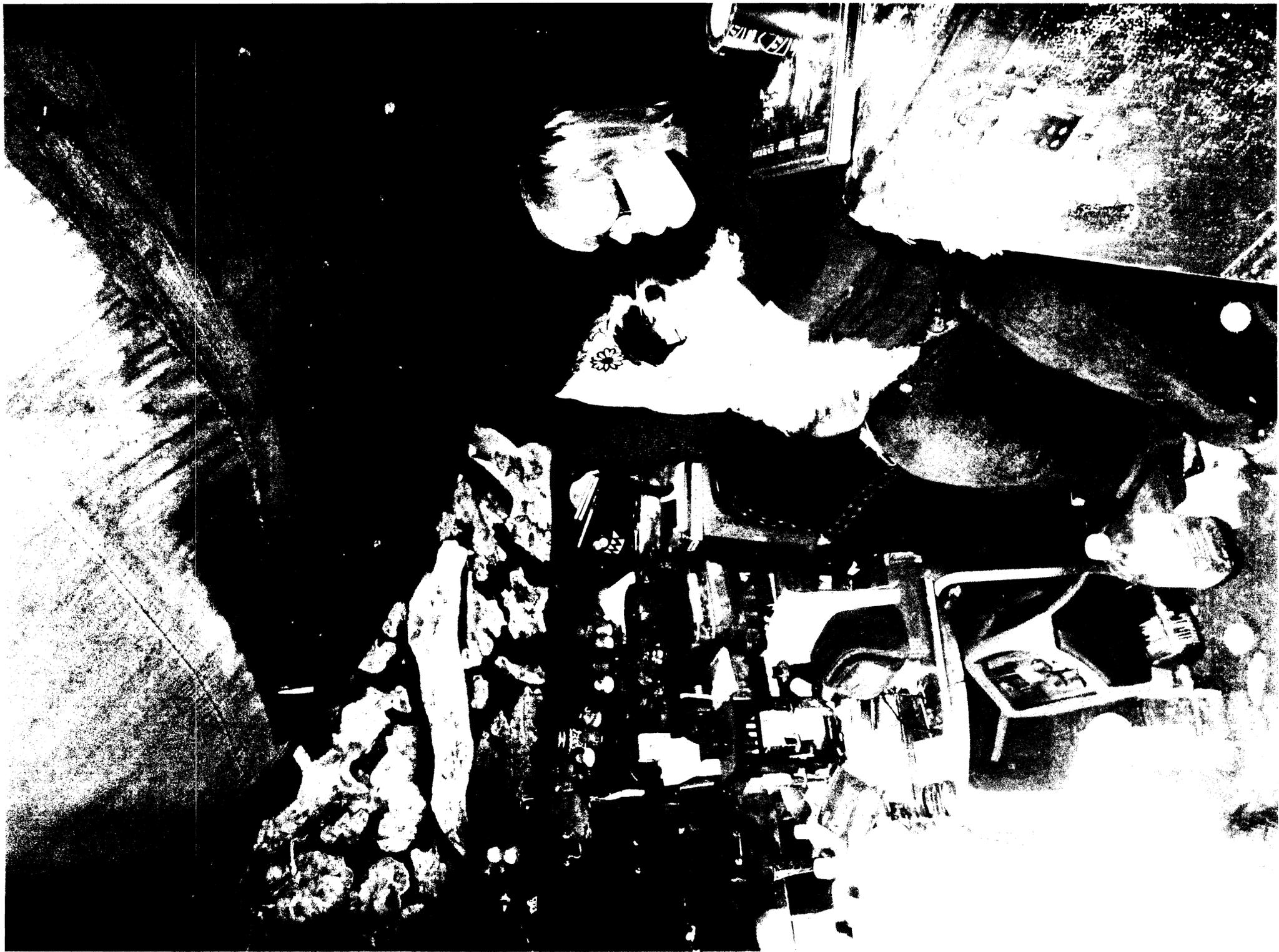
17
18 I declare under penalty of perjury under the laws of the State of California and the
19 United States of America that the foregoing is true and correct.

