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City Attorney's Office

REVISED AT 10/20/2020 CITY COUNCIL MEETING

OAKLAND CITY COUNCIL

RESOLUTION NO. 88341 C.M.S.

A RESOLUTION ADOPTING THE 2020 ENCAMPMENT MANAGEMENT POLICY, TO BE IMPLEMENTED BY THE ADMINISTRATION UPON ADOPTION

WHEREAS, the City of Oakland has experienced a 47 percent increase in its homeless population between 2017 and 2019, the majority of whom live in tents, make-shift structures, vehicles, and places not meant for human habitation; and

WHEREAS, the number of tent and vehicle encampments tracked in Oakland currently exceeds 140, with over half of these encampments considered of significant size; and

WHEREAS, the adverse impacts of tent and vehicle encampments in Oakland continue to increase significantly, including a rise in service calls for fire, assault, robbery, drug trafficking, right-of-way obstructions, storage of combustible materials, and illegal electrical wiring, all of which jeopardizes housed and unhoused residents safety and health; and

WHEREAS, similar increases have been reported throughout the State of California, prompting the creation of statewide homelessness task force by Governor Gavin Newsom; and

WHEREAS, the City of Oakland voters passed the 2020 Oakland Parks and Recreation Preservation, Litter Reduction, and Homelessness Support Act (Measure Q) in March 2020 to support the maintenance of parks, water quality, and homelessness services; and

WHEREAS, this encampment management policy is related to the second prong of the City's three-prong approach to addressing our homelessness crisis, which includes: (1) prevention incorporating our Keep Oakland House programs, (2) crisis management and response, and (3) long-term housing for our unhoused residents; and

WHEREAS, the City recognizes the need for varied interventions to address the need of unsheltered residents or those at risk of homelessness, including but not limited to shelter services, emergency beds, safe parking sites, hygiene services, prevention services, and employment services;

WHEREAS, at the request of the City Council, the City Administrator undertook the development of a new encampment management policy in coordination with multiple City departments; and

WHEREAS, a draft policy was presented to the Life Enrichment Committee on September 21, 2020, and feedback from the committee members and the public was received and considered; and

WHEREAS, the City Administrator has set forth in its entirety the policy that was developed in coordination with multiple City departments as the "2020 Encampment Management Policy" in Exhibit A to this resolution; and

WHEREAS, it is understood that staff will implement the 2020 Encampment Management Policy as written, and shall not deviate from the principles set forth therein without returning to Council, except that it is understood that during the current COVID-19 emergency, increased risk of exposure to the virus shall be a vital consideration as part of implementation of this Policy; now, therefore, be it

RESOLVED: That the City Council adopts the proposed 2020 Encampment Management Policy (EMP), set forth in its entirety in Exhibit A to this resolution (document #2987429v1), which outlines a comprehensive process to mitigate the adverse impacts of tent and vehicle encampments on housed and unhoused residents, focusing encampment interventions on the mitigation of negative outcomes related to public safety and public health hazards; and be it

FURTHER RESOLVED: That the City Administrator or their designee shall provide an implementation update to the Council's Life Enrichment Committee within four month of Council adoption followed by semi-annual updates to the City Council and the public by issuing informational memoranda that reports EMP outcomes and analyses; and be it

FURTHER RESOLVED: That the Homeless Advisory Commission shall review the policy and implementation plan, and provide recommendations to the Life Enrichment Committee within four months after Council adoption and annually thereafter; and be it

FURTHER RESOLVED: That, in accordance with the City Charter, the City Administrator or their designee, shall be responsible for overall implementation of this policy and for directing coordination among city departments, and shall engage the new Homeless Advisory Commission for input and advice on implementation of this policy; and be it

FURTHER RESOLVED: That the Homeless Audit findings shall be incorporated into the informational report to the Life Enrichment Committee four months after Council adoption of the policy; and be it

FURTHER RESOLVED: That any recommendations from the Reimagining Public Safety Task Force regarding police response or involvement in homeless issues and police alternatives related to homeless issues shall be considered for incorporation into the policy and for adoption in the FY 2021 - 2023 budget process; and be it

