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7 Attorneys for Plaintiffs

8 **UNITED STATES COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10 SANTA CRUZ HOMELESS UNION, on
11 behalf of itself and those it represents; SANTA
12 CRUZ FOOD NOT BOMBS; ALICIA
13 AVALOS, HANNAH HEGEL, CHRIS
14 INGERSOLL and RANDOLPH TOLLEY, on
15 behalf of themselves and similarly situated
16 homeless persons,

17 Plaintiffs

18 vs.

19 CITY OF SANTA CRUZ, MARTIN
20 BERNAL, individually and in his official
21 capacity as City Manager for the City of Santa
22 Cruz; TONY ELLIOT, individually and in his
23 capacity as Director of Director of Parks &
24 Recreation for the City of Santa Cruz;
25 ANDREW MILLS, individually and in his
26 capacity as Chief of Police for the City of
27 Santa Cruz,

28 Defendants

Case No.: 5:20-cv-09425-SVK

**PLAINTIFFS' SUPPLEMENTAL STATUS
REPORT; DECLARATION OF KEITH
McHENRY; DECLARATION OF
ANTHONY D. PRINCE**

Hon. Judge Susan van Keulen

Hearing Date: May 13, 2021

Courtroom: Zoom

Time: 9:30 am

PLAINTIFFS' SUPPLEMENTAL STATUS REPORT

Since Plaintiffs filed their May 6, 2021 Status Report, the City has posted the proposed ordinance that, if passed by the City Council as expected tomorrow, May 11, 2021, will directly impact the Benchlands encampment. (See, Declaration of Anthony Prince) In addition, beginning this morning, May 10, 2021, the California Department of Transportation (Caltrans) will begin removing hundreds of homeless persons who have been camped along Highway 1 and Highway 10. (See Declaration of Keith McHenry)

1 As the City has repeatedly admitted, there are more homeless in Santa Cruz than there are
2 available shelter beds or other indoor housing. It is almost certain that a substantial number of
3 persons displaced from the Highway encampments and when the new camping ordinance is enacted
4 and enforced will go to the Benchlands.

5 This morning Plaintiffs' counsel sent an email to the City Attorney advising that should the
6 above-described consequences of the Caltrans removal and the new ordinance take place, Plaintiffs
7 fear that conditions at the Benchlands may deteriorate and be used as a justification to close the
8 encampment or, alternatively, to take measures to "secure" the encampment that could run afoul of
9 the Constitutional rights of the residents therein.
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11
12 Dated: May 10, 2021

Respectfully Submitted,

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15 /s/Anthony D. Prince

16 Attorney for Plaintiffs
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8 **UNITED STATES COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10 SANTA CRUZ HOMELESS UNION, et al.,

11 Plaintiffs

12 vs.

13 MARTIN BERNAL, CITY OF SANTA
14 CRUZ, et al.,

15 Defendants

Case No.: 5:20-cv-09425-SVK

DECLARATION OF KEITH McHENRY

16 **DECLARATION OF KEITH McHENRY**

17 I, KEITH McHENRY, hereby swear and affirm under penalty of perjury that the following
18 is a true and correct statement:
19

- 20 1. My name is Keith McHenry, President of Santa Cruz Food Not Bombs (“FNB”), a plaintiff
21 in the above-captioned matter.
- 22 2. I spend my days working with those who live outside and have more than 40 years
23 experience helping the homeless. I have visited most of the larger camps in the City of
24 Santa Cruz. I have also worked with HUD’s Point in Time Count in Santa Cruz
25 collecting data on the number of unhoused people in the city.
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1 3. I received an urgent call from Santa Cruz City Councilperson Sandy Brown at 1:15 pm
2 on Saturday, May 8th expressing concern that on Monday, May 10, 2021, Santa Cruz
3 City officials, including the police department, will be carrying out the eviction of at
4 least 300 homeless persons camped along Highways One and Ten, pursuant to a notice
5 posted by the California Department of Transportation (Caltrans). Attached hereto as
6 Exhibit A is a true and correct copy of the Caltrans notice. At the bottom of the notice,
7 the phone number of the Santa Cruz Police Department is provided. While the “Local
8 Law Enforcement” is identified as an agency where “Community Service Assistance” is
9 available, in decades of observing such “assistance” from the police, this is just an
10 immediate precursor to forcible removal and arrest.
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14 4. I have visited the camps on Highway 1 and 9 on Caltrans property and was aware of
15 plans to widen the highway and that about 100 people from those two locations would
16 be evicted but was alarmed to learn that the Cty also planned to clear camps at Harvey
17 West, Felker Street and other areas of Santa Cruz near the San Lorenzo River as reported
18 in local media.
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21 5. Having intimate knowledge over many years of the conditions and actions of the
22 homeless community here when sweeps are conducted, San Lorenzo Park, including the
23 Benchlands, is the most commonly used destination of those displaced. Accordingly, we
24 are concerned that many of those 300 or more people displaced today and many more
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1 displaced if the City's new proposed Camping Ordinance is adopted, may move to the
2 Benchlands area out of desperation.

3 I declare under penalty under the laws of the United States and the State of California that
4 the foregoing is a true and correct statement to which I would testify in court if called upon
5 to do so.

