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**Via Fax and email**

September 22, 2007

Robert S. Lieber  
Mayor  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

Robert Zweben  
City Attorney  
City of Albany  
1730 Solano Avenue  
Albany, CA 94706

Beth Pollard  
City Administrator  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

Michael McQuiston  
Police Chief  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

Re: Planned evictions on the Albany Landfill

Dear Sirs and Madame:

I am writing to protest the City of Albany's plans to evict homeless people from the Albany Bulb.

On Friday, September 21, Albany city officials were out at the Bulb and announced that on Monday, the 24<sup>th</sup>, they would begin evicting people who had been living there. Police had previously passed out notices to some of the people warning that they were in violation of Albany's Municipal Code section 8-4.4 prohibiting "camping."

Albany still has no shelters where a homeless person who doesn't have the means to rent or buy a place to live can spend the night legally within the City. In 1999, when far more people were living out on the Landfill, the City at least made a gesture towards providing temporary housing. Not this time. The City has waited till the rainy season to kick people out into the cold with no place to go. The message is clear: Get out of town. There is no place for you here.

This eviction is not only inhuman, it's illegal. Enforcing Albany's camping ordinance against the homeless when there are no shelter beds available constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

In *Jones v. City of Los Angeles*, 444 F.3d 1118 (April 2006), the Ninth Circuit Court of Appeals held that a Los Angeles ordinance criminalizing sitting, lying, or sleeping on public streets and sidewalks at all times and in all places within Los Angeles city limits violated the Eighth Amendment as applied to homeless individuals involuntarily sitting, lying or sleeping on the street due to the unavailability of shelter in Los Angeles. It held that “the Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles.” (*Id.* at 1138. ) It remanded the case back to the district court for appropriate injunctive relief.

Albany’s vague and broadly written camping ordinance applies to all open spaces within its borders including parks, undeveloped areas, streets, and sidewalks. Its provisions against camping, loitering, and lodging criminalize anyone who happens to be homeless who attempts to spend the night with the City limits. To avoid its sanctions a homeless person would have to stay awake and constantly on the move. It applies to anyone who at any time attempts to secure a living space in Albany who can’t afford to rent a room. Because Albany has not a single shelter bed, its camping ordinance, like the ordinance considered by the court in *Jones*, cannot be used against homeless individuals currently living on the Bulb without violating the Constitution’s Eighth Amendment prohibition against cruel and unusual punishment. Nor can Albany claim an exemption from the logic of *Jones* by pointing those it evicts to shelters in neighboring jurisdictions. Its neighbors have their own homeless population and their shelters are almost always full.

In *In re Eichorn* (1998) 69 Cal.App.4<sup>th</sup> 382, the court held that a homeless man cited for violating a Santa Anna camping ordinance, who had presented evidence that on the night he was cited every shelter bed in the city was occupied could raise a defense of necessity. He could argue that he violated the law only to “(1) prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency.” (*Id.* at 389.) The court noted that “Sleep is a physiological need, not an option for humans.” Eichorn could reasonably argue that the “significant evil” he avoided by violating the camping ordinance was “loss of sleep.” (*Ibid.* )

There is a close analogy between the defense of necessity and a claim that prosecution violates the Eighth Amendment prohibition on cruel and unusual punishment. In the one case that went to trial arising out of the evictions of homeless people from the Bulb in 1999, *People v. Michael Reed Smith*, Berkeley Municipal Court Case no. 162913), a jury found “Picasso” Mike Smith not guilty based on a defense of necessity, when he showed that Albany then, as now had no shelters.

If the City intends to evict homeless individuals currently living on the Bulb, it must first provide them lodging for a length of time sufficient for them to secure an alternative place to live. If they don’t have the means for obtaining housing, it must provide them real, effective assistance. If it proceeds with evictions without providing viable

alternative housing it not only places the lives of those it displaces at risk, it places itself at significant risk of liability for knowingly violating their rights.

Finally, should Albany choose to proceed with the evictions, it must take care to preserve and store the possessions of those who are forced out of their campsites on the Bulb. By the manner in which they are kept, those possessions are easily distinguishable from trash. If there is ambiguity the City should err on the side of caution. In a recent case, *Kincaid v. City of Fresno* 2007 U.S. Dist. LEXIS 63528 the court issued a preliminary injunction barring the City from seizing and immediately destroying the personal property of homeless people found during raids on their encampments. It agreed with the Lawyers Committee on Civil Rights, the ACLU of Northern California and the law firm of Heller Ehrman who represented the plaintiffs that the practice appeared to violate their constitution rights.

If you have any questions or concerns, or would like to discuss these matters further, please contact me at your earliest convenience.

Very truly yours,

Osha Neumann

Cc: Vice Mayor Marge Atkinson  
Councilmember Farid Javandel  
Councilmember Jewel Okawachi  
Councilmember Joanne Wile



August 5, 2008

Robert Zweben  
City Attorney  
City of Albany  
1730 Solano Avenue  
Albany, CA 94706

Re: Camping citations issued to homeless people

Dear Mr. Zweben:

The East Bay Community Law Center (EBCLC) and the Homeless Action Center (HAC) represent homeless people who have been cited by the Albany police for violation of its "camping" ordinance, Albany Municipal Code section 8-4.4. Disability Rights Advocates is a non-profit law firm dedicated to protecting and advancing the civil rights of people with disabilities. We are jointly writing to express the concern of each of our organizations that Albany police are again issuing citations to homeless people for violation of its "camping" ordinance, Albany Municipal Code section 8-4.4. We ask that the City cease its efforts to prosecute homeless people under this ordinance, and we would like to meet with you to discuss our concerns.

We believe that Albany Municipal Code section 8-4.4 is (a) unconstitutionally vague on its face and (b) unconstitutional as applied to people who are homeless. It prohibits "loitering," and "lodging," neither of which are defined. Loitering statutes that lack an intent requirement have been repeatedly struck down as violating the 14th Amendment guarantees of due process. The statute is so broadly written that it effectively prohibits people who are homeless from living in Albany. To avoid its sanctions a homeless person would have to stay awake and constantly on the move. It applies to all open spaces including parks, undeveloped areas, streets, and sidewalks.

Albany still lacks a single shelter bed. It has no program to provide transitional housing or supported living arrangements for homeless people. The fact that it has a contract with Berkeley Mental Health to provide services as needed in Albany does not in any way compensate for Albany's failure to provide for its own homeless population. Berkeley Mental Health is not a housing program. Shooing homeless people across the border into Berkeley and telling them to find shelter

there amounts to little more than telling them to “Get out of town. You’re not wanted here.”

A recent *New York Times* article (“U.S. Reports Drop in Homeless Population,” by Rachel Swarns, July 30), reported an overall drop in the number of homeless people counted in a recent national survey and attributed the decrease in part to a “housing first,” strategy that “placed the chronically homeless into permanent shelter — apartments, halfway houses or rooms — and provided them with services for drug addiction, mental illness and health problems.” Unfortunately Albany seems to be pursuing a “housing last” strategy. Indeed, Albany is failing to provide either shelter or housing.

In the absence of adequate housing, or indeed any housing for homeless people in Albany, evicting homeless people from their campsites by enforcement of this ordinance or by any other means amounts to cruel and unusual punishment in violation of the Eighth Amendment of the Constitution. We believe that homeless people cited under this ordinance could legitimately raise a defense of necessity, as per *In re Eichorn* (1998) 69 Cal.App.4<sup>th</sup> 382. The situation now is no different than it was in 1999, when Albany moved to evict homeless people from the Albany landfill. In the one case that went to trial arising out of those 1999 evictions, Michael Smith was found not guilty based on an *Eichorn* defense. (*People v. Michael Reed Smith*, Berkeley Municipal Court Case no. 162913.)

So far we are aware of five people who have received camping citations:

James Lee Bailey	issued citation # 5030210 on July 18, 2008
Michael Welch	issued citation #5030236 on July 2, 2008
Chester Hill	issued citation # 5029345 on July 2, 2008
Jesus Lopez	issued citation #5030249 on July 2, 2008
Glenn Bachelidor	issued citation # 5029334 on July 3, 2008

All of these citations were issued on the "Bulb," that portion of the Albany landfill that remains under Albany's jurisdiction. Other homeless people who are living on the Bulb have told us they have been warned that they will also receive citations and will be evicted if they do not leave voluntarily. A number of them have significant disabilities, which significantly impact their ability to find alternative places to live.

We ask that all efforts to prosecute homeless people and evict them from the places where they are currently living in Albany cease. We look forward to

meeting with you in the hopes of avoiding litigation. Given the present circumstances we request a written response from you no later than noon Thursday, August 14.

Very truly yours,

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East Bay Community Law Center  
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Berkeley, CA 94703  
(510) 644-2429

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Syd Wolinsky  
Disability Rights Advocates  
Berkeley, Ca 94704  
(510) 665-8644

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David Waggoner  
Homeless Action Center  
3126 Shattuck Ave.  
Berkeley, CA 94705  
540-0878

cc:

Albany Mayor Robert Lieber  
Vice Mayor Marge Atkinson  
Council member Farid Javandel  
Council member Jewel Okawachi  
Council member Joanne Wile

Albany City Administrator Beth Pollard  
Albany Chief of Police Mike McQuiston



# Albany Police Department

1000 SAN PABLO AVE. • ALBANY, CALIFORNIA 94706-2295

MICHAEL MCQUISTON  
Chief of Police

(510) 525-7300  
FAX (510) 525-1360

October 27, 2008

Ms. Nancy Adams  
Chief of Staff, Traffic Division  
Wiley Manuel Courthouse  
661 Washington St.  
Oakland, CA 94607

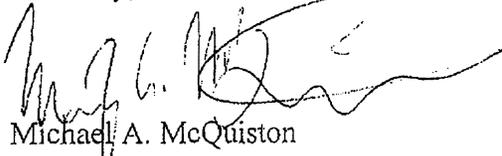
Dear Ms. Adams:

The Albany Police Department would like to respectfully request the court dismiss the following citations in the interest of justice:

Citation #	Name	Date Issued	Court Date
— 5029344	BACHELDER, Glenn	7/2/08	10/30/08 Dept. 102 9:00 AM - 30166051
— 5029345	HILL, Chester	7/2/08	10/30/08 Dept. 102 9:00 AM - 30166042
— 5030236	WELCH, Michael	7/2/08	10/30/08 Dept 102 9:00 AM - 30133994
— 5030249	LOPEZ, Jesus	7/7/08	10/30/08 Dept 102 9:00 AM - 30166024
5030210	BAILEY, James	7/8/08	12/02/08 Dept 102 9:00 AM - 30166060
5030261	MATTONEN, Marc	7/12/08	WARRANT 30166079
— 5030289	WILSON, Alexander	8/13/08	10/30/08 Dept 102 9:00 AM - 30183537
— 5030288	TEAGUE, Sarah	8/13/08	10/30/08 Dept 102 9:00 AM - 30182476

Thank you for your assistance with this request. If you should have any questions, please feel free to call me at my direct number 510-528-5788.

Sincerely,



Michael A. McQuiston  
Chief of Police

cc: Beth Pollard, City Administrator  
Robert Zweben, City Attorney

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



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**ORIGINAL  
FILED**

**NOV 13 2013**

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

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**

**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,

Plaintiffs,

v.

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

Defendants.

CASE NO. **C13-5270**

**DECLARATION OF TAMARA ROBINSON**

**CRB**

1 I, Tamara Robinson, declare that:

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

4  
5 2. I am currently homeless and reside at The Bulb in Albany California. I have resided at  
6 The Bulb for three years. I am 23 years old and I have AIDS.

7 3. I have no income.

8 4. I have a dog, Chewy, whom I love very much.

9  
10 5. I love living on the landfill because I am outdoors in nature, and because I have  
11 community, and because I would have great trouble living in a box. I live in a tent, which is my  
12 home. I have a mattress in the tent that I sleep on. I share a tent with my friend, Joe Rose. He and I  
13 take care of each other and provide each other emotional support.

14 6. Berkeley Food and Housing Project has not offered me any housing.

15  
16 7. Early in the morning on Thursday, September 5, 2013, I was in Albany on Buchanan  
17 Street on the south sidewalk opposite Albany City Hall. I was sleeping. My body was primarily on  
18 the gravel next to the sidewalk. One arm on the side of the sidewalk. Attached to this declaration as  
19 exhibit A is a photograph that depicts the sidewalk where I was lying.

20 8. I had laid down the night before, because I was tired and because my dog who was  
21 with me had a rotator cuff injury and needed to rest.

22  
23 9. Suddenly I was awakened by three Albany police officers. One of them asked me "are  
24 you all right?" I answered, "No, I'm not all right; you just woke me up." The police officer said,  
25 "Why don't you go home." I said, "I am preparing myself for next month, when he will not be  
26 allowed to stay on the Bulb." I am not going back to the landfill because it is no longer my home.

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1 The police officer nevertheless told me to go back to the landfill, and said if I didn't go he would  
2 give me a ticket for obstructing the sidewalk.

3 10. My body was not even on the sidewalk. However I moved further onto the gravel and  
4 they left.  
5

6 11. Because I have AIDS, I need to rest during the day. Sometimes I will sleep nearly all  
7 day for several weeks at a time and am very lethargic. The trailers will be closed during the day, so I  
8 will have no shelter from the rain when I need to rest in the daytime. I also have Hepatitis C, which  
9 means I have a weak immune system and am sick frequently. Because of this, I would not be able to  
10 sleep in close quarters with lots of people. I would be very susceptible to catching colds or influenza  
11 in the trailers, and because I have AIDS and Hepatitis C, it would be very dangerous to my health. I  
12 would also have trouble sleeping with so many people. I would not be able to have my possessions  
13 with me. If I am unable to sleep well, it would be even harder for my immune system to overcome  
14 illnesses.  
15

16 12. If forced to leave the Bulb, I would rather sleep on the street than the trailers. I am  
17 really uncomfortable being in a closed area with lots of people. Some nights I need to be alone, and I  
18 would have no privacy in the trailers. It is important for me to have space by myself so I can think  
19 and process my feelings. I also would not want to get other people sick by exposing them to the  
20 many colds and illnesses that I get. I also cannot abandon my dog. I suffer from depression and  
21 suicidal tendencies. Some days, the only thing that keeps me going is my dog, which provides me  
22 companionship and emotional stability. I also get a lot of mental and emotional support from living  
23 with my close friends at the Bulb, and I would not have a will to live if I were alone away from my  
24 community.  
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26 13. I would like to find housing that I could share with some of my friends at the Bulb.  
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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 20th day of October, 2013 at Albany, California.

By: Tamura Robinson  
Tamura Robinson



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13 Attorneys for Plaintiffs

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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17 KATHERINE CODY; PATRICIA MOORE;  
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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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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. **C13-5270**

DECLARATION OF JOSEPH ROSE

CRB

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DECLARATION OF JOSEPH ROSE  
CASE NO.

DECLARATION OF JOSEPH ROSE

I, Joseph Rose, declare that:

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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 but reside at the home I made at the Bulb in Albany, California. I have resided at the Bulb since February 2008. I have not lived anywhere else during that time. Attached as Exhibit A are photographs of me, my tent, my walker and possessions at my home.

3. I moved to the Bulb after my home was foreclosed on. I moved out here on my own because I had no money to afford anything else. My wife of twenty-seven years died before the foreclosure. I was a mess. At the Bulb, I had time to get over my wife's death. It is peaceful out there.

4. I live in a tent with tarps over it. Inside my tent I have a king-size mattress, a camp stove, and three walkers and four canes that I need for my bad hip. I have had to get rid of the other possessions that I had because I would have no place to keep them if we were evicted. I also have a bicycle with a trailer. Because of my hip problem, it is very important for me to have my bicycle because I can't walk well, so the only way I can get around is by riding my bike.

5. My brother lives right next to me in his own tent. Since my father passed away, my brother is one of the closest family relations I have. It has been very important for me to have my brother living with me because we support and take care of each other. I have developed relationships with other people at the Bulb, and they also feel like family. I feel like part of a community. It has helped me trust people again.

DECLARATION OF JOSEPH ROSE

- 1           6.       I also live with my dog, Son, who is my companion animal. I have had  
2           him for four years. Taking care of him gives me friendship and a sense of  
3           purpose.
- 4           7.       I have been on the waiting list for Section 8 housing for about three years.  
5           I do not have a voucher yet. I was chosen in some sort of lottery but it just  
6           resulted in my name being transferred from one list to another.
- 7           8.       When the Berkeley Food and Housing Project first came out the Bulb,  
8           they told us they were going to find us rent-free housing for 18 months. I applied  
9           for housing with them when they were out at the Bulb about a month ago and they  
10          told me they were only going to be able to subsidize our rent for four months. I  
11          had been planning to look for a house with Michael Nelson and Patricia Moore.  
12          Recently I have agreed to look at housing Berkeley Food and Housing Project  
13          wants to show me, but I am not sure it will work out.
- 14          9.       I receive \$1,200.00 in Social Security Disability Insurance benefits for my  
15          bad hip. My hip has been deteriorating for about fifteen years. I cannot work.
- 16          10.       Because of my bad hip, some days I need to lie down the entire day. It is  
17          okay to do that here because I have my brother and other friends who bring me  
18          the things I need. In the dormitory trailers, I would not be able to lie down if I  
19          need to because the trailers will be closed during the day.
- 20          11.       I would also have no place to keep my walkers and canes or my bicycle  
21          and bicycle trailer, which I need to get around. I would also have no place to  
22          prepare food in the trailers.
- 23          12.       I also need privacy, which I would not have in the trailers. I would not be  
24          able to relax – I would have my guard up all the time – if I were sharing such a  
25          small space with so many people all the time. I could not sleep.







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13 Attorneys for Plaintiffs

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

013-5270

CRB

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  
27  
28

CASE NO.

DECLARATION OF AMBER WHITSON

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DECLARATION OF AMBER WHITSON

I, Amber Whitson, 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 October 31, 2006 with my partner Phyl Lewis.

3. I have ADHD, chronic fungus, dyspepsia, and sciatica. I also have myoclonic seizures, a pituitary tumor, obsessive compulsive tendencies, and I have experienced discontinuation syndrome since stopping taking Zoloft eleven years ago. I have had serious chronic fatigue since I was eight.

4. I became homeless many years ago after my husband and I could no longer afford our housing.

5. Before coming to the Bulb I lived for two and a half years in and around People's Park in Berkeley. I was harassed constantly by Berkeley police. I came to the Bulb seeking a peaceful existence, and I found it. On the Bulb I am free from harassment by police. Since living on the Bulb, my mental and physical health have improved. I have benefited from living in nature and away from the bustle of society. On the Bulb my partner and I have found peace and quiet for the first time. Seven out of eight years of my wonderful relationship with Phyl have been spent on the Bulb.

6. I received a Shelter Plus Care voucher for housing in 2011. The Homeless Action Center (HAC) had entered my name in a lottery for vouchers and I won. I had a case manager at Lifelong Medical Care, Downtown Oakland, James Henderson. He looked for somewhere for me to live. I could not use my voucher in Albany because Albany has no services.

1  
2 7. I get \$940.50 from SSI every month. I've been receiving SSI since about  
3 two years after I moved to the Bulb. If I hadn't moved to the Bulb I would never have  
4 applied for SSI. I received assistance from Homeless Action Center in applying for SSI.  
5 Living at the Bulb also helped me get stabilized enough to get a phone and to get involved  
6 with the City Council meetings in the City of Albany.

7 8. I was an alternate for the position of representative for Albany's homeless  
8 community on the Homeless Task Force (HTF). I put in an application to the City for the  
9 position and was appointed in November 2012. I am also a member of Albany Housing  
10 Advocates, which includes members of the Task Force and other members of the Albany  
11 community to continue our work that we began on the HTF. .

12 9. The Homeless Task Force (HTF) met monthly. The purpose of the HTF  
13 work was originally to advise the City Council on options for strategies to help the  
14 people who are homeless. in the City of Albany. We gathered information online, from  
15 various presentations and by interviewing people in the community. The HTF reported our  
16 findings to the Albany City Council at the May 6, 2013 meeting. At that meeting the City  
17 Council voted to start enforcing the camping ordinance. No one on the HTF expected the  
18 Council to set a date for the eviction of homeless people from The Bulb at that meeting and  
19 we felt our work was disregarded.

20 10. The Homeless Task Force requested that the City of Albany provide a  
21 dumpster and a port-a-potty for the Bulb residents to use. The City of Albany provided a  
22 dumpster that is maintained by the City. However, the City did not provide a port-a-potty.

23 11. The Berkeley Food and Housing Project (BFHP) recently gave me a  
24 voucher to get my state ID upon my request.. About a month ago, while I was passing by  
25 their van parked on The Bulb, they handed me a listing for a place that was up in the hills

1 in El Cerrito. I have bad knees and do not have a car, and if I had been housed there I  
2 would I would not be able to walk or bike up all of those hills so I could not live there. I  
3 want to find housing with my partner Phyl but have been unable to so far.  
4

5 12. I was at the City Council meeting on September 3, 2013 when the City  
6 Council received a report from BFHP which showed that no people had been housed after  
7 33 people had been assessed by this project. To my knowledge, only one person has been  
8 housed since then. A true and correct copy of the Project Hope Report is attached hereto  
9 as Exhibit A.

10 13. On or about September 20, 2013 I received a copy of the City of Albany's  
11 September 2013 newsletter. On the front page, the City describes its intention of enforcing  
12 the "no camping ordinance in the City of Albany beginning in October." The newsletter  
13 describes the City's contract with BFHP to provide assistance to the homeless.

14 14. On September 24, 2013 an Albany police officer and a city employee  
15 came around to our shelters at the Bulb and handed out bags and tags to put our  
16 possessions in. Bulb residents were told that anything that they put in plastic trash bags  
17 and tag with their name will be stored at the City maintenance yard for 120 days. . I have  
18 many items that will not fit into a plastic bag including an Ikea bed frame and mattress,  
19 two old fashioned "footlocker" style trunks, tool chests, a card table that I mounted on two  
20 steel chairs so I can use my computer while standing due to problems with my sciatica. I  
21 was not told what the City intends to do with property that does not fit in plastic bags but it  
22 was implied that anything that is not bagged up and tagged with a resident's name will be  
23 destroyed or thrown out.. I am also concerned because in prior evictions people's property  
24 was destroyed.  
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1  
2 15. Attached hereto as Exhibit B is a transcript of remarks made by Chief  
3 McQuiston to the Homeless Task Force on December 20, 2012. I was present at the  
4 meeting and heard him make these remarks. I subsequently went to City Hall and obtained  
5 a CD of the remarks that was recorded by the City and I am attaching the transcript I  
6 requested be made from that CD. The remarks made by Chief McQuiston that the City  
7 was not enforcing the camping ban at the Bulb confirmed to me that the Bulb was the  
8 defacto homeless shelter in the City of Albany. The Albany police regularly patrolled the  
9 Bulb and also directed homeless people out to the Bulb to live.

10 16. As a member of the Homeless Task Force, I took on the job of conducting  
11 a survey of over 60 Bulb residents. I personally conducted most of the interviews with  
12 residents of the Bulb. Three or four of the assessments were provided by people who did  
13 interviews or gave out the questionnaire under my supervision. The information was  
14 gathered between late April and October 2013. The numbers fluctuate but there are  
15 approximately 60 people that are currently living at the Bulb. As a result of my survey and  
16 in my interaction with Bulb residents, I learned that most of the Bulb residents have  
17 disabilities. These include terminal liver disease, partial blindness, chronic pain, Hepatitis  
18 C, Hepatitis B, AIDS, PTSD, claustrophobia, paranoid schizophrenia, clinical depression,  
19 anxiety and bipolar disorders.

20 17. At the Bulb we have had a number of community projects that benefit all  
21 of the Bulb residents. We have built a library, created a share box of extra clothing and  
22 household items and constructed a work out area. Attached hereto as Exhibit C are true  
23 and correct copies of the library, share box and work out area.

24 18. I meet with my psychiatrist Dr. Joshua Kayman every two or three  
25 months. He believes my mental health has improved as a result of my life at the Bulb.

1 that transition will be difficult.

2 19. On or about October 31, 2013 I received a copy of the City of Albany's  
3 flyer describing the Albany Temporary Transition Shelter. A true and correct copy of that  
4 document is attached hereto as Exhibit D.

5 20. On or about November 4, 2013 I saw the trailers being put in place in the  
6 driveway that leads to the Bulb, which is also part of Buchanan Street Extension.

7 21. My partner Phyl and I began building our shelter six and a half years ago.  
8 It is a shelter that gives us privacy made with walls of brick, wood, and tarp. Inside, I am  
9 able to keep my possessions, including an IKEA queen-size mattress and bed frame,  
10 laptop, solar panels, shelves, a tent, a stack of granite cobblestones, paintings, an adjustable  
11 table, two huge travelling trunks, two bicycles with two bicycle trailers, a small refrigerator  
12 that we use as a cooler, a camp stove, five toolboxes, and a wicker chest. The tools we  
13 have are essential to maintain our bicycles. We have given some of our tools away because  
14 of the threatened eviction. Photographs of these possessions and the shelter we have made  
15 are attached as Exhibit E. In addition, I have a lot of significant items from my childhood,  
16 photographs, keepsakes and artwork. They are the only memories I have of my past. I  
17 would be devastated if I lost these things. I need my shelter during the day and evening  
18 because I have chronic fatigue and sciatica and need to lie down when I am sick, exhausted  
19 or in pain. Because of my ADHD and obsessive compulsive disorder, I need a private  
20 space where I can calm down. If I was staying in a dormitory with a lot of people, I  
21 would not have a space to rest, calm down and focus.  
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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 11<sup>th</sup> day of November, 2013 at Albany, California.