FURTHER RESOLVED: The City Administration shall immediately work to establish part of the currently unused acreage of the Army Base Site as a place to be for homeless residents living in high sensitivity areas of District 3. This should accommodate both RVs and people living in tents on an emergency basis until negotiations with future tenants are completed; and be it

FURTHER RESOLVED: The City Administration shall work to identify comparable areas across all seven council districts to host encampments. Where public spaces are not available, the City may work with private organizations, such as churches to use their site for camping; and be it

FURTHER RESOLVED: The City Administration shall prioritize the encampment on Martin Luther King Jr. Way heading north from Grand Avenue for immediate services, disallowing camping along the west side of that stretch of Martin Luther King Jr. Way and in the bike lane on both sides of the street, and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to negotiate, submit and execute all documents, including, but not limited to, applications, contracts, grant agreements, amendments, payment requests, reports, and to take all related actions necessary to carry out the implementation of the EMP; and be it,

FURTHER RESOLVED: That any corresponding agreements shall be reviewed and approved by the Office of the City Attorney for form and legality prior to execution and executed copies placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

OCT 20 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


ASHA REED

Acting City Clerk and Clerk of the Council
of the City of Oakland, California

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I. INTRODUCTION

In December 2019, the Oakland City Council adopted the Permanent Access to Housing (PATH) Framework, which among other things, recommended strategies and interventions to address the growing homelessness crisis in Oakland.

The PATH Framework groups response strategies into three major categories:

1. **Prevention:** to protect vulnerable tenants from losing the housing they have and stabilizing those most at risk of becoming homeless;
2. **Emergency Response:** to shelter and rehouse households and improve health and safety on the street.
3. **Housing Development:** to expand the number of Extremely Low Income (ELI) and Permanent Supportive Housing (PSH) units prioritized for individuals and families experiencing homelessness.

Prevention strategies and affordable housing development strategies are not addressed in this particular policy; however, it is important to acknowledge that the emergency response strategies outlined in this policy fall within a broader framework to ultimately exit unhoused individuals and families from the homelessness system to permanent housing.

The PATH Framework specifically called for the development of an Encampment Management Policy to address the adverse health and safety impacts of unsheltered homelessness, with compassion and care to not criminalize poverty. Additionally, the PATH Framework highlights the importance of developing an encampment policy through a race and equity lens, given the disproportionate impact of homelessness on African Americans in Oakland, as well as disproportionate health and safety impacts from encampments on low income communities of color.

A. Equity Considerations

African Americans are disproportionately impacted by unsheltered homelessness. In Oakland, 70 percent of the homeless population are African American and the vast majority of known encampments at this time are located within communities of concern. For these reasons, this policy was developed with an intentional focus on the following equity outcomes:

- Health and safety standards are achieved and maintained for encampment residents who are disproportionately Black, Indigenous, and Persons of Color (BIPOC)
- BIPOC neighborhoods and businesses are not disproportionately impacted by vehicle and street encampments
- Service provisions close disparities in BIPOC groups' representation in homelessness

An equity impact analysis will be conducted in coordination with the City's Department of Race and Equity after the adoption and implementation of this policy to ensure the stated outcomes above are achieved and maintained.

It is important to note that an equity impact analysis is a comprehensive process that begins during the policy development stage and extends well into the implementation and evaluation stage of the policy process.

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To this end, this policy will undergo a semi-annual equity review to determine its effectiveness in relation to the equity indicators and outcomes consistent with the guidance and best practices promoted by the City's Department of Race and Equity.

B. Public Safety Considerations

It is important to distinguish between public safety "emergencies" and public safety "factors" to determine the appropriate encampment intervention. **Public safety emergencies requiring a fire, medical, and/or police response should be immediately reported to 911, and those departments shall respond according to the ordinances, codes, statutes, and/or regulations under which they operate and are authorized to enforce (e.g. Health & Safety Code, Fire Code, Penal Code, etc.). The status of being unsheltered does not create immunity from generally enforced state codes and local ordinances.** For example, the investigation of crimes committed at encampments, especially violent crimes, arson, and narcotics trafficking, shall be conducted consistent with the laws and policies that currently govern all other criminal investigations, irrespective of location or whether the suspect is sheltered or unsheltered. Although the City does not enforce ordinances or policies that criminalize the "status" of being homeless (e.g. citing or arresting for sitting, lying, or sleeping outdoors), the City will enforce ordinances and policies aimed at punishing criminal conduct unrelated to the status of being homeless (e.g. drug and sex trafficking, arson, assault, vandalism, etc.). The City shall enforce against all criminal activities in encampments regardless of housing status.

