



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 613

Review of Proposed Unauthorized Camping Ordinance

OVERVIEW

On June 13, 2023, the City Council will consider the proposed Unauthorized Camping Ordinance. Briefly, the proposed ordinance would prohibit unauthorized camping on public property when shelter is available, and in certain areas at all times, regardless of shelter availability. The ordinance was heard by the Land Use and Housing Committee on April 13, 2023. In Committee, three members voted to advance the proposal to the City Council with no recommendation (with one member voting no) and requested that additional informational items accompany the ordinance at full Council, including the following:

- Comprehensive plan that includes expanding congregate and non-congregate shelter options, dedicated outreach, and consistent enforcement
- Site control and funds for new bridge shelters, safe parking, and/or safe camping to demonstrate there is “availability of shelter”
- Status of the Community Action Plan on Homelessness
- How the City’s homelessness work reflects best practices considering the input of the Regional Task Force on Homelessness
- Detailed plan for how enforcement would transition from current activities to what is contemplated under the draft ordinance
- Revised proposal that includes all city parks
- Written enforcement and operations plan
- Plan that identifies specific sleeping sites
- Written legal analysis from the City Attorney on the proposed ordinance, including how it is determined which public areas the city can include in the ordinance for enforcement, both when shelter is available and when shelter is not available.

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To better inform Council’s discussion on the proposed ordinance, our Office prepared this report to summarize current law and practices, clarify the practical implications of the ordinance, identify potential fiscal impacts, review the accompanying informational items, provide relevant information from other California cities with similar ordinances, and offer some key policy considerations.

As part of our analysis, we spoke to Councilmember Whitburn’s Office, the Mayor’s Office, the City Attorney’s Office, the Neighborhood Policing Division of the San Diego Police Department, the Environmental Services Department, the Homelessness Strategies and Solutions Department, and Father Joe’s Villages. We thank the various stakeholders for meeting with us, answering our questions, and offering insights into current practice and the potential impacts of the proposed ordinance.

BACKGROUND

On April 13, 2023, Councilmember Whitburn, in partnership with the Mayor, proposed an ordinance related to unauthorized camping or encampments on public property to the Land Use and Housing Committee. To protect public health, public safety, and sensitive environments, the proposed ordinance would prohibit unauthorized camping at all times in specified sensitive areas. In some sensitive areas, the ordinance would be enforceable only where clear signage is posted prohibiting camping; this includes within two blocks of schools or shelters, and at specified public transit infrastructure and any park.¹ The ordinance would be enforceable regardless of signage in any open space, waterway, and banks of a waterway. Unauthorized camping would also be prohibited when it poses an immediate threat to another person, public health, public safety, or disruption of vital government services. Unauthorized camping would be prohibited on all public property, but only when there is shelter available, meaning any City-funded shelter, shelter included in the City’s Coordinated Intake System, or an area designated by the City for households experiencing homelessness (such as safe sleeping sites). The proposed ordinance also codifies the abatement process to remove personal property and other items during encampment clean-up.

According to available data, unsheltered homelessness is on the rise in the City of San Diego. The recently released annual Point-in-Time Count from January 2023 reported 3,285 unsheltered individuals, a 32% increase from the 2022 unsheltered count.² In comparison, the City saw a 9% increase in unsheltered homelessness between the 2022 and 2020 counts. Hence, the 2023 count indicates a significant increase in unsheltered homelessness. The Downtown San Diego Partnership conducts monthly counts of unsheltered individuals in the downtown area and reported a record high of 1,958 unsheltered individuals in April 2023. The April count represents a 29.2% increase compared to the monthly average for the 2022 calendar year of 1,515 unsheltered individuals. Unsheltered homelessness is also persistent in more remote areas of the City. For

¹ Parks (that have requisite signage) were added as sensitive areas in response to feedback from the Land Use and Housing Committee.

² San Diego’s 2023 Point-in-Time Count was released on June 8, 2023. In contrast to past years, the 2023 count expanded the geographic scope of the count with the inclusion of Caltrans areas, which were previously inaccessible. The numbers cited in this report include the expanded geographic area, since these are the publicly reported numbers. Without the Caltrans areas, which is more comparable to 2022 counts, the unsheltered count for the City was 2,975 or a 19% increase from 2022.

instance, the San Diego River Park Foundation estimated that 238 unsheltered individuals lived along the San Diego Riverbed based on counts conducted between March 30 and April 2, 2023.

Various data indicate that mental health conditions and substance use disorders are prevalent among unsheltered and sheltered individuals experiencing homelessness. Public reporting from the regional [2022](#) annual Point-in-Time Count focused on chronic, long-term conditions and found 8% of unsheltered individuals self-reported experiencing severe mental illness (compared to 18% among sheltered individuals) and 5% self-reported chronic substance abuse (compared to 13% among sheltered individuals). However, these data are likely incomplete, since not all individuals included in the Point-in-Time Count are asked or provide open responses to questions about these conditions. Other research suggests that unsheltered individuals are more likely to experience behavioral health challenges, especially when compared to sheltered individuals. A 2019 [California Policy Lab](#) study examined survey data from 15 states and found that 84% of unsheltered individuals self-reported having a physical health condition (compared to 19% among sheltered individuals), 78% reported a mental health condition (compared to 50% among sheltered individuals), and 75% reported a substance abuse condition (compared to 13% among sheltered individuals). Because this data is often self-reported, the true rates of mental health conditions and substance use disorders among individuals experiencing homelessness are difficult to determine.

Accidental drug overdoses due to illicit fentanyl, a potent and highly lethal synthetic opioid, has also been a rising concern for individuals experiencing homelessness. A notable portion of accidental fentanyl overdose deaths are occurring within the City's population of people experiencing homelessness. Of the 383 fatalities occurring in the City in 2021, at least 113, or approximately 30%, were believed to be homeless.³ Growing concerns over fentanyl overdoses and increased substance use generally among the unsheltered population have been cited as a motivating factor behind the purposed ordinance.

In recent years, the City has made strides to offer additional shelters and services that address co-occurring mental health conditions and substance use disorders, especially through collaboration with the County such as the Emergency Harm Reduction and Safe Haven shelters, but the City also uses law enforcement to address issues related to unsheltered individuals that pose a threat to public safety or health.