20 Executed this 20th day of October, 2013 at Albany, California.

21
22 By:  _____
23 Katherine Cody
24
25









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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
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22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
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CASE NO.

DECLARATION OF DAVID JUSTUS

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DECLARATION OF DAVID SCOTT JUSTUS

I, David Scott Justus, declare that:

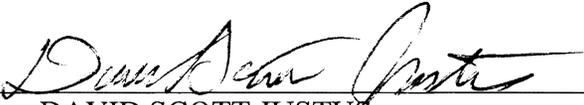
1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.
2. I am currently homeless and reside at the Bulb in Albany California. I have resided at the Bulb since November 2010 and have lived there continuously since that date.
3. I am 55 years old and grew up in Danville, California. I worked for a long time as a tool and dye maker. When I was in my 40s, I went back to school and graduated from Brooks College. I obtained my degree in graphic design 10 years ago. At that time, I was not able to find employment and was evicted from my apartment after my savings dried up.
4. I initially moved to People's Park in Berkeley, but was harassed regularly there. I had friends who told me about the Bulb and so I moved out here.
5. I have tried to get housing, but could not because my only source of income is Food Stamps. I have had trouble finding employment because of physical impairment and lack of an address.
6. Then last year I was diagnosed with depression. That, and my physical condition, are making it even more difficult for me to return to work. I am in the process of applying for disability benefits, but I understand it will take a while before I could get those benefits and have an income.

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

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Executed this 22nd day of September, 2013 at Albany, California.

By:



DAVID SCOTT JUSTUS

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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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19 RICHARD WILSON, TAMURA ROBINSON,
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24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
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27
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CASE NO.

**DECLARATION OF STEPHANIE
RINGSTAD**

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DECLARATION OF STEPHANIE ANN RINGSTAD

I, Stephanie Ann Ringstad, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at The Bulb in Albany, California. I have resided at The Bulb since approximately 2008. A photograph of me inside the shelter where I live is attached as Exhibit A.

3. I became homeless after enduring a divorce in 1994. After the divorce, my ex-husband refused to pay the mortgage, which led to the foreclosure of our house. At the time, I was working as a graphic designer, but I ceased being able to find enough work. I became an administrative assistant through temp agencies until about 1999. At first, my mother allowed me to stay with her, but because of limited space, I ended up moving from house to house in Berkeley and Albany and staying with friends, exhausting every lead and friendship I had.

4. Immediately before coming to the Bulb, I was staying at a friend's apartment in Berkeley. The friend had to leave that apartment and I was forced to find a new place to live. I had come to live with my friend in Berkeley because I had been sexually assaulted in another house.

5. I came to The Bulb because I had nowhere else to go. The Bulb has offered me independence and community. I do not have to rely on other people to stay on the Bulb, and I have always felt safe at The Bulb.

6. My income is about \$500 a month. I receive \$100 a month from a family member and make about \$400 a month through panhandling and recycling.

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2 7. I live in a tent covered by a large tarp. I have another tent nearby where I
3 keep my belongings. I assembled both of them myself. I consider the tent I live in to be
4 my home. It has kept me safe and sheltered from the elements for several years.

5 8. The tents are where I keep my things, including furniture, books, clothing,
6 camera, radio, bike, bike trailer, important papers, food, and cooking items. These items
7 are my personal property. Many of my possessions, including my bed, dresser, bike, and
8 bike trailer, are too large to fit into the bags Albany has given out.

9 9. My home on the Bulb is where I have privacy and my own personal space.
10 I can close the front of my tent and be myself. I have no place else where I can have such
11 privacy.

12 10. Even if I am evicted from the Bulb, I will not be abandoning my tents. If it
13 became necessary to leave the Bulb, I would want to try and bring them with me.