6 Dated: May 9, 2021

/s/ Keith McHenry

7 Executed at Santa Cruz, California
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Exhibit A

Attachment 1A - Template for "Notice to Vacate" - English

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

NOTICE TO VACATE ILLEGAL CAMPSITE

Every person who camps or lodges or stores property on State property without permission of the owner is guilty of a misdemeanor violation of California law.

POSTING DATE: 05/07/2021

TIME: 8:00AM

LOCATION: Northbound and Southbound Hwy 1 between San Lorenzo River and Mission St

INSTRUCTIONS TO OCCUPANTS:

1. ALL PERSONAL PROPERTY AND CAMP DEBRIS IS TO BE REMOVED BY THE TIME AND DATE NOTED BELOW.
2. ANY PERSONAL PROPERTY LEFT AT THIS SITE AFTER THIS TIME WILL BE CONSIDERED ABANDONED.
3. ANY PERSONAL PROPERTY NOT DISPOSED OF WILL BE STORED FOR NINETY (90) DAYS. TO RECLAIM PROPERTY CALL: 831-476-1351 FAILURE TO RECLAIM BY August 9th 2021 WILL RESULT IN ITS DISPOSAL.
4. CONTINUED VIOLATIONS WILL RESULT IN CITATION AND/OR ARREST.

VACATE BY DATE: 05/10/2021

TIME: 8:01AM

VIOLATIONS NOTED AT THIS TIME:

- CALIFORNIA PENAL CODE Section 647(e). Unlawful camping or lodging. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor, who: (e) lodges in any building, structure, vehicle, or place, whether public or private, without permission of the owner or person entitled to the possession or in control of it.
- CALIFORNIA VEHICLE CODE Section 23112. (b). Depositing litter, debris or garbage on State Right of Way: No person shall place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks, refuse, garbage, or dirt in or upon any highway, including any portion of the right of way thereof, without the consent of the state or local agency having jurisdiction over the highway.

Local Ordinances may be inserted below.

Examples may be:

- Unlawful storage of personal property
- Unlawful refuse disposal
- Unlawful camping
- Unlawful camp fire
- Unlawful defecation in public place

COMMUNITY SERVICE ASSISTANCE IS AVAILABLE AT:

- Housing Matters (831) 458-6020
- Local Law Enforcement (831) 471-1131

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10 vs.

11 MARTIN BERNAL, CITY OF SANTA
12 CRUZ, et al.,

13 Defendants

Case No.: 5:20-cv-09425-SVK

DECLARATION OF ANTHONY PRINCE

DECLARATION OF ANTHONY PRINCE

16 I, ANTHONY D. PRINCE, hereby swear and affirm under penalty of perjury that the
17 following is a true and correct statement:
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- 19 1. I am the attorney of record in the above-captioned matter.
- 20 2. Attached hereto as Exhibit A is a true and correct copy of an email I sent to the Santa
21 Cruz City Attorney's Office regarding concerns over the clearing of encampments and
22 the probability of those cleared going to San Lorenzo Park/Benchlands.
- 23 3. Attached hereto as Exhibit B is a true and correct copy of a proposed amendment –
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1 “Camping Services and Standards” – to the Santa Cruz Municipal Code.

2 I declare under penalty under the laws of the United States and the State of California
3 that the foregoing is a true and correct statement.
4

5 Dated: May 10, 2021

/s/ Anthony Prince

6 Executed at Berkeley, California
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Exhibit A

Caltrans Clearing of Highways 1 and 10; Proposed Ordinance;

From: Anthony Prince (princelawoffices@yahoo.com)

To: cbronson@abc-law.com; acondotti@abc-law.com

Date: Monday, May 10, 2021, 06:57 AM PDT

Counsel: We are very concerned that this morning's scheduled removal of hundreds of homeless persons camped along state highways -- Highway One and Highway 10 - by Caltrans will almost certainly result in a substantial influx of those so displaced into San Lorenzo Park and the Benchlands. We are also concerned that should proposed Ordinance No. 2021-XX ("Camping Services and Standards" amendment to the Santa Cruz Municipal Code) be passed, as expected, at tomorrow's City Council meeting, this, too, will result in additional unhoused persons going to the Park and Benchlands.

As Defendants have conceded in the current litigation and in the proposed Ordinance, there are already insufficient available shelter beds or other indoor housing available to the City's unhoused such that the passage and enforcement of the ordinance and the Caltrans actions will only exacerbate the number of homeless on the streets of whom many will go to the Benchlands encampment. If that happens, this is to advise you that conditions in the encampment may deteriorate, something we fear will then become the proffered justification for closing the camp at some point soon.

This morning, we will be filing a Supplemental Status Report relaying this information and these concerns to the Court.

Very truly yours,

Anthony Prince

Exhibit B

Attachment 1: Draft ordinance for consideration of introduction at the May 11, 2021 Council meeting.

ORDINANCE NO. 2021-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AMENDING CHAPTER 6.36 PREVIOUSLY ENTITLED "REGULATIONS FOR TEMPORARY OUTDOOR LIVING" AND HEREAFTER ENTITLED "CAMPING SERVICES AND STANDARDS" OF THE SANTA CRUZ MUNICIPAL CODE

WHEREAS, the City of Santa Cruz is currently experiencing a large number of encampments in public spaces. With a sheltered population of only about 65,000 and an unhoused population likely exceeding 1,200, Santa Cruz has one of the highest per-capita populations of homeless individuals in the State of California and the United States.

