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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Joe DeVries,
Assistant to the City
Administrator

SUBJECT: SUPPLEMENTAL-
Homeless Encampment Management
Report

DATE: February 17, 2020

City Administrator Approval

Date:

2/20/2020

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From The City Administrator On Progress Towards Implementing The Homeless Encampment Management Program Recommendations Approved By City Council On July 9, 2019.

REASON FOR SUPPLEMENTAL

On December 4, 2019 staff was scheduled to deliver an update on the Encampment Management Policy and Program at a Special Life Enrichment Committee (LEC) meeting but was unable to do so. In the interim, staff have continued to meet with LEC Members to evaluate current practices regarding encampments. Through these evaluation efforts, staff has identified a need for a new framework to address ongoing unresolved issues in encampments that requires Council action. The following report provides recommendations for City Council consideration to establish clear encampment management policies for staff to implement.

Unsheltered homelessness will remain a reality in Oakland for the indefinite future and this means that Oakland now has residents living in situations that are *not* guided by existing laws and codes. The zoning code clearly lays out where permitted residences can and cannot be located (parks, for example, are off limits per the zoning code); building, fire safety, seismic, and other codes dictate the standards of those permitted residences. If a permitted residence does not violate any of these codes, the City generally does not intervene. Staff recommends that the City Council go above and beyond what is required by local, state, and federal law to consider and create a similar set of standards for encampments, designed to address the same health and safety issues that the housing and fire codes seek to address. Such a framework would be in effect as long as the current crisis persists.

Under the status quo, City staff have been put in the position of making judgment calls about such standards and have been doing so using the Encampment Management Policy on an

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encampment-by-encampment basis. However, the adoption of an overarching set of standards will provide clarity to both City staff and the public, and adoption of such standards should occur in a public forum, by the members of the City Council.

Adopting such a policy framework would offer several benefits:

- It gives people experiencing unsheltered homelessness clear guidance on how they can pro-actively avoid enforcement; at the same time, it gives service providers or enforcement officials clear standards for engaging those unhoused Oaklanders who are unduly impacting their neighbors' health and/or safety.
- The framework reinforces equity for all as a core principal in dictating which places would be off-limits to any lodging and what are acceptable standards where lodging is permitted.
- Although lodging in public places without permission remains illegal under the California Penal Code Section 647(e), if the City should find a legal means to permit some public locations for encampments, this framework could create the standards for self-management or co-governance in those places.

Below is a list of questions that address the biggest concerns the City is hearing from those impacted by unsheltered homelessness in their community (including those living in encampments). Staff recommends that the City Council consider these questions and provide clear direction to staff to develop a Resolution that embodies the direction Council wishes to take.

1. Are there restricted areas of the City that should be off-limits to encampments at all times?

- ***Should encampments be allowed in or near City Parks?*** The benefit of such a restriction is to protect these spaces for their intended use--recreation. A potential downside of prohibiting encampments in parks would be displacement of encampments out of parks and onto City streets.
- ***What is an appropriate distance encampments should be kept from schools, youth and senior centers, or medical facilities?*** The benefit of establishing a distance rule is clarity for all involved, creating buffer areas to protect access to vital services. The potential downside is this would reduce the total number of areas in the City in which encampments would be allowed. Additionally, operationalizing the moving of encampments that are in violation could take significant time and resources, and neighborhood expectations would need to be tempered as the City assesses each site.
- ***How close to a protected waterway such as a stream, lake, or estuary should an encampment be permitted to locate?*** The CA Water Board and the Bay Conservation Development Commission (BCDC) have both raised concerns about the impact on waterways that encampments create with human waste run-off and trash that ends up in the bay. The potential challenge, like above, would be in the pace with which the City could operationalize this restriction.
- ***Should encampments be permitted in neighborhood commercial zones where sidewalks are the main access to local businesses?*** Small businesses in neighborhood commercial corridors rely heavily on foot traffic customers. Encampments that partially or fully block access to these businesses can have an outsized impact. The downside to a sidewalk encampment restriction is the potential for displacement to an