14 11. I spoke to the Berkeley Food and Housing Project in early August and let
15 them know that I wanted to work on getting housing. I have not contacted them again,
16 because I have heard that they are only offering their services to people with proof of
17 income. I do not fall into that category. No one from Berkeley Food and Housing has
18 followed up with me.

19 12. I am unable to live in a dormitory-style trailer, because of my fear of being
20 physically attacked as happened to me once before. I would have no privacy and no private
21 space, and I would not have access to my personal property. I have anxiety and experience
22 severe panic attacks. Being forced into a trailer in close proximity to people would be
23 very stressful and difficult for me.

24 13. I am equally worried about being harmed if I am required to live on the
25 streets of Albany. I do not feel safe living on the streets. I am a survivor of sexual violence,

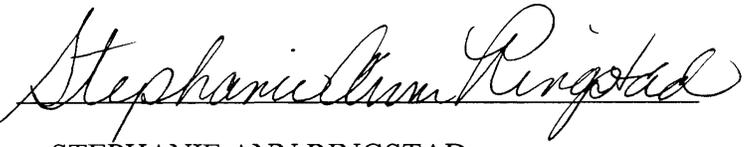
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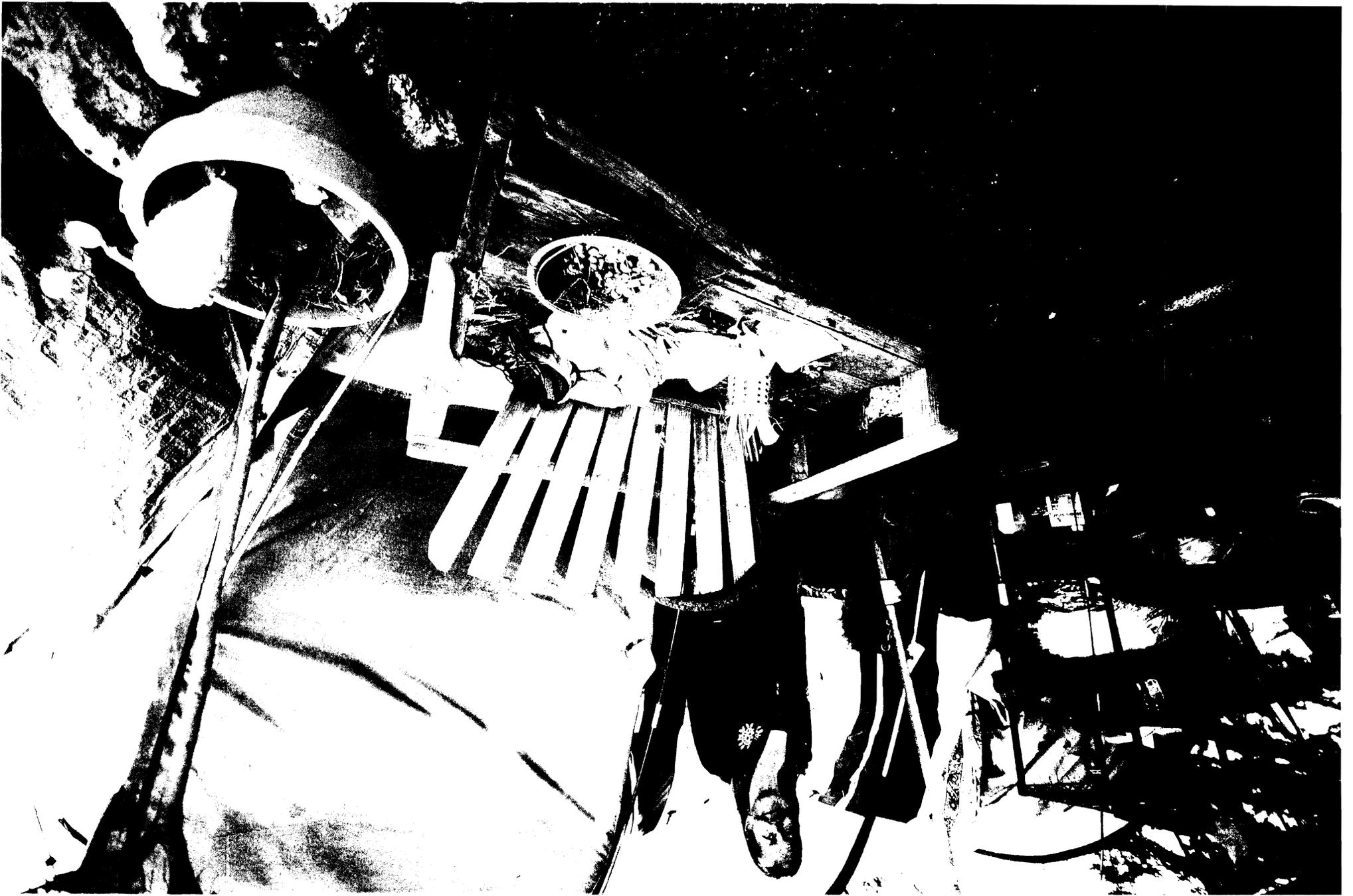
and am afraid that, if I was to sleep on the streets, I could be the victim of a violent crime. I also fear the risks to my health from being exposed to the elements.