WHEREAS, the City's experience is that large, unsanctioned, long-term encampments are almost always associated with a host of major health and safety impacts, including: open and obvious drug use and related crimes, serious fire safety concerns, major impacts related to human and animal waste and accumulation of trash, vandalism, and related nuisance conditions. When longer term encampments within the City are vacated, it is common for City staff to observe extreme environmental degradation, and the City typically removes hypodermic needles, human and animal waste, and substantial amounts of trash and debris.

WHEREAS, when encampments remain for long periods, the costs of supporting hygiene services, refuse management, hypodermic needle disposal, increased calls for service, and property repair are substantial. Moreover, the environmental degradation caused by long term encampments is often substantial, and sometimes is irreparable.

WHEREAS, longer term encampments have the effect of essentially privatizing property that is intended for public use, as the greater community is no longer able to use public spaces that are used for round-the-clock encampments.

WHEREAS, during the COVID-19 pandemic, shelter capacity has significantly expanded within City limits. The City and County have partnered together to add shelter capacity within the City at the Veterans' Hall, the Golflands, the Pavilion, and four motels within the City. Despite this expanded shelter capacity, many individuals remain unsheltered within the City limits.

WHEREAS, the City of Santa Cruz has been disproportionately impacted by encampments. Unsheltered individuals living in encampments are present within the City's limits at much higher rates than are present within neighboring jurisdictions. As the county seat, with county courts, jail, mental health services, and shelters all located here, the City of Santa Cruz has become a de facto hub of encampments within county, state, and country. The City's experience is that a significant percentage of unsheltered individuals actually come to the City from other places with a plan to live outdoors on public property within the City, and the City's experience is that this occurs even more once large encampments are established.

WHEREAS, the City's experience is that much of the local housed community will only be accepting of sanctioned sleeping areas, managed encampments, and shelters in their communities if camping can be prohibited elsewhere in the City. Without a camping prohibition, the City is perceived

Attachment 1: Draft ordinance for consideration of introduction at the May 11, 2021 Council meeting.

as attracting even more unsheltered people to a highly desirable community without the ability to provide adequate services to them .

WHEREAS, unlike some larger cities within the state, the City of Santa Cruz generally does not receive significant funding from the state or federal government to provide housing, health, or other services to persons experiencing homelessness. Instead, the County of Santa Cruz serves as the conduit for various funds, some of which have been allocated through the countywide Homeless Action Partnership. The City has collaboratively partnered with the County in an effort to address homelessness both through and outside of the Homeless Action Partnership, the County's Continuum of Care.

WHEREAS, the City is aware of the County's position that funding received by the County is insufficient to address all homeless needs in the County.

WHEREAS, on top of the City's general lack of funding for homeless services, due to the COVID-19 pandemic, for the 2020-2021 fiscal year, the City had a substantial budget shortfall that was addressed with several cost-cutting measures. The measures included layoffs, furloughing staff,, eliminating or freezing vacant positions, using reserves, and delaying several capital projects. The City also identified structural deficits affecting future fiscal years.

WHEREAS, the City has recently approved affordable and supportive housing projects which, if built, would add approximately 400 affordable units, approximately 180 of which will be supportive housing units, to the City's inventory, and at least 60 deed-restricted, affordable units are currently under construction. However, these types of projects take years of work before they are occupied by residents, and even after the units are constructed, they will not add adequate housing capacity to shelter even the current number of unsheltered individuals in the City.

WHEREAS, the City intends to facilitate the creation of a homeless persons' storage program, sanctioned safe nighttime sleeping locations, and managed encampments. With that said, the City is mindful that, at this time, it has neither the funds, the real estate, the legal mandate, nor the substance abuse/psychiatric expertise necessary to, in a more permanent way, house all of the City's unsheltered population in addition to all of the individuals who, based on the City's past experience, could reasonably be expected to move to Santa Cruz, if the City were to provide those services.

WHEREAS, the City must appropriately consider competing interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources.

WHEREAS, the City Council recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

WHEREAS, it is the purpose and intent of the City Council to establish standards for sheltering outdoors, which are intended to be as compatible as possible with the protection and preservation of health, safety, and welfare of the inhabitants of the City of Santa Cruz.

WHEREAS, this Chapter is intended to address issues such as fire risk, unsanitary conditions, public safety hazards, environmental degradation, and round-the-clock privatization of public property.

Attachment 1: Draft ordinance for consideration of introduction at the May 11, 2021 Council meeting.

WHEREAS, mindful of the decision of United States Court of Appeals for the Ninth Circuit in *Martin, et al., v. City of Boise* (2019) 920 F. 3d 584, this ordinance conditions enforcement of prohibitions on overnight and daytime encampments on the availability of overnight shelter and daytime storage for homeless individuals.

WHEREAS, the City Council has evaluated the environmental effects of this municipal code chapter and ordinance and finds the chapter and the adoption of the ordinance to be exempt under Sections 15307 and 15308 of the Guidelines for the Implementation of the California Environmental Quality Act and under Section 15061(b)(3) of the California Code of Regulations.

WHEREAS, the City Council calls on the County, the State, and the Federal Government to expand shelter-capacity and very low income long-term housing options regionally, statewide, and nationally, and also to provide street outreach, case management, diversion, housing problem-solving, mental health support, and drug rehabilitation services to adequately address and solve homelessness.