Regarding public safety factors that are not necessarily public safety emergencies (e.g. accumulation of trash/debris, right-of-way obstructions, distancing of tents/vehicles/structures, etc.), the Encampment Management Team shall determine the level of intervention depending on specific findings, which are presented later in this policy.

C. Encampment Management Team

The Encampment Management Team (EMT) is an interdepartmental working group tasked with implementing and administering this policy, consisting of representatives from Oakland's Public Works Department ("OPW"), Human Services Department ("HSD"), Oakland Police Department ("OPD"), Oakland Fire Department ("OFD"), the City Administrator's Office ("CAO"), and other consulted departments as necessary (e.g., the Mayor's Office, the City Attorney's Office, Parks and Recreation). The EMT is facilitated by the CAO via the Homelessness Administrator.

The division of responsibilities between each member department of the EMT may be adjusted as necessary depending on available resources, capacity, and emergency responsiveness. Each department may, from time to time, promulgate additional specific procedures necessary to effectuate the roles and duties described in this policy under department specific Standard Operating Procedures (SOPs). The CAO may also promulgate guidance to all EMT member departments that further defines each department's roles and responsibilities.

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Each stakeholder department:

- Provides regular input on issues governed by this policy, based in their departmental expertise;
- Participates in collective decision-making for any intervention proposed under this policy;
- Performs any aspect(s) of an intervention delegated to their department once the intervention is approved by the EMT under this policy; and
- Participates as needed in developing procedure(s) to effectuate this policy.

The purpose of this policy is to protect and serve all Oaklanders, sheltered and unsheltered, and to manage the adverse impacts of homeless encampments by balancing the interests of all residents (i.e. unhoused, housed, business community), focusing encampment actions on mitigating negative outcomes as they pertain to public safety, public health, and equity outcomes. This policy aims to:

1. Designate high-sensitivity areas, where unmanaged encampments are presumed to cause unreasonably high levels of health and safety impacts due to the nature of the location;
2. Designate low-sensitivity areas, where enforcement will not be prioritized.
3. Determine findings that will prompt EMT intervention;
4. Provide guidance on addressing unreasonable health and safety risks, promoting voluntary compliance, and strategies to address non-compliance.

II. DESIGNATION OF ENCAMPMENT SENSITIVITY AREAS

This policy designates two distinct areas – high and low sensitivity - with respect to presumed health and safety concerns related to vehicle and street encampments.

A. High-Sensitivity Areas

High-Sensitivity Areas are formally designated by the City Council and can include parks, particularly those with playground structures or tot lots, protected waterways, and other public lands. High-sensitivity areas are locations where the health and safety impacts of homeless encampments are heightened due to the potential degradation of critical infrastructure, restriction of public amenities or services, or significant obstructions to residences, businesses, emergency routes and rights-of-way. In these locations, the City would prioritize maintaining the areas free of encampments. Parks with playground structures or tot lots, or that host City-sponsored programs or classes for children shall be the City's highest priority high-sensitivity areas. The City Council reserves the right to allow smaller encampments in high-sensitivity areas, however, it is recommended that the operation and management of encampments in these areas be in collaboration with a managing agency. The managing agency would work in collaboration with encampment residents and the City to mitigate safety and health hazards. The managing agency can be a nonprofit organization, advocacy group, faith-based organization, another public agency, or a grassroots collective. The managing agency must meet the City's insurance requirements (or obtain a fiscal sponsor that is able to meet the City's insurance requirements). Guidance on the implementation of this model can be found in Appendix A.