FISCAL AND POLICY DISCUSSION

Current "Quality of Life" Laws and Enforcement

Laws that pertain to homelessness are termed "quality of life" laws, and can include bans on activities such as sleeping, camping, sitting, or lying in public. In the City of San Diego, quality of life laws are primarily enforced by the Neighborhood Policing Division (NPD) within the San Diego Police Department (SDPD). In contrast to other police officers who might patrol within a certain geographic area (referred to as "patrol officers"), NPD officers operate citywide and focus specifically on "quality of life" issues related to homelessness. The Division directs its officers in response to Get It Done complaints and largely takes a reactive approach to enforcing quality of life offenses. As of May 30, 2023, there were 1,291 open Get It Done complaints related to

³ This number includes sudden or non-natural deaths examined by the Medical Examiner who could be identified as those living a transient/homeless lifestyle, found in an encampment, homeless shelter, or living in their vehicles. Other deaths occurring under the care of a physician/hospital may not be included.

homelessness. The week proceeding, NPD closed 882 requests with an average response time of 14 days. Of the 87.15 FTEs budgeted in FY 2023 for NPD, 54.00 FTEs are most directly responsible for addressing neighborhood concerns and quality of life issues related to homelessness through the Neighborhood Policing Team. The total FY 2023 budget for this team, including non-personnel expenditures, is \$19.5 million.⁴

Based on our conversation with NPD, current law enforcement practices for quality of life offenses take into consideration the following major factors:

- ***What is the law?*** NPD officers take enforcement action based on violations of law that are evident. For unsheltered individuals experiencing homelessness and living in encampments on public property, the two most relevant laws are (1) illegal lodging (State Penal Code Section 647(e)) and (2) unauthorized encroachment (San Diego Municipal Code Section 54.0110). Specifically, illegal lodging is considered a misdemeanor and applies when any person “lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.” For encroachment, the San Diego Municipal Codes states “[i]t is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.” According to NPD, various other statutes may also be relevant, such as public intoxication, open alcohol container in public, trespassing, or public urination or defecation laws.
- ***What violations can be clearly substantiated?*** NPD also indicated that how clearly a violation could be proved factors into enforcement. For instance, when an NPD officer encounters an individual living in a tent on a public sidewalk, unauthorized encroachment on public property is clearly being violated as encroachment applies to objects (e.g., tents and other personal belongings) on the public right-of-way (e.g., the sidewalk). To prove illegal lodging, the officer would need to prove and collect evidence that the individual intends to lodge, or specifically stay overnight, in the tent on the sidewalk. Hence, although NPD can take enforcement action under both the illegal lodging statute in State law and the unauthorized encroachment section of the Municipal Code, NPD more often takes enforcement action under encroachment, because the violation of law is clearer and more straightforward to prove. In 2022, NPD issued 1,240 citations and made 66 arrests for encroachment alone.⁵
- ***What case law and/or court settlements are applicable in this situation?*** Legal settlements and case law can dictate how and under what circumstances certain laws can be enforced (a summary of relevant legal settlements and considerations can be found [here](#)). For instance, under the 2007 *Spencer* settlement, the City is not allowed to enforce illegal lodging between 9PM and 5:30AM, with the exception of the downtown area under certain circumstances. Due to the 2011 *Isaiah* settlement, the City agreed not to abate personal property between 9PM and 5:30AM and is required to give a minimum 3-hour notice before

⁴ Beyond the Neighborhood Policing Team, NPD also includes the Homeless Outreach Team, Crime Prevention Unit, and NPD Management.

⁵ Public Records Act Request #23-2702, request submitted to the San Diego Police Department by inewssource.

encampment clean-up and abatement occur when storage bin space is available. The 2019 *Arundel* settlement relates to encroachment and requires the Police Department to adopt and implement progressive enforcement when engaging homeless individuals with personal belongings located on public property, as described below:

Progressive Enforcement Model

- First contact: Provide education of the law
- Second contact: Issue an infraction citation
- Third contact: Issue a misdemeanor citation
- Fourth contact: Potentially arrest an individual

Our understanding is that the Police Department generally uses progressive enforcement when dealing with violations related to homelessness. Additionally, the City must also abide by a 2018 court ruling in *Martin v. Boise* that prohibits governments from criminalizing indigent homeless people for sleeping outdoors on public property when no sleeping space is practically available in any shelter. The ruling does suggest that “an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible” ([Martin v. Boise](#), 2018, p. 32).

- ***What level of enforcement applies?*** For unauthorized encroachment, NPD officers use the progressive enforcement model. For the first contact, the officer explains the law and provides an opportunity for the individual to remedy the situation. This may include asking the individual to accept shelter, if appropriate shelter is available, or asking the individual to store their personal belongings in one of the City’s three storage facilities. If the individual accepts either shelter or storage, the personal belongings can be removed from public property, thereby resolving the encroachment violation, and no further enforcement is needed. *If no shelter is available, officers cannot enforce illegal lodging (under Martin v Boise) but can still enforce unauthorized encroachment since the individual has their personal belongings on public property and is in violation of City law.* During future encounters with the same individual, enforcement progressively escalates if the encroachment violations are not addressed, including citations and potential for arrest.

In addition to law enforcement practices, shelter availability and the encampment clean-up and abatement process are two other aspects of how the City addresses quality of life issues, as detailed below.

Shelter Availability

According to the Division, NPD officers receive a daily update about the availability of shelter beds across the City’s shelter system. Upon encountering an individual who appears to be violating quality of life laws, the officer offers the individual access to shelter. If the individual accepts, the officer calls the [Coordinated Intake System](#), operated by the San Diego Housing Commission, to verify that appropriate shelter space is available for that individual. The Coordinated Intake System staff asks a series of questions to gauge eligibility and the type of bed the individual will need. For instance, if the individual is a senior and cannot access a top bunk, only bottom bunk beds would be considered. If an appropriate shelter bed is available, the officer then drives the individual to

the shelter. As previously mentioned, if no shelter space is available, NPD officers can still go through the progressive enforcement model for any applicable violations, such as encroachment.