WHEREAS, the City Council believes that sheltering outdoors should be done in a way that is temporary, respectful of neighbors and the environment, and not conducted in a way that creates a sustained privatization of public spaces.

WHEREAS, the Council previously adopted Chapter 6.36 "Regulations for Temporary Outdoor Living," but also determined that the chapter needed to be substantially revised before implementation. The purpose and intent of this ordinance is to repeal the "Regulations for Temporary Outdoor Living" (also known as the Temporary Outdoor Living Ordinance, or "the TOLO") and replace Chapter 6.36 with this new "Camping Services and Standards" ordinance.

BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1. Chapter 6.36 "Regulations for Temporary Outdoor Living" (also known as the Temporary Outdoor Living Ordinance, or the TOLO) is hereby repealed and replaced with the following Chapter 6.36, "Camping Services and Standards," as follows:

**"Chapter 6.36
CAMPING SERVICES AND STANDARDS**

6.36.010 PURPOSE AND INTENT.

The purpose and intent of this Chapter is to provide standards for sheltering outdoors which: (i) are intended to be as compatible as possible with the protection and preservation of health, safety, and welfare of the inhabitants of the City of Santa Cruz, including homeless individuals; (ii) will address issues such as fire risk, unsanitary conditions, public safety hazards, environmental degradation, and round-the-clock privatization of public property that have been associated with longer-term encampments in the City; (iii) establish allowances for, and in some instances, minimum thresholds for provision of storage, managed encampments, and safe sleeping programs that will feasibly allow unsheltered individuals to engage in basic life sustaining activities without criminal citation; (iv) generally prohibit the establishment of unregulated encampments on public property during daytime hours, but only when there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage; and (v) generally prohibit the establishment of unregulated encampments on public

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property during nighttime hours, but only when there is an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location.

6.36.020 DEFINITIONS.

When used in this chapter, the following words and phrases have the following meanings:

“Available 24/7 Sanctioned Sheltering Location” means a public or private facility, with available 24/7 space for an indigent, homeless individual to stay, at no charge. The term Available 24/7 Sanctioned Sheltering Location includes a shelter, a managed encampment, and/or a hotel/motel voucher. The term Available 24/7 Sanctioned Sheltering Location does not include the following: (a) Shelter space where an individual cannot stay because the individual has exceeded a shelter’s maximum stay rule or because shelter is unavailable due to the individual’s gender; (b) Shelter space that cannot reasonably accommodate the individual’s mental or physical needs or disabilities; (c) Shelter space that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian, assuming the individuals seeking such shelter are at least one parent or legal guardian with a minor child; (d) Shelter space for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

“Available Homeless Persons' Storage” means a public or private facility, with available daytime and nighttime space for an indigent, homeless individual to, free of charge, store a reasonable quantity of Personal Effects and/or survival items, such as tents, sleeping bags, tarps, and blankets.

“Available Overnight Sanctioned Sleeping Location” means a public or private facility, with available overnight space for an indigent, homeless individual to stay, at no charge. The term Available Overnight Sanctioned Sleeping Location includes a shelter, a managed encampment, a managed safe sleeping zone for overnight tent encampments, and/or a hotel/motel voucher. The term Available Overnight Sanctioned Sleeping Location does not include the following: (a) an overnight sanctioned sleeping location space where an individual cannot stay because the individual has exceeded a location’s maximum stay rule or because location is unavailable due to the individual’s gender; (b) an overnight sanctioned sleeping location that cannot reasonably accommodate the individual’s mental or physical needs or disabilities; (c) an overnight sanctioned sleeping location that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian, assuming the individuals seeking such shelter are at least one parent or legal guardian with a minor child; (d) an overnight sanctioned sleeping location for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

“Camping” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camping Facilities” include, but are not limited to, tents, huts, or temporary shelter.

“Camping Paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

“Encampment” means a collection of items that are used or intended to be used for temporary habitation outdoors. Encampments contain Camping Facilities and/or Camping Paraphernalia. This definition of Encampment specifically does not include a collection of items that reasonably appear to be for less than 12-hour, daytime only use, such items brought to a park or beach for a picnic, nap, or daytime party. If

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items have in fact been maintained in the same approximate location for a period in excess of 12 hours, then the collection shall be considered an Encampment as provided in this section. For the purposes of this chapter, the term Encampment does not include a vehicle used for habitation.

“Personal Effects” means personal property consisting of the following items.

1. ID/Social Security cards
2. Medications, medical devices, eyeglasses
3. Photos/Photo Albums
4. Tax/medical records
5. Reasonably usable, not overly soiled, non-verminous items that are reasonably believed to have value to persons experiencing homelessness, including tents, sleeping bags, and functional bicycles (although bicycle parts shall not be considered Personal Effects).

“Qualifying Disability” means a physical or mental disability that prevents that person from being able to, on a daily basis, construct, de-construct, and put away an Encampment.

“Urgent Circumstances” are facts and circumstances that would cause a reasonable person to believe that, for the benefit of public safety and welfare, an Encampment needs to be urgently removed with less than 24 hours notice. Urgent Circumstances include, but are not limited to, increased fire risk, obstructing or interfering with the flow of pedestrian or vehicular traffic, and blocking access to a parking lot of a building.