By:  \_\_\_\_\_  
Amber Whitson

# PROJECT HOPE

Program: Project Hope

Contractor: Berkeley Food and Housing Project

Year: 2013

Month: August

Number Assessed:	33
Number Housed:	0
Number Served:	54
Number of Services:	115
Age:	Approximate Range between 25 and 65
Gender:	46-Males / 24-Females
Last Place of Residence:	1-Hayward, 3-San Leandro, 1-Livermore, 1-Oakland, 11-Albany, 1-Richmond, 1-San Francisco, 1-Out of State, 2-Out of County
Bulb or other parts of the city	All Bulb except for 1 household of 2

**Report Submitted By:**

**Jo Ferlatte**

**Date: 9/3/2013**

**Homeless Task Force Meeting with Albany Chief McQuiston & Sgt. Willis  
December 20, 2012  
(99993-887991)**

Speakers:

Speaker	Time
	[00:00]
Speaker 1	It's 7:07.
Chief McQuiston	<p>Kind of the third thing that I think I want to have put out there is, change will not happen unless, unless there's political will behind it because political will controls the money that is needed and I think often to offer services and make meaningful change for people that are homeless. One of the, one of the organizations that I occasionally look at their stuff is the County of San Luis Obispo and I don't know if you come across any of that in any of what you've been studying. But San Luis Obispo does a pretty thorough census of their homeless population in the County of San Luis Obispo and I think it's an annual census and one of the things that they found this past year in 2012 is, they define the homeless in three different categories. I'm not 100% sure that I buy into this, but I think it's kind of, it's compelling to think about. Twenty percent they described as the ready homeless. Those are people that they define as ready and engaged to participate in available services and transition out of homelessness. Their findings with their particular area down there is that those people are typically homeless less than two and a half years.</p> <p>The other 80% of the homeless that they have studied are made up of two 40% groups. Forty percent that they call the unable or the cannots. This group is constrained, I'm reading this from a piece of paper, I downloaded it off the Internet here, this group is constrained by mental illness, addiction or both, and is unable to access or sustain involvement in available services. And they also, homeless, I'm sorry, whereas the other, first group was two and half years or less, this group is two and a half years or longer. And then also the other 40% are what we refer to as the resistant homeless and the will nots. This group's unwilling and resistant to access available services and homelessness is a choice for those people.</p> <p>It's also important to recognize when we talk about homelessness that we come across different kinds of homelessness. There are people that live in cars that are homeless. There are people that live on the street. There are people that live on our old landfill, and I'm sure there are other categories. What I think is unique to Albany is based on my anecdotal experience, the majority of our homeless are in that resistant homeless group. That is that they choose to be homeless and that ties back to my earlier comment that I believe Albany encourages it by allowing, and I'm not here advocating turn the police loose on the Bulb and we'll fix it. I'm just kind of pointing that out, that the Bulb is attractive to a certain type of homeless individual.</p>

	<p>I'm trying to find something positive to say here. The positive thing that I would report is, in the past in the City of Albany, I, next week I'll celebrate my 24<sup>th</sup> anniversary working with the City of Albany and it's been a great run. In 1999, the city had the political will in anticipation of Eastshore State Park coming into being and taking that land. The political will was there to pass an ordinance and bring in resources, including the police, but really primarily transitional housing and an assortment of other resources to make a meaningful change with the homeless on the Bulb, it's not a citywide solution by any means, but it was a way of compassionately trying to change what was happening out there. And I point to that as a great success because the political will was there and the willingness to expend money to make that happen and there was great coordination at the time between the police department and all of the other involved agencies and organizations that helped make that very successful.</p> <p>The last thing that I would say is, whatever is done, and I say this with regard to a lot of things in Albany because in my time here what I've found is, we often have grand ideas, or we have good ideas, but we don't account for sustainability. So we can knock down a great idea for what we're going to do about a particular problem and we tackle it pretty effectively often and then we're not able to sustain it because no planning, and particularly no financial planning, to sustain it beyond that initial push. So it could be done really well but not sustained. That's been my experience in some of these cases, particularly with the landfill and what happened out there in 1999. And so with that, we're here, we're at your service, we're glad to be here and hopefully we can provide you with some useful information.</p>
Speaker 2	I'm sorry.
Chief McQuiston	That's okay, ma'am.
Speaker 2	Excuse me. Is this the right time? I have two questions. The first one is, what is Albany PD's interactions with the East Bay parks enforcement, what has that been like on the East Bay regional park land that's surrounding or bordering it?
Chief McQuiston	So, are you talking about our relationship with the East Bay Regional Parks police or are...
Speaker 2	Yeah. With their police.
Chief McQuiston	It's a good relationship, I think, it's fine. We communicate when we need to about issues of mutual concern on the waterfront. I don't see them there that often and I don't know personally, I have the impression that I don't think they're there that often.
Sgt. Willis	They don't have a huge resource they have a huge area to cover. We see them occasionally. But you'll find that if they, normally if they find someone camping on their property, they move that person rather quickly.
Chief McQuiston	They're very proactive about it. They run parks, so they're, again they're equipped to be very proactive with camping or vegetation management, road maintenance, all of those things. That could conceivably change with the

	beach restoration or the dune restoration. It's possible with the addition of some facilities down there, they may actually increase their presence. But as Chris said, they're the largest regional park system in the country. There's 1,600 square miles that they have to cover and it's quite a lot of ground to cover and given that this section of the park has virtually no facilities for them to police, yeah, it's unusual to see them there.
Speaker 2	Okay. And I'll just squeeze in my second question. Do you have any, or can you describe some trend data as far as community or Albany residents or complaints about homeless, the marginally housed people in Albany? And, what proportion is occurring at the Bulb, what proportion is occurring in the rest of Albany, and other locations?
Chief McQuiston (	We don't have anything that I can quantify because we don't track it, we don't have the resources basically to collect that kind of data. I can tell you anecdotally that most of the homeless in Albany live on the waterfront. In terms of complaints about the homeless, Chris, you're probably more on the front end of this and I always tend to think that most of them come when someone is no longer out of sight, out of mind. So, if someone pitches a camp at Solano and Key Route that's a very important public issue. Excuse me.
Speaker 2	Yeah.
Chief McQuiston	And unless park users have an interaction with someone that's unfavorable out on the waterfront or they're somehow offended by something they see out there and they don't like the conditions out there, we typically don't get that complaint.
Sgt. Willis	Right. [09:37] compared to what she said is, in the city you just don't, right now we only have, that I know of, two homeless people who are street people who go cubby to cubby or that go sneak inside an apartment building to sleep at night. We get those complaints because they're in someone's building. So those are constants of dealing with the homeless. The complaints we have on the Albany Bulb are, is when an officer's out on routine patrol and someone, a dog walker or someone just out walking flags them down and asks them, what's going on here. Why, and they would refer them to call their local council to let them know. Because, that's where the clinch is.
Speaker 3	So do you do those all every day, calls are two people, basically for two people?
Sgt. Willis <b>(Inaudible)</b>	Basically, there are two people I know of right now. There used to be about four or five. Some of them [10:37] services. Not want them wanting it??? Berkeley Mental Health So basically the calls in the city are two people right now that we have to [10:57].
Speaker 2	But those aren't just the number of times called, such as on the Hill?
Sgt. Willis	We're rarely get any calls from the Hill.
Speaker 2	But do you know if there are people living there?
Chief McQuiston	Well, I don't know if there's anybody there right now. But it's a transient population so people will come through town and generate a protocol and then they're gone and you never see them again because they're simply moving from one place to another.
Speaker 4	So I don't know, Sergeant Willis, you're probably well trained in how you

	<p>contact homeless people when you get a call. Is there a general protocol, a special protocol that's for homelessness and that may also cover folks with mental health issues? I know, and I'd like to hear about your interactions with Berkeley/Albany mental health district. And are you tied in well with, you know, Eve Ahmed[12:06] and are you tied into that system well? So two things, is there training or official protocols and are you aware of, there must be out there, a set of best practices for how law enforcement comes into contact with homeless people. I'm wondering if we're aware of that and how well we follow those. And then, the bigger question for our committee is, I've always questioned whether law enforcement is the best way for society to interact with its homeless population. So I know you have to in many places but that's the bigger question that I think, like how do we deal with who's living out on the Bulb? Is that really a law enforcement question? Can you help me out?[12:49] on the surface it is, but in big picture of our society has said we're going to think about this first before we just take a long introspective [12:56]. So those are big questions. Sorry. I'll do my best. These are the things we've been sort of wrestling with as a committee and that we have not yet, I have not yet had a chance, I've met Sergeant Willis about a week or so ago. That was the first time I had this conversation.</p>
<p>Chief McQuiston</p>	<p>Well, as I said at the outset, the police can't fix the problem and I think that ties well with what you're saying now. But ultimately, there has to be an enforcement, there's a role for enforcement because it's kind of, it's often the motivator. It's that end of the line piece that referring back again to 1999. Ultimately we did end up citing some people after multiple warnings, they did receive citations. They did have to go to court. And there have been times where I've written a letter to the court that says, okay, drop it, because they got their services, they're taking care of business. It's not about trying to criminally prosecute someone. It's about in some cases, forcing them to get the help. Best practices, in terms of our contacts with any member of the community, it falls under our, our policy I believe is called Racial/Bias based policing. And so it's generally, it's categorizing someone. It's putting anyone into a category. And what that would be, it would be a violation of the 14<sup>th</sup> Amendment, it's actually protected under the [14:15] law. So essentially, they should be treated no differently than anyone else on the street. That having been said, there's the caveat that often, they're the subject of a report to the police that they are doing something unlawful and it, and we find ourselves, like I say, we're at the point of conflict between society at large and the homeless population. You mentioned best practices and I'm not sure, I'm not sure from a law enforcement perspective what is out there. I think that we do a pretty good job of not really overstepping our bounds when it comes to that. We have very clear political direction about how we handle the Bulb in particular. And we make pretty regular visits out there. But it's not, it's not meant to harass or intimidate.</p>

Speaker 4	Without being too political, could you characterize the culture between, one thing I was just going to get at is the differences between Berkeley and Albany is, I'm sure there are some differences and did that create any problems in dealing with, because some of these folks are probably, I don't, or it does not matter at all because you just deal with our folks and they deal with their folks and there's no interaction. I know Berkeley has a lot of things in place with their police department on dealing with homelessness that is what I was asking about <u>Eve Ahmed and...</u> [15:52].
Chief McQuiston	Okay. I don't have a relationship with Eve, I know who she is. What the police department and officers like Chris typically have really good relationships with the mobile crisis team.
Speaker 4	That's it, that's her, yeah.
Chief McQuiston	Darrell Brand has been out here probably thousands of times over the years.
Speaker 4:	<u>Brand?</u> [16:13]
Chief McQuiston	She is a, I don't know, probably one of their longer serving mobile crisis people. I assume she's still there, I haven't been on the street for a while.
Speaker 4	Yeah. <u>Has [he] been with Eve at all?</u> [16:25].
Chief McQuiston	I'm sure. So the mobile crisis team that's dispatched out of Berkeley Police Department has always been a resource for the police department since I've started working here in 1988. And we use them at the drop of a hat if we need to. They're a very good resource for us when it comes to mental health issues, when it comes to crisis issues. And that's not just the homeless population, you know, frankly I think we use them more for home owners.
Speaker 4	The reason I bring this up is because I've had experience now where I know, and I talked to Sergeant Willis about this guy, he's technically on East Bay regional park district land and I call the mobile help crisis center and they said we can't go out there by ourselves. We can't go out there. I need to have a policeman go with me. I talked to Albany police, well that's not our jurisdiction so <u>much as</u> [17:13] the East Bay Regional Parks, we have no protocol like that. We don't do that basically is what they told me. So their only <u>solution</u> [17:20] with East Bay Regional Parks, they're only way of dealing with it is just tell them to leave. But they can't, you know, he's really only like 30 feet from the street, from public land. It's not like a big adventure to go to him, but there's no legal way for us to officially get a service to him right now. Because East Bay Regional Park won't do that service of connecting with Eve and going in and supporting them there [17:45]. So that won't happen. And I'm mad that it does happen with us if it's needed and that's the protocol, I know that is the protocol in Berkeley and they have it, call somebody and they get Eve to go with an officer. But it can't happen there, so I hesitate just to have a law enforcement contact with this individual because otherwise, I'm not, he's not, you know, there's bigger social issues but he's not really bothering anybody that I know of.
Chief McQuiston	Their posture and their policies is also, also contributes to the majority of the population being on the Bulb, I believe.
Speaker 4	Yeah, I know that. They don't allow, and technically he could be gone, I could

	make him gone in a day probably, I know of officers who would do it. But, what was it, oh yeah, I'm just going to, and clearly he has mental health issues. He yells to himself, but other than that, he's not, he seems totally harmless <u>and maybe...</u> [18:45].
Chief McQuiston	I yell to myself, too. [18:48].
Speaker 4	<u>ore place is not usually crowded</u> [18:49] but every so often I notice visitors kind of looking 'because he's in the bushes and you hear yelling. So anyway, that's kind of where part of the situation <u>where partly I go there and there's like three different jurisdictions, or two...</u> [18:59]. And then I, that was it. I just wanted to make sure you were in touch with Eve and that system works here too.
Chief McQuiston	It works really well for the most part.
Sgt. Willis	Most of the time, the complaints, either a complaint, a welfare check for homeless people in the city itself. A lot of the people see a homeless person sitting on the sidewalk and <u>consider their</u> [19:26] welfare. That's probably 50% or maybe more of the contacts we have with the street people in the city.
Speaker 4	[19:34] welfare checks?
Sgt. Welfare	A welfare check. It's basically saying that they're able to take care of themselves at that point but they want to use services, legal perhaps, so <u>some</u> [19:42] say yeah, I'm fine, I don't want anything. Sometimes you'll see the person, that they really can't take care of themselves, and then we'll get <u>Berkeley mental health involved</u> [19:49]. And then they usually get 51-50 [19:52].
Speaker 4	And that's more often in town, right? I mean you don't really get called out for mental health issues <u>out at the Bulb, right</u> [20:00] 'because they're kind of, they're a different population.
Sgt. Willis	Right.
Speaker 4	Okay.
Chief McQuiston	The occasional welfare check but not very much.
Sgt. Willis	Right, welfare checks but not [20:08].
Chief McQuiston	Yeah <u>like this guy</u> , I would call <u>out to mediate the appropriate contact for a</u> [20:11] welfare check. I <u>don't</u> really know if he's really well taken care of, I worry about him, and he doesn't really have a shelter. He just has this very makeshift slap. Anyway. Rather than just have him moved along, which I've actually seen them moved along by <u>East Bay cops before</u> [20:29]. And then he's back in the same place.
Speaker 4	There's another thing that I'll just share with you. It's from the police officer perspective, these are all minimum lose-lose scenarios.
Chief McQuiston	We get a call about a welfare check, that person's sleeping on the bus bench, and we go there and often the officer will know who it is so when they walk and say hey, how you doing, you need any services, you're okay? And then the officer is chastised for harassing someone, and someone walks by, leave them alone, why are you doing this, and so you find the officers over time get really gun shy about these things all the way across the board. They just don't

	see it.
Speaker 4	Which is why, this is part of the reason I think it's, that's the wrong way to contact. There's this whole other services in other countries like Britain where they have social services out on the street, contacting with folks. Not law enforcement.
Chief McQuiston	And if we <u>don't</u> ...
Speaker 4	That's who should be <u>contacted</u> . [21:27].
Chief McQuiston	If we don't haul them off the bus bench then the person who called <u>us</u> says why don't you do your <u>job</u> ... <u>you know</u> ?
Speaker 4	Right, I understand. That's not a place to be in.
Speaker 3	I was thinking about, I want to have further discussion about your comment about sustainability, because I think that what we're doing is been, has been taking recommendations to the city council. And like when you said sustainability, I interpret that as more long-term or permanent. And so, I'd like to hear from you what you think would be, in other words I know that you're often called in the crisis mode, or the present mode, but what would be your suggestion in terms of, a less of broad term than sustainability, and there's other cases out there, 'cause we take recommendations to the council about what we think, but it, we do research, we discuss, we bring different levels of experience. But I don't want it to be in conflict with the law, I mean in terms of what legally, you have to do. Does that make sense? So if we make a recommendation, or talk about options to the council, I want to make sure that it's pretty much valid, and I also want to look at the long-term case, too.
Chief McQuiston	<p>Let me start with long-term. Long-term, I think, is less expensive than the near term. Another thing I said at the outset of this is that it [the Bulb] [23:04] encourages homelessness. And by changing that posture, and putting services in place that help discourage it, and then the other part of that, frankly, is, again, going back to our experience the last time we cleaned out that area down there of inhabitants, there was no thought given to enforcement afterwards and maintaining the roads so police could make regular patrols, and things of that sort, that over time get, it gets cheaper. You make an initial investment in that infrastructure to bring it into the rest of town, basically. And so it gets part of our patrol patterns, and we get comfortable out there if we know the lay of the land as well. So the political piece I would say behind that is, the willingness to let, once that change has been made, let the police enforce, and not pull the police back.</p> <p>And again, it should go hand-in-hand with having options for the way we talk about Berkeley Mental Health and the Mobile Crisis Team, but it's not always that, it's, to use the example of the gentleman that's out on East Bay Regional Parks land right now, they have no services. They had offered, they have no resources that they can bring to the situation, and so that's, in terms of sustainability, we're typically the primary contact. I don't think that the City of Albany is ever going to be in a position to have a social services department or outreach people that are permanently working on this sort of a thing. We</p>

	<p>would need to have options, so when we are moving someone out of the park, that we're able to offer them something other than, well you can check in at 711 Harrison, or here's a voucher for the Rescue Mission in Richmond.</p> <p>So, I guess that's kind of the two parts of the sustainability. One is, one should make the change to no longer encourage homelessness, that you have consistent enforcement of rules that will discourage it, and that you provide, probably the police, or other agencies in the city, with the resources that they can bring to that, to the problem. Whether it be county resources that are contracted or, I have no idea, really. And that's another thing, I want the disclaimer out here, neither Chris nor I are experts on this by any stretch of the imagination. We just have experience with it over the years here in a very small area.</p>
Speaker 4	<p>Mike, is your philosophy is that the police department primarily just simply carry out the directive that the city council empowers you with. And keep a <u>law in place</u> as well. I mean is that, are you, your philosophical approach <u>in general to handling this?</u> [26:19].</p>
Chief McQuiston	<p>Yeah in 2002, our last elected police chief left. And the police chief's position became appointed at that time. And what that did was that transferred that authority, essentially, to the appointing body, and that's the city council, that gives me my job, and through the city manager gives me my priorities and budgets appropriate funds for whatever goals they have for us. I lost the gist of it here in my antihistamine-induced haze, I lost the gist of it. [26:56]...</p>
[Inaudible]	<p><u>Share with us what you're feeling in your antihistamine-induced state.</u> [26:56]</p>
Chief McQuiston	<p><u>I don't want to get in trouble.</u> So yes, they can set the enforcement of...</p>
Speaker 4	<p>Some police forces are, we, here's what we're doing, screw the rest of you, our job is to make this happen. Whereas others, other police departments are very sensitive to what the council, this is the approach we want to take, therefore we'll carry out, even if we don't agree with it, this is what we'll do. That's what I mean. Okay, what's your philosophy?</p>
Chief McQuiston	<p>Well we, our philosophy generally is, we don't do everything that necessarily <u>the council might've suggested.</u> [27:32].</p>
Speaker 4	<p>Okay, right.</p>
Chief McQuiston	<p>As a department head I try to advise and provide information on what I think, but I would tell them frankly the same thing I told you tonight. You know, we hold the line on ethical policing, and as long as what they are asking of us is legal and is ethical and doesn't undermine our legitimacy as a law enforcement organization, then that's what we do, because...</p>
Speaker 4	<p>So then based on that, then, philosophically speaking, if we were to suggest to the city council, our plan is to suggest three or four different <u>practical</u> [28:11] options. One of them may well be an option that basically redefines what we term homelessness in this community, whereas we actually suggest that the city invest <u>some time and energy</u> [28:23] with state and county funds, to develop a community that lives out there. Where there's a new plan in place. That's one thing I just, we're playing with right now, just to let you know.</p>

	This, is the police department willing to redefine homelessness, for example if the city council would say this is what we want to do. As long as, see that's a sustainable idea, that we're looking into those kind of as a way of building a way of dealing with the situation we have here in Albany which is different than many other communities, is that what was weird?
Chief McQuiston	It is in a lot of ways.
Speaker 4	Yes. And it creates an environment that's unlike, I don't know, we've been visiting other communities, Portland and San Luis Obispo and down south as well, and found some different ways that their communities have decided to deal with the issue of homeless.
Chief McQuiston	Mm-hmm.
Speaker 4	And it's not, it's funny 'cause they're assisting in helping those communities exist, but living in a healthier, harm-reduction approach, rather than just trying to get rid of them, kick them out and move them somewhere else. Because as you say, many of the people who choose to live homelessly will find another place to live homelessly if you move them out of there. So you create a problem somewhere else. So my question is, is this police department willing to, if we would go in another direction that would redefine when you're homeless, support that kind of concept as well? And then I have one follow-up to that after you answer that. I'm sorry, I don't mean to, I'm just, we thought you would be...
[Inaudible]	<u>We would have to sacrifice a lot of time and energy...</u> [30:00]
Speaker 3	...kind of where I was going, is you want [30:03].
Chief McQuiston	Well it's a tough, it's a tough thing, what you're talking about, to answer. Because I think ideologically most police would be opposed to that.
Speaker 4	Sure. I understand.
Chief McQuiston	It's a tough question. I get concerned, again, about the sustainability of a model like that. And the perception again, because the police tend to be the, that front piece of conflict, but when the police do take police action in a special community, I guess would you would say, what's the perception and, I don't know. I think my answer's I'm not really sure.
Speaker 4	That's a good answer I think, for us too. We don't know either.
Chief McQuiston	I'm not really sure. I'm doubtful, based on what you described to me, that it would succeed.
Speaker 4	Okay.
Chief McQuiston	And that's, and that has less to do with the police department than it does with human nature. And when people gather in groups.
Speaker 4	I think if we proceed at some point we'd probably like to sit down and pick your brain more about the practicality of some of these ideas. The follow-up I have, and it's just a here and now question, would the police department be open at all to letting someone from our community, and not necessarily <u>Eve</u> [31:26] in this case but someone such as myself, or Andrew or somebody who's spent a lot of time down at the Bulb now with those people and know them pretty well, become kind of an <u>intermediary so that</u> [31:36] when

	somebody from the Bulb is picked up for something or is dealt with, that one of us would be called to come down and help solve the situation immediately. Is that something the police department would be open to doing at some point? If we had our own person in place as an advocate?
Chief McQuiston	Sure.
Speaker 4	Okay. I don't...
Chief McQuiston	I don't see a problem there, but the problem that I see there might be some practical situations where that's not the case.
Speaker 4	Yeah, it's more like there's a situation there where somebody's bike gets impounded and if I could stop it immediately and <u>that could save</u> that person a whole lot of money and me a whole lot of money, and a lot of time and anguish and fighting back and forth and being pissed off with each other, and solving problems. Or somebody gets picked up because they're, they're here for a meeting and something comes up at the last minute that throws that whole thing out <u>of whack when I could</u> just step in, maybe pay <u>a fine</u> or do something that solves the immediate problem. And I'm not saying I am necessarily the person to do that but just wondering if you're open to that.
Chief McQuiston	I am open to it, where I would be, I never want to take away discretion from park patrols...
Speaker 4	Absolutely not.
Chief McQuiston	...officers, and supervisors.
Speaker 4	I understand.
Chief McQuiston	And there may be cases where, they make decisions every day on whether or not someone gets arrested or whether they're released on a citation after they get arrested. But I would look at what you're describing as resources that the police could call upon when...
Speaker 4	Okay.
Chief McQuiston	...they're dealing with someone that has a special need.
Speaker 4	Okay.
Chief McQuiston	And I'm not opposed to it on the face of it, not at all.
Speaker 4	Okay.
Chief McQuiston	If it can help, so we don't have to...
Speaker 4	(Inaudible) [33:07]
Chief McQuiston	...we don't have to impound the bicycle now, if it streamlines our process. We may still arrest and later cite release someone, but...
Speaker 4	I understand.
Chief McQuiston	...it's less of a heartache for them, and I don't have a bicycle sitting outside my office.
Speaker 4	Okay.
Speaker 5	You talked about getting direction from the city council on, on, permission would be to carry out. Are there any parts of direction you feel like you've