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Adoption of this policy would establish the following public property locations as high-sensitivity areas:

- All vehicular traffic lanes, bike lanes, and sidewalks (at least on one side of the street) must comply with American Disabilities Act (ADA) sidewalk and street requirements and must allow for passage of emergency vehicles.
- Locations designated as High Fire Severity Zones (HFSZ) by the Oakland Fire Department and/or CalFIRE.
- Within 150 feet of an elementary, middle, pre-school or child care center, and 100 feet from a high school.
- Within 50 feet of a protected waterway as established by any governing body.
- Within 50 feet of a residence.
- Within 50 feet of a retail business, and 50 feet from the main entrance and any emergency exits from all other businesses, including places of worship.
- Within 50 feet of a city park or other public land that has a children's playground, play structure, tot lot, or recreation center in which children participate in city-sponsored programs/classes*
(*Other public parks that contain ball fields, basketball courts or tennis courts shall be discouraged as encampments, but not initially considered high-sensitivity locations.)
- ~~Within 50 feet of a public park, soccer field, baseball field, basketball court, tennis court, and/or golf course.~~
- Areas directly adjacent (within 25 feet) to emergency shelter interventions.

B. Low-Sensitivity Areas

Low-Sensitivity Areas are all other areas not included above, and the following standards are to apply to all encampments in these locations:

- Shall be limited to one side of the street.
- Shall not impede vehicle, bike, or pedestrian traffic (on at least one side of the street).
- Shall not impede ADA access points, consistent with goal of limiting encampments to one side of the street.
- Shall not impede emergency ingress/egress routes.
- Compliance with applicable and generally enforced state codes and local ordinances.
- Encampment footprint shall not exceed 12 x 12 sq. ft per person.
- Area directly adjacent to a vehicle dwelling must remain clear at all times.
- No gray or black water dumping.
- No illegal electrical or water taps.
- No storage of tires, gasoline, generators, or propane tanks, or unsafe storage of combustible materials or accumulation of combustible waste.
- Structures, tents, and vehicle dwellings shall maintain not less than six (6) feet distance between one another.

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Encampments in low-sensitivity areas are monitored and managed by the EMT (barring emergency situations that require a fire, medical, police, or other emergency response). In the case of a medical or public safety emergency, 911 should be called.

Encampments that do not comply with the standards outlined above as well as with applicable and generally enforced state codes and local ordinances are subject to EMT intervention, and inquiries and complaints should be forwarded to 311 and/or homelessness@oakalndca.gov for action.

III. EMT INTERVENTION

A. Findings Prompting EMT Intervention

Encampments located in high-sensitivity areas are always subject to EMT intervention (except for exceptions approved by the City Council) given the potential degradation of critical infrastructure, restriction of public amenities or services, or significant obstructions to residences, businesses, emergency routes and rights-of-way.

For encampments located in low-priority areas that do not meet the standards outlined above, the EMT will consider the following findings in deciding what level of intervention is appropriate.

Public health findings:

- Confirmed case(s) of infectious disease(s) (e.g., Bubonic plague, Tuberculosis, Zika, COVID-19);
- Confirmed exposure(s) to case(s) of infectious disease(s) (e.g., Bubonic plague, Tuberculosis, Zika, COVID-19);
- Excessive animal or vermin vector hazards (e.g., rats, other vector vermin);
- Presence of biological vector hazards (e.g., blood, fecal matter);
- Notice of public health emergency at an encampment site declared by a county, state, or federal public health entity;
- Need for encampment decompression as identified by public health officials; and/or
- Location of encampment in a public recreational area, or shared facility for recreational activity should such facility require repurposing, pursuant to the Order of the Alameda County Health Officer to Shelter in Place No. 20-04 or other similar subsequent orders.

Public safety findings:

- Location of encampment impedes the right-of-way, lane of traffic, bike lane, or ADA access;
- Location of encampment such that First Responders (including, but not limited to, Fire, Police, and any health care workers), are impeded in performing their essential government functions;
- Pervasive criminal activity;
- Damage to essential infrastructure (e.g., reservoirs, bridges, public utilities, drainage and sewer systems);
- Excessive amounts of waste/garbage/débris as determined by OPW.
- Proximity of encampment to objective dangers (e.g., edge of a steep slope, on an in-use train track, in a vehicular lane of traffic).