Encampment Clean-Up and Abatement Process

The Environmental Services Department (ESD) is responsible for encampment clean-up and abatement. Similar to enforcement, the [abatement process](#) also abides by legal settlements, especially related to advance noticing. ESD must give a minimum of 72-hour notice before clean-up begins, or 3 hours if storage bin space is available. The clean-up must occur on the date stated on the notice, and if delayed or rescheduled, a new notice must be posted. Abatements cannot occur between 9PM and 5:30AM or on inclement weather days. During the abatement process, ESD has a protocol for sorting through items, impounding valuable items, properly disposing of human or other types of waste, and documenting the process. ESD staff identify, record, and impound abandoned personal belongings considered irreplaceable or of greater value than \$100. Other items are disposed of or discarded. Throughout the process, ESD staff document through photographs and recordings the state of encampments prior to clean-up, items to be impounded, items to be discarded for health and safety reasons, and the abated areas following clean-up. Finally, a notice is posted for individuals who wish to retrieve any impounded items, which are stored for 90 days. For FY 2023, ESD has ten abatement teams (totaling 22.00 FTEs), which are budgeted at \$1.9 million for personnel expenditures, as well as non-personnel expenditures of \$4.5 million ongoing for contracts and \$1.2 million one-time for vehicles.

Summary of Proposed Ordinance

As previously mentioned, the proposed ordinance makes the following major changes to the San Diego Municipal Code:

- ***Imminent Risk of Harm:*** Unauthorized camping would be prohibited at all times when it poses an immediate threat to another person, public health, public safety, or disruption of vital government services.
- ***Sensitive Areas:*** Prohibit unauthorized camping at all times in specified sensitive areas, includes within two blocks of schools or shelters, as well as at any open space, waterway, banks of a waterway, specified public transit infrastructure, and any park. The ordinance would only be enforceable when signage is visible at all sites, except for open space, waterways, and banks of a waterway where no signage is needed.
- ***Public Property (based on Shelter Availability):*** Unauthorized camping would be prohibited on all public property, but only when there is shelter available, meaning any City-funded shelter, shelter included in the City's Coordinated Intake System, or an area designated by the City for households experiencing homelessness (such as safe sleeping sites).
- ***Codifying Encampment Clean-up and Abatement.*** The proposed ordinance also codifies the abatement process to remove personal property and other items during encampment clean-up.

The figure below provides a summary of how the proposed ordinance compares to current enforcement practices, based on relevant legal settlements and court cases. The figure leaves blank any activities that are not explicitly required under current law, legal settlements, or case law, but may still be permissible. For instance, we understand that operationally the San Diego Police

Department generally uses progressive enforcement when dealing with all violations related to homelessness which would also extend to the proposed ordinance. Additionally, although allowed in the proposal, staff have indicated that enforcement between 9PM and 5:30AM in sensitive areas would generally not occur.

	Illegal Lodging	Unauthorized Encroachment	Unauthorized Camping	
			Sensitive Areas	All Public Property
Code Section	State Penal Code Section 647(e)	San Diego Municipal Code Section 54.0110	Proposed Ordinance	Proposed Ordinance
Enforcement Between 9PM and 5:30AM	Not allowed, except when responding to complaint in downtown area and shelter is available	Allowed ¹	Allowed	Not allowed
Progressive Enforcement²		Required		
Enforcement only when Shelter Available	Required			Required

Notes

This figure is not inclusive of all possible City or State laws that may address behavior associated with encampments. Additionally, enforcement of City and State laws is generally allowed during the daytime (i.e., between 5:30AM and 9PM). The figure leaves blank any activities that are not explicitly required under current law, legal settlements, or case law, but may still be permissible.

¹ Case law may constrain enforcement of unauthorized encroachment when no shelter space is available, particularly during the nighttime hours or extreme weather conditions when an unsheltered individual may need personal items to protect themselves from the outside elements.

² The San Diego Police Department generally uses progressive enforcement when dealing with violations related to homelessness.

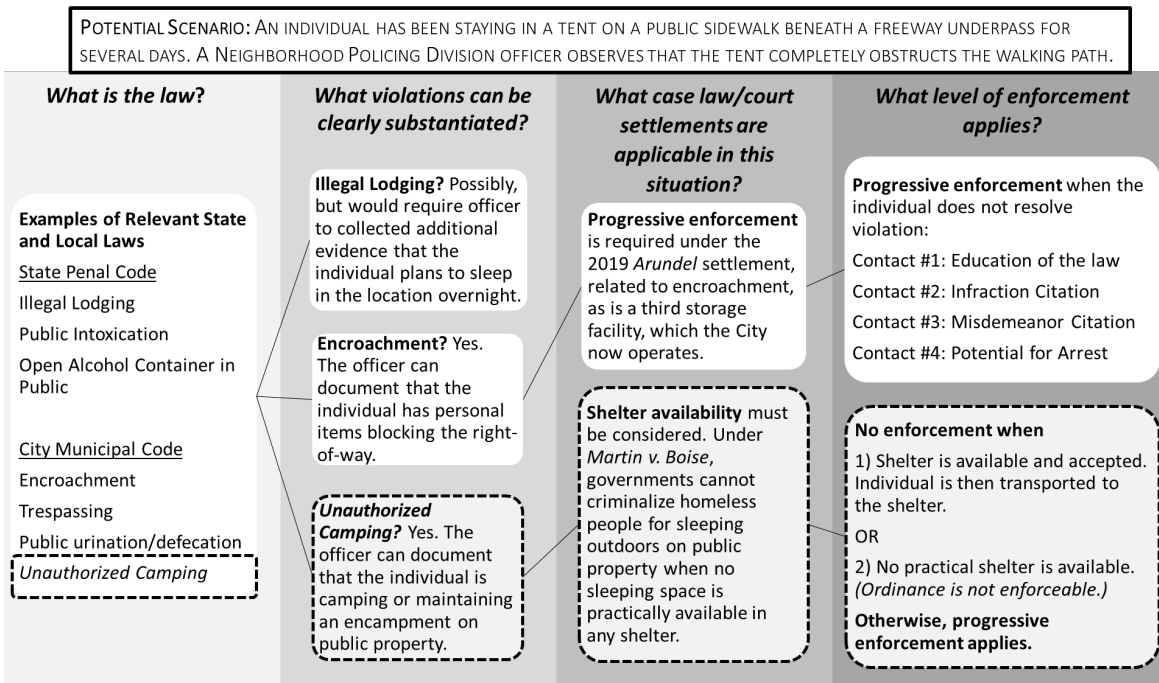
Impact of Proposed Ordinance on Current Practices

According to stakeholders, the proposed ordinance provides additional clarity and codifies existing settlement agreements. Notably, the ordinance would codify ESD’s current abatement process, along with the relevant settlement agreements that pertain to abatement. The abatement process is currently established in department regulations, which can be subject to change. In contrast, codifying the abatement process in the San Diego Municipal Code provides clarity, improves transparency, and establishes clear definitions.