	gotten, or that you don't carry out, at this point? And I was sort of wondering what laws you typically are enforcing, among this population. I mean like, there was a blog about enforcement of dumpster diving and being not a crime, and I'm just curious as to what kind of things actually reflect <u>what you get cited for.</u> [33:57].
Chief McQuiston	And you're talking citywide, not just with...
Speaker 5	Yeah, citywide.
Chief McQuiston	Okay, 'because it's different on the Bulb. We have a different enforcement policy out there than we have generally in town.
Speaker 5	How is that different?
Chief McQuiston	So let me start with that. The Bulb has a, there's a municipal code that deals with that, is that the Chapter 8?
Sgt. Willis	Chapter 8, yeah. Not sure, but.
Chief McQuiston	<p>I think it might be Chapter 8, the community code that deals with waterfront open space. And there are a few of those subsections in that code that we've been directed not to enforce. That's basically <u>my main point</u> [34:36]. <u>And so if s</u>Someone looks like they have a need to stay there, we let them stay there, okay? So we don't <u>take any serious</u> [34:41] code to move them. We still enforce generally California Penal Code, so if there's theft and if there's crimes of violence or anything like that, that'll <u>be cause for</u> [34:54]. But we have, we have pulled back on some of the municipal code stuff. I shouldn't say a little, we've pulled back a lot.</p> <p>In town, in general, it's generally is our municipal code, which doesn't come into play too often, but it's police patrol work to ride around and investigate when something's going on. And that includes if somebody's on private property going through a bin, the officers talk to them. Sometimes those are the results of calls, all right? I can remember being on patrol, it's been quite a while, but driving by the dumpster behind Happy Donuts, there's a huge pile of trash there, and it's getting bigger, and someone's throwing stuff out of there, I mean it, there are other factors that kind of come into play when we decide to take that kind of action to stop and detain and identify someone.</p> <p>I know that a lot of the officers, if it's like it used to be when I worked the street, know many of these people, and have very increasing relationships with them, I'm sure probably good, and bad. And that may factor into some of that too when they make contact with someone and the person reacts to the officer, the officer reacts to the person. I don't know if that answers your question.</p>
Speaker 5	...That's great. [36:24] I mean, I've been out walking at 5:00 a.m., 5:30 in the morning, on a very cold morning and there was people sleeping on the street. Is that something that you assist with? And have you encountered these people about in the winter?
Chief McQuiston	Chris, I'll let you answer that one. I know what we used to do.
Sgt. Willis	It's, [36:47], last time I worked nights, and over the weekends, I was actually,

	if we see someone lying on the sidewalk, which we do sometimes, we'll do a welfare check right away just to make sure, A, we don't know if it's a medical issue unless we talk to them. Nobody seems to want to sleep on a sidewalk when it's 25 degrees out. Basically try and, try to make sure they get up and try to find, you know, if they go to Happy Donuts or whatever, somewhere. A lot of times you'll see an individual or two sit in the <u>Laundromat</u> . That's cool. They're not really bothering anyone. But right now, it's only two people that I can think of that I would <u>put in this subcategory</u> [37:31].
[Inaudible]	<u>This is the last question...</u> [37:33]
Speaker 6	I'd like to go back to the municipal <u>installation portion, because of California penal enforcement</u> [37:41]. You said that you were directed not to force municipal <u>law</u> , or some components of that, I'm assuming that's directive came from the council.
Chief McQuiston	Well I get my direction generally from the city manager who I think gets hers generally from the policymakers on the council, yes.
Speaker 6	Okay so if the city of Albany as a matter of policy decided to change their definition of homeless and therefore make it, make a municipal code irrelevant, in this instance, you would be obligated to enforce the redefinition, would you not?
Chief McQuiston	I'm not sure I understand your question, but the muni code doesn't talk about homelessness. The muni code that I referred to was special legislation that was passed affecting the waterfront, the Albany Hill, and I think open space, that has a long kind of a laundry list of things that you can't do, destroy shrubbery, tie ropes to bushes or branches, to have fires, you can't, yeah, you know...
[Inaudible]	<u>Defecating...</u> [38:58]
Chief McQuiston	Yeah, that's right, alcohol, smoking, things of that sort. So generally our direction and our current policy is, we can enforce just about all of those, but we generally don't. The big ones, I think, there are the two big ones. One is, if someone can demonstrate a need, they need to stay there, they need to live there, I'll give you a perfect example. Sometimes the young people rocking out like a rave party or something like that. We tell them to leave. If we can catch them before they're all out there having a ball. Whereas someone that we think clearly is homeless, and they're staying there, we don't, we don't enforce the municipal code that says you can't sleep there. I don't think I answered your question.
Speaker 6	No you did but I, but <u>I think</u> [39:52] it's more a matter of something that you worked out with the city manager and the city manager has worked out with the council. But it's kind of an informal or unspoken policy. And so I'm wondering, for our purposes, if we make a recommendation as to a formal policy, would you be obligated to enforce it? 'Cause it sounds to me like you've got a lot of leeway, and if you decide, okay, the city has a new definition of homelessness, and/or vagrancy, and there's a consensus about how the city would like to deal with it. We understand that but we still have certain obligations that we must fulfill regardless of that definition. That's what <u>I'm hearing</u> .
Chief	I think my answer is yes to what you're saying. And we don't, we enforce the

McQuiston	law as best, it's kind of the, it's our core function is we look at what the law is and if the law says, we have in California, it's a felony to have brass knuckles but it's only a misdemeanor to carry a concealed pistol, that's the way we enforce it. We may not like it but that's the way it is. So we can't do any more than what the law says. We could always exercise discretion and do less in again what we call in the interest of the spirit of the law versus the letter of the law. And that's kind of where we're at on our enforcement out on the <u>Bulb</u> [41:33] right now, we're trying to get away from the letter of the law and kind of do a little more spirit of the law, and that is not to necessarily to move people off simply because they're homeless. In this sense Albany is offering an option.
Speaker 6	Which is why you define it, <u>as a community that encourages it?</u> [41:52].
Chief McQuiston	Yeah. And we have, to my knowledge, very little to offer in terms of, when we talk about as high as, or maybe more than 20% that are ready, we have very little to offer them at <u>the end of the day</u> [42:12], so absolutely.
Speaker 6	Just something we need to address? Okay.
Speaker 7	Going back to what Steve said about representing some of the individuals that might be picked up for minor infractions, and I think the <u>formal term for it is ombudsmen</u> [42:37]. I mean if they do it a lot and the, I'm sure with budget cuts they don't have them as much any more, they don't have a specific position, <u>but I think the probation department use ombudsmen along</u> [42:48]. It might be a great idea. I don't...
Chief McQuiston	It may be. You know ombudsmen typically are after-the-fact and wouldn't necessarily be there when those critical decisions, riding out on a bicycle or [43:04] ought to be made.
Speaker 6	That was more of an initial personal question, but we're also trying to deal with both immediate needs as well as long term needs as a committee. So that's why I asked that question.
Speaker 7	But I mean even, either or sounds, I mean we can, if you like we could do a little research on that, if you think it would be helpful or you'd be open to it.
Chief McQuiston	We will.
Speaker 7	And even more <u>than after</u> [43:32].
Speaker 8	It's a good idea.
Chief McQuiston	I have no problem with alternative means of finding justice and if anyone has a good definition of that...
Speaker 1	And for the most part I just want you guys to know, I do appreciate as a resident as well as somebody whose, I really care about a lot of those people down there as I know you guys do too, I appreciate the fact that you deal with the Bulb differently than you deal in other areas. Because I think, you're right, it is a strange, weird, uncanny place for people to be living and that's what is happening, so.
Chief McQuiston	Yeah. Let me just share one more thing with you that I've shared with other people in the past is. I mentioned earlier the 14 <sup>th</sup> Amendment of the U.S. Constitution and one of things that it gives us all is equal protection under the law. And this has come into play a couple of times when we've been asked to

	deal differently with someone in Albany proper versus someone out <u>in the waterfront</u> [44:29]. And I get very concerned when I have to tell the police deal with that one, look the other way with that one, because I think that really <u>skirts</u> in that area of constitutional law that my people, frankly are very good about not violating. So it can be challenging for us to treat it differently because we are trained, and I encourage them, or discourage them from ever treating people differently. It comes into play all the time when someone wants somebody to move along from the front of their liquor store because they're homeless. They might not call us and have you move them off. And so we have to really be careful about disparate treatment of people. And that is my, my red flag goes up when we start talking about defining it differently. It doesn't mean it's not working, but it's really problematic, or it can be. What I've said in at least one case, I'll say this because I speak my mind and encourage you to <u>do as well</u> [45:39], so you're good. I get very uncomfortable knowing that we have a majority Caucasian population on the <u>Bulb</u> [45:48] and when there's transient African-American in town and it suddenly becomes the priority to deal with that. Meanwhile we leave this other population alone. That concerns me deeply as your police chief. So when you define a population as special, you have to make sure that you don't run afoul of that part. And I know there's probably ways to ensure, and I just, it's nothing I've given much thought to.
Speaker 3	So to go back to the complaint issue for a second, you said you didn't really have any real data on complaints, but that it's mostly anecdotal. Would that mean there's no record of a police contact unless there's some sort of <u>an altercation</u> [46:43]?
Chief McQuiston	No. This typically, we try to make records of just about everything we do. We try to generate a little log note, and sometimes it has very little information. It may say that Sgt. Willis did a welfare check at 3:00 in the morning on someone sleeping in front 801 San Palo Avenue. But it may not have the name, it may not designate that person as homeless. So we've got records, but it's really difficult for us to extrapolate any data out of that. For example, it's a welfare check. If you're trying to reach a relative in town and they haven't answered their phone in two days and you call us, that's a welfare check too. And so it's really hard for us to extract real specific data out of the system.
Speaker 3	So is any way to estimate or approximate the percentage of resources that you dedicate to just the issue of the homeless context, the homeless people?
-	
Chief McQuiston	I don't think so.
Speaker 3	Not at this point.
Chief McQuiston	Yeah, I don't think so.
Speaker 5	But just talk, is it a lot, or a little, or...
Chief McQuiston	I don't, I don't think it's a lot but, yeah, every day is, but generally over a 24 hour period it might be safe to say we might have one contact in a 24 hour

	period. But again, I'm just shooting from the hip.
Sgt. Willis	I'll probably have three or four contacts usually. But there's a lot of them, just self-initiate after that they'll talk to someone they haven't seen for a few days, or just discuss what's going on. So a lot of times we go to fill up our gas early morning, they're at the gas station to get something to eat, a couple of minutes talking, that has contact and it's a positive contact I think generally.
Speaker 3	We've got a lot to do.
Chief McQuiston	Well we're happy to help wherever we can. But I keep going back to, I don't think the police can fix the problem. It's going to that that combination of money, and services and political will. And I also, if I can just characterize, I'm not here to point my finger at the council, I'm just trying to help people understand how this works. And that is that they set our priorities and fund us for a few certain things. And just 'because they do all the other departments in the city, they, we work out our rules and objectives and set aside money to do that.
Several	Thank you.
Chief McQuiston	Thank you.

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LIBRARY (as of 9/22/13)







# ALBANY CALIFORNIA



CITY OF ALBANY  
1000 SAN PABLO AVENUE  
ALBANY, CA 94706  
[www.AlbanyCA.org](http://www.AlbanyCA.org)

## Albany Temporary Transition Shelter

*Revised October 28, 2013*

The Albany Temporary Transition Shelter located on City owned property at the Albany waterfront is intended to ensure that individuals who are inhabiting the Bulb when the City begins enforcing its no-camping and curfew ordinances have an alternative sheltered location during their transition off the Bulb.

The Shelter will provide assistance to homeless transitioning from the Albany Bulb as well as others homeless in Albany. Operation Dignity will manage the Shelter and Berkeley Food and Housing Project (BFHP) will continue to provide housing-centered outreach, case-management services, placement, and other assistance. The tentative opening date of the shelter is November 20, 2013. The shelter will remain in operation for 6 months.

The Shelter will operate 7 days a week from 5:30 PM to 9:00 A.M. 30 beds are available each night. Dinner and breakfast will be provided to those residing at the Shelter. Also available at the Shelter:

- Showers
- Dog kennels
- Storage space for personal property

## Albany Housing Subsidy Program (AHSP)

The Albany Housing Subsidy Program (AHSP) is a collaborative and supportive approach to help people transition into housing. The program provides financial assistance in the form of rental subsidies for up to 6 months to help people who are homeless afford housing.

### How does AHSP work?

The City will enter into lease agreements with participating landlords to help ensure the City's ability to promptly secure an agreement when available housing locations are identified. The City will cover a portion of the monthly rent, along with available grant funding, and in most cases a portion of the rent will be covered by the tenants.

The amount of housing subsidy provided will be assessed on a case-by-case basis considering the following factors:

- Tenant's monthly net income
- Amount of monthly rent due
- Availability of City Funds
- Availability of other resources
- Housing readiness assessment by BFHP

**Who is eligible?**

The Albany Housing Subsidy Program (AHSP) will provide financial assistance to people (1) who have been homeless in Albany since the start of the Albany Project Hope outreach and engagement program on July 1, 2013 and (2) who had a Housing Readiness Assessment on file with Berkeley Food and Housing Project as of September 30, 2013.

**How do I apply for AHSP?**

Contact Berkeley Food and Housing Project Case Manager Jo Ferlatte at (510) 684-0540

## Homeless Resources

**DIAL 2-1-1**

2-1-1 is a free, non-emergency, confidential, 3-digit phone number and service that provides easy access to housing information, and critical health and human services.

2-1-1 Operates 24 hours a day, 7 days a week with multi-lingual capabilities.

**Shelters****Berkeley Food and Housing Project -- Men's Housing Program**

1931 Center St, Berkeley

Shelter Reservation Line: 1.866.960.2132 (Line is answered Mon– Fri at 12:00pm and 7:00pm, Sat – Sun at 2:00pm)

53 shelter beds for men. Men must have a referral from the Shelter Reservation Line and arrive at the time on the referral. Breakfast and dinner are served Daily.

Hours of Operation: 365 days a year; 5:00pm – 7:30am

**Berkeley Food and Housing Project -- Women's Overnight Shelter**

2140 Dwight Way, Berkeley

Shelter Reservation Line: 1.866.960.2132 (Line is answered Mon– Fri at 12:00pm and 7:00pm, Sat – Sun at 2:00pm)

Women's Overnight Shelter has single beds and two family rooms. Women must have a referral from the Shelter Reservation Line and arrive between 4:00pm and 7:00pm for intake. Breakfast, lunch and dinner provided.

Hours of Operation: 24 hours per day, 365 days a year. Opens at 4:00pm for new intakes.

**BOSS -- Harrison Singles Shelter**

711 Harrison Street/4<sup>th</sup> Street, Berkeley

Phone: 510.843.3700

50 beds. Sign up for lottery (if beds are available) Monday-Friday 9 a.m. at 1931 Center St (MASC) Dinner provided.





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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND  
**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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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-  
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. **C13-5270**

**DECLARATION OF ALEXANDER  
RICHARD WILSON**

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DECLARATION OF ALEXANDER RICHARD WILSON  
CASE NO.

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DECLARATION of ALEXANDER RICHARD WILSON

I, Alexander Richard Wilson, 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 2001.

3. I live at the Bulb because I knew a lot of people who were kicked out in 1999. When they started to come back I came back with them.

4. Before moving to the Bulb, I lived with my girlfriend at a house that she was renting for a year, but we broke up and I could not stay there anymore. I stayed in an encampment in Richmond near the train across the street from the Costco. Caltrans bulldozed the encampment. They gave three days notice and then bulldozed. I fled to the Bulb. The last place I stayed at, before moving to the Bulb, was under a bridge on Bayview Avenue for approximately 18 months.

5. I like living at the Bulb because I have shelter and privacy there. My friends call me "the Hermit" because I am alone so often. When I am around lots of people, I get very manic. It is intensely stressful for me if I do not have a private place to be alone.

6. I live in a shelter that I built myself. It is made of rocks, mud, wood, and glass. It has skylights in the roof. I have been there for five years. Even if forced to leave the Bulb, I would not be abandoning my shelter.

7. In my shelter, I have a couch that is built into the wall. I have a twin size mattress. I have a wood stove that weighs about three hundred pounds. I also have two

1 mandolins, two banjos, an autoharp, and drums. I have several boxes of tools. Many of  
2 these possessions would not fit into a plastic bag. Photographs of my possessions and  
3 home are attached as Exhibit A.

4 8. I need my tools to work on instruments, motors, and sculptures. I have  
5 clinical depression and suicidal tendencies. I first started to see a psychiatrist when I was  
6 five years old, and have had mental illness throughout my life. Working on things helps me  
7 be mentally and emotionally stable.

8 9. I am also claustrophobic. When I am forced into enclosed spaces, I have  
9 migraine headaches, panic attacks, and sometimes even seizures. It is very stressful for me.  
10

11 10. I have two dogs, one of which is a certified service alert dog. The  
12 certificate for my service dog is attached as Exhibit B. My dogs keep me from being  
13 suicidal so they are definitely therapeutic and very important to me. The service dog alerts  
14 me if I am about to have a seizure. I have only had one seizure since I have had him.

15 11. The closer it gets to the time for us to leave the Bulb, I get more and more  
16 depressed and it gets harder to do anything and harder to get out of bed.

17 12. A few years ago I entered a lottery for subsidized housing but I was not  
18 chosen.

19 13. The only help I have received to find housing was from the folks at the  
20 Berkeley Food and Housing Project when I talked to Carmen Francois who works there. It  
21 did not result in housing for me. I did an intake with them in July or August 2013, and they  
22 said that all of their apartments go for approximately \$600/month or more, and I currently  
23 make \$950 but if I were to get an apartment I would only receive \$866/month. They have  
24 not found an apartment for me, but there is no way I could afford an apartment that costs  
25 \$600/month or more. I would have to pay for food and transportation and utilities with my

1 remaining benefits. I am not eligible for food stamps because I am on SSI. Berkeley Food  
2 and Housing y said they would get back to me, but did not sound very enthusiastic. They  
3 have my phone number, but they have not gotten back to me. They made it sound like an  
4 apartment for less than \$600/ month was not even an option.

5  
6 14. My disabilities prevent me from staying in the dormitory trailers. I need to  
7 have my service dog with me in case I have a seizure. I am also claustrophobic, and have  
8 difficulty being around lots of people. Thus sleeping in a small dormitory trailer with lots  
9 of other people would be very difficult for me. I also need both of my dogs because they  
10 help me with my clinical depression and suicidal tendencies. I would not be able to bring  
11 my dogs into the trailer with me. I would also not have access to many possessions, like  
12 my tools, which I need to work on things – which also helps me cope with my depression  
13 and suicidal tendencies.

14 15. Since I cannot stay in the dormitory trailers, if I were forced to leave the  
15 Bulb, I would be sleeping in downtown Albany on the sidewalks. I fear that I would get  
16 harassed a lot by the Albany police who don't tolerate homeless people on the streets of  
17 Albany. If I were to go to jail for sleeping on the streets, I would probably have more  
18 panic attacks and seizures from being in an enclosed cell. My mental condition would  
19 definitely deteriorate and my depression would keep me immobile if I have to leave the  
20 Bulb. I also would lose most of my possessions, including my tools. I don't know what  
21 might happen to my dogs.

22 //

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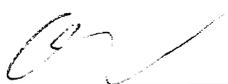
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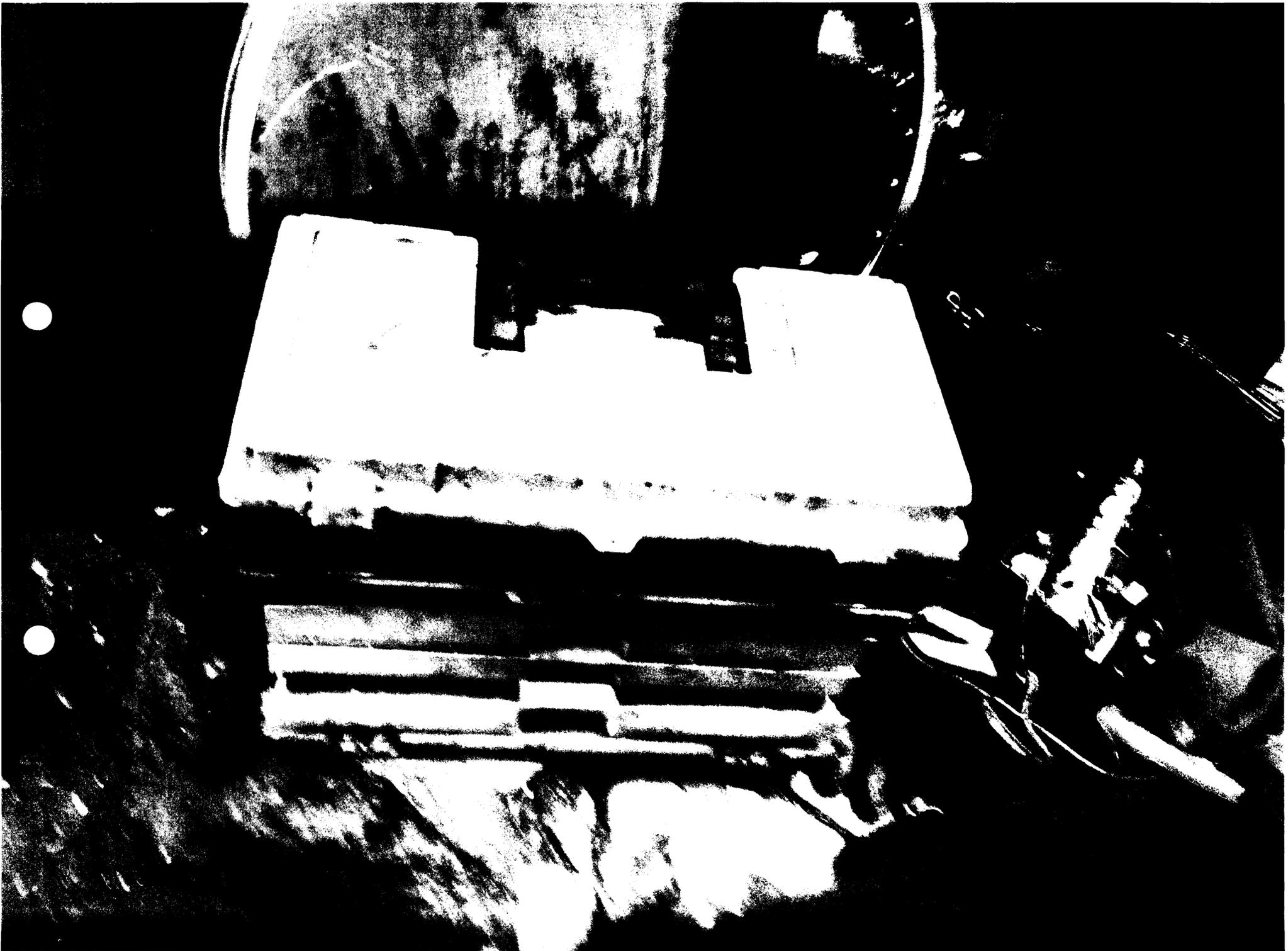
I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of October, 2013 at Albany, California.