6.36.030 PRIVATE PROPERTY.

(a) Private property. It is unlawful for any person to, on private property, erect, configure, construct, maintain, or store an Encampment, or to use a vehicle for Camping, except as expressly authorized below:

- (1) In the yard of a residence with the consent of the owner or occupant of the residence, where the camping is in the rear yard, or in an area of a side yard or front yard that is separated from view from the street by a fence, hedge or other obstruction; or
- (2) Inside of a licensed and registered motor vehicle in the parking lot on the site of a religious institution with the written consent of such institution, where the driver/occupant of such vehicle is in possession of a valid driver’s license, provided that no more than six vehicles shall be permitted at any one location; or
- (3) Inside of a licensed and registered motor vehicle in the parking lot on the site of a business institution in a non-residential district with the written consent of both the business institution and property owner, where the driver/occupant of such vehicle is in possession of a valid driver’s license, provided that no more than three vehicles shall be permitted at any one location; or
- (4) Inside a licensed and registered vehicle in a residential off-street driveway with the written consent of the owner and occupant of the residence, where the driver/occupant of such vehicle is in possession of a valid driver’s license, provided that no more than one vehicle shall be permitted at any one location.

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(b) Camping shall not be permitted on private property where it is conducted in such a manner as to create inadequate sanitation, any trafficking in illegal drugs, a public or private nuisance, or other matters offensive to persons of ordinary sensibility; nor where the Camping is of such frequency, intensity or duration as to constitute a use of land prohibited by any provision of Title 24 of this code; nor where the Camping activity would be prohibited under any other provision of this code concerning use of mobile homes; nor where any fee, charge or other monetary consideration is collected for the privilege of Camping or for any services or the use of any facilities related thereto; nor where the covenants, conditions and restrictions of a duly organized homeowners association would prohibit the activity in the residential area subject to the covenants, conditions, and restrictions.

6.36.040 OVERNIGHT ENCAMPMENTS PROHIBITED WHEN THERE IS AN AVAILABLE OVERNIGHT SANCTIONED SLEEPING LOCATION OR AN AVAILABLE 24/7 SANCTIONED SHELTERING LOCATION; DAYTIME ENCAMPMENTS PROHIBITED WHEN THERE IS AN AVAILABLE 24/7 SANCTIONED SHELTERING LOCATION OR AVAILABLE HOMELESS PERSONS' STORAGE.

(a) Nighttime Prohibition. Except where expressly authorized by Section 6.36.050, it is unlawful and a public nuisance for any person to place, erect, configure, construct, maintain, or store an Encampment on public property anywhere in the City of Santa Cruz between one hour before sunset and one hour after sunrise (but no later than 8:00 a.m.) when there is either an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location.

This subsection 6.36.040(a) shall not be enforced against indigent homeless persons unless:

(1) There is either an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location that is promptly available and offered to a person found in violation of Subsection (a); and

(2) The City (potentially in cooperation with homeless service providers, mutual aid groups, neighborhood groups, and faith communities) establishes and is operating programs providing not less than 150 additional shelter, managed camp, or safe sleeping spaces in the City of Santa Cruz on City-owned or operated properties or facilities. These facilities are to include water, handwashing stations, and portable toilets. Safe-sleeping facilities shall not be located adjacent to residential neighborhoods or schools.

(b) Daytime Encampment Prohibition.

(1) When there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage, no person shall erect, configure, construct, and/or maintain an Encampment on public property between the hours of one hour after sunrise (but no later than 8:00 a.m.) until one hour before sunset. During circumstances where there is no Available 24/7 Sanctioned Sheltering Location, this daytime Encampment prohibition shall neither apply nor be enforced during rainfall, sleet, snow, or when the projected daily high temperature, as noted by the National Weather Service, is 50 degrees Fahrenheit or lower.

(2) When there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage, a person must take down, fold, deconstruct, and put away any Encampment erected, configured, or constructed on public property between the hours of one hour after sunrise (but no later than 8:00

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a.m.) until one hour before sunset. When there is no Available 24/7 Sanctioned Sheltering Location, this requirement shall neither apply nor be enforced during rainfall, sleet, snow, or when the projected daily high temperature, as noted by the National Weather Service, is 50 degrees Fahrenheit or lower

(3) The City plans to sponsor or arrange for the sponsorship of an unsheltered persons' storage program within the City of Santa Cruz, which would provide unsheltered persons with a reasonable quantity of storage for Personal Effects and/or survival items, such as tents, sleeping bags, tarps, and blankets. As City personnel encounter individuals who are camping in prohibited areas or at prohibited times, the City shall have a service available to assist individuals with on-street transportation to Available Homeless Persons' Storage. The prohibitions above in Subsections 6.36.040(b)(1) and 6.36.040(b)(2) shall not be enforced unless and until the above-described unsheltered persons storage program is operational and reasonably available to unsheltered persons in the City of Santa Cruz. The City Manager is hereby authorized to administratively establish and authorize operation of such storage facility or facilities within any zoning district within the City.

(c) If there is no Available 24/7 Sanctioned Sheltering Location, the encampment prohibitions above in Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against families with one or more children under the age of 18 years old. In cases of a homeless family, staff shall work with the County, including Child Protective Services, the State, and/or non-profit partners to attempt to find families temporary shelter or housing. If it is not reasonably apparent to City staff that a family unit has a member under the age of 18, City staff may request reasonable documentation to confirm that there is a minor in the family.