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- Excessive fire hazards and/or calls for service as determined by OFD.
- Unpermitted outside fires burning less than 30 feet away from any structure, tent, or vehicle.
- Presence of open electrical splices or illegal wiring.
- Roadway does not have 20' unobstructed width for Fire Apparatus Access
- Fire hydrant obstructions with less than three (3) feet radial clearance around hydrants.
- Storage of tires, gasoline, or propane tanks, and unsafe storage of combustible materials or accumulation of combustible waste.

The 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.

B. Types of EMT Interventions

It is the goal of the City to provide regular and adequate trash collection from encampments, to ensure that porta-potties and hand-washing stations are serviced regularly as needed, and that encampments receive regular deep cleanings to ensure that our unhoused residents not living in conditions that threaten health and/or safety.

- **Health & Hygiene Intervention.** This intervention may include placing handwashing stations, portable toilets, mobile shower facilities, providing routine waste collection services, and/or outreach services at an encampment. This intervention may be used at as many encampments as the City can reasonably serve given its resources. When possible, this intervention will be coordinated with partner public agencies. The EMT will use the 2018 Minimum Health and Safety Standards to determine which encampments are eligible for this intervention.
- **Deep Cleaning.** This intervention may require individuals encamped at a site to temporarily relocate to mitigate public safety and/or public health risks, allowing individuals to return to the site after the intervention is complete. This intervention may be used when one or more of the public safety and/or public health findings identified above are present and, due to its presence, the EMT decides that performing this intervention is necessary to protect the public. In performing this intervention, the City will make reasonable efforts to mitigate any individual or group property loss, as outlined in OPW's SOPs, but may determine that some property must be removed to protect the public. When possible, this intervention will be coordinated with relevant public agencies.
- **Partial closure.** This intervention may include partially moving and/or closing an encampment due to construction, to provide access to a work zone, or to abate ongoing public safety and/or health hazards. Affected encamped individuals will be offered shelter and/or alternative housing (or, if located in a high-sensitivity area, an opportunity to voluntarily relocate to a low-sensitivity area). This intervention may be used when the City is alerted to an impending construction or work project, and/or one or more of the public safety and/or public health findings identified above are present and, due to its presence, the EMT decides that performing this intervention is necessary to protect the public (including, but not limited to, the health and/or safety of the individuals living in the encampment). In performing this intervention, the City will make reasonable efforts to

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mitigate any individual or group property loss, as outlined in OPW's SOPs, but may determine that some property must be removed to protect the public. Additionally, the City, on its own or in conjunction with another public agency, will make offers to all affected encamped individuals of shelter and/or alternative housing.

- **Closure.** This intervention may include fully closing an encampment due to construction, to provide access to a work zone, or to abate ongoing public safety and/or health hazards. Affected encamped individuals will be offered shelter and/or alternative housing (or, if located in a high sensitivity zone, an opportunity to voluntarily relocate to a low sensitivity zone). This intervention may be used when the City is alerted to an impending construction or work project, and/or one or more of the public health and/or public safety findings identified above are present and, due to its presence, the EMT decides that performing this intervention is necessary to protect the public (including, but not limited to, the health and/or safety of the individuals living in the encampment). In performing this intervention, the City will make reasonable efforts to mitigate any individual or group property loss, as outlined by OPW's SOPs, but may determine that some property must be removed to protect the public and/or to complete the process of closing the encampment. Additionally, the City, on its own or in conjunction with another public agency, will make offers to all affected encamped individuals of shelter and/or alternative housing.

C. Public Noticing of EMT Interventions

To the extent feasible, the City will follow the procedures stated below to provide notice prior to any encampment intervention.

Non-emergency Actions

For any non-urgent intervention, the City will provide adequate notice. For Health & Hygiene interventions, the City will work with those encamped to ensure the effectiveness of the intervention. For all Deep Cleaning, Partial Closure, and Closure interventions, the City will provide at least a 72-hour notice unless there is an emergency that prevents such notice from being provided, as described in the section below. The 72-hour notice will be provided in writing, posted around the site in multiple languages, and, as feasible, verbally to those encamped.