By:  \_\_\_\_\_

Alexander Richard Wilson







# CERTIFICATE OF REGISTRATION

*This certificate recognizes the full registration of this Service Animal in accordance with the laws and regulations set forth by the Department of Justice and the Americans with Disabilities Act.*

Presented To: **Alexander Wilson**

On Behalf of: **Bruno (Boo Boo)**

Type: **Canine**

Color(s): **Grey & Brown**

Breed: **Mixed**

Gender: **Male**

Training: **Signal/Alert Animal**

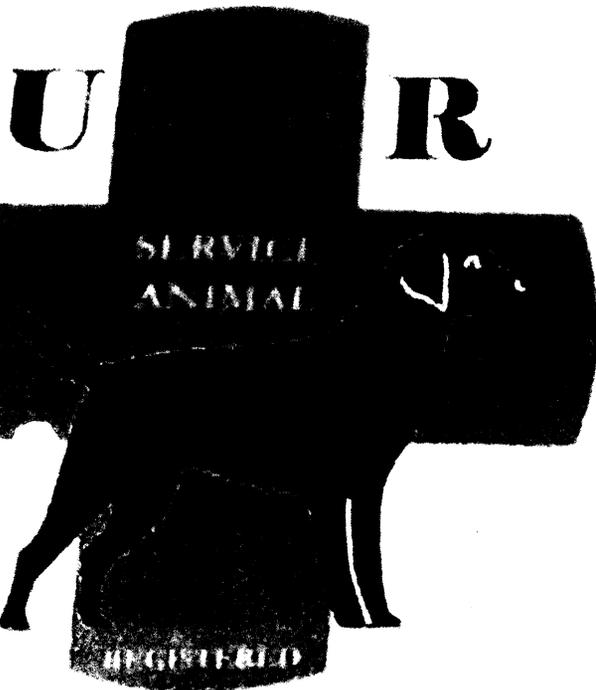
REGISTRATION # 100200639



USAR PRINCIPAL

02 02 2010

DATE



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NOV 13 2013

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

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 Attorneys for Plaintiffs

17 KATHERINE CODY; PATRICIA MOORE;  
ROBERT WHARTON; APRIL ANTHONY;  
18 LARRY CABRERA; JOSEPH ROSE;  
STEPHANIE RINGSTAD; ALEXANDER  
19 RICHARD WILSON, TAMURA ROBINSON,  
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CASE NO. **C13-5270**

DECLARATION OF DR. BARRY ZEVIN

CRB

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## DECLARATION OF DR. BARRY ZEVIN

I, Barry Zevin, hereby declare:

1. I have been a physician for 25 years. For almost all of that time, I have worked primarily with homeless people, specializing in public health, addiction medicine, and other fields related to care for poor and homeless communities.
2. I received my medical degree from Temple University School of Medicine in 1988. My internship and residency were in Primary Care Internal Medicine at the Cambridge Hospital, a teaching hospital of Harvard Medical School. Since I finished my residency in 1991, I have worked for the Department of Public Health Homeless Programs in San Francisco, at the Tom Waddell Health Center. I was the Medical Director for Community and Homeless Services from 1995 to 2006, and have continued to work there as a physician specialist since that time. From 2006 to 2011, I was the Medical Director of the Harm Reduction Therapy Center in San Francisco, and the Medical Director of Caduceus Outreach, a program for mentally ill chronically homeless people in San Francisco. I am the Board President of the Coalition on Homelessness in San Francisco. For seven years, I served as the Continuing Medical Education Coordinator on Community-Oriented Primary Care for the San Francisco Department of Public Health. In that position, I had responsibility for training more than a hundred medical staff members.
3. I am board certified by the American Board of Internal Medicine and by the American Board of Addiction Medicine. I am also a certified HIV specialist.
4. From 1988 to 1991, I was a Clinical Fellow at Harvard Medical School. In 1991 I joined the faculty of the UCSF School of Medicine; since 1996 I have been an Assistant Clinical Professor.
5. I have given numerous presentations at local, national, and international meetings on homelessness, addiction, harm reduction, chronic pain management, transgender health, and documenting disability. I have personally treated hundreds of homeless patients and have observed many of them in their encampments and communities. I am deeply familiar with homelessness from a medical and a community health perspective.
6. I am informed that in Albany, California, there is a homeless encampment on the Albany Bulb. While I am not intimately familiar with this particular encampment, I have encountered many encampments where communities of homeless people live, and I am familiar with how they work. When there is a major change in one of these communities, it is medically necessary to take certain steps to ensure the safety and health of the residents.
7. In my experience, and according to available data, there is a very high incidence of mental health disorders and physical disabilities among chronically homeless people.

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- 8. Cognitive disorders are an important factor that is sometimes overlooked. Chronically homeless people are much more likely to suffer from cognitive disorders than the population at large. I conservatively estimate that 30% to 50% of chronically homeless people that I work with have permanent cognitive impairments. This is often the result of a lifetime of exposure to physical violence.
- 9. The prevalence of cognitive disorders makes it very difficult for residents in homeless encampments to cope with change. If you have been living a certain way, with a certain routine, it is possible to cope with these cognitive disorders. But change means that they will have to solve new problems, deal with new rules, and register with new social service agencies that put large documents in front of them to read and sign. This is extremely difficult for people with cognitive disorders.
- 10. Usually, people are living in encampments because they need social relationships. They take care of one another. They share food. They lend each other money. Living on the street downtown may be more convenient, but it deprives them of the community they depend on for support.
- 11. The tolerance for abnormal or disruptive behavior is higher in encampments than in traditional social settings. People hearing voices, or responding to internal stimuli, face mockery and hostility on a bus, a residential street, or in a shelter. But in an encampment, they can have space to behave unconventionally without alienating their community. Elsewhere, they are likely to be assaulted, arrested, or institutionalized – none of which are successful outcomes.

**Accessibility of City of Albany’s Shelter Program to Disabled Homeless People**

- 12. I have reviewed the City of Albany’s plan for removing 60 people from the Albany Bulb, sheltering 30 people in a trailer, setting up showers, and providing a nominal \$35,000 housing subsidy. The plan is not only insufficient: it is likely to prove dangerous in terms of public health. Nor will the City’s program be accessible to individuals with mental health disabilities.
- 13. As far as physical health goes, moving 30 homeless people into a poorly ventilated trailer at the beginning of winter presents a severe threat to public health. The current plan ignores the obvious risk of a tuberculosis outbreak. A cramped trailer cannot be adequately ventilated without being too cold to sleep in during the winter. Since so many people will be living there, installing the appropriate airborne disease prevention technology would require expensive ultraviolet technology. Given the amount the City is planning to spend, it appears that tuberculosis prevention is not part of its plan.
- 14. Improper trailer ventilation will damage the Bulb residents’ physical health, as well as the health of surrounding communities. From a public health point of view, being outside is much safer for people who are immuno-suppressed. There is less risk of disease spreading, whether it is TB, influenza, or another airborne virus. The people most affected by a poorly ventilated shelter will be immuno-suppressed Bulb residents, including people with disabilities related to HIV, diabetes, and chronic

1 alcoholism. I understand that there are a number of Bulb residents who are immuno-  
2 suppressed, due to various ailments, including Hepatitis C and AIDS. People with  
3 poor nutrition will also be at risk. Under the current plan, it would be unreasonable  
and unwise to put anyone with vulnerable physical health into a trailer.

4 15. There are also several types of mental disabilities that make it very hard to be in a  
5 shelter in close quarters with other people. First, among mental health disorders I  
6 have seen in chronically homeless people, paranoia is common. Experiencing  
7 paranoia makes being around other people intolerable. A person with paranoia in a  
8 congregate shelter will suffer severe anxiety and sleeplessness. The anxiety of dealing  
with other people can also cause trauma, and even seemingly small encounters can  
seriously exacerbate someone's condition. It is not reasonable to put people suffering  
from this kind of disorder in a shelter unless they have some private space of their  
own.

9 16. Another group of disabled people who need accommodation in shelter are those with  
10 mental health disabilities related to histories of trauma. Often, people with such  
11 histories, including victims of domestic violence, victims of sexual assault, people  
12 who experienced violence in their homes or neighborhoods growing up, or have been  
13 victims of violence on the streets, and people who were abused or neglected as  
14 children, have post-traumatic stress disorder. I understand that there are a number of  
Bulb residents who suffer from PTSD. A communal living space is a potential  
minefield of triggers for PTSD and is not suitable housing for someone suffering  
from PTSD. People with PTSD may isolate themselves, behave inappropriately, or  
leave and not be able to come back. Again, even minor incidents can create  
significant mental health setbacks.

15 17. There are also people who have difficulty, as a result of their disabilities, conforming  
16 to strict shelter rules. People with cognitive disorders often cannot understand,  
17 remember, and follow the rules, and can be expelled from their shelters as a result. I  
18 have been told that there are many residents of the Bulb who suffer from cognitive  
19 disorders, including as a result of their chronic homelessness. I have also seen a  
20 number of patients who are expelled from shelters because they are too depressed to  
21 follow the rules. Finally, there are those whose mental health disorders result in  
"acting out": they are loud or aggressive, or they violate rules, resulting in their  
termination from shelter. Putting people into a crowded shelter always increases the  
risk of violence; that is particularly true here where the population in question is a  
chronically homeless community that has been established over years, and where the  
individuals have had the protection of relative isolation and considerable privacy.

22 18. Part of accommodating people with disabilities involves allowing service animals.  
23 This requires enough space to house service animals with their owners, performing  
the services they need to perform, while being considerate of the needs of other  
people in the shelter who may be allergic or afraid of animals.

24 19. There are ways to make shelter more accessible for people with these disabilities.  
25 First, it is important to have trained staff. Staff members who are familiar with  
different types of mental health disabilities, who are trained in de-escalation

1 techniques and who have clinical skills, can better manage the needs of people with  
2 mental health disabilities. Second, having more hours that the shelter is available can  
3 help acclimate people with disabilities to their new surroundings, make them  
4 comfortable, and give them safe space during hours that they are not sleeping. Third,  
5 a shelter that is appropriate for homeless people with disabilities cannot be a mere  
6 bunkhouse. A crowded space is not a safe space. Studies show that a group of rats put  
7 in a small cage will attack each other. The same number of rats in a larger cage can  
8 live peacefully. From my observations and my understanding of the clinical needs of  
9 chronically homeless people, I have seen that putting too many people into a small  
10 shelter makes the shelter medically unsafe. Fourth, some people with disabilities  
11 cannot be housed in a shelter where they do not have private space. There should be  
12 such a space available in the shelter, or options for housing available as an  
13 accommodation.

- 14 20. According to the information I have reviewed and my experience in this area, the  
15 City's current plan is not the best use of resources for this population. The City could  
16 spend the same amount of money and house more people in circumstances that would  
17 be better for public health and for the health of vulnerable residents. The program as  
18 described by the City is not currently accessible for many people with disabilities.  
19 Nor is it safe from a public health perspective.

### 20 **Effects of Moving from An Established Encampment to Street Homelessness**

- 21 21. It is my understanding that the City of Albany's new program does not meet the  
22 existing need in Albany. There are at least 60 Bulb residents, and the trailers can  
23 accommodate only 30. I also understand that homeless people in other parts of  
24 Albany are invited to live in the shelter. This means that the majority of the people  
25 who are evicted from the Albany Bulb will be on the street.
- 26 22. In my experience, one of the biggest problems when you dislocate people – whether it  
27 is indoors or outdoors – is that they face a lot of violence. When they are strangers to  
28 a new area and behaving in a way that falls outside the norm in that area, they are  
29 very frequently the victims of violence. Homeless people are often stereotyped as the  
30 perpetrators, but my experience and relevant statistics show that they are much more  
31 frequently the victims of violence. I see injuries related to violence every day that I  
32 work.
- 33 23. Women are even more at risk of victimization and physical violence. Sexual violence  
34 is an everyday occurrence in the lives of homeless women. Many of them have  
35 already been seriously traumatized and frequently experience PTSD when they are  
36 taken out of their zones of comfort. This is especially true when they are living on the  
37 street and more likely to be assaulted or raped.
- 38 24. Chronically homeless people also experience significant negative health effects from  
39 regular police harassment. Being homeless in public spaces leads to a lot of  
40 interaction with the police, who are rarely trained in talking to people with  
41 disabilities. Particularly for people who are cognitively impaired, or have mental  
42 health disabilities—as I understand many people at the Albany Bulb do—these

1  
2 interactions can have serious consequences. These interactions often contribute to the  
3 traumatization of already vulnerable people. The effect is especially bad if people are  
4 arrested or incarcerated. People who are arrested for sleeping or camping in public are  
5 usually incarcerated for a shorter time than people arrested for more serious offenses,  
6 but are incarcerated repeatedly, as chronically homeless people continue to sleep on  
7 the street for lack of anywhere else to go. The relatively short stays mean that jail  
8 staff are less likely to provide medical care, administer the necessary medication, or  
9 do anything to mitigate the trauma of repeated arrest without alternative.

6 25. Street life causes sleep deprivation, which leads to very serious disorientation,  
7 anxiety, cognitive difficulties. Sleeping on the hard ground can cause a lot of  
8 orthopedic and musculoskeletal problems.

8 26. Living on the street causes health problems related to exposure and neglect.  
9 Particularly in the winter, sleeping without a shelter can subject medically susceptible  
10 people to pneumonia and to serious infections. Poor nutrition and poor access to  
11 medical care mean that conditions like HIV, diabetes and hypertension—which are  
12 relatively easily treated—can get much, much worse. Without access to regular  
13 hygiene access, skin conditions like scabies and lice can turn into serious infections.

12 27. Any kind of major change that is not introduced carefully and gradually can have a  
13 serious consequence on mental health, and may result in a severe deterioration of  
14 mental health. Change is a source of stress for everyone; for people who already have  
15 mental health issues, it is far more serious. The kind of change contemplated in  
16 Albany—removing people from their social support, their shelter, their belongings  
17 and their pets, and sending them from nature back into an urban environment—is  
18 likely to cause serious trauma unless it is properly handled. In some cases, the mental  
19 and physical consequences of forcibly removing Albany Bulb residents from their  
20 established home and community could be life-threatening.

### 17 **Obtaining Housing for Encampment Residents**

18 28. It is possible to successfully transition chronically homeless people into housing. As  
19 is recognized by the nationally recognized model for addressing homelessness—the  
20 “Housing First” model—a primary need of homeless people is housing, and good  
21 outcomes are unlikely without it.

20 29. To be suitable and accessible, the housing placement should take into account  
21 individual conditions. When people have been homeless for a period of time, often  
22 the type of housing that is offered is far away from where they are living. People  
23 literally do not know how to live in the new place where they are offered housing.  
24 The new places are often crowded and noisy. This is a major problem for people used  
25 to living in relatively isolated circumstances. Because we know that long-term  
homeless people often have severe mental health disorders, living with other people  
with the same kind of problems can often lead to a lot of conflict. Being separated  
from pets is often devastating, and for people with disabilities, losing a service animal  
can cause negative health effects.

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30. We try to encourage a process where people have a sense of control over their situation—their preferences in housing, how they can move in, what kind of services they will need when they move in.
31. Of primary importance to transition people into housing is that outreach workers have enough time to build relationships of trust. Naturally, the encampment residents are not going to immediately trust any outsider that comes in, especially if they come in with the threat of uniformed police officers behind them. This is especially true if, as is often true, they have had negative experiences in the past, where a social services agency said they would help them and then did not.
32. In my experience, a chronically homeless person is unlikely to seek health care from a nearby clinic, even if it is nearby, if she or he does not know or trust the people who work there. If trust is not established, people who are chronically homeless will not come for help and will not be seen by a doctor until the late stages of disease. But if they are given time to establish relationships of trust with outreach workers or service providers, the possible outcomes are different.
33. A seminal example of the right way to do this is the Bridge Project, a harm reduction program we established in San Francisco in the mid 1990s. Our aim was to take people who were homeless drug addicts with AIDS and house them in single-room occupancy units. People were interested in housing, but very suspicious of us at first. They were not sure of our motives in offering them low-cost housing. We decided to use a combination of social workers, nurses and peer staff—formerly homeless people who had found housing and stopped using drugs. To build trust, we offered food, gift cards, and other practical incentives. Gradually, we became known in the community. If they had a medical issue, the nurse would check them out; if they needed further attention, the nurse would refer them to me. Our staff was non-judgmental. It took about six months to take people from the street to a room. We were most effective when we used the same team of people to reach out to the community, and set up mini-clinics in the single-room units where they were housed. People involved in the Project could continue using drugs if they wanted to; but after only a couple of months, people began telling us of their own accord that they wanted to stop using drugs and get into a program. We were able to achieve this result because we had worked for them often for up to a year or more.
34. My understanding is that the Berkeley Emergency Food and Housing Project has been awarded two \$30,000 contracts by the City of Albany for outreach and engagement to the people living on The Bulb. In my experience, this level of funding is entirely inadequate. To transition the 60 or so people who are living on the Bulb into affordable appropriate housing will require someone with professional training, supported by a team of peer workers and professional staff members. This team would have to make daily outreach and trust-building visits to the Bulb. To transition 60 or so chronically homeless people, some diagnosed with multiple disabilities, will require a team of health workers. At a minimum there should be two people with master's degrees in mental health/social services plus two to four peer workers: people who have personal experiences of homelessness, who are from the community, and who have cultural competency. They should be there every day

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working with each individual, at least a few hours a day, for an extended period of time. \$60,000 is not nearly enough to fund such a program.

35. Whatever it costs to house the people currently living on the Bulb, in the long run it will be cheaper than sending them out onto the streets without shelter. Several studies show that the cost of housing chronically homeless people is less than the cost of jail, hospitalization for mental or physical illness, or other emergency medical services.<sup>1</sup> If people at the Albany Bulb are moved into street homelessness, the City is very likely to incur those increased costs.

**Conclusion**

36. Based on my medical training, professional expertise, and two decades of experience working with homeless people, I conclude that the City's plan to clear the Albany Bulb will force many current residents on to the street, gravely damaging their physical and mental health; in the worst cases, I believe that their lives may be at risk.

I swear under penalty of perjury that the foregoing is true and correct. Executed this 4th day of November, 2013.

  
Barry Zevin, M.D.

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<sup>1</sup> See, e.g., The Lewin Group, Costs of Serving Homeless Individuals in Nine Cities: Chartbook, November 19, 2004, available at <http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf>; U.S. Interagency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness, 18, available at [http://www.usich.gov/PDF/OpeningDoors\\_2010\\_FSPPpreventEndHomeless.pdf](http://www.usich.gov/PDF/OpeningDoors_2010_FSPPpreventEndHomeless.pdf).

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NOV 13 2013

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

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

C13-5270

CRB

17 KATHERINE CODY; PATRICIA MOORE;  
ROBERT WHARTON; APRIL ANTHONY;  
18 LARRY CABRERA; JOSEPH ROSE;  
STEPHANIE RINGSTAD; ALEXANDER  
19 RICHARD WILSON, TAMARA 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 JULIE ANN  
WINKELSTEIN

1 I, Julie Ann Winkelstein, declare that:

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

4 2. I have been a resident of Albany, California since 1980. I work as an adjunct  
5 professor and postdoctoral researcher for the School of Information Sciences at the University of  
6 Tennessee, Knoxville.

7 3. I am the President of Albany Housing Advocates, a nonprofit, public benefit  
8 corporation. The specific purposes of the Albany Housing Advocates Corporation are indicated in  
9 its Articles of Incorporation as follows:

- 10 A. To encourage residents and officials of the City of Albany, California to be  
11 sensitive to and supportive of the need of all persons for safe and secure housing  
12 regardless of income level, race, ethnicity, gender, gender identity, sexual  
13 orientation, physical, mental or psychological condition, family composition or  
14 personal history or status;
- 15 B. To encourage residents and officials of the City of Albany, California to  
16 promote and secure the City's compliance with its obligation to attain its fair share of  
17 the housing goals of the State of California;
- 18 C. To encourage residents and officials of the City of Albany, California to  
19 support the development and maintenance of a range of supportive services in the  
20 Albany community for persons who are experiencing, or who are at risk of  
21 experiencing, homelessness;
- 22 D. Otherwise to advocate through all lawful means for compliance by the City  
23 of Albany, California with its obligation, as part of its general planning processes, to  
24 prepare and implement housing elements in compliance with California law.

25 Another member of the corporation includes Amber Whitson, an Albany Bulb resident. A true  
26 and correct copy of Albany Housing Advocates Articles of Incorporation is attached hereto as  
27 Exhibit A.

28 4. I was one of the 10 or so members of the City of Albany Homeless Task Force,  
appointed by the City Council to develop policy options and strategies to end homelessness in  
Albany. The City Council approved the formation of the Homeless Task Force on May 21, 2012  
and approved the appointment of its members on July 2, 2012. The Homeless Task Force was  
given a start date of July 19, 2012. I understood our appointment was for 18 months.

1           5.       The Homeless Task Force held public monthly meetings consisting of reports and  
2 presentations on programs that serve people experiencing homelessness; analysis of low income  
3 housing inventory and shelter availability; options for funding sources; a proposal to do assessments  
4 of Bulb residents and survey Albany's permanently housed residents to obtain input on policy  
5 options for ending homelessness in Albany and to gauge the level of education needed on the topics  
6 of poverty and homelessness; review of the history, plans and ordinances pertaining to the  
7 waterfront property and the Bulb; creating and maintaining a list of long and short term goals and  
8 options for ending homelessness and for addressing the needs of unstably housed Albany  
9 community members. The Homeless Task Force was given a copy of the Work Plan provided by  
10 the Albany City Council to evaluate options available to the City with respect to homelessness.  
11 Attached hereto as Exhibit B is a true and correct copy of the Work Plan that sets forth the purpose  
12 of the Task Force and a description of what the Task Force was expected to accomplish.

13           6.       The Homeless Task Force used the Alameda County "EveryOne Home Plan" as a  
14 road map, as requested by the City Council to develop strategies based on the five major goals  
15 included in that plan.

16           7.       Part of my role on the Homeless Task Force was to assist in preparing a quarterly  
17 report to the City Council. In our first report, Interim Report No. 1 dated January 22, 2013, the  
18 Homeless Task Force reported on meetings with the following agencies: EveryOne Home, Berkeley  
19 Mental Health and the Albany Police Chief. A true and correct copy of Interim Report No. 1 is  
20 attached hereto as Exhibit C.

21           8.       At a Task Force meeting on December 20, 2012, Albany Police Chief McQuiston  
22 reported that the Albany Police Department was told not to enforce the municipal overnight  
23 camping ban and storage of property prohibition. A true and correct copy of the minutes from the  
24 December 20, 2012 Homeless Task Force meeting are attached hereto as Exhibit D. In conjunction  
25 with my duties on the Homeless Task Force, I was presented with research about the availability of  
26 homeless shelters in the City of Albany. I discovered there are none; nor is there any available low  
27 or very low income housing in the City of Albany. There are only 16 units of low-income housing  
28 in all of Albany, with two of those units designated for the very low-income. None of these units is

1 available and there is a very long waiting list for those units. The research I reviewed also showed  
2 there were very long waiting lists to get into homeless shelters or low income housing in the nearby  
3 city of Berkeley.

4 9. In our review of the homeless situation, the Homeless Task Force found that the  
5 majority of the homeless people in the City of Albany live at The Bulb. As a member of the  
6 Homeless Task Force, I came to know many of the people living at the Bulb. I am impressed by  
7 their resilience despite the fact many have disabilities. I was able to observe the community  
8 atmosphere the residents of the Bulb have created.

9 10. The Homeless Task Force discussed the need for dumpsters at the Albany Bulb for  
10 trash disposal for the residents there. Members of the Task Force requested a dumpster be delivered  
11 to the Albany Bulb so that the homeless residents had a place to throw their trash and the City of  
12 Albany agreed to our request. A picture of the dumpster supplied by the City of Albany to the Bulb  
13 residents is attached hereto as Exhibit E.

14 11. I participated in gathering the information for Interim Report No. 2 that was  
15 discussed at the May 6, 2013 City Council meeting. At the time Interim Report No. 2 was  
16 submitted, the Task Force members had no idea this would be our final report. If we had known  
17 that, our report would have contained additional information as to our recommendations to the City  
18 Council, including our view that the City needed to provide more support to those who are  
19 experiencing homelessness.

20 12. As requested by the City and with the City's staff input, the Task Force prepared a  
21 summary of "Options for Ending Homelessness" that is attached to Interim Report No. 2. That  
22 summary reflected the various policy and program options available to the City of Albany. Pros  
23 and cons of each option were laid out. It was made clear to us by City staff that we had to include  
24 all possibilities, even those we felt would undermine our goals and serve no positive function in  
25 addressing homelessness in Albany. The Task Force was not allowed to recommend an option to  
26 the City. A true and correct copy of Interim Report No. 2 is attached hereto as Exhibit F.

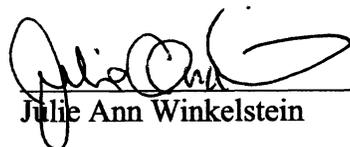
27 13. At the May 6, 2013 City Council meeting, the Homeless Task Force was told that the  
28 Task Force was no longer needed. All members of the Task Force believed we were not finished

1 with the assignment given to us by the City Council and were shocked that we were disbanded by  
2 the City Council. In fact, a draft timeline, created by City Staff, was included in our March 2013  
3 meeting packet and it indicated our final meeting would be in December 2013. The Task Force had  
4 identified the need for public education on the subject of addressing homelessness in our  
5 community, which we were ultimately not allowed to pursue as a result of the City Council's abrupt  
6 decision to disband the Task Force.

7 14. I attended the kickoff meeting held by the Berkeley Food and Housing Project with  
8 Bulb and other Albany residents on July 25, 2013. Given what I learned as a Task Force member, I  
9 believe the October 2013 deadline for evicting Albany community members living at the Bulb is not  
10 a sufficient timetable for the Bulb residents to secure other housing. I also believe the funds  
11 designated by the City are insufficient and that more money, as well as a true commitment to  
12 addressing homelessness in Albany, will be needed to offer the services that the City Council has  
13 committed to provide.

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

16 Executed this 4<sup>th</sup> day of October, 2013 at Albany, California.

17  
18   
19 Julie Ann Winkelstein

20  
21  
22  
23 65753213V.1

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

22 Plaintiffs,

23 v.

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

26 Defendants.  
27  
28

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ORIGINAL  
FILED

NOV 13 2013

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

CASE NO.

**C13-5270**

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

CRB



1 Plaintiffs Katherine Cody, Patricia Moore, Robert Wharton, April Anthony, Larry Cabrera,  
2 Joseph Rose, Stephanie Ringstad, Alexander Wilson, Tamara Robinson and Phillip Lewis, and  
3 Albany Housing Advocates (collectively, "Plaintiffs") for their complaint against defendants the  
4 City of Albany, Albany Police Department, and Mike McQuiston, in his official capacity as Chief  
5 of Police (collectively, "Defendants"), hereby allege as follows:

#### 6 NATURE OF THE ACTION

7 1. The City of Albany ("the City") — which does not have a single permanent shelter  
8 bed, transitional house, or available unit of subsidized housing — is set to evict roughly 60  
9 homeless people who are currently living on the 40 acre tip of a former landfill. The landfill  
10 forms a peninsular that juts out into the San Francisco Bay. Its tip, where people live, is known as  
11 "the Bulb." The City plans to evict Bulb residents, just as the rainy season begins and winter  
12 approaches.