Note that unauthorized camping would likely be an additional charge on top of any other violations that are occurring. For instance, if an individual living in an encampment refuses shelter during the second contact with NPD under progressive enforcement, the individual could receive an infraction citation for both encroachment *and* unauthorized camping. NPD emphasizes that unauthorized camping would provide an additional tool, beyond encroachment and illegal lodging, to encourage individuals to utilize available shelter and/or relocate outside of sensitive areas. Based on our discussions, NPD expects the City Attorney’s Office to prosecute more cases under unauthorized camping, because a violation of unauthorized camping should be straightforward and clearer to prove beyond a reasonable doubt. In other words, according to NPD, the impacts associated with the proposed ordinance largely rests on the prosecutors at the City Attorney’s Office to prosecute unauthorized camping cases and ensure there are legal consequences for repeat offenders.

The most substantive change from current practice is the prohibition of encampments in sensitive areas regardless of shelter availability. The ordinance notes public health and safety, as well as protection of sensitive environments, as the rationale for prohibiting encampments at all times in sensitive areas. Among the sensitive areas specified, enforcement in and near schools, shelters, public transit infrastructure, and parks are contingent on the presence of posted signage. Our understanding is that signage in parks would be prioritized for parks where public safety issues are persistent, as not all City parks face recurrent public safety issues. In contrast, the ordinance could be enforced at all times in any open space, waterway, and banks of a waterway, regardless of signage being posted. In addition to the specified sensitive areas, encampments would also be banned when there is an immediate threat or risk of harm or disruption of vital government services. The proposed ordinance would also allow for 24-hour noticing for clean-up and abatement, rather than the minimum 3 hours or 72 hours, which are current options.

The figure below describes a potential scenario for law enforcement when encountering an encampment on public property (not in a sensitive area) if the unauthorized camping ordinance were in effect alongside current law and practices.



Potential Operational and Fiscal Impacts

Despite discussions with various City departments likely to be affected by the proposed ordinance, fiscal impacts are not entirely known at this time. The production of signage, *which we estimate to be no more than \$400,000 one-time*, is one known cost. Council should monitor the fiscal impacts of other operations as the ordinance is implemented. This section summarizes anticipated operational impacts of the ordinance, while highlighting potentially applicable costs. Given time limitations, the fiscal impacts on tourism, small businesses, and other aspects of the local economy associated with not pursuing this ordinance are not factored into our analysis.

Neighborhood Policing Division – Unknown Costs

According to NPD, the costs associated with implementing the ordinance can be absorbed in the Division's current budget. NPD does not anticipate any significant operational changes, since NPD already enforces encroachment using the progressive enforcement model. NPD will continue to educate, issue citations, and potentially arrest individuals living in encampments on public property. For citations, unauthorized camping would be an additional charge, along with encroachment and any other cited violations. For arrests, NPD does not expect changes under the ordinance, with the assumption that these individuals would have been arrested for encroachment if the proposed ordinance were not in place. NPD currently sends a team of officers into the riverbed areas once a week.

However, because the ordinance newly and explicitly identifies sensitive areas where encampments would be prohibited at all times, we believe the ordinance calls for a *higher level of service from NPD* compared to current enforcement of unauthorized encroachment, which could require additional funding or shifting of resources inside SDPD. The stated purpose of the ordinance includes protecting the life, health, and safety of those in the City, as well as environmentally sensitive areas. For the ordinance to achieve this stated purpose, sensitive areas would need to be cleared and kept clear of encampments, and subsequent encampments would need to be prevented. This is in contrast to the complaint-driven, reactive enforcement approach NPD currently uses. For instance, to prevent wildfire risk and damage to sensitive environments, especially in canyons, waterways, and large parks, these areas would need to remain clear of encampments to effectively mitigate any potential risks. *Proactively keeping sensitive areas clear of encampments would likely require additional resources and patrols for these efforts, especially in more remote areas.* SDPD has indicated it would both reactively and proactively enforce the ordinance using existing resources with NPD officers working with patrol officers, but unanticipated costs and impacts associated with shifting to proactive enforcement are currently unknown. Specifically, the Department plans for NPD teams to rotate throughout areas of the City and work alongside patrol officers in each area during enforcement. This allows patrol officers to learn about the process and services available when NPD is enforcing in their area. The patrol teams would then work to keep the area clear of encampments, as NPD teams rotate to other areas before being able to return to the same area.

Although NPD does not anticipate major operational or fiscal changes under the proposed ordinance, we anticipate the ordinance will have a short-term but immediate impact on NPD response times to Get It Done complaints. With the passage of the ordinance, individuals throughout the City could hear that homeless encampments are banned throughout the City, without being aware of particular nuances (i.e., related to shelter availability) or that enforcement

operations may not significantly change. Heightened awareness about the ordinance could lead to a significant initial uptick in complaints about encampments from residents, under the impression that encampments are now banned. Without an increase in NPD resources, the initial increase in complaints may slow down NPD response times.

Environmental Services Department – Absorbable Costs

Similar to NPD, ESD does not anticipate any fiscal or operational impacts. According to ESD, abatements already occur in the public areas listed in the proposed ordinance, and there would not be significant changes under the ordinance. The Department noted operational efficiencies associated with moving to a 24-hour notice period from a 72-hour or 3-hour notice period. Under the 2011 *Isiah* settlement, a minimum 3-hour notice is required when storage bin space is available, but three hours may not be sufficient time for individuals to be notified that an area will be abated to relocate their personal belongings. Under these circumstances, ESD may return to an area to abate after the 3-hour notice expires and find that individuals are still relocating their belongings. For 72-hour notices, individuals in the encampments might not know when the notice was posted, and consequently when the abatement will occur, making it challenging to plan accordingly. ESD also must consider the timing of the weekend during 72-hour periods, which can be challenging. According to ESD, when there is a significant fire risk, a 72-hour period may be too long to prevent risky activity. In contrast, ESD anticipates a 24-hour period would allow individuals sufficient time to relocate their belongings and allow ESD staff to return the next day to essentially cleared blocks ready for clean-up and abatement, allowing ESD to more efficiently plan and abate areas.

