

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Omar Passons

**SUBJECT:** SEE BELOW

**DATE:** August 30, 2023

Approved



Date

8/30/23

## INFORMATION

**SUBJECT: APPROACHES TO MANAGING THE HOMELESSNESS CRISIS IN ENCAMPMENTS AND OTHER LOCATIONS – CLARIFYING PROTOCOLS**

The purpose of this memorandum is to provide the Mayor and City Council with information about City protocols with regard to managing the homelessness crisis in encampments and other locations within the City of San José.

## BACKGROUND

Given the complexity of homelessness, there can be confusion and uncertainty when trying to understand what the City can do within the law to manage some of the impacts of the homelessness crisis. This confusion can make it difficult to set expectations for members of the community about what the City is permitted to do to address various scenarios that involve interactions with people who are experiencing unsheltered homelessness, either in encampments or in other locations.

## ANALYSIS

### Who to Contact Regarding an Encampment?

Residents who identify an issue specific to an encampment can report that encampment to the Parks, Recreation, and Neighborhood Services Department's Beautify San José via its online Encampment Management Intake Form.<sup>1</sup>

<sup>1</sup> Encampment Management Intake Form Link: <https://www.sanjoseca.gov/your-government/departments-offices/parks-recreation-neighborhood-services/beautifysj/beautifysj-encampment-management-intake-form>

Reporting issues with encampments is not the purpose of the Housing Department's Homeless Concerns line, which exists to help provide resources to people who are unhoused and connect them to services and housing, when available. However, residents wishing to help people experiencing homelessness locate shelter may refer them to Bill Wilson Center's *Here4You* line at (408) 385-2400.<sup>2</sup>

Note that reporting an encampment does not necessarily mean it will be removed. The City Council adopted an Encampment Management Strategy because there are currently not enough resources to house/shelter the more than 4,400 people who experience homelessness on San José streets or in vehicles on any given night. The memorandum regarding that Encampment Management policy was adopted by the City Council on April 29, 2022.<sup>3</sup> This memorandum is the direction from the Mayor and City Council adopting that policy for City staff implementation that confirms the current approach.

When Parks, Recreation, and Neighborhood Services Department staff receives an Encampment Management Intake Form, staff will evaluate a given location to potentially provide more regular trash service, to do a large-scale clean-up to reduce the size of the encampment, or under certain circumstances when specific violations of the existing policy exist, to abate or remove the encampment. Please find more information about the City Council-approved Encampment Management Strategy on the Parks, Recreation, and Neighborhood Services Department website.<sup>4</sup>

The City Council may choose to bring forward direction to modify the current policy in the future. If approved and funded, any direction would be implemented by the respective Departments in coordination with the City Manager's Office.

### **What Happens if a Resident Sees a Fire?**

If a resident sees a fire being lit or witness an active fire, they should contact 9-1-1 so that the Fire Department can be dispatched as appropriate.

### **What Should be Done to Report a Crime?**

As with crimes committed in permanent homes or any other place, criminal activity should be reported to the San José Police Department by calling 9-1-1. However, the mere state of experiencing homelessness is not a crime.

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<sup>2</sup> The *Here4You* website can be found here: <https://www.billwilsoncenter.org/services/all/here4you.html>

<sup>3</sup> City Roadmap – Encampment Management and Safe Relocation Policy, April 29, 2022.

<https://sanjose.legistar.com/View.ashx?M=F&ID=10860685&GUID=3BEB1411-FBEC-4F19-9163-CC120C6ED303>

<sup>4</sup> Parks, Recreation, and Neighborhood Services – Encampment Management Program website:

<https://www.sanjoseca.gov/your-government/departments-offices/parks-recreation-neighborhood-services/beautifysj/encampment-management-program>

The City enforces existing laws and manages the use of public spaces, including where people are permitted to be in the public right of way. The Administration also takes into account policy considerations when recommending responses to the direction of the Mayor and City Council based on the expertise of the professional staff charged with City operations. This expertise is informed by members of the community – both those with lived experience of homelessness and other members of the community.

### **Current Abatement Protocols**

Homelessness is a crisis in San José that impacts all residents. For those living outside, there are dangers and difficulties meeting basic needs, including receiving supportive health and social services. For other members of the community who have homes, the crisis can present challenges ranging from interactions that may be uncomfortable for some but pose no legal issue to interactions that may be illegal and inappropriate.

#### *Actions During Abatement Activities*

The City's current practice with regard to abatements provides for advanced notice for all non-emergency abatements and includes outreach or notification for the purpose of connecting people to housing and services as these are available. In addition, the City's current practice suspends abatement activities when the weather forecast indicates the temperature will exceed 88 degrees, if there is heavy rain, or if air quality is poor because of smoke from nearby large fires.

Except in cases of emergency abatement, per the Encampment Management Policy, the City posts a 72-hour notice of abatement at the encampment site to give a person the opportunity to move from the location. After that time, an abatement may happen, typically any time between four days and two weeks, depending on the number of pending actions, inclement weather, or other factors.

Moving forward, the City will continue to follow its existing setback guidelines<sup>5</sup> for locations where people are not permitted to establish encampments. It will also continue the 12x12 Good Neighbor Policy established to manage encampments and maintain cleanliness as much as possible while alternative solutions are found. Further refinements to these policies may be made as needed, in coordination with appropriate Department staff, and communicated publicly.