14. If I were forced to leave, I also fear that I would lose all of my possessions because I have nowhere to take them.

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

Executed this 20th day of October, 2013 at Albany, California.

By: 
STEPHANIE ANN RINGSTAD





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13 Attorneys for Plaintiffs

14
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24 DEPARTMENT; and MIKE MCQUISTON, in
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25 Defendants.
26

CASE NO.

DECLARATION OF JULIE SUTTON

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DECLARATION OF JULIE SUTTON

I, Julie Sutton, declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at the Bulb in Albany California. I have lived on The Bulb since September 2011.

3. I moved to the Bulb on the advice of the Berkeley and Albany Police.

4. I had been living at various locations in the Marina and along the waterfront for about eighteen months. The police removed me from those locations and recommended that I go to the Bulb on multiple occasions.

5. I continue living at the Bulb because it gives me peace of mind. I experience substantial anxiety in crowded and busy places, but I feel relaxed at the Bulb. I live in a tent on the Bulb, which is my home. It affords me privacy and a place to be alone. I also have a bicycle, a bed, and two cats. My cats provide me companionship and emotional stability. I would not want to abandon them.

6. I enjoy the community at the Bulb. We try to self-govern in weekly meetings. I repaired and run the library that has been in existence for more than ten years.

7. When I came here, the police implied that this option was permanent, and that it was okay to stay here. I believed that living here would be a permanent thing.

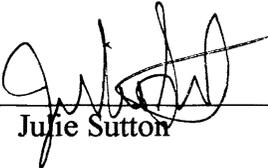
8. I have never received assistance to find housing from a government agency. I can make about ten dollars per day from collecting cans, but I have no source of income other than that.

9. I was in a serious car accident at age 19, after which I began filing for disability benefits. I stopped the process to move to Kentucky and work with horses. Upon returning, both my physical and mental health deteriorated. I am also very depressed.

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

Executed this 22nd day of October, 2013 at Albany, California.

By: 
Julie Sutton

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13 Attorneys for Plaintiffs

14
15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 KATHERINE CODY; PATRICIA MOORE;
ROBERT WHARTON; APRIL ANTHONY;
18 LARRY CABRERA; JOSEPH ROSE;
STEPHANIE RINGSTAD; ALEXANDER
19 RICHARD WILSON, TAMURA ROBINSON,
PHILIP WILLIAM LEWIS and ALBANY
20 HOUSING ADVOCATES, a California non-
profit public benefit corporation,

21 Plaintiffs,

22 v.