(d) If an indigent, homeless person who has a Qualifying Disability is maintaining an Encampment on public property, then City staff shall work with the County, State, and/or nonprofit partners to attempt to find the disabled person an Available 24/7 Sanctioned Sheltering Location. The prohibitions above in Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against an indigent, homeless person with a Qualifying Disability nor against a single caregiver for a person with a Qualifying Disability, unless these individuals have access to an Available 24/7 Sanctioned Sheltering Location. Or, if there is no Available 24/7 Sanctioned Sheltering Location, but there is Available Overnight Sanctioned Sleeping Location and Available Homeless Persons' Storage, Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) may be enforced if reasonable assistance is available that would allow for an indigent, homeless person with a Qualifying Disability to pack, unpack, and store their belongings daily. A person who claims to have a Qualifying Disability that is not reasonably apparent to City staff may be asked to present a physician's verification of the Qualifying Disability.

(e) The City Manager may, but is not required to, establish standard procedures, forms, or administrative regulations that are consistent with this Chapter.

(f) The City may prioritize individuals with Qualifying Disabilities, one caretaker for each such individual, and families with minor children for occupancy at an Available 24/7 Sanctioned Sheltering Location and/or an Available Overnight Sanctioned Sleeping Location, to the extent that the City has control over such facilities.

(g) In no event (including circumstances where there is a lack of an Available 24/7 Sanctioned Sheltering Location, Available Homeless Persons' Storage, and/or an Available Overnight Sanctioned Sleeping Location) may any individual, including individuals with Qualifying Disabilities, consistently occupy the same public space for a period exceeding 96-hours. With respect to individuals with Qualifying

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Disabilities, prior to enforcement of this 96-hour rule, the City shall provide reasonable assistance, if necessary, in helping a person with a Qualifying Disability to comply with this rule.

(h) The City shall not enforce any portion of this Chapter in a way that would cause it to violate any currently applicable order or injunction issued by the court in the matter of *Santa Cruz Homeless Union et al v. City of Santa Cruz et al*, Case 5:20-cv-09425-SVK.

(i) The City shall not enforce any portion of this Chapter in a way that would cause the City to not abide by the Center for Disease Control's guidance on encampments during the COVID-19 pandemic, unless either (i) Santa Cruz County is in the "yellow tier" (or a lower tier, if established) of California's Blueprint for a Safer Economy tiering structure, or (ii) California ends its tiering system and more fully re-opens the economy on a broader scale, as is currently expected to occur on or around June 15, 2021.

(j) If a need is verified, the City manager may establish one or more managed daytime sleeping areas, to be used by unsheltered individuals with a documented need to work at night and sleep during the day. Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against indigent, homeless persons who have provided such reasonable documentation unless there is either: (i) an Available 24/7 Sanctioned Sheltering Location, or (ii) available managed daytime sleeping areas and Available Homeless Persons' Storage.

6.36.050 CAMPING PERMITTED.

Camping is permitted in the City of Santa Cruz under the following circumstances:

(a) in public areas that the City has, as permitted by this Chapter, specifically set aside or clearly marked for public camping purposes, if conducted in a manner consistent with other provisions of this Chapter;

(b) at events authorized and permitted by the Santa Cruz City Parks and Recreation Department. Generally, under this subsection, no person or group may camp in a City park under authority of this subsection for more than three nights in any twelve months. However, where the camping activity is taking place in conjunction with an authorized and permitted restoration or conservation project being performed by campers at or near the campsite, the Director of Parks and Recreation may permit an individual or group to camp in one of the afore-referenced City parks for a period of time in excess of that prescribed above. Additionally, no permit shall be required for security guards who camp in City parks incident to a lawful event. For fair and consistent application of this section, the director of Parks and Recreation may promulgate guidelines defining the criteria for permit issuance contained in this section.

Under this subsection, the Director of Parks and Recreation may issue a permit authorizing persons or groups to Camp in the improved areas of Harvey West Park, the improved area known as lower De Laveaga Park adjacent to Branciforte Drive, and San Lorenzo Park benchlands upon finding that the applicant has met the City's requirements for:

- (1) Parking and traffic control;
- (2) Toilet and other sanitary facilities;
- (3) Security;

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- (4) Liability insurance;
- (5) Garbage collection and cleanup;
- (6) Security and cleanup deposits;
- (7) Such other public health, safety and general welfare matters as may be raised by the camping application; and
- (8) Environmental compliance according to the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.

(c) at events or in a manner that is authorized by the City Council or City Manager, such as managed encampments and/or a managed safe sleeping zones for overnight tent encampments, , which may be managed by the City, the County, or by an approved non-profit. These may be authorized on any public or private property, in any zoning district, and in areas that would otherwise prohibit such uses.

(d) in a part or all of a City-owned parking lot, closed portion of a public right-of-way, on private property, or in an alternative space or area designated by the City Manager for safe sleeping. The City Manager, or his or her designee, is directed to establish not less than 150 additional shelter, managed camp, or safe sleeping spaces in the City of Santa Cruz on City-owned or operated properties or facilities, subject to all criteria set forth in Section 6.36.060. The hours of operation of safe sleeping sites may be determined by the City Manager, consistent with any other uses of the properties that will be hosting nighttime safe sleeping. The City Manager is hereby authorized to administratively establish and authorize operation of safe sleeping spaces within any zoning district within the City.