13 2. The people whom the City plans to evict have lived on the Bulb for many years  
14 with, at a minimum, the tacit—and often explicit—permission of the City and the Albany Police  
15 Department. A number of the Bulb's residents were directed to the Bulb by police officers from  
16 the City and surrounding jurisdictions.<sup>1</sup> Based on the understanding that the City and its police  
17 force approved of their presence on the Bulb, residents erected tents and other structures to shelter  
18 themselves from the elements and created an area of privacy for themselves. In reasonable  
19 reliance on the permission of the City residents have brought personal property to the Bulb, which  
20 they use in their daily life. These activities have been well-known to the City for many years.

21 3. In meetings in May and September, the Albany City Council voted to instruct the  
22 police to begin enforcing Chapter 8-4 of the Albany Municipal Code, the City's "anti-camping"  
23 ordinance, in October 2013. As a result of such enforcement, residents of the Bulb (including  
24 Plaintiffs) will be evicted, not only from the Bulb, but from the City in its entirety, as the anti-  
25 camping ordinance, (1) applies to all "open space" in Albany—including parks, recreational areas,

26  
27 <sup>1</sup> In addition to directing Albany's homeless to the Bulb, Albany police officers have, for a  
28 number of years, routinely visited the Bulb and greeted the homeless people living there. The City  
of Albany's Chief of Police also previously publicly stated that the police were directed by the  
City not to enforce the "anti-camping" ordinance at issue in this Complaint.



1 and the waterfront—and (2) prohibits not only “camping”, but also “lodging” (both undefined in  
2 the ordinance). The “anti-camping” ordinance has not been enforced for many years. The  
3 Council’s May vote represented a highly prejudicial and untimely shift from the City’s prior  
4 policy of at least allowing—and in some instances, encouraging—the presence of the Bulb  
5 community within the City. At a City Council meeting on October 21, the City voted to  
6 appropriate \$570,000 to be spent on removing people from the Bulb. \$171,000 of this would be  
7 spent on cleanup of their campsites with the remainder to be spent on setting up two portable  
8 trailers with bunk beds to serve as a “transitional shelter” for six months as well as the staffing for  
9 such a shelter; only \$35,000 was allocated for rental subsidies to assist the homeless to move into  
10 traditional permanent housing.

11 4. The City’s imminent enforcement will remove all people currently living on the  
12 Bulb from their homes, deprive them of their shelter, and ultimately drive them out of the City.  
13 Given the broad sweep of the ordinance it will enforce, and the City’s plan to provide temporary  
14 shelter for only 30 people, many current Bulb residents will have no choice but to relocate to  
15 neighboring jurisdictions to avoid citation or arrest—jurisdictions which do not have enough  
16 housing and shelter for their own homeless residents.

17 5. The effects of driving the people now living on the Bulb from their homes and  
18 shelters at the beginning of the rainy season—without providing those people any viable  
19 alternative—will be devastating. Many of the Bulb’s residents, including Plaintiffs, have physical  
20 and/or mental disabilities, some of which are severe. Some are terminally ill. Some have severe  
21 limitations on their mobility. Many will suffer traumatic emotional distress if evicted. Many will  
22 be forced into situations which threaten their health and safety.

23 6. The City of Albany is, or should be, aware that many of the Bulb residents have  
24 disabilities. The City was given notice in writing that there were serious concerns about  
25 temporary shelter in trailers not being accessible for people with disabilities. Despite this notice,  
26 the City Council chose not to consider this issue in any depth at its October 21 meeting. At  
27 Council meetings, the City Council acknowledged that there were people with disabilities living  
28 on the Bulb and one Council member noted that there were potential ADA issues. Others noted



1 that many Bulb residents were medically or mentally vulnerable. But the City Council failed to  
2 provide solutions, or instruct staff to address ADA access issues at all when approving its current  
3 plan. Many of the people living on the Bulb have experienced crime and harassment living on the  
4 streets. The Bulb has been the only place they have felt safe, and the only place where they have  
5 had a community that supports them.

6 7. The City's contemplated timeline for evicting residents of the Bulb does not afford  
7 them a realistic prospect of finding appropriate alternative housing. Some have no income at all;  
8 others lack sufficient income to secure housing in the Bay Area without a subsidy of other  
9 financial support. Some lack any form of legal identification. Many have no rental history. For  
10 six months, the City will install two portables equipped with 30 bunk beds that will be sufficient to  
11 shelter, at best, half of the current residents of the Bulb. For the many Bulb residents with  
12 disabilities, they will not be accessible. Those who can access them, will only be able to do so if  
13 they give up the right to privacy they have been able to enjoy in their homes on the Bulb.

14 8. The City has not provided any alternative place for the remaining Bulb residents to  
15 go. If they try and sleep in some other open space in Albany, they will be in violation of the anti-  
16 camping ordinance. If they try and sleep on the sidewalk, they will be threatened with arrest if  
17 they don't get up and move.

18 9. Even those select Bulb residents "lucky" enough to avoid citation or arrest over the  
19 next six months by securing a bunk in one of the communal trailers offered by the City may, in  
20 addition to enduring continued infringement of their constitutional right to privacy, suffer  
21 psychological harm and aggravation of their mental disabilities.

22 10. For those Bulb residents who are unable to secure a bunk due to the limited space,  
23 the City, by unreasonably taking away their only shelter during the winter season and forcing them  
24 onto the streets, will be exposing them to dangers that they would not otherwise face.

25 11. The City has not provided—and has not committed to provide—adequate resources  
26 to find long term alternative housing for even a small number of Bulb residents, much less the  
27 roughly 60 people currently living at the Bulb.

28 12. This is an action brought by and on behalf of people who reside at the Bulb, who



1 face eviction from the homes in which they have lived for many years with the permission, or at  
2 least acquiescence, of the City of Albany, and where they have enjoyed a reasonable expectation  
3 of privacy. All that they now have, will be taken away from them. Their property will be seized,  
4 their homes destroyed. They will have three choices: If they are willing to give up their privacy,  
5 and if their disabilities do not prevent them, *and* if there is room, they can go into a portable,  
6 where they will have a bunk bed in a shelter for six months. If they are unable to go into on the  
7 portable, they can either risk almost certain arrest by staying in Albany, or get out of town. A  
8 fourth choice, to find affordable long term alternative housing is foreclosed because of the  
9 imminence of the eviction. Finally, after six months, there will be *no* place where a homeless  
10 person can legally sleep or shelter from the elements within the City. The City of Albany's plan to  
11 enforce the anti-camping ordinance against the homeless individuals who shelter at the Bulb  
12 violates rights afforded Plaintiffs under the United States Constitution, the Constitution of the  
13 State of California, and federal and state law.

14 13. Plaintiffs bring this action for declaratory and injunctive relief pursuant to 42  
15 U.S.C. § 1983. Defendants, under color of state law, intend, on an ongoing basis, to violate  
16 Plaintiffs' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States  
17 Constitution and Article I, §§ 1 and 7 of the California Constitution as well as Title II of the ADA  
18 and accompany state law. Plaintiffs seek this relief to enjoin Defendants from proceeding with  
19 their plan to effect the mass eviction of the City's homeless population through enforcement of  
20 Albany Municipal Code § 8-4.

#### 21 **PARTIES**

22 14. Plaintiff Katherine Cody is a citizen of the United States residing in Albany,  
23 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms. Cody  
24 is terminally ill and suffers from debilitating physical and mental conditions that limit her ability  
25 to work. Ms. Cody was the victim of a violent crime in the 1990s in which she lost a spleen, and  
26 many of her conditions stem from that incident and the poor medical treatment she received  
27 afterwards. Because she is medically vulnerable, and as a result of her mental condition, Ms.  
28 Cody would not be able to stay in the portables or receive the benefits provided to those who stay



1 there, and would be at risk if she required to a shelter during the day. Ms. Cody first came to The  
2 Bulb in 2007. She left for a time in 2009 to live first in a housing cooperative and then out of a  
3 van. Eventually, while still living in her van, Ms. Cody was instructed by Albany police to return  
4 to the Bulb. Ms. Cody returned to the Bulb and has resided there since 2010. She has sought and  
5 continues to seek assistance to locate housing other than at the Bulb, but all such efforts remain  
6 unsuccessful to date.

7 15. Plaintiff Patricia Moore is a citizen of the United States residing in Albany,  
8 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.  
9 Moore is 56 years old and worked for many years as a physical therapist. Illness and injury now  
10 limit her ability to continue that work. Ms. Moore has a long history of trauma related to  
11 institutional settings, and is still medically weak from her recent hospitalization. Her disabilities  
12 would make it very difficult and dangerous for her to be in the close quarters of the portable  
13 shelter and she would need an accommodation to access the City's homeless program. Ms. Moore  
14 has resided at the Bulb since 2010 except for a two month period in 2013 when she was in a  
15 hospital and nursing facility. Ms. Moore's has made her home in a shelter with tarp covered  
16 wooden walls, a tarp roof, and rugs on the floor. She has sought and continues to seek assistance  
17 to locate housing other than at the Bulb, but all such efforts remain unsuccessful to date.

18 16. Plaintiff Robert Wharton is a citizen of the United States residing in Albany,  
19 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.  
20 Wharton suffers from debilitating physical and mental conditions that limit his ability to work.  
21 Mr. Wharton could not live in the close quarters of the portable shelter and would need an  
22 accommodation as a result of his PTSD, depression, and psychosis. Mr. Wharton has lived at the  
23 Bulb, on and off, since 1993. Mr. Wharton was first directed to the Bulb by Albany police in 1993  
24 and was directed back to the Bulb by Albany police again in 2012. Mr. Wharton has sought and  
25 continues to seek assistance to locate alternative housing that he can afford on his limited Social  
26 Security Income, but all such efforts remain unsuccessful to date.

27 17. Plaintiff April Anthony is a citizen of the United States residing in Albany,  
28 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.



1 Anthony has resided at the Bulb since 2009. Ms. Anthony's family moved to the City of Albany  
2 in 1969; she has been unable to find a place to live in Albany or any of the surrounding cities. Ms.  
3 Anthony suffers from bipolar disorder, anxiety and depression, as well as physical ailments that  
4 make it difficult for her to walk. She would not be able to access the shelter in the portables or  
5 avail herself of any of the benefits provided to those who stay there because of her disabilities.  
6 Ms. Anthony does not have a regular source of income. She has sought and continues to seek  
7 assistance to locate housing other than at the Bulb, but all such efforts remain unsuccessful to date.

8 18. Plaintiff Larry Cabrera is a citizen of the United States residing in Albany,  
9 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.  
10 Cabrera has resided at the Bulb since 2010. Mr. Cabrera worked for many years as a journeyman  
11 contractor and asbestos abatement supervisor but was unable to continue working due to a  
12 physical disability, the result of permanent lung damage from asbestos. As a result of his  
13 condition, Mr. Cabrera is medically vulnerable and particularly at risk of damage of airborne  
14 diseases. He could not safely stay in the portable shelter or avail himself of the benefits provided  
15 to those who do. Mr. Cabrera has sought and continues to seek assistance to locate housing other  
16 than at the Bulb, but all such efforts remain unsuccessful to date. One organization under contract  
17 with the City offered to buy Mr. Cabrera a one-way bus ticket out of Albany if he was willing to  
18 leave. Mr. Cabrera has nowhere else to go.

19 19. Plaintiff Joseph Rose is a citizen of the United States residing in Albany,  
20 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr. Rose  
21 has resided at the Bulb since February 2008. He became homeless after losing his home to  
22 foreclosure. Mr. Rose receives disability benefits because of a physical injury to his hip, which  
23 has severely limited his mobility. He has to lie down during much of the day and night. Since the  
24 City's planned shelter will be closed during the day, Mr. Rose will need an accommodation that  
25 allows him to shelter 24 hours a day. He has been on the waiting list of Section 8 housing for  
26 three years. Mr. Rose has sought and continues to seek assistance to locate housing other than at  
27 the Bulb, but all such efforts remain unsuccessful to date.

28 20. Plaintiff Stephanie Ringstad is a citizen of the United States residing in Albany,

1 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.  
2 Ringstad has resided at the Bulb since approximately 2008. Her home, a large tent, has provided  
3 her with shelter and privacy for many years. Ms. Ringstad has a history of trauma, including  
4 sexual assault, and as a result, could not feel safe or be mentally healthy if sleeping in the close  
5 quarters of the portables. Ms. Ringstad became homeless after losing her home to foreclosure.  
6 Ms. Ringstad has sought and continues to seek assistance to locate housing other than at the Bulb,  
7 but all such efforts remain unsuccessful to date.

8 21. Plaintiff Alexander Wilson is a citizen of the United States residing in Albany,  
9 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.  
10 Wilson has resided at the Bulb since approximately 2001. With the full knowledge and implicit  
11 permission of Albany officials, Mr. Wilson created his home at the Bulb using rocks, mud, wood,  
12 and glass and has lived there for five years. He did so with the knowledge and implicit permission  
13 of Albany officials. Mr. Wilson suffers from debilitating physical conditions that limit his ability  
14 to work. He is claustrophobic and manic, among other mental disabilities. Mr. Wilson also has a  
15 seizure disorder, and needs his service dog with him to both prevent seizures and alert him if a  
16 seizure is coming. He would not be able to access the portables. Mr. Wilson has sought and  
17 continues to seek assistance to locate housing other than at the Bulb, but all such efforts remain  
18 unsuccessful to date.

19 22. Plaintiff Tamara Robinson is a citizen of the United States residing in Albany,  
20 California. She is homeless within the federal definition provided by 42 U.S.C. §11302. Ms.  
21 Robinson has resided at the Bulb since approximately 2001. With the full knowledge and implicit  
22 permission of Albany officials, Ms. Robinson has lived at the Bulb for the past three years. Ms.  
23 Robinson suffers from serious, life-threatening disabilities. She is HIV positive and has Hepatitis  
24 C. Because she is immuno-suppressed, she is particularly medically vulnerable to airborne  
25 diseases, and at risk if she stays in a closed space with many other people. Ms. Robinson would  
26 not be able to stay in the portables without placing her health at risk, and so would not be able to  
27 avail herself of any of the benefits provided to those who utilize the shelter. She has been  
28 threatened with citation by the Albany police for sleeping on a city sidewalks.



1           23. Plaintiff Phillip Lewis is a citizen of the United States residing in Albany,  
2 California. He is homeless within the federal definition provided by 42 U.S.C. §11302. Mr.  
3 Lewis is a military veteran who has resided at the Bulb since approximately 2005. With the full  
4 knowledge and implicit permission of Albany officials, Mr. Lewis created a home for himself and  
5 his partner at the Bulb using materials he found or scavenged, including rocks, boulders and tree  
6 branches. Mr. Lewis suffers from substantial mental disabilities, including major depression,  
7 schizoid personality disorder, and effects of a significant trauma history. His disabilities preclude  
8 him from utilizing the shelter in the portables or receiving the benefits provided to those who stay  
9 there.

10           24. Plaintiff Albany Housing Advocates (“AHA”) is a non-profit public benefit  
11 organization that advocates for, *inter alia*, the development and implementation of services that  
12 ensure the welfare of Albany’s homeless population, such as adequate shelter and housing  
13 opportunities. AHA’s members include Amber Whitson, a disabled resident of the Bulb who  
14 faces imminent eviction as a result of the City’s planned enforcement of Albany Municipal Code  
15 §8-4. AHA has a strong interest in preventing the imminent eviction of Ms. Whitson from the  
16 Bulb, as well as the Bulb’s other residents, consistent with its organizational purpose.

17           25. Upon information and belief, Defendant City of Albany is a municipal corporation,  
18 organized under the laws of the State of California, with the capacity to sue and be sued. Upon  
19 information and belief, the City is the legal and political governmental entity responsible for the  
20 actions of the Albany Police Department, its officials, agents, and employees.

21           26. Defendant Albany Police Department (hereinafter “Department”) is the municipal  
22 agency responsible for policing the City and for enforcement of the Albany Municipal Code  
23 (hereinafter “Code”), including § 8-4 and California Penal Code § 647(e). Upon information and  
24 belief, the Department, through its officials, agents, and employees, has taken steps towards the  
25 enforcement of and will enforce Code § 8-4.

26           27. Defendant Mike McQuiston has been the Chief of Police since July 1, 2006. In his  
27 official capacity as Chief of Police, he directs the administration and operation of the Department  
28 pursuant to the Code and guidelines set by the City. As such, he is responsible for the



1 enforcement of Code § 8-4. Upon information and belief, under his direction, officials, agents,  
2 and employees of the Department have threatened Plaintiffs with camping and obstruction of  
3 public way citations. Chief McQuiston is being sued in his official capacity.

#### 4 JURISDICTION

5 28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1343(a)(3)  
6 and (4) and 1367. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate rights  
7 established by the Fourth, Eighth and Fourteenth Amendments of the United States Constitution as  
8 well as federal law. Plaintiffs also seek relief under the Declaratory Judgment Act, 28 U.S.C.  
9 §§2201 and 2202. Plaintiffs' state constitutional and state law claims arise from the same  
10 occurrences as their federal constitutional claims and are within the Court's supplemental  
11 jurisdiction pursuant to 28 U.S.C. § 1367.

#### 12 VENUE

13 29. Venue in this action is proper in the Northern District of California under 28 U.S.C.  
14 § 1391(b), as the Defendants are located in the Northern District of California and all the events,  
15 acts, and/or omissions giving rise to the claims complained of herein have occurred or will occur  
16 in this District.

#### 17 FACTUAL ALLEGATIONS

##### 18 Albany's Anti-Camping Ordinance

19 30. Albany Municipal Code section 8-4 provides, in relevant part, that:

##### 20 **8-4.3 Hours of Operation.**

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

##### 26 **8-4.4 Camping.**

27 No person shall loiter, camp or lodge in any park, recreation, open space, waterfront  
28 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



1 purpose of overnight camping. No person shall leave any tents, shacks, sleeping  
2 bags or any other shelter, structure or specialty vehicle to be used or could be used  
3 for overnight camping, . . . in any park, recreation, open space, waterfront or  
4 Albany Hill area. The restrictions contained within this section shall not apply to  
5 programs sponsored or co-sponsored by the City.

6 **8-4.7 Unauthorized Activities.**

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

- 9 b. Construct or erect any building of any kind, whether permanent or temporary, . . .
- 10 g. Store personal property.

11 Subsections 8-4.4 and 8-4.7(b) and (g) apply to all open spaces in Albany.

12 **Prior Enforcement and Non-Enforcement of the Ordinance**

13 31. People have been living on the Albany landfill for close to 20 years. In 1999,  
14 there were approximately as many people living on the landfill as there are now.<sup>2</sup> Upon  
15 information and belief, Albany Municipal Code 8-4 was drafted by staff and passed by the  
16 Council with the explicit intention that it be used as a tool to remove “individuals occupying  
17 public lands on the Albany Landfill.” In 1999, as now, the City’s plans to evict homeless  
18 people living on the landfill did not include provisions sufficient to ensure that those who  
19 were evicted would be able to find shelter or housing in Albany, or in any other jurisdiction.  
20 When the mass evictions in 1999 took place, the vast majority of homeless people who had  
21 been living on the landfill were forced out of Albany.

22 32. In most cases, the people who were evicted in 1999 lost all of their property.  
23 Shelters were bulldozed and personal property was thrown in a dumpster. One man whose  
24 right leg had been amputated lost, among other things, his wheelchair, crutches, and arm  
25 braces.

26 33. In the only instance in which a person who was issued a citation under the  
27 anti-camping ordinance in 1999 sought relief from the courts, Bulb resident Michael Smith

28 <sup>2</sup> In 1999, people were living on the entirety of the landfill not just the tip known as the Bulb. Since then, the entirety of the landfill except for the Bulb has been transferred state and is managed by the East Bay Regional Park District. The Bulb still belongs to the City.



1 was found not guilty on the grounds that he had a defense of necessity, in that, as a person  
2 who is homeless, he had no choice but to break a law, that criminalized fulfilling the basic  
3 human need for sleep and shelter.

4 34. After the 1999 eviction homeless people returned to the Bulb, sometimes at  
5 the suggestion of the City's police officers. Enforcement of the ordinance ceased altogether  
6 except for a brief flurry in 2008.

#### 7 **The Lack of Housing Alternatives in Albany and in Alameda County Generally**

8 35. For at least five years before the 1999 eviction, homeless people had been  
9 residing on the landfill and they have been residing there ever since. At no time in that  
10 period has the City taken any steps toward providing housing or alternative places for  
11 landfill residents to sleep or seek shelter. In fact, even though the City is required by state  
12 law to make a plan for affordable housing and zone for a homeless shelter in at least one part  
13 of the City, it has not. Albany has been out of compliance with state affordable housing law  
14 since at least 1997.

15 36. As a result, homeless people who wish to sleep and shelter in Albany, have  
16 no option than to go to the Bulb. If they lie in a sleeping bag or set up a tent, in any other  
17 open space in Albany they will be in violation of Albany Municipal Code section 8-4. If  
18 they lie on the sidewalk, they are at the risk of being cited and arrested for lodging or  
19 obstructing the sidewalk.

#### 20 **The City's Current Plan for Eviction of the Homeless**

21 37. In 2012, the Albany City Council ("Council") created a Homeless Task Force  
22 ("Task Force") to "consider homelessness throughout the City including consideration of the  
23 unique issues associated with homeless on the Albany waterfront" and develop a solution  
24 with the goal that Albany's homeless would be "supportively and permanently housed."

25 38. At an Albany City Council meeting on May 6, 2013, the Task Force  
26 presented findings from its ongoing study. Those findings listed a series of options for  
27 "Ending Homelessness in Albany." At that same meeting, the Council instructed the police  
28 to begin enforcing the anti-camping ordinance in October 2013. The Task Force report had



1 listed as the “cons” of this approach that it “would/could ‘push’ persons who are homeless to  
2 other parts of Albany communities.” The Council voted to allocate \$30,000 to contract with  
3 an agency to do “outreach and support” to homeless people on the Bulb.

4 39. On September 3, 2013, the Albany City Council again put on its agenda the  
5 proposed October enforcement of the anti-camping ordinance. Despite numerous speakers  
6 who made the case for more time to plan alternatives and urged the Council to reconsider,  
7 the Council reaffirmed its decision to begin enforcement in October. The speakers stressed  
8 that a delay in the evictions need not be permanent, but that Albany had not allocated  
9 sufficient time and economic resources to find shelter for the roughly 60 residents of the  
10 Bulb. Berkeley Food and Housing Project which had received a contract from the City  
11 reported that it had been able to secure housing for only one resident of the Bulb, despite the  
12 passage of nearly five months since the City decided to evict its homeless citizens from the  
13 Bulb. The Council nevertheless voted to extend its contract through December for another  
14 \$30,000.

15 40. At its October 21, 2013 meeting, the Albany City Council voted on a budget  
16 and a plan pertaining to its eviction of people from the Bulb. It voted to appropriate a total  
17 of \$570,675. \$171,465 would be for cleaning up campsites. The remainder would go to  
18 purchase to portables (that would be sold after use), staffing of the shelter that would be  
19 housed in the portables, various incidentals, and \$35,000 for a housing subsidy to be  
20 administered by Berkeley Food and Housing Project.

#### 21 **Current Bulb Residents Who Will Be Affected by the Eviction**

22 41. Neither the City of Albany nor Berkeley Food and Housing Project has  
23 conducted a formal census of all people living on the Bulb or made a comprehensive attempt  
24 to document the needs and resources of all Bulb residents. Between April and September  
25 13, 2013, Amber Whitson, an Albany Bulb resident, conducted an informal survey of the  
26 people living on the Bulb at the time. She found that sixty-four people (62 of whom  
27 participated in Ms. Whitson’s survey: 39 men and 23 women) were living on the Bulb. Of  
28 the 62 people participating in the survey:



- 35 reported suffering from at least one disability.
- 36 have no income, 21 of whom desire employment.
- 8 are on General Assistance, unemployment, have a job or receive money from other sources.
- 18 (6 women and 12 men) are receiving either Supplemental Security Income (SSI) or Social Security Disability Income (SSDI).
- 48 were interested in finding housing.
- One person reported living on the Bulb 22 years; two people said they had lived there for 20 years; people reported having lived there 8, 9, 10, 14, 15, and 16 years.
- 56 of the current residents of the Bulb have been living there for more than a year.

42. Many people living on the Bulb have moderate to severe physical and mental disabilities, including bipolar disorder, paranoia, HIV, chronic alcoholism, diabetes and complications thereof, anxiety disorders, and post-traumatic stress disorder. Many are immuno-suppressed and/or medically vulnerable as a result of poor nutrition in combination with their other conditions. Many cannot work as a result of their disabilities. Others have difficulty finding work and survive on government assistance, food stamps, scrapping metal, recycling, or doing odd jobs.

43. According to the definition provided by the United States Department of Housing and Urban Development (HUD), the overwhelming majority of people living on the Bulb are “chronically homeless.” Under the definition employed by HUD, people are considered chronically homeless if they have been homeless for more than a year, or have had at least four episodes of homelessness in the last three years, and can be diagnosed with a substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability.

