



STAFF REPORT

SAUSALITO CITY COUNCIL

MEETING DATE: February 5, 2021

AGENDA TITLE: Report on Homelessness in Sausalito and the Dunphy Park Tent Encampment

LEAD DEPARTMENT: Administration

RECOMMENDED MOTION:

- 1) Adopt a Resolution of the City Council of the City of Sausalito Expressing Its Commitment to Work with our Regional and Local Partners to Explore Every Opportunity to Provide Shelter and Care to Those Without a Home and to Treat all Individuals Experiencing Homelessness with Compassion and Dignity; and
 - 2) Adopt a Resolution of the City Council of the City of Sausalito Closing Certain City Property, except for a designated portion of Marinship Park, to Camping and Storage of Personal Property and Adopting Standard Operating Procedures for Clearing and Cleaning Encampments; and
 - 3) Direct staff to return to the Council with a report on homelessness in Sausalito and the implementation of the Council's direction in not less than 60 days.
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SUMMARY

There has been an alarming increase in homelessness in California. Our neighboring jurisdictions in Marin County, particularly San Rafael and Novato, have seen an increase in the number of people living on the streets and erecting tent encampments on public property. The lack of appropriate alternative shelter available to individuals experiencing homelessness and housing insecurity in Marin has been exacerbated by the pandemic.

In late December 2020 an individual erected a tent and began living on the outskirts of Dunphy Park in the area that was formerly occupied by the Sausalito Police Station. By February 1, the number of individuals occupying this area had increased to approximately nine. An unknown number of occupants had been occupying vessels on Richardson's Bay in waters controlled by the Richardson's Bay Regional Agency, and were displaced by the recent wind and rain storms.

The City has been and continues to work diligently with our state and local representatives, the County of Marin, Marin County Health and Human Services, the Marin County Office of Veterans Services, local and regional non-profit organizations, and the faith-based community to provide needed services and find viable alternative shelter for the individuals in the Dunphy Park encampment.

BACKGROUND

As of January 2019, California had an estimated 151,278 people experiencing homelessness on any given day, as reported by Continuums of Care to the U.S. Department of Housing and Urban Development (HUD). Of that Total, 7,044 were family households, 10,980 were Veterans, 11,993 were unaccompanied young adults (aged 18-24), and 41,557 were individuals experiencing chronic homelessness.

<https://www.usich.gov/homelessness-statistics/ca/#:~:text=%20Homelessness%20Statistics%20for%20California%20%201%20Total,7%20Total%20Number%20of%20Unaccompanied%20Homeles...%20More%20>

DISCUSSION

The tent encampment currently located on the outskirts of Dunphy Park first appeared at the end of December 2020, with one tent and one individual occupant. By mid-January a few more tents were erected in the same area. After the heavy storms at the end of January, the encampment grew to approximately twelve tents and nine individuals. It appears that six of these individuals previously occupied vessels on Richardson's Bay in waters under the jurisdiction of the Richardson's Bay Regional Agency (RBRA).

Service providers from the Marin County Department of Veterans Affairs and the nonprofit organization Downtown Streets Team, in addition to local faith-based leaders, have visited the site numerous times to talk with the individual occupants and assess their needs and opportunities for shelter. The Sausalito Police Department also visits the area multiple times a day to ensure the safety of the occupants and the Sausalito community.

The current location of the encampment is not appropriate because of the lack of access to restrooms, showers and other sanitary services. Therefore, the encampment at Dunphy Park poses health, welfare, and safety risks to the persons living in the encampment and to the environment.

Sausalito is committed to finding solutions to address homelessness and housing insecurity in Sausalito and Marin County. Since withdrawing from RBRA in 2017 the City has carried through with its commitment to remove marine debris to protect the ecology of San Francisco Bay and Richardson's Bay, and to protect the public waterfront. It has also carried through on its commitment to find alternatives for individuals living on Sausalito's waters. On June 20, 2017, the Sausalito City Council approved a Waterfront Management Plan that prioritized the removal of marine debris vessels, the removal of unoccupied vessels being stored on Sausalito waters, the removal of unregistered vessels, and the removal of vessels occupied by persons who are a danger to themselves or others, while enunciating as the City's lowest priority the removal of legacy, occupied vessels that are licensed, registered, and in possession of a waste disposal contract or utilizing a similar form of service. Between 2016 and the present, the number of vessels in Sausalito waters has been reduced from ninety to nine, and over fifty illegal mooring balls/devices have been removed from Sausalito waters in Richardson's Bay.