Emergency Actions Due To Catastrophic Events, Natural Disasters, or other Urgent Health and Safety Concerns

For any emergency Deep Cleaning, Partial Closure, or Closure, the City will make reasonable efforts to provide those encamped with some form of notice, such as outreach workers visiting the site and sharing information verbally or in writing, if such notice is feasible. For certain public health or public safety interventions, like fires, the City may be unable to provide prior notice due to the nature of the emergency.

D. Storage of Individuals' Property

In performing any intervention, the City will respect and protect individuals' rights to their property while also following applicable local, state, and federal laws.

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During the course of any EMT intervention, OPW and other EMT member departments may remove debris, trash, waste, illegal dumping, hazmat, and/or other materials, following ordinary procedures with respect to handling such materials and the disposal thereof. OPW and other EMT member departments may also encounter property that is not debris, trash, waste, illegal dumping, or hazmat. For any such property: (1) whose ownership cannot be clearly determined but does not seem abandoned; or (2) whose ownership is known but the owner cannot transport it, the City will make reasonable efforts to store up to one (1) square yard of such property per individual. Any such effort will comport with OPW's ordinary practices with respect to property storage during encampment interventions. Should OPW require additional procedures for performing these property-related functions under this policy, OPW may promulgate such additional SOPs. Note that if a law enforcement agency must effectuate an arrest, the Alameda County Sheriff's Department, which operates the County's detention and incarceration facilities, will set any and all rules regarding property storage at their facilities.

While this policy is in effect, the EMT will explore reasonable methods of safe, secure, property storage potentially available to the City, including, but not limited to, OPW's storage facility; self-storage; and partnering with other public agencies or businesses to develop storage capacity.

IV. COMPLIANCE

The City must balance the rights of encamped individuals against its fundamental duty to maintain public safety and public health, in both high- and low-sensitivity areas. Where necessary, and when voluntary compliance cannot be achieved, the EMT may perform one of the four (4) interventions described above to maintain public safety and public health. The City will not cite or arrest solely for camping, but will enforce criminal laws in an ordinary manner to protect unsheltered and sheltered residents alike.

Encampments located within a high-sensitivity area that are not approved by the City Council will be subject to a Closure intervention as outlined above. Except when urgent health and safety concerns require shorter notice, encampment residents will be given 72-hours to accept an offer of shelter or alternative housing if such referrals are available. A person is also free to voluntarily relocate to a low-sensitivity area if shelter provisions are declined. All declinations will be documented. Emergency shelter provisions cannot be reserved for greater than 72-hours at a time, given the current demand.

Encampments in low-sensitivity areas that are in compliance with the standards outlined above are not subject to EMT intervention, unless an emergency arises. Outreach efforts and service offers will continue, as resources allow, with the goal of ending the individual's unsheltered status. Encampments in compliance with the standards established for low-sensitivity areas must still abide by all relevant and generally enforced local, state and federal laws.

Encampments in low-sensitivity areas that are not in compliance with the standards established in this policy are subject to EMT intervention as follows:

- Encampment residents will be notified by the EMT of any public safety and/or public health findings and, unless urgent health and safety concerns require shorter notice, will be given 72-hours to obtain voluntary compliance. Outreach workers may assist encampment residents during this period to achieve voluntary compliance.
- If the Outreach Team is unsuccessful, the encounter is documented and scheduled for a Deep Cleaning, Partial Closure, or Closure as determined by specific findings of the EMT, adhering to all noticing and storage requirements outlined above.

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The City cannot require any individual to accept any offered form of shelter and/or alternative housing, even if such acceptance is strongly recommended for public health or public safety reasons. Instead, an individual offered shelter and/or alternative housing who declines the offer may continue to camp without risk of being issued a citation or arrested for remaining encamped, unless the encampment must be partially or fully closed as described above for public health and/or public safety reasons. In those limited circumstances, the 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 in moving to a new location, and will avoid citation or arrest unless either is necessary to protect against imminent risks to public safety and alternative indoor shelter or housing has been offered and declined.

In an effort to create more shelter and housing options for individuals encamped in high sensitivity areas, the City shall launch at least one co-governed encampment pilot on public land within the next four months, working collaboratively with the unhoused community to design the program, advocates, housed and business neighbors and the Councilmember of the district.