44. The City has not made, or at least made public, any plan to accommodate people with physical or mental disabilities. There is no indication that the City is considering the particular physical disabilities of Bulb residents, designing the portable trailers, or their program as a whole, to accommodate those disabilities. Some disabled Bulb residents will have trouble getting in and out of bunks, or onto sleeping mats. Some will need to sleep with, and remain with, their service animals to prevent the deterioration of their conditions. Some will need to lie down during the day. Some medically vulnerable



1 people will need adequate ventilation so that they do not catch airborne diseases that could  
2 be life-threatening for someone in their condition. There is no known plan to make  
3 reasonable accommodations or modifications for people with physical disabilities.

4 45. Nor is there any indication that the City has made a plan to accommodate  
5 people with mental disabilities. People with paranoia need a private space, or limited contact  
6 with other people, or they will suffer severe anxiety. People with histories of trauma, who  
7 have post-traumatic stress disorder, also need private space to avoid triggering major mental  
8 health setbacks. People with cognitive disorders will need flexibility in enforcement of  
9 shelter rules, because they do not have the capacity to understand, remember, and follow  
10 them. The shelter should be operated by staff who are trained in de-escalation and have  
11 enough clinical training and experience to work well with people with mental disabilities.

#### 12 **Effect of Planned Eviction on Current Bulb Residents**

13 46. The effect of the eviction on Bulb residents will be devastating. The structures that  
14 they call home will be seized and likely destroyed. Even if their possessions are not thrown away as  
15 trash in the course of eviction, they will likely be lost, because the residents will not have any place  
16 to keep them. For many, the Bulb represented the only community they have known. It is where  
17 they have felt supported, accepted, and safe. On the Bulb they knew from experience that the police  
18 would leave them alone. Given that Albany has offered them neither permanent housing nor  
19 allowed them the time and resources necessary to find housing, many will have no choice if they are  
20 evicted, but to returning to the streets, and a life lived with the constant threat of criminalization.

21 47. The effect of criminalization on homeless people is severe. The penalty for an  
22 infraction is a fine. If they miss a court date, a civil assessment of \$300 will be added onto their  
23 fine. For homeless people who cannot afford to pay, these fines turn quickly into arrest warrants.  
24 Armed with a warrant, the police can arrest a homeless person at any time. The constant threat of  
25 arrest is particularly detrimental to homeless people who are ill or suffer from physical or mental  
26 disabilities. Additionally, active warrants can impair the ability of a homeless person to get  
27 employment, housing, and other benefits. A warrant for failure to appear can result in the  
28 termination of Social Security benefits. Homeless individuals must disclose criminal convictions on

1 applications for public housing. These convictions become a matter of public record. As a result,  
2 the convictions may cause a person who is homeless to lose the opportunity to obtain public and  
3 private housing. Additionally, an individual may lose a housing placement if he or she is  
4 incarcerated. Conviction and incarceration can also interfere with the ability to obtain and maintain  
5 Social Security disability benefits. Recipients may not receive benefits for any period in which they  
6 are incarcerated.

7 48. If current Bulb residents, including Plaintiffs, are forced to leave their homes and  
8 live on the street in unfamiliar areas, and without the support of the community, they will be  
9 vulnerable to assault, theft, and harassment. Women will be particularly at risk of victimization and  
10 physical violence. If people are forced to leave the living spaces they have created for themselves  
11 on the Bulb, they are likely to find themselves with no alternative but to live on the street which can  
12 result in or exacerbate a variety of physical and mental impairments. Living on the street,  
13 especially during the rainy winter season, causes health problems related to exposure and neglect.  
14 The fact that the majority of people living on the Bulb suffer from a variety of mental and physical  
15 disabilities increases the likelihood that they will have great difficulty coping with the consequences  
16 of eviction from a stable community.

17 49. In short, evicting people currently living on the Bulb, without providing a safe,  
18 affordable, appropriate long-term alternative place for them to live poses a serious risk to their  
19 health and well-being. Successfully transitioning Bulb residents to another location, without  
20 causing harmful consequences, requires a sustained effort and enough resources and time to find  
21 solutions that reasonably accommodate each resident's physical, emotional, and mental health  
22 needs.

### 23 **FIRST CLAIM FOR RELIEF**

#### 24 **Violation of Prohibition Against Cruel and Unusual Punishment** 25 **(Eighth Amendment; 42 U.S.C. § 1983)**

26 50. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

27 51. Defendants have stated they will begin enforcing the camping ordinance in October  
28 2013. Implementation is now due to occur in mid- November 2013. For the first six months after  
enforcement the City has stated it will set up to portables that have room for 30 people to sleep in



1 bunk beds. After those six months, Albany will have no shelter beds at all, no transitional housing,  
2 and no affordable subsidized housing for the people it plans to evict. It will, however, have laws on  
3 the books that make it essentially impossible for a homeless person to live in Albany and perform  
4 the functions necessary for his or her survival without breaking the law. That will be the situation  
5 immediately for all those who find all the bunk beds in the portables taken, or who have a disability  
6 that makes it impossible for them to go into shelters in the first place, they enjoyed and reasonably  
7 expected to enjoy in their dwellings on the Bulb.

8 52. Albany Municipal Code § 8-4 prohibits life-sustaining activities that people who are  
9 homeless must engage in, such as lying down at night, seeking shelter from the elements, using  
10 bedding to keep warm, or simply remaining in one place for a length of time. Under Defendants'  
11 plan for the evictions of people from the Bulb, Plaintiffs' and other homeless Bulb residents who  
12 attempt to engage in these life-sustaining activities in Albany will be subject to arrest and  
13 punishment for violating section 8-4 or other related laws forbidding lodging on private or public  
14 property. The actions for which they will be punished are involuntary and necessary for survival—  
15 going to sleep at night, covering oneself from the cold, seeking shelter from the rain, will become  
16 crimes because they are homeless in Albany. Punishment for involuntary acts arising out of the  
17 status of homelessness constitutes cruel and unusual punishment under the Eighth Amendment of  
18 the United States Constitution, as incorporated in and applied to the states through the Fourteenth  
19 Amendment. Plaintiffs seek redress for Defendants' violation of their right to be free from cruel  
20 and unusual punishment.

## 21 **SECOND CLAIM FOR RELIEF**

### 22 **Violation of Americans with Disabilities Act and Related State Statutes** 23 **(42 U.S.C. § 1983; 42 U.S.C. § 12132; Cal. Gov't Code § 11135 *et seq.*)**

24 53. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

25 54. Title II of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12132,  
26 provides that:

27 [N]o qualified individual with a disability shall, by reason of such disability, be  
28 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 California incorporates all of these federal protections into state law, such that violations of the  
2 ADA are also state law violations and also contains a broad and independent disability civil rights  
3 mandate. (Cal. Gov't Code § 11135 *et seq.*)

4 55. The term “disability” includes persons with mental or physical impairments that  
5 limit one or more major life activities. Cal. Gov't Code § 12926 (i) (medical condition), 12926 (j)  
6 (mental disability), 12926 (l) (physical disability). A number of the plaintiffs and a majority of the  
7 residents of the Bulb are qualified individuals with disabilities within the meaning of 42 U.S.C. §  
8 12102; 42 U.S.C. § 12131, 28 C.F.R. § 35.104 and Cal. Gov't Code §12926.

9 56. The ADA and associated state laws obligate public entities to operate each service,  
10 program, or activity so that the service, program, or activity, when viewed in its entirety, is readily  
11 accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150. The operation of a  
12 transitional shelter in portable trailers by the City is a “program” or “activity” that must comply  
13 with the ADA requirements of accessibility. In order to comply with the ADA, the City must  
14 operate the temporary trailers so as to provide disabled persons with “meaningful access” or  
15 provide shelter and services in a manner and place that is accessible. Many residents of the Bulb have  
16 disabilities that will render the portables inaccessible to them. These disabilities particularly include  
17 mental disabilities like claustrophobia, Posttraumatic Stress Disorder, and schizophrenia. For people  
18 with these disabilities it will be as impossible for them to enter the shelter as it would be for a person  
19 in a wheelchair required to climb up a flight of steps. The City has made no provision in its planning  
20 to provide a reasonable accommodation for people with disabilities that will prevent them from  
21 accessing the shelter. The City plans to operate the temporary shelter under policies, practices, and  
22 procedures which systematically fail to reasonably accommodate the needs of individuals with  
23 disabilities, so that these programs are not readily accessible to and usable by individuals with  
24 disabilities in violation of 28 C.F.R. § 35.150 and Cal Gov't Code § 11135.

25 57. The City's failure to adopt policies or procedures that provide reasonable  
26 accommodations for homeless people with disabilities denies Plaintiffs with disabilities meaningful  
27 access to the trailers in violation of Title II of the American's with Disabilities Act and 28 C.F.R. §  
28 35.150 and accompanying state law.





1 and claustrophobia, as well as physical disabilities, such as weakened immune systems due to  
2 incurable, infectious diseases like Hepatitis C. The individuals suffering from such disabilities  
3 who seek, and are able to access, the temporary communal shelters provided by the City, face  
4 further significant dangers resulting from their pre-existing physical and mental conditions  
5 including psychological harm and physical illness. For these individuals in particular, the threat of  
6 harm stemming from the City's planned enforcement program is severe: either face the risk of  
7 aggravating their already vulnerable mental and physical health by utilizing the temporary shelter  
8 offered by the City or live on the streets without any shelter, exposed to the elements during the  
9 cold winter months. The City has been informed of these dangers and has, with deliberate  
10 indifference, chosen to proceed with its enforcement plan.

11 **FOURTH CLAIM FOR RELIEF**  
12 **Violation of Right to Be Secure from Unreasonable Seizures**  
13 **(Fourth Amendment; 42 U.S.C. § 1983)**

14 65. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

15 66. In or around early October, the City issued guidelines providing that property and  
16 structures stored on the Bulb will be subject to seizure and/or destruction. The City's  
17 Administrative Procedures provide that personal property seized during their sweep of the Bulb  
18 will be stored for one hundred twenty (120) days. Property not claimed after 120 days presumably  
19 will be destroyed. The City plans to "abate" buildings and structures, which, given the absence of  
20 any procedure for "abatement," and past experience, will result in the destruction of Bulb  
21 residents' dwellings.

22 67. The Plaintiffs have property rights in their possessions and dwellings on the Bulb.  
23 These dwellings are not abandoned, they are not an immediate threat to public health and safety,  
24 nor are they contraband or evidence of a crime. The City's plan to destroy dwellings and  
25 dispossess Plaintiffs and other Bulb residents of their homes after many years of allowing and  
26 encouraging Plaintiffs to establish dwellings on the Bulb will result in the unreasonable seizure  
27 and destruction of Plaintiffs' property in violation of their Fourth Amendment rights.

28 68. Plaintiffs seek redress for Defendants' violation of their right to be secure from  
unreasonable seizure.



1 **FIFTH CLAIM FOR RELIEF**  
2 **Violation of Right to Procedural Due Process of Law**  
3 **(Fourteenth Amendment; 42 U.S.C. § 1983; Art. I, §7 Calif. Constitution)**

4 69. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

5 70. Due process requires a minimum notice and an opportunity to be heard if the  
6 government intends to deprive a person of his or her property. Defendants' "Administrative  
7 Procedures for the Removal of Temporary Shelters, Personal Property and Refuse" provide for  
8 neither a pre-deprivation or post-deprivation hearing for people whose personal property the  
9 Defendants intend to take, and whose buildings and structures it intends to "abate." The  
10 Administrative procedures provide no guidance as to the process that will be followed in abating  
11 the buildings and structures, which have been people's homes. Because the property of people  
12 who are homeless often appears to be valueless to those in charge of its removal, the risk that it  
13 will be mistaken for trash, and destroyed is great. Due process protections, and particularly the  
14 right to a hearing are therefore especially important when the property of people who are homeless  
15 is going to be taken. The absence of provision for a hearing in Defendants' Administrative  
16 Procedures will result in a violation of Plaintiff's rights to due process.

17 71. Plaintiffs seek redress for Defendants' violation of their right to due process of law.

18 **SIXTH CLAIM FOR RELIEF**  
19 **Violation of Due Process—Vagueness**  
20 **(Fourteenth Amendment; 42 U.S.C. §1983)**

21 72. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

22 73. Albany Municipal Code § 8-4.4 as written, forbids loitering, lodging, and camping.  
23 It provides no definition of these terms. It provides no guidance to what constitutes "lodging," and  
24 "camping." These are offenses so lacking in definition that Plaintiffs, who are homeless, cannot  
25 reasonably know what conduct is forbidden. They are an invitation to selective enforcement.<sup>3</sup>  
26 Municipal Code § 8-4 is unconstitutionally vague on its face and as applied to people who are  
27 homeless.in violation of the Fourteenth Amendment to the United States Constitution. Plaintiffs

28 <sup>3</sup> In recognition of the constitutional infirmity of § 8.4.4, the Albany City Council voted at its  
October 2, 2013 meeting to delete the reference to loitering from this code provision. The bans on  
"camping" and "lodging" however remain.



1 seek redress for Defendants' violation of their due process rights under the Fourteenth  
2 Amendment.

3 **SEVENTH CLAIM FOR RELIEF**  
4 **Violation of Right to Privacy**  
5 **(Art. I, § 1 Calif. Constitution; U.S. Bill of Rights)**

6 74. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

7 75. Plaintiffs, like all other Californians, enjoy the protections of both Article I, § 1 of  
8 the California Constitution and the penumbra of rights created by the First, Third, Fourth, Fifth,  
9 Ninth Amendments of the U.S. Constitution, including the right to privacy. Privacy is a  
10 fundamental right.

11 76. The right to privacy protects the right to make intimate personal decisions and  
12 conduct personal activity without observation, intrusion, or interference. For example, choosing  
13 who one lives with and excluding others from one's home are exercises of the right to privacy.

14 77. With the knowledge of the City, and sometimes at the City's direction, Plaintiffs  
15 created homes and private dwellings on the Bulb. They have lived in these homes for many years  
16 and have exercised their rights to privacy in these habitations.

17 78. Defendants' planned eviction of Plaintiffs from their homes and the threatened  
18 destruction of these structures will leave Plaintiffs without any shelter or other place they may  
19 exercise their rights to privacy. All other venues within Albany in which Plaintiffs may attempt to  
20 exercise their privacy rights — rights they have enjoyed in their homes on the Bulb — will be  
21 criminally off-limits to them.

22 79. Plaintiffs will face criminal sanction if they seek to remain in their homes. They  
23 will be similarly criminally sanctioned if they establish new shelters in any other areas in Albany.  
24 A limited amount of "shelter space" will be available: night-only access to bunk beds in  
25 communal trailers for six months. There are insufficient beds for all Bulb residents and many  
26 residents, including Plaintiffs, have disabilities that preclude them from accessing the shelter and  
27 medical conditions that would make it dangerous for them to do so.

28 80. Bulb residents who are not precluded by medical condition or disability from  
utilizing the shelter, will not be able to do so without giving up the right to privacy they currently



1 enjoy. They will have to give up the right to make intimate personal decisions and conduct  
2 personal activity without observation, intrusion or interference. If they refuse to give up this right  
3 and wish to sleep the night in Albany, they will have no choice but to violate Albany Municipal  
4 Code 8-4.4 or risk arrest for sleeping on the sidewalk.

5 81. Public entities in California cannot condition the receipt of a public benefit on the  
6 waiver of Constitutional rights except under certain extreme circumstances. This, however, is  
7 exactly what Albany is doing when the “benefit,” of obtaining shelter, meals and participating in  
8 the City’s housing subsidy program is conditioned on Plaintiffs giving up the right to privacy they  
9 currently enjoy. Defendants cannot satisfy the heavy burden of demonstrating the practical  
10 necessity for this condition. The public accrues no benefit from this impairment of Plaintiffs’  
11 right to privacy, and, although they are not required to do so, Plaintiffs have identified to Albany  
12 available alternative means that could maintain the integrity of Albany’s temporary shelter  
13 program without severely restricting a constitutional right. Defendants, however, have insisted on  
14 their current scheme.

15 82. Defendants’ plan to seize or destroy Plaintiffs limited shelter against the elements  
16 during the winter months, expel them from their home on the Bulb, cite or arrest them if they fall  
17 asleep in public and condition the provision of shelter on the waiver of Plaintiffs’ right to privacy  
18 under the U.S. and California Constitution is a violation of their Plaintiffs’ Constitutional rights to  
19 privacy.

20 83. Plaintiffs seek redress for the City’s violation of their Constitutional right to  
21 privacy.

## 22 PRAYER FOR RELIEF

23 WHEREFORE, based on the allegations asserted herein, Plaintiffs respectfully request  
24 relief as follows:

- 25 1. A temporary restraining order and/or preliminary and permanent injunction,  
26 enjoining Defendants, their officers, employees, assignees, successors, and agents  
27 from enforcing Albany Municipal Code §8-4, against persons who are homeless  
28 and currently living on the Bulb so long as there is not a location available in



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Albany where they can find shelter that protects those persons' right to privacy and reasonably accommodates their disabilities.

2. A temporary restraining order and/or preliminary and permanent injunction, enjoining Defendants, their officers, employees, assignees, successors, and agents from enforcing Albany Municipal Code §8-4, against persons who are homeless and currently living on the Bulb without providing them with an adequate hearing before depriving them of their property interest in their personal property and/or dwelling.
3. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to be free from cruel and unusual punishment under the United States Constitution;
4. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to be secure from unreasonable seizure under the United States Constitution;
5. A declaration that Defendants' past, present, and threatened future enforcement of § 8-4 violates Plaintiffs' rights to due process of law under the United States and California Constitutions;
6. A declaration that the City's plan to operate a temporary transitional shelter that is not readily accessible to individuals with disabilities violates the ADA and California State law;
7. A declaration that Albany Municipal Code Section § 8-4.4 is void for vagueness under the United States Constitution;
8. A declaration that Defendants' past, present and threatened future enforcement of § 8.4 under the circumstances here violates Plaintiffs' right, the right to privacy guaranteed under the California and U.S. Constitutions;
9. Plaintiffs' costs incurred in this lawsuit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988, as well as any appropriate provisions of California law;
10. Plaintiffs reasonable attorney's fees, pursuant to 42 U.S.C. § 1988, and analogous



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provisions of California law; and

11. All such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial as to all issues triable to a jury.

DATED: November 13, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: Maureen A. Sheehy  
MAUREEN A. SHEEHY

DATED: November 13, 2013

EAST BAY COMMUNITY LAW CENTER

By: Osha Neumann, MS  
OSHA NEUMANN

DATED: November 13, 2013

HOMELESS ACTION CENTER

By: Patricia E. Wall, MS  
PATRICIA E. WALL

65827718V.1



3593150

Added For Imaging 08-12-2013 th

ARTICLES OF INCORPORATION  
OF  
ALBANY HOUSING ADVOCATES

FILED  
Secretary of State  
State of California

AUG - 5 2013

I

The name of the corporation is Albany Housing Advocates.

ICC

II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.

III

The specific purposes of this corporation are:

A. To encourage residents and officials of the City of Albany, California to be sensitive to and supportive of the need of all persons for safe and secure housing regardless of income level, race, ethnicity, gender, gender identity, sexual orientation, physical, mental or psychological condition, family composition or personal history or status;

B. To encourage residents and officials of the City of Albany, California to promote and secure the City's compliance with its obligation to attain its fair share of the housing goals of the State of California;

C. To encourage residents and officials of the City of Albany, California to support the development and maintenance of a range of supportive services in the Albany community for persons who are experiencing, or who are at risk of experiencing, homelessness;

D. Otherwise to advocate through all lawful means for compliance by the City of Albany, California with its obligation, as a part of its general planning processes, to prepare and implement housing elements in compliance with California law.

IV

The initial ~~street~~ address of the corporation is 555 Pierce Street, #1234, Albany, California 94706. This address is also the initial mailing address of the corporation.

V

The name and address in California of the corporation's initial agent for service of process is Robert R. Outis, 1320 Solano Avenue, Suite 203, Albany, California 94706.

I

VI

This corporation is organized and operated for social welfare purposes within the meaning of Section 501(c)(4) of the Internal Revenue Code.

VII

The property of this corporation is irrevocably dedicated to social welfare purposes. No part of the net income or assets of this corporation shall inure to the benefit of any director, officer or member of the corporation or to the benefit of any private person.

VIII

Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for social welfare purposes and which has established its tax exempt status under Section 501(c)(4) of the Internal Revenue Code.

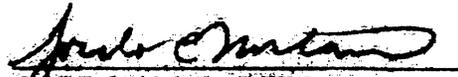
Dated: August 4, 2013

  
BRIAN JOHNS

Dated: August 4, 2013

  
LISA KLEINBUB

Dated: August 5, 2013

  
GORDON McCARTER

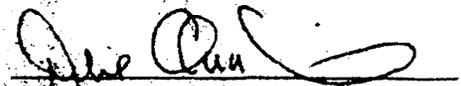
Dated: August 4, 2013

  
ROBERT E. GLITS

Dated: August 4, 2013

  
AMBER WHITSON

Dated: August 4, 2013

  
JULIE ANN WINKELSTEIN

**Work Plan**  
**Albany Homeless Task Force**  
Revised: May 11, 2012

Purpose

In line with the Federal Mandate to end Homelessness by 2020, develop policy options and strategies to end homelessness in Albany. Homeless individuals with needs and disabilities deserve a safe, supportive and permanent place to live and access to resources that will support health and wellness.

Description

Due to the complexity of the issue and the comprehensive approach required to end homelessness, the task force will tap into existing resources and models currently in place in Alameda County.

EveryOne Home is Alameda County's road map for ending homelessness by the year 2020. The EveryOne Home Plan was published in 2006. An organization by the same name was launched in 2007 to lead the implementation of the plan. EveryOne Home envisions a housing and service system that partners with consumers, families and advocates; provides appropriate services in a timely fashion to all who need them; and ensures that individuals and families are safely, supportively and permanently housed. To achieve those objectives, the plan is structured around five major goals that outline multi-faceted solutions for a multi-dimensional problem:

- Prevent homelessness and other housing crisis.
- Increase housing opportunities for the plan's target populations.
- Deliver flexible services to support stability and independence.
- Measure success and report outcomes.
- Develop long-term leadership and build political will.

The Homeless encampment at the Albany Bulb is composed of homeless people between the ages of approximately 15 to 70, all races and ethnicity. Although there is no water, food, shelters or infrastructure; people have opted to live in this environment by creating temporary structures out of found materials and other supplies.

The Bulb is the area of land, owned by the City, located a half a mile into the Bay at the end of Buchanan Street. It is connected to the rest of the waterfront by a narrow spit of land called the Neck. The Bulb was created gradually from 1963 to 1983 by a landfill operation that placed construction debris progressively further out into the Bay. Its terrain has been configured by the vegetation growing over the fill. The vegetation on the Plateau and Bulb is designated as "ruderal scrub" (mostly non-native shrubs and grasses), and is dominated by coyote-brush. French broom and cotoneaster are also common, as are native grasses and wildflowers in varying densities.

The Eastshore State Park was formally established in 2002, extends 8.5 miles from the foot of the Bay Bridge in Oakland to the Marina Bay neighborhood in Richmond, and contains 260 acres of dry land and 2,002 acres of tidelands. Eastshore State Park is the result of decades of citizen efforts, starting in the 1960s, to stop garbage dumping in the Bay; to oppose commercial development on the shoreline and to preserve it for public use; and to create environmental benefit on the shoreline. The publicly owned portion of the Albany waterfront, including the Bulb, has been designated to be part of the Eastshore State Park, but has not been accepted as part of a state park because uneven ground, protruding metal,

**SUBJECT:** Homeless Task Force - Interim Report No. 1

**TO:** Albany City Council

**DATE:** January 22, 2013

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**TASK FORCE RECOMMENDATION**

That Council receive Interim Report No. 1 from the Homeless Task Force and provide further direction as necessary.

**BACKGROUND**

On May 21, 2012, the City Council created a task force to address the issue of homelessness in Albany, and directed that the Task Force:

- *Recommend to Council options for policies and strategies to end Homelessness in Albany that support the five objectives outlined in Alameda County EveryOne Home Plan:*
  - *Prevent homelessness and other housing crisis.*
  - *Increase housing opportunities for the plan's target populations.*
  - *Deliver flexible services to support stability and independence.*
  - *Measure success and report outcomes.*
  - *Develop long-term leadership and build political will.*
- *Create a survey tool to gather community input.*
- *Task Force to meet once a month for 18 months.*
- *Present updates to Council every three months beginning in January 2013.*

Individuals who were selected to serve on the Homeless Task Force (HTF) members include: April Anthony (alternate: Amber Whitson), Ruth Cashmere, Barbara Chambers, Brian Johns and Gordon McCarter (alternate: Francesco Papalia), Lisa Kleinbub, Paul O'Curry, Sharon Pipkin, Steve Thrush (alternate: Andrew Franklin), and Julie Ann Winkelstein.

On October 15, the Council approved a request by the Task Force that a 10<sup>th</sup> member be selected that could represent the homeless population at the Bulb. As agreed to by the Council, the Task Force was given the latitude of selecting that person through the city application process.

The HTF meets on the third Thursday of each month, and meets at the Albany Senior Center at 7:00 p.m. The public is welcome to attend and is invited to comment during the meetings after Task Force members have first had an opportunity.