Since 2017, the City of Sausalito, in conjunction with RBRA, and the County of Marin, has participated in various efforts to preserve Richardson's Bay waters and assist anchor-outs and other vulnerable populations. These efforts include annual Richardson's Bay debris collection events, participation in and support for the mobile showers offered by the Downtown Streets Team, and provision of grab-and-go bags of groceries from the San Francisco-Marin Food Bank during Mobile Shower visits during the pandemic. The City also developed the Safe Harbor Program, a partnership with the local marinas in Sausalito, to find slips for sea-worthy vessels that allow the boat's occupants a safe, secure place to dock and ready access to numerous benefits including transportation, sanitary facilities and employment.

In addition, the Sausalito Police Department has hosted an annual Homeless Outreach Event in November for Sausalito's anchor-out and homeless communities. Attendees have access to free medical and dental care, clothing, and supplies. The relaxed atmosphere of the event helps foster open communication between officers and attendees. Lunch has traditionally been provided to those attending, along with access to the mobile showers. The event was not held last year due to the pandemic but we anticipate starting up again in November, 2021, if Covid restrictions allow for such events.

The City Council working group, comprised of Mayor Hoffman and Councilmember Blaustein, has been meeting with local and regional officials and agencies on a nearly daily basis, sometimes multiple times a day, in an effort to find alternative housing for the occupants in the Dunphy Park tent encampment. Unfortunately, the lack of available shelter beds has made this a difficult task. In addition, priority for housing is assigned using the Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT). It is also important to keep in mind that some individuals may be resistant to alternative shelter.

Marin County Health and Human Service previously made shelter beds available in partnership with local hotels/motels through Project Room Key. <https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/project-roomkey> However, Marin County's participation in the program was temporarily suspended in fall 2020 because continued state funding was in question. The State recently committed additional funds to Project Room Key and we understand that the County Board of Supervisors will be reconsidering reauthorization of the program soon.

The County has also been pursuing the acquisition of sites for housing through Project Home Key, a grant program for agencies to acquire hotels, motels, apartments, and other buildings to provide homes for people experiencing or at risk of homelessness. <https://www.hcd.ca.gov/grants-funding/active-funding/homekey.shtml#background> To date, however, no sites have been acquired in Marin County.

Attached (**Attachment 1**) is a draft resolution for the Council's consideration memorializing the City's commitment to continue to work with our local and regional partners to explore every opportunity to provide shelter and care to those without a home and to treat all individuals experiencing homelessness with compassion and dignity.

The Legal Framework – Martin v. Boise:

A City's response to a homeless encampment implicates homeless persons' constitutional rights under the Eighth Amendment of the United States Constitution prohibiting cruel and unusual punishment and governmental seizure and destruction of property without due process of law.

In *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that the Eighth Amendment prohibits cities from criminalizing indigent homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter. This case involved legal challenges to two city ordinances, the Disorderly Conduct Ordinance and the Camping Ordinance, that together were frequently used to broadly prohibit homeless persons from camping or sleeping overnight on any public property throughout the City.

The Court held as follows:

Our holding is a narrow one....'we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets...at any time and at any place.' [] We hold only that 'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public.' [] That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.

(*Id.* at 617.)

The Court, however, clarified this holding as follows:

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying or sleeping outside at particular times or in particular locations might well be constitutionally permissible. [] So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the 'universal and unavoidable consequences of being human' in the way the ordinance prescribes.

(*Id.*, fn. 8.)