ESD noted that abatement in sensitive areas would only be on public property, which can require reviewing maps to clearly identify property lines. Many canyon areas are located on private property. In contrast, areas along the waterways are more likely to be located on public property, where ESD would abate. ESD anticipates that abatement in more remote areas, such as along the San Diego River bed, will require more time due to build-up of personal belongings and refuse, but, again, ESD already abates in such public spaces. However, if NPD is able to keep these areas cleared of encampments after abatement occurs, ESD would either no longer need to return to abate the same areas, or abatement could take less time since the degree of build-up of personal items would be reduced.

City Attorney's Office – Unknown Costs

As previously mentioned, the passage of the ordinance could lead to more cases being referred to and prosecuted by the City Attorney's Office. Regarding likelihood of prosecution, NPD expressed an expectation that the City Attorney's Office would prosecute more cases under unauthorized camping than the Office currently does under encroachment. For context, in the 2022 calendar year, the City Attorney's Office issued 80 cases where encroachment or illegal lodging were the highest charges.⁶ The number of cases does not entirely capture the workload associated with such charges, since the Office conducts initial reviews of cases submitted by law enforcement before pursuing prosecution. Although it remains unclear whether more cases would be prosecuted under the ordinance, the City Attorney's Office would still have to review cases for the additional charge of unauthorized camping, leading to at least some increase in workload. At this time, however, the costs associated with reviewing unauthorized camping as an additional charge and potentially prosecuting more cases under unauthorized camping remains unknown. For some additional

⁶ Cases where encroachment or illegal lodging were not the highest charge are not included in this case count.

context, the cost to add one new Deputy City Attorney is around \$200,000, including salary, fringe, and non-personnel expenditures.

Signage Production and Posting – Less Than \$400,000 to Print Signs, But Labor Costs Unknown, Likely Minimal

Enforcement of the ordinance near schools, near shelters, at transit infrastructure, and in parks is dependent on the posting of signs prohibiting camping. We estimate the production of signs would likely cost no more than \$400,000. Our understanding is that the posting of signs in parks would be incorporated into normal staff duties under the Parks and Recreation Department, resulting in absorbable labor costs for posting signs in City parks. For other sensitive areas, labor costs associated with posting signs are not yet known but could be minimal or absorbable if incorporated into existing staff responsibilities.

Comprehensive Shelter Strategy – Upwards of \$1.0 Million

As requested by the Land Use and Housing Committee, the Homelessness Strategies and Solutions Department (HSSD) developed and released a comprehensive shelter strategy as a companion item to the ordinance. The strategy provides various cost estimates for short-, medium-, and long-term options for shelter, safe sleeping, and safe camping sites, including an analysis of the types of beds and support services needed to relatively serve the unsheltered population. Per the request from the Land Use and Housing Committee, the strategy also reflects how HSSD’s work reflects best practices and provides the status of the Community Action Plan on Homelessness.

Particularly relevant to the proposed ordinance is the identification of two feasible safe sleeping sites and associated cost estimates. The 20th and B Street site is considered a short-term option, estimated to serve 136 individuals at a cost of \$1.0 million to \$2.0 million annually. The City used this site for safe camping in response to the hepatitis A outbreak in 2017. The “O” Lot at Balboa Park is considered a medium-term option, with a maximum capacity of 400 tents with costs ranging from \$7.3 million to \$11.5 million annually. We note that site preparation costs are still under development for the “O” Lot. The strategy also identifies 930 shelter beds for relocation and replacement due to various circumstances planned through December 2024. Although the Department aims for a one-to-one shelter bed replacement to maintain existing levels of shelter bed capacity overall, staff efforts and resources dedicated to finding replacement beds could unintentionally stall efforts to *add new* shelter bed capacity.

Based on our review of the shelter strategy, we highlight our main assessments below:

- ***Assumed Per Bed Night Costs Appear Reasonable.*** The HSSD estimates for new shelters and safe sleeping sites are based on the current average per bed-night cost across the City’s shelter system, which is approximately \$79. The estimates for new shelter are likely on the higher end relative to existing traditional congregate shelter, since shelters that offer substance use disorder and mental health services (e.g., the City’s Emergency Harm Reduction and Safe Haven shelters that have higher per bed-night costs) are included in the average per bed-night amount. However, given the likely needs among the unsheltered population, factoring in potential costs for additional services is appropriate. For safe sleeping sites, these costs are unknown, as the City does not currently operate a safe sleeping program. We compared the estimated safe sleeping costs, which range from \$50

EXCERPTS FROM RTFH
POLICY GUIDELINES TO
ADDRESS UNSHELTERED
HOMELESSNESS AND
ENCAMPMENTS

"Additionally, municipalities should consider developing constructive alternatives such as strategies designed to connect people experiencing homelessness with available shelter and services in lieu of facing enforcement action when circumstances permit." [p.6]

"Some individuals may express that they are not yet ready to pursue services or temporary or permanent housing options and a desire to remain in their current unsheltered situation. For those individuals it is important that outreach personnel respect their rights while continuing to assertively engage and offer access to basic needs services to ease their unsheltered experience..." [p.10]

"When circumstances and resources permit, encampment abatements should be conducted at the conclusion of a multi-disciplinary assessment that includes evaluation from street outreach personnel and other Stakeholders to ensure that all avenues of assistance and supports have been utilized." [p.13]

to \$79 per bed night, with other cities that operate safe sleeping and found HSSD estimates to be reasonable. For instance, the [Safe Sleeping Village](#) in Los Angeles was an eight-month pilot for 70 spaces at a cost of \$1.5 million, or approximately \$88 per bed night. San Francisco's [Safe Sleeping Villages](#) were considerably higher and thought to cost more than \$60,000 per tent per year or \$164 per bed night. Actual costs for safe sleeping sites will not become clear until the Department begins the process to identify site operators and service providers.

- ***Capacity of Safe Sleeping Sites Should Be Carefully Considered.*** The two identified safe sleeping sites have capacities ranging from 136 individuals to 400 tent spaces. Given that the City does not currently operate a safe sleeping program, operational risks and challenges remain unknown, along with best practices and potential operational efficiencies. Council should give careful consideration to the capacity of these first few safe sleeping sites to ensure that operations can run smoothly before significantly scaling up. Based on our discussions with HSSD, the Department plans to scale up operations incrementally and use multiple service providers for specific sub-populations, especially in the larger safe sleeping site.