#### *Evaluating Common Scenarios*

For ease in understanding how the City addresses various interactions, the **Attachment - Application of *Martin v. City of Boise* to Unhoused Engagement Scenarios** provides common scenarios and the actions staff currently undertake in response to those scenarios. *Martin v. City of Boise* is a federal court case applicable to California and other Western states that provides a framework for local municipalities managing the homelessness crisis in public spaces. This Attachment does not address every potential scenario because there is a wide diversity of unique

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<sup>5</sup> May 3, 2022 City Council Memorandum: City Roadmap, Encampment Management and Safe Relocation Policy <https://sanjose.legistar.com/View.ashx?M=F&ID=10860685&GUID=3BEB1411-FBEC-4F19-9163-CC120C6ED303>

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interactions. Further, because certain scenarios are subject to additional policy direction from the Mayor and City Council, some circumstances may only be clarified at subsequent meetings of the City Council.



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For questions about this memorandum, please contact Omar Passons, Deputy City Manager for Homelessness, at [omar.passons@sanjoseca.gov](mailto:omar.passons@sanjoseca.gov).

Attachment: Application of *Martin v. City of Boise* to Unhoused Engagement Scenarios

### Application of *Martin v. Boise* to Unhoused Engagement Scenarios

Engagement Scenario	Current Approach	Changes to Approach
A person is sitting, lying, or sleeping on a public street obstructing traffic in violation of the law.	Immediate abatement (within 24 hours) to ensure safety of the individual and the public.	Immediate (within 24 hours) response and evaluation, which may include citation, arrest or other action depending on the specifics of the violation, to ensure safety of the individual and the public.
A person is sitting, lying, sleeping, or has set up an encampment on a public sidewalk.	Assessment is done to determine how much of the right-of-way is being blocked. If there is a three-foot-wide area to pass, enforcement in two+ weeks out may be scheduled. If less than three feet, immediate enforcement is warranted for blocking right-of-way that may impact people with disabilities.	No change.
A person is blocking the entrance to a home or business.	An assessment is done to determine whether public or private property is blocked; if it is a public right-of-way such as a sidewalk, if less than three feet is available to pass, then immediate enforcement is warranted. An abatement can take between four days to two weeks, depending on the number of other pending actions, inclement weather, or other factors. If the person is on private property, the property owner has options, such as seeking the help of contract service provider (private property owners should call 2-1-1 or visit <a href="http://211bayarea.org">211bayarea.org</a> for a referral) or calling the police to address the issue. The City generally does not abate on private property unless the property is used or maintained in a manner that makes the property unsafe, hazardous, dangerous, in which case it typically takes 24-72 hours, or is creating a public nuisance. If a public nuisance is determined and	No change.

Attachment

	not resolved by the private property owner, it can take several days to months to resolve depending on the circumstances.	
A person, encampment, or vehicle is located on private or certain quasi-public property, e.g., Valley Water District or other property for which contract arrangements with the City of San José exist.	If the person, encampment, or vehicle is located on private property, the property owner has options, such as seeking the help of contract service providers (private property owners should call 2-1-1 or visit 211bayarea.org for a referral) or calling the police to address the issue. The City generally does not abate on private property, unless a property is maintained or used in a manner that makes the property unsafe, hazardous, dangerous, in which case it typically takes 24-72 hours, or becomes a public nuisance or the City has entered into an agreement with the private property owner. If a public nuisance is determined and not resolved by the private property owner, it can take several days to months to resolve depending on the circumstances.	No change.
A person is encamped in a public park or other public spaces.	Upon notification, an abatement can take between four days to two weeks, depending on the number of other pending actions, inclement weather, or other factors. City will abate to ensure access to playgrounds, trails, community centers or libraries, inside City parking lots.	No change.
A person is encamped within 150 feet of a school or playground.	Upon notification, an abatement can take between four days to two weeks, depending on the number of other pending actions, inclement weather, or other factors. City staff does abate within these locations, when resources are available, as this is within the buffer zone as defined by the Encampment	No change. The handling of this scenario may change because it is pending current direction from the City Council to establish a buffer zone 150 feet around preschools and licensed childcare facilities. The action will return to City Council later this year.

Attachment

	Management and Safe Relocation Policy.	
A person is encamped and obstructing or blocking public infrastructure. (e.g., utility box).	City will provide abatement services within two weeks. Abatement can be immediate if critical infrastructure is blocked.	No change.
A person is encamped or there is a vehicle that may be involved in criminal behavior or activity.	When the Police Department is notified, and it is determined that an immediate abatement is warranted and can be justified, then the Police Department would notify the Parks, Recreation, and Neighborhood Services Department Beautify San José team to complete any subsequent debris removal or encampment abatement procedures, which may take between four days to two weeks to complete.	No change.
A person is parked and living in a vehicle or RV on a public street, is not obstructing ingress and egress, and is not posing a significant or immediate public health or safety concern.	The Police Department does not abate unless in coordination with, or at the request of, the Parks, Recreation and Neighborhood Services or Housing Departments (e.g., Guadalupe Gardens large abatement, potential safety risk, etc.). Forcibly removing someone from a lived-in vehicle during a large-scale abatement may involve obtaining a warrant.	No change. The handling of this scenario may change because it is pending current direction from the City Council to establish a buffer zone 150 feet around preschools and licensed childcare facilities. The action will return to City Council later this year.