**PROGRESS TO DATE:**

As of the writing of this report, the Task Force has held six meetings. Our first meeting (July 19) was a workshop which included speakers who work with homeless individuals. For more details, refer to the July 19 agenda and PowerPoint presentation (attached).

Below is a summary of the things the HTF members have been doing or learning about.

Topic/Speaker	Activity/Action
EveryOne Home	<ul style="list-style-type: none"> <li>• Linda Gardner, Director of Alameda County HCD spoke on Alameda County’s EveryOne Home Plan</li> <li>• Reviewed/discussed EveryOne Home Goals</li> <li>• Staff reported on meeting with Elaine DeColigny, Executive Director of EveryOne Home</li> </ul>
Berkeley Mental Health	Eve Ahmed, psychiatric social worker spoke about her experience with Albany’s homeless individuals and homelessness in general
Albany Bulb history, homeless programs and organizations (e.g., Operation Dignity, Dignity Village (Portland), Lifelong Medical Care, Berkeley Food & Housing Project, Solano Community Church)	Presented by City staff and CSU East Bay graduate students
City Council objectives/direction to HTF	Reviewed/discussed Council action creating HTF
Dental care	Researched available dental services for homeless persons
Beach/Neck restoration plan	Staff presented overview of EBRPD plan/timing
Short and Long Term goals	Listed/discussed
Add homeless member to HTF to better understand needs	<ul style="list-style-type: none"> <li>• Request made to Council/Council agreed</li> <li>• Subcommittee reviewed applications</li> <li>• HTF appointed new member and alternate</li> </ul>
Options for ending Homelessness in Albany	<ul style="list-style-type: none"> <li>• Listed options via brainstorming process</li> <li>• Ongoing process (list expands at each meeting)</li> </ul>
Existing programs that serve homeless persons	Members present research at each meeting (e.g., Ritter Center/San Rafael, Dignity Village/Portland, Seven Directions/Oakland, Remote Area Medical, Judge Manley’s law enforcement approach, 2-1-1)
Subcommittee created	Drafted Interim Report No. 1 to Council
Homeless population census	Discussed need for a census of homeless persons living at the Bulb and other parts of town to better assess needs, conditions
Operation Dignity (OD)	Staff reported on meeting w/ Operation Dignity; based on their experience with homeless encampments, OD recommends focusing efforts on Bulb population first
Berkeley Mental Health Services Act Advisory Committee (provides input on	One HTF member and two Albany seniors’ applications were accepted

MHSA Plan)	
Toilet at Bulb?	Staff reported on past efforts/constraints; researched composting toilet; installation is a policy decision
Alameda County funding sources and low income housing inventory, and McLaughlin Eastshore State Park Plan (Bulb portion)	Staff distributed documents related to these topics for informational purposes
Law Enforcement	Chief McQuiston reported that PD provides visible safety presence for all public members at the Bulb on a daily basis; currently not enforcing overnight camping and storage of property prohibition if person can demonstrate no reasonable or immediate housing alternative.

**TASK FORCE NEXT STEPS:**

1. Encourage Albany City Council to fund a survey of persons who are homeless living at the Bulb, to be conducted by an appropriate organization with experience doing outreach to the homeless. This survey is for the purpose of assessing needs and providing information to assist in formulating options.
2. Explore the creation of a tool to survey those persons who are homeless and living in areas of town other than the Bulb. Any aspects involving policy or funding decision would first be presented to the City Council.
3. Compile three to four policy options and strategies to end homelessness in Albany to present to the City Council, with help from the brainstorming process and research conducted to date.
4. Begin development of a draft survey instrument and methods to survey Albany’s general public, and collect their input on the policy options and strategies presented to the City Council.

**Attachment:**

Brainstorming ‘Ending Homelessness in Albany’ (a work in progress)



**City of Albany  
Homeless Task Force  
Thursday, December 20, 2012 – 7:00 pm  
Albany Senior Center, 846 Masonic Avenue – South Room**

**Meeting Notes**

Members present: April Anthony, Ruth Cashmere, Barbara Chambers, Andrew Franklin, Brian Johns, Lisa Kleinbub, Gordon McCarter, Paul O'Curry, Sharon Pipkin.

Member absent: Julie Ann Winkelstein

Staff present: Ann Chaney and Isabelle Leduc, Chief McQuiston, Sgt. Willis

**1. Adoption of November 15, 2012 Meeting Notes**

**Motion:** Motion was made by Member Johns and seconded by Member McCarter to accept the November 15, 2012 minutes. Motion carried all in favor.

**2. Guest Speakers: Police Chief Mike McQuiston and Sgt. Willis**

- Police Chief McQuiston provided an overview of Albany's 1999 efforts at the Bulb, as well as current activities.
- Albany PD visits the Bulb on a daily basis, which is not meant to harass. Visits are not always enforcement driven, but typically done for the purpose of providing visible safety presence for all persons. When enforcement is used, he said it is done with the intent of getting help for the individual.
- PD is not currently enforcing the City's 'no overnight camping' ordinance. This is a challenge because the PD is trained to not treat someone differently under the law.
- Information was also provided from a San Luis Obispo County survey regarding their homeless population.

**3. Staff Update**

- Staff Leduc reported on a meeting with Elaine DeColigny, Executive Director of EveryOne Home.
- Staff Chaney provided a brief overview of the information distributed in the packet: funding sources, low income housing inventory, McLaughlin Eastshore State Park Plan (Bulb portion).

- Staff Leduc provided a brief overview of the Dignity Village Evaluation Report also included in the packet.

#### **4. Report on framing January City Council report – Members Pipkin, Kleinbub and Winkelstein**

- The subcommittee presented the draft report.
- The draft report will be revised according to comments received.
- The final report must be sent to staff by January 11 to be included in the January 22, 2013 Council meeting packet.

#### **5. Discussion on expanding options to Council**

- The Task Force identified other items to add to the brainstorming list:
  - Food bank
  - Suitcase clinic
  - Enforcement of the Park Ordinance (Pros, cons, cost)
  - Food and coat drive

#### **6. Report on MHSA Advisory Committee – Member Thrush**

- Member Thrush provided a brief update of the meetings to date, but mentioned that he would have more information in the future.

#### **7. Research on programs that serve the homeless.**

- Member Thrush mentioned a new federal program that provides free cell phones to the homeless.

#### **8. Items for the Next Agenda**

- Eastshore State Park Plan
- Berkeley's Public Common for Everyone's Initiative
- EveryOne Home
- MHSA report from Member Thrush

#### **9. Adjournment: 9:15 PM**

Dumpster Provided by the City of Albany:



**SUBJECT:** Homeless Task Force - Interim Report No. 2

**TO:** Albany City Council

**DATE:** May 6, 2013

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### **TASK FORCE RECOMMENDATION**

That the Council receive Interim Report No. 2 from the Homeless Task Force and provide further direction as necessary.

### **BACKGROUND**

On May 21, 2012, the City Council created a task force to address the issue of homelessness in Albany, and directed that the Homeless Task Force:

- *Recommend to Council options for policies and strategies to end Homelessness in Albany that support the five objectives outlined in Alameda County EveryOne Home Plan:*
  - *Prevent homelessness and other housing crisis.*
  - *Increase housing opportunities for the plan's target populations.*
  - *Deliver flexible services to support stability and independence.*
  - *Measure success and report outcomes.*
  - *Develop long-term leadership and build political will.*
- *Create a survey tool to gather community input.*
- *Task Force to meet once a month up to 18 months.*
- *Present updates to Council every three months beginning in January 2013.*

On January 22, 2013, the Homeless Task Force presented our first report to the City Council and provided an overview of what we had been doing and learning. In addition, we included a brainstorming list of options for "Ending Homelessness in Albany" (work in progress).

Since that time, we have refined the list of "Options for Ending Homelessness in Albany" (attached) for your consideration. While the majority of Albany's homeless individuals reside at the Bulb, these Options are intended to apply to homeless persons anywhere in Albany. In addition to the Options list, we developed a "Short-Term Efforts" list for your consideration, because we believe it is important that some immediate steps be taken in aiding homeless persons, while pursuing longer term solutions (attached).

The HTF meets on the third Thursday of each month at the Albany Senior Center at 7:00 p.m. The public is encouraged to attend and invited to comment during the meetings after Task Force members have first had an opportunity.

**PROGRESS TO DATE:**

To date, the Task Force has held eleven meetings (July 2012 - April 2013), including a special meeting on April 3 to provide additional time for the Homeless Task Force to review and refine the “Options for Ending Homelessness in Albany” document.

Below is a summary of the things the HTF members have been doing or learning about since our January presentation to the City Council.

Topic/Speaker	Activity/Action
Alameda County <i>EveryOne Home</i>	Kathie Barkow presented information on the “Housing First” model.
Alameda County Healthcare for the Homeless program	This mobile clinic visits the Bulb each month. Updates are provided at the HTF meetings.
Visits to the Bulb	All HTF members, who were unfamiliar (or familiar) with encampments at the Bulb, visited the waterfront.
Homeless Bill of Rights and Fairness Act (AB5)	Brian Johns presented the information and updates at each meeting
Overview of plan, ordinances, issues applicable to the waterfront and parks	Staff provided an overview of plans, regulations, and initiatives for the waterfront area: McLaughlin Eastshore State Park Plan, Albany General Plan, Albany Zoning Ordinance, Albany Municipal Code, Voices to Vision, Measure C, and regional agencies, such as Bay Conservation Development Commission (BCDC), Regional Water Quality Control Board (RWQCB).
Short Term efforts/goals	Listed/discussed/included in presentation to Council May 6
Options for ending Homelessness in Albany	Ongoing process/included in presentation to Council May 6
Existing programs that serve homeless persons	Members present research at each meeting (e.g. Sierra Root’s Eco-Village, Camp Take Notice, RAM, RotaCare Richmond, Nickelsville, 2009 Seattle Needs Assessment, SAMHSA Grant, Dept. of Justice (COP))
Subcommittee created	Review of Options to End Homelessness in Albany Drafted Interim Report No. 2 and Executive Summary to Council Best practices for needs assessment (in progress)
Needs Assessment	Presentation by Alex McElree, Executive Director, Operation Dignity Inc.
Berkeley Mental Health Services Act Advisory Committee (provides input on MHSA Plan)	The Task Force has been receiving regular updates.
City of Berkeley Public Commons For Everyone Initiative	Information distributed and reviewed
Rough cost estimates regarding Options	Received information prepared by staff

## **UNDERSTANDING THE CHALLENGES OF HOMELESSNESS**

According to a publication prepared by the Center for Urban Studies, Portland State University, September 2012, homelessness is a condition; it does not define who a person is. For the vast majority of individuals experiencing homelessness, the condition is transitory and related to a temporary setback in their lives, such as job loss or divorce. For others, the condition is a lasting state, either reoccurring frequently or existing continuously. While there are numerous definitions of homelessness, various agencies essentially consider a person to be homeless when he or she lacks a permanent place to live. Thus, people who live in their cars, on the street, in short-term shelters, etc. are considered homeless.

The US Department of Housing and Urban Development's (HUD) Point-In-Time homeless count conducted in January 2011 indicated that there were approximately 636,000 people experiencing homelessness in the US (National Alliance to End Homelessness & Homelessness Research Institute, 2012). Of these, approximately 17% were considered to be experiencing chronic homelessness. HUD defines the condition of chronic homelessness as having these characteristics: living alone, the presence of a disabling condition (mental or physical), and either continuous homelessness for at least a year or at least four episodes of homelessness in the last three years.

### **TASK FORCE EXECUTIVE SUMMARY:**

We'd like to acknowledge the support from Council for addressing issues relating to homelessness in Albany by creating this task force. When dealing with social issues, it can sometimes seem as if one group of people - in this case, people experiencing homelessness - are considered a problem to be solved rather than an opportunity to address an issue, such as poverty, in a creative, collaborative and supportive way. We see the motivation for creating this task force as concern for people who are experiencing homelessness in Albany and the desire to work collaboratively with community members living at the Bulb and on the streets so that any courses of action are taken together. We'd like to add that we are grateful to have residents of the Bulb on the Albany Homeless Task Force - their experiences and insights are highly valued.

An important aspect of addressing homelessness in our community is examining the assumptions and biases some housed members of the community may have toward those who are without permanent housing. As noted in the submitted documents, we strongly suggest surveying the community as to their beliefs about the causes and outcomes of poverty and homelessness and following that survey with a community-wide effort to provide appropriate statistics, facts and general education related to these issues. The use of unbiased language, such as "those experiencing homelessness" versus "the homeless," can lessen the tendency to frame this topic as an "us" versus "them" scenario and it can help all of us concentrate on the task at hand, which is reducing the prevalence of homelessness in Albany. Language drives perceptions and so it's incumbent upon those of us who have the opportunity to talk about homelessness and poverty to select words and phrases that are as free from assumptions as possible. It is also critical that we learn to separate housing status from other concerns, such as untreated or inadequately treated mental illness or the realities of living with substance abuse. Those concerns are relevant to

everyone, no matter their housing status. A person without predictable and permanent housing is simply that - homelessness doesn't define a person, it describes their living situation. In addition, statistics show that any violence or threatening behavior related to homelessness is overwhelmingly from housed people and is aimed at those experiencing homelessness. The reverse is rarely the case.

The Task Force acknowledges the broader economic and political context within which we live and work. It is an era of financial depression, government austerity, housing foreclosures, widespread unemployment. In that light, we believe "ending homelessness" in Albany is highly unlikely. In California alone, there were an estimated 135,928 homeless people in 2011, including 34,040 so-called chronic homeless, according to a report by a leading advocacy group. It should come as no surprise that San Francisco ranked fourth among cities nationwide. Still, we believe it is within our means to lend a hand to a considerably smaller group of 60-odd neighbors through efforts focused on harm reduction, social service assistance, and permanent housing for those who wish it.

Laws that make criminals of people based on socio-economic status rather than behavior occupy a prominent place in American history. This legislation – whether called Ugly Laws, Jim Crow, Sundown towns, Anti-Okie laws, or Operation Wetback – served to keep "certain" people out of sight, if not out of mind. This "quality of life" or "nuisance crime" approach equates poverty with contagious disease, penalizing public sleeping, sitting, loitering, panhandling, and even food-sharing. The Task Force categorically rejects this criminalization approach and urges the Council to formally support the proposed California Homeless Persons' Bill of Rights and Fairness Act (AB5), which advocates believe can help alleviate poverty and homelessness, protecting homeless people from discrimination, and help ensure their rights to privacy and personal property.

The Task Force appreciates the difficult challenge facing the Council as it tries to reconcile legitimate, if sometimes conflicting, community values and aspirations. These include residents' civic-mindedness and altruism, a general desire to maintain a small-town feel within a sprawling metropolitan area, the wish for the serenity of safe-guarded open space for all who seek it, a unique place for dog lovers, an open air gallery for local artists, or simply a safe place to lay down one's head at night. The Task Force recognizes that opinions regarding the response to individuals experiencing homelessness often represent conflicting social values, such as those advocating personal responsibility and the enforcement of social norms versus those recognizing a need for the collective social support of all individuals.

However, we fully believe the City Council is capable of creating a plan that does not benefit some community members while penalizing others.

Attachments:

Task Force “Options for Ending Homelessness in Albany”  
Short-Term Efforts to End Homelessness in Albany  
Rough Cost Estimates regarding Options  
“Tent Cities in America”

## Homeless Task Force Options for Ending Homelessness in Albany

### 1. Alternatives that Rely on Existing Policies and Programs

#### 1.A. Housing First Model

Description: Places persons who are homeless directly into permanent, stable housing, rather than in a transitional living environment. Permanent housing could include unit(s) in a privately-owned apartment building, subsidized apartment, etc., located throughout the County, including Albany (i.e. scattered sites). Case management often accompanies this model.

Service needs/overall goal:

- Assist persons in finding safe and sanitary living options
- Provide housing subsidies/vouchers
- Provide case management, which helps link persons to supportive services, such as housing, primary/mental health care, education, job training/placement, legal assistance

Background: This model is embraced by Federal, State and County governments, including Alameda County's *EveryOne Home* program. It provides the level and length of rental subsidy needed, and supportive services once housed, that ensure that people can maintain housing and improve their lives. While no income is required to qualify for housing, those having some level of income experience shorter waiting periods. Studies find that supportive services tend to stabilize lives and prevent a return to homelessness. Pre-conditions for treatment acceptance or compliance are not required.

PROS	CONS
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Be supported by Federal, State and County* governments.	Foster a fear of isolation and loss of autonomy among persons who are homeless when entering a new environment
Provide assistance to the City due to an existing programs and funding opportunities	Require the City to compete with other jurisdictions (or submit grant applications) for federal monies to fund housing costs
Rely on an existing network of organizations already in place; thus would not require "reinventing the wheel"	Require persons who are homeless to provide some level of income (e.g., SSI, Disability, Veterans benefits, wages)

\* Alameda County *EveryOne Home* envisions a system of care by 2020 that will ensure all extremely low-income residents have a safe, supportive and permanent place to call home.

May be combined with: All Options

**1.B. Enforce the Albany Municipal Code (AMC) with limited support services**

Description: Would direct Albany Police to enforce AMC Sections 8-4 and 5-9 prohibiting overnight camping at parks and the waterfront. A timeframe would be set for commencing enforcement. Prior to enforcement, supportive social services and housing resources would be applied to assist those persons interested in locating alternatives.

Service needs/overall goal:

- Assist persons in finding safe and sanitary living options
- Provide case management
- Enforce ‘no overnight camping’ ordinance after offering services
- Restore area for open space use

Background: Overnight camping is prohibited in any Albany park, recreation, open space, waterfront or Albany Hill area per Ordinance Section 8-4.4. Enforcement is occurring at all these locations, except the waterfront area (Albany Bulb). Overnight camping is also inconsistent with various local, regional and state plans and regulations (e.g., McLaughlin Eastshore State Park, Albany’s general plan, Measure C, Regional Water Board), which designate the Albany Bulb as conservation and/or open space.

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Reestablish the Bulb as public open space/park land, consistent with McLaughlin ESP, Albany General Plan/Zoning Ordinance, Voices to Vision, Measure C (Voter Initiative)	“Push” persons who are homeless to other parts of Albany or communities
Encourage reuse of public parkland by people of all ages	Not likely improve the quality of life for all persons at the Bulb who are homeless
Allow for environmental clean-up and return to a more natural state	Not achieve the goal of ending homelessness in Albany
Provide services to assist persons in locating alternatives	Raise legal questions as a ‘defense of necessity’ (i.e., no other shelter alternative)
Include efforts to eliminate poor sanitary conditions	

May be combined with: 1.A., 1.C., 2.B.

**1.C. Transitional or Permanent Housing in Albany**

Description: Identification of a non-profit to own and operate dwelling(s) (e.g., 1 or more homes/apartments) which allow people to live for six months to two years and receive intensive services, such as job training and placement, substance abuse and mental health counseling, education, etc.

Service needs/overall goal:

- Provide a safe place to live while receiving intensive services
- Provide home/shelter for individuals
- Provide intensive supportive services
- Enlist volunteer professionals to support this effort

Background: A home setting would be, operated by a non-profit organization with a supportive staff and/or volunteers and intensive services. Daily interaction/supervision would have the goal of improving the person’s confidence, social interactions, ability to reduce dependencies, etc. A possible scenario for this option might result in the purchase (or lease) of a house in Albany, which is currently vacant or dilapidated. Residents typically pay 30 percent of their income for housing and services.

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Provides shelter and services while waiting for permanent housing	In contrast to the Housing First model, this option does not provide a permanent solution to housing
Allows for recovery to begin	Possible resistance from public to house formerly homeless persons in urban neighborhoods

May be combined with: All Options

**1.D. Phased Transition**

Description: Approach would involve the identification and mitigation of existing camps that pose the significant life safety and environmental risk. The remaining camps would be allowed in designated areas while support services and alternative housing are arranged. Remaining residents must demonstrate good faith efforts to make transition.

Service needs/overall goal:

- Assist persons in finding safe and sanitary living options (permanent or transitional)
- Provide housing subsidies/vouchers for permanent housing
- Provide case management
- Enforce ‘no overnight camping’ ordinance only after offering supportive services
- Restore area for open space use

Background: Per Option 1.B above, overnight camping is prohibited in Albany’s park and open areas. This Option supports enforcement of the City’s ordinance, but recommends it be implemented through a phased approach. This approach would focus on campsite removals by a set of criteria.

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Improve safety of residents	Require some encampments to be removed in near term
Mitigate environmental risk to the Bay	Continue to discourage some potential park users due to presence of encampments
Advance Bulb towards implementation of the Eastshore State Park	Over time, would push residents that do not draw on support programs to other areas of the City or to other communities
Phases demand on social services providers	Require criteria on how determinations for campsite removals would be made
	Careful monitoring of campsites required
	Require careful consideration be given to equal protection principles

May be combined with: 1.A., 1.B., 2.B.

**1.E. Status Quo (Do Nothing)**

Description: Persons who are homeless would continue to live at the Bulb in substandard housing, without running water or adequate sanitary facilities; Albany Police would continue to patrol twice daily without enforcing AMC Sections 8-4 (Parks, Open Space) and 5-9 (Law Enforcement); Albany Fire would continue to respond to 911 calls; City would continue to provide dumpsters, and periodically provide outreach by assembling health, housing, legal professionals to talk with persons about their issues and opportunities.

Service needs goal:

- Assist persons who are interested in locating housing (permanent or transitional)
- Assist where possible in securing housing subsidies/vouchers for permanent housing
- Promote efforts by others to provide case management
- Promote efforts by others to provide primary and mental health care

Background: Homelessness is a nationwide issue and it is not uncommon for persons who are homeless to seek refuge in areas away from the general public. This approach would not necessarily retain status quo as the population could fluctuate.

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Not discernibly increase current City costs	Not be consistent with Albany Municipal Codes and their city-wide enforcement
Provide “an” alternative to homelessness	Not be consistent with McLaughlin ESP, Albany General Plan/Zoning Ordinance, Voices to Vision, and Measure C (Voter Initiative), which designate the Bulb as “open space”, not “residential”
Continue to allow persons at the Bulb to have a sense of community, which they believe has been created	Not eliminate substandard environmental, sanitary and housing conditions
Support current policy of tolerance	Continue to discourage some public users due to the presence of large dogs, existing aesthetic and environmental conditions
Continue providing mobile health services and trash services	Result in an immediate evacuation without benefit of positive alternatives, if an emergency occurred (e.g., epidemic)
	Fail to conform to Albany’s water quality obligations

**2. Alternatives that Rely on New City Policies/Program**

**2.A. Dignity Village Model**

Description: Assemble/Create a “village/campground” of temporary accommodations, such as tents or semi-permanent structures, to provide transitional housing to persons who are homeless. The location in Albany, its size, and number of persons to be served, has not been determined.

Service needs goal:

- Portable toilet(s) and shower(s)
- Medical services - evaluations/treatment, rehabilitation for substance abuse
- Housing assistance to transition to safe, affordable housing
- Job training/placement
- Legal

Background: Portland, Oregon’s Dignity Village provides temporary, semi-permanent structures for about 60 persons. The Village is a nonprofit entity located on 1+ acres of city-owned land next to the city’s composting yard. The contract between the City and the Village states that the Village is responsible for managing and maintaining the campground, establishing and enforcing rules, not allowing more than 60 residents at any one time, assisting residents to transition to safe, affordable housing, submitting quarterly reports to the city manager, cooperating with police, etc. Facilities include a central gathering/meeting place with electricity and heat from a wood stove, access to telephones, computer and internet, temporary showers, and portable toilets. The Village is a self-governing community, with an elected Board of Directors.

Albany’s model would capture some or all of the Dignity Village concepts, and provide temporary accommodations in semi-permanent structures for a set number of persons (to be determined).

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Help stabilize and prepare individuals to enter permanent housing	Prolong persons living in substandard housing conditions
Provide autonomy and dignity	Result in resistance from general public
Result in a contract between property owner (Albany) and residents, with specific conditions and renewal clause	Be costly, if at the Bulb, due to its remoteness: potable waterline extension and/or water tank; site drainage; portable restroom and shower*
Provide certain level of shelter with no income requirements	Be in conflict with various regulatory requirements, McLaughlin ESP Plan, Albany General Plan/Zoning, Voices to Vision, etc.

	Require Measure C vote if located at the Bulb
Require self-governing/rules; maintenance and management by residents	Continue to be inconvenient for access to services/food and water/basic needs
Foster teaching one another	Require residents, who tend to be intensively independent and sometimes reclusive, to work together to maintain/manage/ensure safety/comply with rules
Create a supportive community	Fail to conform to Albany's water quality obligations, if at the Bulb
Be preferred by persons who are homeless due to a sense of independence and commonality	

\* Portland's Village provided electricity to common buildings.

May be combined with: 1.C., 2.B.

**2.B. Drop in Day Service Center in Albany**

Description: A daytime center that serves low-income or no-income persons who are homeless or at risk of becoming homeless. Services to be provided may include case management, housing placement assistance, legal assistance, primary health and mental health referral services, a food pantry and clothing dispensary. Facilities could include restrooms, showers, laundry, and storage lockers.