- ***Review of Best Practices Does Not Include Law Enforcement Actions on Homelessness.*** Although the strategy reviews how the City's homelessness programs are aligned with existing best practices, the scope of the review does not include the City's law enforcement practices related to homeless issues, including the proposed ordinance. Because reviewing law enforcement practices clearly falls beyond the purview of HSSD and the comprehensive shelter strategy, we provide relevant excerpts in the box to the left from the Regional Task Force on Homelessness' ["Policy Guidelines for Regional Response for Addressing Unsheltered Homelessness and Encampments Throughout San Diego County"](#) for Council to consider as it relates to the proposed ordinance.

Similar Laws in Other California Cities

With the rise of unsheltered homelessness in many areas in California, various cities have contemplated and passed ordinances prohibiting camping and other related activities on public property. To provide comparison points, this section discusses how Los Angeles, Oakland, Sacramento, and Santa Cruz approached homeless encampments. To highlight some key differences compared to the proposed ordinance, Los Angeles requires City Council approval of certain designated sites and has adopted an outreach plan to engage encampments before a new designated site is added; Oakland prioritizes high-sensitivity

areas to clear of encampments but does not allow for citations or arrests; Sacramento voters passed a ballot measure prohibiting encampments which is contingent on (1) a formalized agreement between the City and County and (2) newly authorized emergency shelter space and a shelter bed utilization threshold tied to the estimated unsheltered population; and Santa Cruz’s ordinance can only be enforced once a storage center and 150 new safe sleeping or shelter spaces are opened.

Los Angeles

In recent years, the City of Los Angeles has amended its municipal code to prohibit an individual from sitting, lying, sleeping, or having personal property in the public right-of-way, in areas designated as “sensitive use,” and other areas where signage is posted prohibiting such activities. Sensitive use areas are public parks or public libraries, and the ordinance is enforceable up to a maximum of 500 feet of the sensitive use area. The code also prohibits these activities near specified areas of high automobile or pedestrian traffic, public transportation, shelter, safe sleeping, safe parking, or homeless services navigation centers. Notably, the prohibitions in these areas are only enforceable if (1) the City Council takes action to designate an area for enforcement under the code section, (2) signage is posted at the designated area, and (3) at least 14 calendar days have passed since the signage was posted. The first set of locations approved by the Los Angeles City Council included 54 sites, and the Council continues to add sites for enforcement. In August 2022, the City Council approved an amendment to prohibit sitting, lying, sleeping, or having personal property within 500 feet of a school or day care center, in addition to those areas Council designates for enforcement. Individuals who violate these laws may face an infraction citation, misdemeanor prosecution, or be referred to a diversion program. In April 2023, the City Council requested a review of the effectiveness and financial costs associated with the implementation of the prohibition of encampments at specified sites.

The Los Angeles City Council also adopted a [Citywide Street Engagement Strategy](#) alongside these legislative changes. The strategy allows time for outreach teams to conduct an initial assessment of a proposed designated site and collaboration across service providers to offer shelter, housing, and other resources to individuals at the encampment weeks before enforcement begins. In addition to the street engagement strategy, the Mayor of Los Angeles also announced the [Inside Safe Initiative](#) in December 2022. The initiative targets specific locations throughout the City to resolve encampments through outreach and offers of shelter, housing, and services. However, even with such intensive efforts, [recent reports](#) indicate that the initiative has encountered significant problems related to substance use disorders, serious mental health issues, criminal activity, and service resistance. Recently, the City Council took steps to approve \$250 million proposed for the initiative in FY 2024.

Oakland

In October 2020, the Oakland City Council adopted an [Encampment Management Policy](#) that prioritized maintaining high-sensitivity areas free of encampments. High-sensitivity areas include high fire severity zones; within 150 feet of an elementary school, middle school, preschool, or child care center; within 100 feet of a high school; within 50 feet of a protected waterway, residence, retail business, main entrance and emergency exits from all other businesses including places of worship, city park, other public land with children-oriented play structures or programming; and areas within 25 feet of emergency shelter interventions. The policy states “[t]he City will not cite or arrest any individual solely for camping, or otherwise for the status of being

homeless, and will make reasonable efforts to allow and, where feasible, assist the encamped individual with gaining compliance with the encampment standards outlined in this policy.” An interdepartmental team is responsible for implementing and tracking efforts related to the policy. According to the City’s [Homelessness and Encampment Response](#) website, more than 200 encampments have been completely cleared without option to return in the 2022 calendar year.

Sacramento

In November 2022, Sacramento voters approved [Measure O](#) or the “Emergency Shelter and Enforcement Act of 2022”, which was placed on the ballot by the Sacramento City Council. The measure added an ordinance to the Sacramento City Code requiring certain conditions be met before a prohibition on unlawful camping could be enforced. For the ordinance to be operative, the City and County must first enter into a legally binding partnership agreement establishing their respective roles related to mental health services, substance abuse services, outreach and case management, child welfare services, and domestic violence services. Within 90 days of the ordinance going into effect, the City must authorize new emergency shelter spaces equivalent to 12% of the estimated number of unsheltered individuals in the City. If in any given month afterwards, the utilization rate is higher than 60%, within 30 days, the City must authorize additional emergency shelter equal to 12% of the estimated number of unsheltered individuals. The number of emergency shelter spaces the City must identify will not exceed 60% of the estimated number of unsheltered individuals. The ordinance also requires the City to perform regular outreach to individuals experiencing homelessness. When appropriate shelter is available and an individual refuses shelter or relocation, unlawful camping can be enforced on any public or private property and would constitute a misdemeanor. Residents of the City can file complaints about encampments and require the City to begin the abatement process.

Santa Cruz

In May 2021, the Santa Cruz City Council approved an [ordinance](#) prohibiting overnight camping on public property, if shelter is available. If storage or shelter are available, camping during the day on public property would be prohibited; individuals are required to remove any encampment located on public property during the day, with some exceptions for extreme weather when shelter is not available. The ordinance also prohibits individuals from occupying the same public space for more than 96 hours, regardless of availability of shelter or storage. However, the ordinance will only be enforceable once the City has opened a storage center and 150 new safe sleeping or shelter spaces. The law stipulates that additional safe sleeping or shelter spaces be in facilities that include water, handwashing stations, and portable toilets. Those in violation of the ordinance will be issued a verbal or written warning before receiving an infraction citation, which is not to exceed \$20. If violations continue after an infraction citation is issued, the violation could escalate to a misdemeanor with the potential of arrest.