Based on the foregoing it is clear that:

- The protections of *Martin* apply only to persons who have no option of sleeping indoors;
- Cities may regulate the location and timing of sleeping outdoors, as well as other reasonable regulations, so long as homeless people with no option to sleep indoors have some place where they can lawfully sleep outdoors;

Next Steps

Sausalito Municipal Code Section 13.28.010 provides that it is unlawful:

A. For any person to make use of or to enter upon or refuse to fail to leave any park, parkway, recreation area, street, alley or other public land owned or controlled by the City at any time during which lands have been withdrawn from the personal access and use of members of the public, or during which such access or use has been limited in area, time or manner by resolution of the City Council, or by any officer of the City authorized by Council resolution to limit access to such lands; provided, however, that this prohibition shall not be deemed to limit or restrict any person from access who has a private right in such lands;

B. For any person to make use of any park, parkway, recreation area, street, alley or other public land owned or controlled by the City in a manner prohibited by resolution of the City Council or by any officer of the City authorized by Council resolution to regulate the manner of use of such lands.

Attached is a draft resolution (**Attachment 2**) for the Council's consideration that provides:

- **No Daytime Camping or Storing of Camping Equipment on Public Property:** Camping or storing camping facilities (as those terms are defined in the resolution) are prohibited on any City property from sunrise to sundown.
 - **Overnight Camping Temporarily Allowed Only in Marinship Park:** Overnight camping and storage of camping facilities (as those terms are defined in the resolution) are prohibited on any City property from sundown to sunrise, except for area(s) of Marinship Park designated by the Interim City Manager or her designee, by persons who have no option to sleep indoors, pending further action by the City Council.
 - **Removal of Personal Property From Marinship Park:** All persons camping overnight must remove all camping facilities and personal property from Marinship Park between the hours of thirty (30) minutes after sunrise to thirty (30) minutes before sunset.
 - **Standard Operating Procedures.** Adopts the Standard Operating Procedures attached as Exhibit A to govern the clearing and cleaning of areas used for camping.
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RESOURCE ALLOCATION

As part of the upcoming budget process the City Council may want to consider allocating resources such as staff time and/or financial resources towards this issue. Additionally, the Council may want to consider hiring an advocate or consultant to work with the homeless population and coordinate access to resources.

CEQA:

The City's adoption of the proposed resolution regarding overnight camping is not a "project" under the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq., Title 14 California Code of Regulations) pursuant to Public Resources Code Section 21065. Therefore, it is exempt from the provisions of CEQA pursuant to Guidelines Sections 15061(b)(3) (because it can be seen with certainty that the adoption of this Resolution will not have an effect on the environment), 15308 (actions by a regulatory agency for the protection of the environment), 15269 (emergency projects) and 15321 (enforcement actions by regulatory agencies).

FISCAL IMPACT

The Cost to the City to undertake actions necessary to implement the proposed resolutions is unknown at this time.

STAFF RECOMMENDATION

- 1) Adopt a Resolution of the City Council of the City of Sausalito Expressing Its Commitment to Work with our Regional and Local Partners to Find Viable Alternatives to Homelessness and to Treat all Individuals Experiencing Homelessness with Compassion and Dignity; and
- 2) Adopt a Resolution of the City Council of the City of Sausalito Closing Certain City Property, except for a designated portion of Marinship Park, to Camping and Storage of Personal Property and Adopting Standard Operating Procedures for Clearing and Cleaning Encampments.
- 3) Direct staff to return to the Council with a report on homelessness and the implementation of the Council's direction in not less than 60 days.

ATTACHMENT-

Attachment 1- Draft Resolution of the City Council of the City of Sausalito Affirming Its Commitment to Work with our Regional and Local Partners to Explore Every Opportunity to Provide Shelter and Care to Those Without a Home and to Treat all Individuals Experiencing Homelessness with Compassion and Dignity

Attachment 2 – Draft Resolution of the City Council of the City of Sausalito Closing Certain City Property, except for a designated portion of Marinship Park, to Camping and Storage of Personal Property and Adopting Standard Operating Procedures for Clearing and Cleaning Encampments

Exhibit A – Standard Operating Procedures for Clearing and Cleaning Encampments

PREPARED BY: Mary Wagner, City Attorney

REVIEWED BY: John Rohrbacher, Chief of Police

SUBMITTED BY: Marcia Raines, Interim- City Manager