23 CITY OF ALBANY; ALBANY POLICE
24 DEPARTMENT; and MIKE MCQUISTON, in
his official capacity as Chief of Police;

25 Defendants.
26

CASE NO.

DECLARATION OF JOSEPH WALTER JR.

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DECLARATION OF JOSEPH WALTER, JR.

I, Joseph Walter, Jr., declare that:

1. I make this declaration based on personal knowledge and if called as a witness could testify competently to the matters stated herein.

2. I am currently homeless and reside at The Bulb in Albany California. I have resided at The Bulb since 2001. I have spent time since then living in Point Isabel and Hoffman Marsh. I returned to Albany Bulb around 2004 and have remained here since then.

3. In 2004 or 2005 my home was bulldozed by East Bay Regional Parks. Officials claimed they were cleaning up the artwork on Albany Bulb, but they destroyed my home and my possessions. I have stayed on Albany Bulb though, because it's somewhere I can survive and it's a low stress environment.

4. I choose to live at the Albany Bulb because it's stress free and I feel safe here. The Bulb is not too far from town. It's a nice area, and nobody else wanted it. I don't want to live in the hills because they're hard to get to and too close to people's homes. I don't want to bother people and have to sleep in doorways.

5. Albany Bulb is a good place for me to live because I know I can survive here. I can float, without a lot of stress. Living in society, I always feel like I'm sinking slowly. Housing is too expensive and I'm not able to keep up.

6. It's hard to find housing outside of the Bulb. I don't know of any services in Albany for individuals like me. I would have to go to Berkeley to get any help.

Churches come out the Bulb with sleeping bags and clothes a few times a year. This helps,

1 but it's not enough. Berkeley Food and Housing has started coming out to help, but only
2 over the past few months.

3 7. My only income is about \$900 a month in SSI disability payments. I've
4 been receiving disability benefits for about two years. I receive disability assistance
5 because I was diagnosed with chronic depression.

6 8. Over the years I have used welfare, food stamps, and Section 8 housing
7 assistance to survive. These programs helped a little when I was with my family and had
8 children, but now because I'm a single adult I'm not eligible for many of those programs.
9 Police often ask me why I don't apply for government assistance, but the paperwork and
10 application process is so difficult for most programs that I've found it too confusing to
11 complete without assistance.

12 9. I have one dog, a boxer mix named Bob Marley, who I am very attached
13 to. He provides me companionship and helps me cope with my depression.

14 10. Berkeley Food and Housing comes out to the Bulb on Tuesdays and
15 Thursdays. The few people who have gotten assistance through them have not been happy.
16 Sometimes the housing that they are offering is in really bad neighborhoods where people
17 aren't comfortable.

18 11. A few weeks ago, the East Bay Regional Park Police wouldn't let me
19 leave the Bulb to use the restroom. It was around 12pm. The officers wouldn't let me
20 through to go to the restroom and go back home, even though I live on the Bulb. I ended
21 up waiting until they left and then went to the bathroom.

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12. I consider The Bulb my home and can't imagine living anywhere else. I have a home here where I know I can survive with the very little disability assistance I receive. I have lived on and off at The Bulb for almost fifteen years and I can cope with the stress here much better than other places I have lived in the area.

13. I live in a carport that is held together with Velcro. It is my home and keeps me sheltered from the weather. It allows me to be in a private space where I can relax and be alone. Inside I keep my possessions. I have various trinkets from my past that are sentimental and very important to me. I also have a sectional couch, a fold-up full-size bed, and a telescope. I also keep my tools there, which I use to fix mechanical things. Many of the things I have would not fit in the garbage bags that the City is providing.

14. If I had to leave the Bulb, I would not want to abandon my shelter. I would want to bring it with me.

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

Executed this 21st day of October, 2013 at Albany, California.

By: Joseph Walter, Jr.
Joseph Walter, Jr.