Key Policy Considerations

Given the complexities and challenges associated with addressing unsheltered homelessness, Council may want to consider several policy questions during deliberation on the proposed ordinance. This section provides key policy questions and considerations.

Will the proposed ordinance result in desired behavior change?

The stated goal for this ordinance is to protect public health, public safety, and sensitive environments which can be threatened with the existence of homeless encampments. This ordinance is intended to compel homeless individuals to take up available shelter and services. Although the impacts of the ordinance on unsheltered individuals are hard to predict, a deeper understanding of why individuals might refuse shelter or services and whether the ordinance (and its associated actions, such as safe sleeping sites) could address these underlying concerns could provide helpful insights. A [2020 San Diego State University](#) study based on in-depth interviews with 84 individuals who lived in or near the San Diego river beds and canyons found that study participants were likely to avoid the shelter system or be disconnected from services. Shelter avoidance was due to factors such as “not being able to stay with one’s partner or pet, lack of safety, the risk of having one’s possessions stolen, and not trusting other unsheltered people.” The study found prevalent physical health, mental health, and apparent substance use challenges among the participants. The study also described a desire to avoid law enforcement as a motivation for some to live in more remote areas. A [2019 RAND](#) study focusing on homeless veterans in Los Angeles found that autonomy, privacy, safety, security, and shelter rules that might reduce one’s sense of self-determination factored into an individual’s decision to accept shelter. Leaving a certain community, including social connections, to stay in shelter, and the general lack of available appropriate shelter in the City were also factors mentioned during our stakeholder conversations. The HSSD comprehensive shelter strategy, as previously discussed, takes initial steps to address some underlying concerns by identifying the different types of shelter beds needed to serve the unsheltered population. Furthermore, unsheltered individuals could be more receptive to safe sleeping as an alternative to traditional congregate shelter from a safety and privacy perspective.

Without other changes, especially related to increased shelter and services, shelter resistance could persist. According to NPD, the Division would largely continue status quo operations if the ordinance is approved, with unauthorized camping as an additional charge on citations or arrest warrants when appropriate. However, if the tools currently available to NPD to enforce encroachment and threaten arrest for encroachment do not seem to effectively motivate changes in behavior and compel unsheltered individuals to accept shelter, it remains unclear that enforcement of unauthorized camping as an additional tool would change this outcome. On the other hand, potential reasons why the ordinance could motivate behavior change, as mentioned by various stakeholders, include additional clarity on the City’s approach, setting the expectation that unauthorized camping on public property is unacceptable in the City, and a higher likelihood of prosecution.

Should the ordinance pass, the City Council may wish to request information to assess the effectiveness of the ordinance. For instance, Council could request regular reporting from NPD on the number of citations and arrests under unauthorized camping, including a breakdown of repeat offenders and, if possible, racial breakdowns to monitor the equity impacts of the ordinance. Council may also wish to request data on the number of individuals successfully connected to shelter through NPD, the outcomes of individuals connected to shelter through NPD referrals, and the number of cases prosecuted by the City Attorney’s Office for unauthorized camping, as well as potentially identify ways to systemically collect data on why individuals refuse shelter through HSSD homelessness outreach to continually identify system gaps.

How will the ordinance affect the City's existing shelter system and support services?

The significant increase in unsheltered homelessness reflected in the 2023 Point-in-Time counts and HSSD's anticipated replacement of a significant share of existing shelter beds are two factors that place additional strain and pressure on the City's shelter system. To the extent that this ordinance compels individuals experiencing homelessness to seek shelter, Council should also consider how such increased demand would affect the City's shelter capacity and how the City would get enough beds online, especially with 930 existing beds set for replacement by December 2024. On any given day, the City's shelter system does not have sufficient beds or different types of beds to accommodate all those requesting shelter. As an example, on June 5, 2023, the Coordinated Intake System received 35 requests for shelter from SDPD (6) and service providers (29), but only 20% of those requests were fulfilled. The reasons cited for incomplete referrals include a lack of bottom bunks for males (8) and females (5) and a lack of top bunks for males (15). The proposed ordinance would increase pressure for individuals to move, accept shelter, or face punitive measures, and, as a result, the City will face increased pressure to provide sufficient shelter (including safe camping) for unsheltered individuals. However, even with the 536 tent spaces from the two planned safe camping sites operating at full capacity, the City would still lack sufficient shelter space for the vast majority of the estimated 3,285 unsheltered individuals, based on San Diego's 2023 Point-in-Time count. With routine referrals going unfulfilled even without the ordinance in place, **Council should consider how the ordinance might impact the existing demand and limited supply of shelter beds and how implementation of the proposed ordinance could more closely be connected to having sufficient appropriate and available shelter space.** For instance, the City of Santa Cruz made their ordinance contingent on the creation of new safe sleeping spaces, and the City of Sacramento's measure required a certain threshold of authorized shelter space based on the unsheltered count before the camping prohibition could be enforced. Guidance should be given to HSSD on the timeline for increasing shelter capacity, especially in relation to the implementation of the proposed ordinance. Such linkages could be beneficial if the planned safe camping sites are not sufficient or delayed in the near term or if the City unexpectedly loses shelter beds.

Are there other alternative approaches to address encampments?