6.36.060 ADDITIONAL CRITERIA FOR ENCAMPMENTS ON PUBLIC AND PRIVATE PROPERTY

If Encampments on public or private property are permitted for any reason to remain in place, they must meet the following criteria:

- (a) Encampments shall not impede emergency ingress/egress routes on public sidewalks or rights-of-way, such as driveways providing access to emergency vehicles and entrances or exits from buildings.
- (b) Under no circumstances, may persons dump gray water (i.e., waste water from baths, sinks, washing machines, and other kitchen appliances) or black water (i.e., sewage water) onto sidewalks, streets, parks, open spaces, storm drains, or any other facilities not intended for gray water or black water disposal. In addition to any other penalties or fines available to address this conduct, gray water and black water dumping is also an infraction under this chapter.
- (c) Under no circumstances, may persons create unpermitted electrical connections or "taps."
- (d) Public property shall not be used as storage for extra car tires, bicycles or bicycle parts (except as needed for an individual's personal use), gasoline, generators, household furniture, extra propane tanks, or combustible materials, including combustible waste.
- (e) No open fires are allowed. This subsection prohibits fires (such as camp fires, bonfires, recreational fires, burning of garbage, or portable outdoor fireplaces) that are lit in any public open space or park,

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except for a fire lawfully created wholly within a designated fire pit or other permanent receptacle provided by the City in a public park or beach for the purpose of allowing fires in said location. In addition, it shall be unlawful to intentionally or negligently set fire to or cause the burning of combustible material in such a manner as to endanger the safety of persons or property. A violation of this subsection is a misdemeanor.

(f) Encampments shall be maintained in a reasonably safe, tidy, and sanitary/hygienic fashion, free from litter, debris, waste, discarded food products, discarded property, and garbage unless contained within an enclosed container or trash receptacle. Encampments shall be maintained free from discarded hypodermic needles surrounding the Encampment. All refuse and recyclables shall be contained within a bag, box, or similar vessel and shall be removed from the Encampment by the occupant(s) on a regular basis. An Encampment location shall be cleared of all personal belongings, camp paraphernalia, and refuse by the occupant(s) at the end of the stay.

(g) Encampments shall not occupy an area greater than 12 feet by 12 feet per person who is occupying the location. For individuals with one or more Qualifying Disability and their caretakers, City staff shall permit reasonable deviation from this requirement if additional space is needed.

(h) Outdoor Living Encampments shall not cause direct damage to the environment through activities such as excavating or terracing soil, harming trees, cutting vegetation, or disturbing wildlife dens, burrow, or nests.

6.36.070 PENALTIES FOR VIOLATION.

(a) If a person has violated or is in violation of this Chapter (for example, by erecting or maintaining an Encampment in a way that is prohibited under this Chapter), City staff shall give the person a verbal or written warning before an infraction citation is issued. City staff shall seek opportunities, particularly when public safety/life safety is not under immediate/urgent threat, through coordination with City, County, non-governmental organizations, or faith-based groups, for outreach to precede or occur simultaneously to enforcement of this Chapter so that, when feasible, non-enforcement personnel can contact identified individuals on a complaint basis or within a structured, proactive program. The warning shall provide the person with information about any Available 24/7 Sanctioned Sheltering Location, Available Homeless Persons' Storage, and Available Overnight Sanctioned Sleeping Location. City staff also may, but shall not be required to, transport the person to Available 24/7 Shelter, Available Homeless Persons' Storage, and/or Available Overnight Sanctioned Sleeping Location.

(b) Unless a different penalty is explicitly noted elsewhere in this Chapter, if a person violates this Chapter, then that person is guilty of an infraction. The City's fine for the infraction shall not exceed \$20. If acceptable to the court, in lieu of a fine, the City encourages the court to allow infractions under this Chapter to be satisfied with a reasonable amount of community service.

(c) Unless a different penalty is explicitly noted elsewhere in this Chapter, if, after receiving an infraction citation, a person who is in violation of this Chapter fails or refuses to come into reasonably prompt compliance with this Chapter (for example by failing to take reasonably prompt action to remove an Encampment that is not permitted under this Chapter), then that person is guilty of a misdemeanor. Misdemeanor enforcement under this subsection (c) and subsection (d) below may only be used only after outreach, warning, and infraction citation, and only when (i) camping violations are exacerbated

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by other illegal behaviors, or (ii) the subject willfully refuses to vacate, or (iii) the subject interferes with the closure or removal of an illegal Encampment.

(d) Additionally, any person who violates any section in this Chapter and receives an infraction citation for such violation, and who, between 1-30 days from receiving such infraction citation, again violates this Chapter or is still violating this Chapter, is guilty of a misdemeanor.

(e) If a misdemeanor arrest is permitted under this Chapter, the arresting officer shall be permitted to seize and store items within an Encampment if necessary to prevent items from being stolen and/or if deemed necessary to prevent the immediate re-establishment of an Encampment that is violative of this Chapter. Unless the property is contraband or evidence of a Penal Code crime, persons who have been arrested and have had property seized pursuant this subsection may recover their property at the Santa Cruz Police Department, anytime within 90 days after that property is seized.

6.36.080 PROPERTY REMOVAL AND STORAGE.

(a) The establishment of an Encampment that is contrary to this chapter is declared to be a public nuisance, and appropriate City staff is authorized and empowered to remove any such Encampment after providing reasonable notice.