Service needs goal:

- Physical location for services and service providers (e.g., storefront, office space)
- Staffing (professional service providers/volunteers)
- Phones, computers, work areas
- Restrooms, showers, storage lockers (possible laundry)

Background: Most supportive services for persons who are homeless, or facing homelessness, are located in the cities of Berkeley and Oakland. While AC Transit provides direct bus access to these communities, the distances and time are such that an entire day may be needed to deal with one or two service agencies. If multiple return trips are needed, it can cause frustration, and ultimately cause an individual to abandon efforts to receive services. A drop-in service center is one way of bringing assistance closer to those who need it. An existing City facility could be used but might displace other activities.

<b>PROS</b>	<b>CONS</b>
<b>This Option would/could:</b>	<b>This Option would/could:</b>
Provides easier access to services that address basic needs of homeless persons in Albany	Possible resistance from public
Shift focus from law enforcement to social service agencies	Cause some people to believe this option could result in prolonging a person's homeless situation

May be combined with: All Options.

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Footnotes:

- 1 The term 'public' or 'Albany residents' shall refer to residents who are housed.
- 2 All options, which include abandonment of sites, will involve clean-up activities and sustained enforcement by the City.

## **Short-term efforts at Ending Homelessness in Albany**

### **Healthcare**

- Provide general health services (in close proximity to Albany's homeless)<sup>1</sup>
- Provide dental/vision care (reach out to local dentists/optometrists for free care)
- Provide transportation to next regional Remote Area Medical (RAM) event
- Cooperate with City of Berkeley for Mental Health Services<sup>2</sup>

### **Transportation**

- Provide transport to housing, health care, etc. services in Berkeley, Oakland, Richmond (e.g., non-profit/private persons/informal transport; city-sponsored transport)<sup>3</sup>

### **Housing**

- Provide permanent housing by working with Alameda County EveryOne Home program<sup>4</sup>
- Provide transitional housing

### **Facility(ies)**

#### **Provide:**

- Drop-in center in Albany
- Provide center with case management staff who help place persons in transitional or permanent housing (county-wide), and foster self-sufficiency (e.g. Ritter House, San Rafael)
- Toilet (porta potty) at Bulb
- Dumpster at Bulb<sup>5</sup>
- Showers and laundry

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<sup>1</sup> Alameda County Health Care for the Homeless proj. (mobile medical clinic visits Waterfront about once/month)

<sup>2</sup> Albany now has members on Berkeley Mental Health Services Act (MHSA) Advisory Committee. Albany staff is reviewing recently released MHSA FY12-13 Plan update, including proposed new program "New Adult Homeless Outreach Program" that could provide all encompassing services in Berkeley and Albany (e.g., outreach, referrals, education, crisis intervention, short term counseling for women, elderly, and TAY, adults and older adults living on the street or in "area homeless encampments" ).

<sup>3</sup> Berkeley Community Health Clinic; Berkeley Food and Housing Project; RotaCare Richmond (free medical clinic); Homeless Action Center; Social Security offices; food pantries; etc.

<sup>4</sup> EveryOne Home representative spoke to Homeless Task Force; city staff in communication with EveryOne Home staff to explore Albany's options.

<sup>5</sup> Albany, in cooperation with Waste Management, providing dumpster services at least once every two months.

### **Funding/in-kind services**

- Identify current available funding sources for housing, social services, health, education, jobs, job skills
- Develop long term plan for funding housing/supportive services: private, federal, county, local, etc.
- Create Albany non-profit for community involvement/funding - "Albany Cares"/seek public contributions
- Advocate for increased cooperation with Alameda County
- Seek cooperation/involvement with UC Berkeley and corporate world

### **Education**

- Conduct census of homeless city wide
- Research model programs; what other cities/counties/non-profits have done
- Seek to inform community perception about homelessness (e.g. from fear and misunderstanding to understanding)
- Create Community Resource Guide for health, housing, etc. services

### **Legal/Legislative**

- Create judicial advocacy program to deal with legal issues
- Advocate for safe return for people coming out of prison/re-entry program
- Research/advocate "out of the law enforcement cycle" approach
- Support AB-5: Homeless Bill of Rights (sponsored by Tom Ammiano (D-San Francisco))

### **Programs**

- Link homeless persons with job/employment opportunities, job placement
- Create "Buddy" system; mentoring to assist individuals
- Promote community service in exchange for services (e.g., transportation, health)
- Support comprehensive and effective harm reduction drug and alcohol programs
- Foster self-sufficiency through stabilized housing with casework services (e.g., Ritter Center in San Rafael using housing located county-wide)
- Support Dial 2-1-1 (information/referral)<sup>6</sup>
- Create "Wet" houses (e.g., Seattle residence for homeless chronic alcoholics)

### **Environmental**

- Mitigate the environmental impacts of at Bulb<sup>7</sup>
- Preserving the environment at the Bulb

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<sup>6</sup> Albany contributes \$5,000/year from CDBG funds toward Dial 2-1-1.

<sup>7</sup> Persons at the Bulb are using WM dumpsters to clean-up abandoned and personal campsites.

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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  
28

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**CASE NO.**

**DECLARATION OF DR. BARRY ZEVIN**

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**DECLARATION OF DR. BARRY ZEVIN**

I, Barry Zevin, hereby declare:

1. I have been a physician for 25 years. For almost all of that time, I have worked primarily with homeless people, specializing in public health, addiction medicine, and other fields related to care for poor and homeless communities.
2. I received my medical degree from Temple University School of Medicine in 1988. My internship and residency were in Primary Care Internal Medicine at the Cambridge Hospital, a teaching hospital of Harvard Medical School. Since I finished my residency in 1991, I have worked for the Department of Public Health Homeless Programs in San Francisco, at the Tom Waddell Health Center. I was the Medical Director for Community and Homeless Services from 1995 to 2006, and have continued to work there as a physician specialist since that time. From 2006 to 2011, I was the Medical Director of the Harm Reduction Therapy Center in San Francisco, and the Medical Director of Caduceus Outreach, a program for mentally ill chronically homeless people in San Francisco. I am the Board President of the Coalition on Homelessness in San Francisco. For seven years, I served as the Continuing Medical Education Coordinator on Community-Oriented Primary Care for the San Francisco Department of Public Health. In that position, I had responsibility for training more than a hundred medical staff members.
3. I am board certified by the American Board of Internal Medicine and by the American Board of Addiction Medicine. I am also a certified HIV specialist.
4. From 1988 to 1991, I was a Clinical Fellow at Harvard Medical School. In 1991 I joined the faculty of the UCSF School of Medicine; since 1996 I have been an Assistant Clinical Professor.
5. I have given numerous presentations at local, national, and international meetings on homelessness, addiction, harm reduction, chronic pain management, transgender health, and documenting disability. I have personally treated hundreds of homeless patients and have observed many of them in their encampments and communities. I am deeply familiar with homelessness from a medical and a community health perspective.
6. I am informed that in Albany, California, there is a homeless encampment on the Albany Bulb. While I am not intimately familiar with this particular encampment, I have encountered many encampments where communities of homeless people live, and I am familiar with how they work. When there is a major change in one of these communities, it is medically necessary to take certain steps to ensure the safety and health of the residents.
7. In my experience, and according to available data, there is a very high incidence of mental health disorders and physical disabilities among chronically homeless people.

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- 8. Cognitive disorders are an important factor that is sometimes overlooked. Chronically homeless people are much more likely to suffer from cognitive disorders than the population at large. I conservatively estimate that 30% to 50% of chronically homeless people that I work with have permanent cognitive impairments. This is often the result of a lifetime of exposure to physical violence.
- 9. The prevalence of cognitive disorders makes it very difficult for residents in homeless encampments to cope with change. If you have been living a certain way, with a certain routine, it is possible to cope with these cognitive disorders. But change means that they will have to solve new problems, deal with new rules, and register with new social service agencies that put large documents in front of them to read and sign. This is extremely difficult for people with cognitive disorders.
- 10. Usually, people are living in encampments because they need social relationships. They take care of one another. They share food. They lend each other money. Living on the street downtown may be more convenient, but it deprives them of the community they depend on for support.
- 11. The tolerance for abnormal or disruptive behavior is higher in encampments than in traditional social settings. People hearing voices, or responding to internal stimuli, face mockery and hostility on a bus, a residential street, or in a shelter. But in an encampment, they can have space to behave unconventionally without alienating their community. Elsewhere, they are likely to be assaulted, arrested, or institutionalized – none of which are successful outcomes.

**Accessibility of City of Albany’s Shelter Program to Disabled Homeless People**

- 12. I have reviewed the City of Albany’s plan for removing 60 people from the Albany Bulb, sheltering 30 people in a trailer, setting up showers, and providing a nominal \$35,000 housing subsidy. The plan is not only insufficient: it is likely to prove dangerous in terms of public health. Nor will the City’s program be accessible to individuals with mental health disabilities.
- 13. As far as physical health goes, moving 30 homeless people into a poorly ventilated trailer at the beginning of winter presents a severe threat to public health. The current plan ignores the obvious risk of a tuberculosis outbreak. A cramped trailer cannot be adequately ventilated without being too cold to sleep in during the winter. Since so many people will be living there, installing the appropriate airborne disease prevention technology would require expensive ultraviolet technology. Given the amount the City is planning to spend, it appears that tuberculosis prevention is not part of its plan.
- 14. Improper trailer ventilation will damage the Bulb residents’ physical health, as well as the health of surrounding communities. From a public health point of view, being outside is much safer for people who are immuno-suppressed. There is less risk of disease spreading, whether it is TB, influenza, or another airborne virus. The people most affected by a poorly ventilated shelter will be immuno-suppressed Bulb residents, including people with disabilities related to HIV, diabetes, and chronic

1  
2 alcoholism. I understand that there are a number of Bulb residents who are immuno-  
3 suppressed, due to various ailments, including Hepatitis C and AIDS. People with  
4 poor nutrition will also be at risk. Under the current plan, it would be unreasonable  
5 and unwise to put anyone with vulnerable physical health into a trailer.

6  
7 15. There are also several types of mental disabilities that make it very hard to be in a  
8 shelter in close quarters with other people. First, among mental health disorders I  
9 have seen in chronically homeless people, paranoia is common. Experiencing  
10 paranoia makes being around other people intolerable. A person with paranoia in a  
11 congregate shelter will suffer severe anxiety and sleeplessness. The anxiety of dealing  
12 with other people can also cause trauma, and even seemingly small encounters can  
13 seriously exacerbate someone's condition. It is not reasonable to put people suffering  
14 from this kind of disorder in a shelter unless they have some private space of their  
15 own.

16  
17 16. Another group of disabled people who need accommodation in shelter are those with  
18 mental health disabilities related to histories of trauma. Often, people with such  
19 histories, including victims of domestic violence, victims of sexual assault, people  
20 who experienced violence in their homes or neighborhoods growing up, or have been  
21 victims of violence on the streets, and people who were abused or neglected as  
22 children, have post-traumatic stress disorder. I understand that there are a number of  
23 Bulb residents who suffer from PTSD. A communal living space is a potential  
24 minefield of triggers for PTSD and is not suitable housing for someone suffering  
25 from PTSD. People with PTSD may isolate themselves, behave inappropriately, or  
leave and not be able to come back. Again, even minor incidents can create  
significant mental health setbacks.

15  
16 17. There are also people who have difficulty, as a result of their disabilities, conforming  
17 to strict shelter rules. People with cognitive disorders often cannot understand,  
18 remember, and follow the rules, and can be expelled from their shelters as a result. I  
19 have been told that there are many residents of the Bulb who suffer from cognitive  
20 disorders, including as a result of their chronic homelessness. I have also seen a  
21 number of patients who are expelled from shelters because they are too depressed to  
22 follow the rules. Finally, there are those whose mental health disorders result in  
23 "acting out": they are loud or aggressive, or they violate rules, resulting in their  
24 termination from shelter. Putting people into a crowded shelter always increases the  
25 risk of violence; that is particularly true here where the population in question is a  
chronically homeless community that has been established over years, and where the  
individuals have had the protection of relative isolation and considerable privacy.

22  
23 18. Part of accommodating people with disabilities involves allowing service animals.  
24 This requires enough space to house service animals with their owners, performing  
25 the services they need to perform, while being considerate of the needs of other  
people in the shelter who may be allergic or afraid of animals.

24  
25 19. There are ways to make shelter more accessible for people with these disabilities.  
First, it is important to have trained staff. Staff members who are familiar with  
different types of mental health disabilities, who are trained in de-escalation

1 techniques and who have clinical skills, can better manage the needs of people with  
2 mental health disabilities. Second, having more hours that the shelter is available can  
3 help acclimate people with disabilities to their new surroundings, make them  
4 comfortable, and give them safe space during hours that they are not sleeping. Third,  
5 a shelter that is appropriate for homeless people with disabilities cannot be a mere  
6 bunkhouse. A crowded space is not a safe space. Studies show that a group of rats put  
7 in a small cage will attack each other. The same number of rats in a larger cage can  
8 live peacefully. From my observations and my understanding of the clinical needs of  
9 chronically homeless people, I have seen that putting too many people into a small  
10 shelter makes the shelter medically unsafe. Fourth, some people with disabilities  
11 cannot be housed in a shelter where they do not have private space. There should be  
12 such a space available in the shelter, or options for housing available as an  
13 accommodation.

- 14 20. According to the information I have reviewed and my experience in this area, the  
15 City's current plan is not the best use of resources for this population. The City could  
16 spend the same amount of money and house more people in circumstances that would  
17 be better for public health and for the health of vulnerable residents. The program as  
18 described by the City is not currently accessible for many people with disabilities.  
19 Nor is it safe from a public health perspective.

### 20 **Effects of Moving from An Established Encampment to Street Homelessness**

- 21 21. It is my understanding that the City of Albany's new program does not meet the  
22 existing need in Albany. There are at least 60 Bulb residents, and the trailers can  
23 accommodate only 30. I also understand that homeless people in other parts of  
24 Albany are invited to live in the shelter. This means that the majority of the people  
25 who are evicted from the Albany Bulb will be on the street.
- 26 22. In my experience, one of the biggest problems when you dislocate people – whether it  
27 is indoors or outdoors – is that they face a lot of violence. When they are strangers to  
28 a new area and behaving in a way that falls outside the norm in that area, they are  
29 very frequently the victims of violence. Homeless people are often stereotyped as the  
30 perpetrators, but my experience and relevant statistics show that they are much more  
31 frequently the victims of violence. I see injuries related to violence every day that I  
32 work.
- 33 23. Women are even more at risk of victimization and physical violence. Sexual violence  
34 is an everyday occurrence in the lives of homeless women. Many of them have  
35 already been seriously traumatized and frequently experience PTSD when they are  
36 taken out of their zones of comfort. This is especially true when they are living on the  
37 street and more likely to be assaulted or raped.
- 38 24. Chronically homeless people also experience significant negative health effects from  
39 regular police harassment. Being homeless in public spaces leads to a lot of  
40 interaction with the police, who are rarely trained in talking to people with  
41 disabilities. Particularly for people who are cognitively impaired, or have mental  
42 health disabilities—as I understand many people at the Albany Bulb do—these

1  
2 interactions can have serious consequences. These interactions often contribute to the  
3 traumatization of already vulnerable people. The effect is especially bad if people are  
4 arrested or incarcerated. People who are arrested for sleeping or camping in public are  
5 usually incarcerated for a shorter time than people arrested for more serious offenses,  
6 but are incarcerated repeatedly, as chronically homeless people continue to sleep on  
7 the street for lack of anywhere else to go. The relatively short stays mean that jail  
8 staff are less likely to provide medical care, administer the necessary medication, or  
9 do anything to mitigate the trauma of repeated arrest without alternative.

10  
11 25. Street life causes sleep deprivation, which leads to very serious disorientation,  
12 anxiety, cognitive difficulties. Sleeping on the hard ground can cause a lot of  
13 orthopedic and musculoskeletal problems.

14  
15 26. Living on the street causes health problems related to exposure and neglect.  
16 Particularly in the winter, sleeping without a shelter can subject medically susceptible  
17 people to pneumonia and to serious infections. Poor nutrition and poor access to  
18 medical care mean that conditions like HIV, diabetes and hypertension—which are  
19 relatively easily treated—can get much, much worse. Without access to regular  
20 hygiene access, skin conditions like scabies and lice can turn into serious infections.

21  
22 27. Any kind of major change that is not introduced carefully and gradually can have a  
23 serious consequence on mental health, and may result in a severe deterioration of  
24 mental health. Change is a source of stress for everyone; for people who already have  
25 mental health issues, it is far more serious. The kind of change contemplated in  
Albany—removing people from their social support, their shelter, their belongings  
and their pets, and sending them from nature back into an urban environment—is  
likely to cause serious trauma unless it is properly handled. In some cases, the mental  
and physical consequences of forcibly removing Albany Bulb residents from their  
established home and community could be life-threatening.

### 26 **Obtaining Housing for Encampment Residents**

27  
28 28. It is possible to successfully transition chronically homeless people into housing. As  
29 is recognized by the nationally recognized model for addressing homelessness—the  
30 “Housing First” model—a primary need of homeless people is housing, and good  
31 outcomes are unlikely without it.

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33 29. To be suitable and accessible, the housing placement should take into account  
34 individual conditions. When people have been homeless for a period of time, often  
35 the type of housing that is offered is far away from where they are living. People  
literally do not know how to live in the new place where they are offered housing.  
The new places are often crowded and noisy. This is a major problem for people used  
to living in relatively isolated circumstances. Because we know that long-term  
homeless people often have severe mental health disorders, living with other people  
with the same kind of problems can often lead to a lot of conflict. Being separated  
from pets is often devastating, and for people with disabilities, losing a service animal  
can cause negative health effects.

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30. We try to encourage a process where people have a sense of control over their situation—their preferences in housing, how they can move in, what kind of services they will need when they move in.
31. Of primary importance to transition people into housing is that outreach workers have enough time to build relationships of trust. Naturally, the encampment residents are not going to immediately trust any outsider that comes in, especially if they come in with the threat of uniformed police officers behind them. This is especially true if, as is often true, they have had negative experiences in the past, where a social services agency said they would help them and then did not.
32. In my experience, a chronically homeless person is unlikely to seek health care from a nearby clinic, even if it is nearby, if she or he does not know or trust the people who work there. If trust is not established, people who are chronically homeless will not come for help and will not be seen by a doctor until the late stages of disease. But if they are given time to establish relationships of trust with outreach workers or service providers, the possible outcomes are different.
33. A seminal example of the right way to do this is the Bridge Project, a harm reduction program we established in San Francisco in the mid 1990s. Our aim was to take people who were homeless drug addicts with AIDS and house them in single-room occupancy units. People were interested in housing, but very suspicious of us at first. They were not sure of our motives in offering them low-cost housing. We decided to use a combination of social workers, nurses and peer staff—formerly homeless people who had found housing and stopped using drugs. To build trust, we offered food, gift cards, and other practical incentives. Gradually, we became known in the community. If they had a medical issue, the nurse would check them out; if they needed further attention, the nurse would refer them to me. Our staff was non-judgmental. It took about six months to take people from the street to a room. We were most effective when we used the same team of people to reach out to the community, and set up mini-clinics in the single-room units where they were housed. People involved in the Project could continue using drugs if they wanted to; but after only a couple of months, people began telling us of their own accord that they wanted to stop using drugs and get into a program. We were able to achieve this result because we had worked for them often for up to a year or more.
34. My understanding is that the Berkeley Emergency Food and Housing Project has been awarded two \$30,000 contracts by the City of Albany for outreach and engagement to the people living on The Bulb. In my experience, this level of funding is entirely inadequate. To transition the 60 or so people who are living on the Bulb into affordable appropriate housing will require someone with professional training, supported by a team of peer workers and professional staff members. This team would have to make daily outreach and trust-building visits to the Bulb. To transition 60 or so chronically homeless people, some diagnosed with multiple disabilities, will require a team of health workers. At a minimum there should be two people with master's degrees in mental health/social services plus two to four peer workers: people who have personal experiences of homelessness, who are from the community, and who have cultural competency. They should be there every day

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working with each individual, at least a few hours a day, for an extended period of time. \$60,000 is not nearly enough to fund such a program.

35. Whatever it costs to house the people currently living on the Bulb, in the long run it will be cheaper than sending them out onto the streets without shelter. Several studies show that the cost of housing chronically homeless people is less than the cost of jail, hospitalization for mental or physical illness, or other emergency medical services.<sup>1</sup> If people at the Albany Bulb are moved into street homelessness, the City is very likely to incur those increased costs.

**Conclusion**

36. Based on my medical training, professional expertise, and two decades of experience working with homeless people, I conclude that the City's plan to clear the Albany Bulb will force many current residents on to the street, gravely damaging their physical and mental health; in the worst cases, I believe that their lives may be at risk.

I swear under penalty of perjury that the foregoing is true and correct. Executed this 4th day of November, 2013.

  
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Barry Zevin, M.D.

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<sup>1</sup> See, e.g., The Lewin Group, Costs of Serving Homeless Individuals in Nine Cities: Chartbook, November 19, 2004, available at <http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf>; U.S. Interagency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness, 18, available at [http://www.usich.gov/PDF/OpeningDoors\\_2010\\_FSPPreventEndHomeless.pdf](http://www.usich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.pdf).

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OAKLAND

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-  
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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CASE NO.

**013-5270**

**CRB**

**DECLARATION OF ROBERT WHARTON**



DECLARATION OF ROBERT WHARTON

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Albany Police Force told us that if we did not want stuff like that to happen, we should move out of Albany. I asked him where we should move then. He responded that I should move to the Bulb where all the other homeless people are.

8. I moved back out to the Bulb about a year ago and have been living here ever since. I have been unable to work since 1993 due to my disabilities.

9. I have been going to Berkeley Mental for the last two years to see a doctor once a month, but I do not have a caseworker there.

10. I have been diagnosed with PTSD, depression and psychosis. I also have medical disabilities; my back is messed up and I have had to have surgery on my legs.

11. I get \$950 a month from Social Security Income. Getting Social Security Income was a very long and difficult process. In total it took about seven years for me to get it. I finally got it with help from my doctor at Berkeley Mental. I have no other source of income.

12. At the Bulb, I have a support network of people who are sensitive to my mental health diagnosis, and who protect me from being overwhelmed or getting into trouble. My doctor at Berkeley Mental recommends that I stay out of new social environments, so I feel comfortable with the familiar people at the Bulb. With this network, I have been able to live a stable life where I feel safe.

13. I consider the shelter where I live, pictured in Exhibit A, to be my home. It is a shelter made of plywood. My shelter has kept me safe for about a year. I live here because I have had nowhere else that I could have a home.

14. My shelter is where I have privacy and my own personal space. I can close off my shelter and be myself. I have no place else where I can have such privacy.

1 15. I keep my things at my shelter, including my clothes, bed, tools, and tent.  
2 The shelter and many of my things, including my bed, are too large to be placed  
3 in one of the Albany bags. The shelter and the items within it at my personal  
4 property.

5 16. My shelter is not abandoned. Even if I am evicted from the Bulb and  
6 forced to sleep in one of the temporary shelters at night, I am not abandoning my  
7 shelter on the Bulb.

8 17. If it became necessary to leave the bulb without another place to go, I  
9 would want to bring my shelter with me.

10 18. I do not have a place to go other than the Bulb, and I do not have anyone I  
11 can stay with. I have no other shelter available to me, other than my home on the  
12 Bulb. When I was forced from the Bulb in 1999, the home I had built was  
13 bulldozed, and I lost my musical instruments and my clothes. If evicted again, I  
14 would try to stay in Albany near City Hall, but expect that I would be told by the  
15 police to leave again and threatened with arrest. I would not have a shelter  
16 anymore like I do at the Bulb.

17 19. Berkeley Food and Housing Program told me they would help me find a  
18 place, but they have not. Berkeley Food and Housing Program referred me to a  
19 place called the Bonita House, but the outreach worker from Bonita House said  
20 that because I was going to Berkeley Mental I was ineligible for their program.  
21 Berkeley Mental Health has no housing for me yet.

22 20. The man from Bonita House told me that I would have to not have any ties  
23 to Berkeley Mental for six months until I would be eligible for their program. My  
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DECLARATION OF ROBERT WHARTON

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doctor at Berkeley Mental has helped me out a lot and I do not want to stop going there, and I especially do not want to stop receiving any treatment at all.

21. I am unable to live in a communal dormitory-style trailer because I would have no privacy and no private space, and because I would suffer psychological harm related to my PTSD, depression and psychosis. I would be forced to share space with many other people, which would be stressful for my mental health. For me, being around large groups of people is overwhelming.

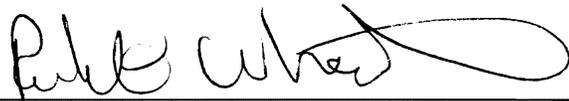
22. If I were required to live in the trailers, I worry that I would not have access to my personal property.

23. If I was forced to choose between living in the dormitory-style trailer and on the street, I would live on the streets of Albany to avoid the harms to my mental stability from living in close quarters with others. However, living on the street would also expose me to harms to my safety and to the loss of my possessions.

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 20th day of October, 2013 at Albany, California.

By:  \_\_\_\_\_

ROBERT WHARTON