Council may wish to consider alternative approaches to address encampments either in addition to or in lieu of the proposed ordinance. For instance, HSSD is currently administering the State-awarded Encampment Resolution Grant, which provides \$2.4 million to provide direct services and housing options for individuals experiencing unsheltered homelessness in the E Street encampment. As this work progresses, the Department may develop best practices and lessons learned from the housing- and service-based approach used to resolve unsheltered homelessness, as well as suggest approaches to replicate for other encampments. The Department has also applied for additional Encampment Resolution Grant funding for other areas of the City. Council may also want to explore how alternative pathways can be used to connect individuals to needed mental health or substance use disorder treatment. This includes the Prosecution and Law Enforcement Assisted Diversion Services (PLEADS) and the Lifesaving Intervention for Treatment (LIFT) program. PLEADS is a collaboration between the City Attorney's Office, SDPD, and the County, which began in November 2019. PLEADS is a voluntary diversion pathway for individuals to avoid prosecution and jail time by agreeing to accept addiction treatment and other support services. Individuals suspected of being under the influence of a controlled substance in public can

be referred by SDPD to the program. Although NPD indicated to us that individuals referred to PLEADS must only be under the influence and have no other violations, Council may wish to explore if changes to the program could be warranted to connect more unsheltered individuals to treatment given the high rates of substance use disorder among the unsheltered population. The City Attorney's Office administers the LIFT program to (1) assess individuals with co-occurring conditions who have cycled through the criminal justice system, (2) make referrals to the County for services, and (3) make referrals for conservatorships. Lastly, Council could also consider how homelessness outreach would be best utilized during the implementation of the ordinance. The use of homelessness outreach to conduct an initial site and needs assessment of encampments and offer services in Los Angeles during their implementation of a similar ordinance is one example of how outreach might help resolve encampments prior to contact with law enforcement. **Council may wish to consider how alternative approaches, such as encampment resolution services, PLEADS, LIFT, and homelessness outreach, could be employed to complement the proposed ordinance and improve outcomes for unsheltered individuals.**

Which locations should be considered sensitive areas?

As mentioned in the legal analysis of the ordinance provided by the City Attorney's Office, Council should give due consideration to what constitutes a sensitive area, where unauthorized camping is prohibited at all times. The legal analysis suggests that Council should consider whether clear public health or safety concerns can be articulated for each location that is identified as a sensitive area, in case the ordinance needs to be defended in court. As one example, we met with Father Joe's Villages to discuss the implications of having encampments near shelters, which are proposed as sensitive areas. Encampments near shelters pose safety challenges to staff and clients, hurts community acceptance for more shelter, increases vulnerability of shelter residents to drug use, and reflects poorly on the shelter operator. However, at the same time, unsheltered individuals might also benefit from camping near shelters, as shelters often have security present and access to naloxone, a medication that reverses opioid overdoses – both of which can protect and even save the lives of unsheltered individuals. Additionally, the Land Use and Housing Committee request to include all parks as sensitive areas resulted in a compromise that the ordinance would only be enforced in parks where signage is posted, with these parks determined based on past complaints indicating public safety concerns. **Council should consider the defensibility of placing signs in parks that have no clear public health or safety concern.** Given that some sensitive areas as proposed may not have clear public health or safety concerns, another option Council has is to initially narrow the definition of sensitive areas to those with a clear nexus to public health or safety (such as schools, open spaces, waterways, and transit infrastructure) and consider adding additional sites in the future. This gradual approach could also allow for smoother implementation, as operational impacts of the ordinance would be clearer after the initial set of sensitive areas become enforced.

How might the ordinance affect regional or statewide dynamics related to homelessness?

Based on San Diego's 2023 Point-in-Time Count, 80% of those surveyed reported they became homeless in San Diego County, meaning that 20% became homeless elsewhere – attesting to the flow of individuals experiencing homelessness into (and possibly also out of) the region, which appears to have increased since 2022. For comparison, the 2022 count found 85% reported becoming homeless in the County and 15% came from elsewhere. Although many individuals might stay in the area where they first became homeless, there could be regional and even statewide

consequences associated with the ordinance. For example, following the clearing of encampments in Los Angeles, neighboring Culver City passed an [ordinance](#) prohibiting camping on public property, due to concerns that encampments from Los Angeles would move to Culver City. Hence, if San Diego were to pass the ordinance, it is possible other localities in the region might pass similar ordinances in anticipation of more unsheltered individuals leaving the City of San Diego for nearby areas. Similarly, with large cities throughout California prohibiting camping or related activities in certain areas or throughout public spaces, the Council may wish to consider the implications if San Diego were the only large city in California *not* to have similar prohibitions in place, and any impact this could have on movement of unsheltered individuals from other regions.

CONCLUSION

This report provides a discussion of fiscal and policy considerations related to the proposed ordinance on unauthorized camping. We also describe how such issues are currently addressed by law enforcement, compare the ordinance to current practice, and provide examples from other cities with similar ordinances.

Long-term fiscal impacts associated with ordinance implementation remain largely unknown; while SDPD and ESD indicate that they may be able to absorb potential costs initially, Council should monitor both operational impacts and potential costs during implementation of the ordinance if enacted. Although SDPD currently uses a reactive approach to address homelessness issues, the Department indicated it would also proactively enforce the ordinance using existing resources in the near-term, but there may be unanticipated costs to the shift towards proactive enforcement since this would be a higher level of service. ESD abatement operations would gain operational efficiencies by using the 24-hour notice period, and costs associated with the ordinance, if any, would likely be absorbable. The City Attorney's Office would likely experience some increased workload due to initial review for unauthorized camping cases and possibly higher rates of prosecuting such cases, but these costs, too, remain unknown. The cost of printing signage would likely be less than \$400,000 one-time, but labor costs associated with posting signs are unknown but would likely be minimal. Costs for implementing new sleeping sites range from \$1.0 million (for one site) to \$15.4 million (for two sites) ongoing.

Along with fiscal considerations, we stress that the actual impacts of the proposed ordinance remain unknown. NPD would largely continue current operations if the ordinance is approved, with unauthorized camping as an additional charge. However, if the tools currently available to NPD through encroachment and illegal lodging do not appear to effectively motivate changes in behavior and compel unsheltered individuals to accept shelter when it is available, it remains unclear how enforcement of unauthorized camping as *an additional charge* would change this outcome. It will therefore be critical to regularly receive updates on the implementation of this ordinance, and its effects, if it is adopted.

This report also provides key policy considerations, related to the effectiveness of the ordinance in changing behavior, impacts to the shelter system, alternative approaches to addressing encampments, the locations included as sensitive areas, and how the ordinance may affect regional and statewide dynamics related to homelessness. Paramount to this discussion is whether the proposed ordinance would result in the desired behavior change, and if not, how the City could better address and resolve unsheltered homelessness. We suggest that

Council request regular reports on the implementation and effectiveness of this ordinance which could shed light on this matter.

Our Office appreciates the opportunity to explore these issues and continues to be available to assist Council with any future next steps.



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