(b) What length of time is reasonable will depend on the size of the Encampment, the presence of any Urgent Circumstances, whether individual(s) are present to receive notification, and the abilities of the person who maintains the Encampment, if known to the City. Unless a seizure of property and arrest occur related to a misdemeanor violation (as described in subsection 6.36.070(e) above) or unless Urgent Circumstances exist, at least 24-hours written notice shall be given before the City removes property found to be in violation of this Chapter.

(c) Personal property that poses an imminent threat to public health or safety, is contraband, is evidence of a Penal Code crime, is obstructing or interfering with the flow of pedestrian or vehicular traffic, is removed pursuant to Section 6.36.070(e), and/or is blocking access to a parking lot or a building shall not be subject to the above described notice requirements and may be promptly removed by appropriate City staff, in accordance with the law and generally accepted law enforcement procedures. In other circumstances, unless this Chapter provides otherwise, City staff shall make a good faith attempt to identify and remove Personal Effects, and if Personal Effects are identified, City staff shall cause a Notice of the Personal Effects to be posted, as provided in subsection (f) below. Personal Effects shall be stored, as provided below.

(d) When Urgent Circumstances or circumstances described in Section 6.36.070(e) do not exist, prior to removing an Encampment found to be in violation of this Chapter, a written notice with the following content shall be provided:

1. The date and time of written notice,
2. The location of the notice,
3. A direction that:

“PERSONS IN THIS AREA MUST VACATE AND REMOVE ALL BELONGINGS
ON OR BEFORE: [insert reasonable date and time to vacate]

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THE CITY WILL CLEAN THIS SITE ON OR AFTER THE TIME AND DATE SPECIFIED ABOVE.

UNACCOMPANIED ITEMS ARE SUBJECT TO REMOVAL AND MAY BE DISCARDED OR DESTROYED.

4. A phone number and a physical address for property related inquiries.
5. A phone number for other questions or concerns.

(e) If items remain at an Encampment site after the relevant notice period has expired, prior to discarding items, appropriate City staff shall make a good faith attempt to identify and remove Personal Effects from the Encampment. Any Personal Effects identified by City personnel shall not be discarded.

(f) At the time of removal of any Personal Effects from an Encampment, City personnel shall conspicuously post a dated notice (either at the exact location from which the Personal Effects were removed or at another nearby location) with the following information.

1. A statement that Personal Effects were removed;
2. A telephone number for information on retrieving Personal Effects;
3. An address where the Personal Effects are temporarily stored;
4. That Personal Effects will be stored for 90 days.

The posting of notice required under this section shall not apply if removal property is conducted pursuant to Section 6.36.070(e) and the arresting officer has reasonable reason to believe that all items belong to the individual(s) being arrested. In such cases, the individual(s) being arrested shall be provided with written notification of the where their items are being stored and how to retrieve them at a later date.

(g) Following removal of any Personal Effects, City personnel shall place the removed Personal Effects in containers labeled in a manner facilitating identification by City personnel and owner and which reasonably protect such property from damage or theft.

(h) Personal Effects stored by the City which are claimed within ninety (90) days from removal shall be released to the person claiming ownership providing they identify the property and the approximate location where the property was left.

(i) Personal Effects that remain unclaimed after 90 days may be discarded, recycled, dedicated for public use, or given to a nonprofit agency for charitable use.

(j) In situations where the City provides for more than one week written notice to vacate at an Encampment that is reasonably believed to be inhabited, the City shall have no obligation to attempt to identify, remove, and/or store Personal Effects. If unattended items remain at an Encampment site after a notice period of one week or greater, the City may simply discard, recycle, or donate items that remain, as they are most likely abandoned.

(k) In situations where the City has reasonable, good faith reason to believe that an Encampment has been abandoned and is not occupied, the City may promptly remove any items that reasonably appear to be trash/garbage. For items that do not reasonably appear to be trash or garbage, the City may post a

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written "Notice of Apparently Abandoned Property" which notifies potentially interested parties that the City believes the site to be abandoned and will discard unclaimed items in no fewer than 72 hours. Under this scenario, the City shall have no obligation to attempt to identify, remove, and/or store Personal Effects. If unattended items remain at an apparently abandoned site after a notice period of 72 hours or greater, the City may simply discard, recycle, or donate items that remain, as they are most likely abandoned.

(l) Regardless of the City's authority to remove an Encampment pursuant to this section, every owner, occupant, or lessee of private property, and every holder of any interest in private property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.

(m) The cost of Encampment removal on property not owned by the City, including all administrative costs of any action taken hereunder, may be assessed against the subject premises as a lien, made a personal obligation of the owner, or both, in accordance with procedures in Title 4 of the Santa Cruz Municipal Code.

(n) It shall be a misdemeanor to willfully prevent, delay, obstruct, or otherwise interfere with a City official, employee, contractor, or volunteer in their execution of property and/or Encampment removal pursuant to this section.

6.36.090 INTERPRETATION OF CHAPTER.

(a) If any subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

(b) Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(c) In enacting and implementing this ordinance, the City is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this ___ day of _____, 2021, by the following

vote:

AYES:

NOES:

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ABSENT: None.

DISQUALIFIED: None.

APPROVED:

Donna Meyers, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

PASSED FOR FINAL ADOPTION this ___ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Donna Meyers, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2021-_____ and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk Administrator