- area where another group is impacted.
- **Should encampments be prohibited under Bay Area Rapid Transit (BART) Tracks?** There is high potential of a fire disrupting the Bay Area's transportation network in these locations.
 - **Should encampments be prohibited in traffic islands or medians, from blocking bike lanes, extending into the vehicular lane of traffic, or blocking driveways?** The traffic dangers are very real in some situations and bicyclists, pedestrians, and vehicles all require ample space to traverse Oakland.
2. **What are reasonable regulations for existing encampments not located in restricted areas?** Recognizing that unsheltered Oaklanders must be able to sleep without constant fear of relocation, regulations could create a public pact: for so long as the homeless crisis persists, the City will deprioritize closures for those encampments/unsheltered residents who meet certain standards:
- **Should the City restrict encampments to one side of a street to maintain pedestrian access on the other side of the street?** In instances where the City has received official Americans with Disabilities Act (ADA) complaints, an assurance that the City would maintain one side of the street encampment-free was a successful way to avoid further action/litigation.
 - **How close to a residential address should encampments be permitted?** Some encampments have been able to avoid multiple complaints by maintaining a reasonable distance from people's homes. The downside to this would be to limit the total available space where encampments would be permitted.
 - **Should the City restrict the collecting of material to a point that it creates a fire safety risk as identified by the Fire Marshall or blocks ADA passage?** The clear presence of fire hazards is a high priority for the City to protect all people's safety. However, when City personnel have attempted to clean encampments and remove dangerous hazards, they are often met with opposition from the unsheltered and advocates that the City is taking people's belongings. People collect large amounts of material for multiple reasons, including that some unsheltered individuals suffer from mental health conditions that include a desire to hoard large amounts of material. These situations present difficult challenges and require support from mental health outreach workers.
 - **How shall the Fire Marshall inspect for a minimum degree of fire safety and structural integrity for life safety purposes in sheltering structures?** The more recent phenomena of people building mini-homes out of construction material poses new challenges for the City. Some of these structures are well-built and may come close to meeting certain life safety standards if the builders are given some basic guidance. The downside to this practice is that any structure built like this on a median or in a place deemed unsafe for an encampment poses a de facto violation and could constitute a dangerous condition under state or local law.
 - **Should RVs be permitted in Residential Zones, and for how long should they be allowed to remain in one place?** The City is operating in ambiguity in addressing people living in RVs or other vehicles, which comprises the fastest growing population of unsheltered individuals in the past two years. Anyone can park a vehicle for up to 72 hours in the same place and avoid enforcement action (unless there are other parking restrictions on the street) but when an RV takes up residence for multiple weeks in the

same location and begins to use the entire sidewalk as an extension of their home, it has an impact on the surrounding community. If the City were to restrict RVs in residential neighborhoods (as many already do), it would shift RVs out of these neighborhoods. If it were to enforce the 72-hour rule, it would significantly reduce the built-up garbage or debris in one location. The downside to this is that some RVs are non-operational and the City doesn't want to be in the position of taking someone's home through a towing action if it can be avoided. By establishing certain areas where the City wouldn't enforce the 72-hour rule, it could work with service providers to provide assistance to non-operating RV owners to be towed out of restricted areas.

- **Should there be a restriction on the size of encampments?** Some encampments have become so large that hazards are created such as blocked travel lanes or excess build-up of fire load material in one area. However, the City is currently providing health and hygiene interventions at its largest encampments which makes them more manageable and allows for a consolidation/concentration of services such as outreach, medical assistance, and mobile shower trailers. If encampments are too small and spread out, they are harder to serve.
 - **Should there be a limitation on how much area one individual uses to store their belongings while unsheltered?** As noted above, some people suffer from a desire to collect and hoard material, but others conduct business in the streets such as auto and bike repair operations that sometimes take up half of a city block. If the City Council supports a limitation, staff would have to develop detailed conditions to apply equitably across the City.
3. **Under what circumstances should enforcement take place?** Although staff work diligently to manage encampments citywide through outreach, services, and patience, and through application of the Encampment Management Policy, there are situations in which a services-first approach has been unable to mitigate the real impacts of certain encampments on their neighbors. Recent court cases including *Martin v. Boise*, have held that cities can take enforcement action to regulate where and in what manner people can be unsheltered on the streets, but cannot make the status of homelessness illegal by citing people for simply being homeless when shelter or housing options are otherwise unavailable. In this context, City staff are struggling to determine the circumstances under which enforcement for an encampment's persistent violations of existing laws and codes should occur:
- **If an encampment or person(s) within encampments persistently violate any standards laid out above, should the City ever be able to enforce against them?** The benefit of a reasonable enforcement policy is that it attempts to balance the Constitutional rights and needs of those living in encampments with the rights and needs of their neighbors in the housed and business communities who are negatively impacted. The challenges of enforcement include creating circumstances whereby unhoused people may be disproportionately burdened by criminal justice involvement.
 - **If it is decided that enforcement may take place, what are the circumstances and due processes for carrying it out?** If enforcement is to take place in certain circumstances, it is beneficial for the entire community to have guidelines about how that can be expected to take place. The lack of such guidance continues to result in general confusion among the public about how and why the City does or does not intervene when complaints are received.
 - **If enforcement results in relocation of an encampment, how should the City pro-**

actively manage relocation to ensure similar future problems do not simply occur at the new location? It is important to think about the impacts on both the sheltered and unsheltered communities if enforcement and/or relocation ever do (or do not) occur. The City is committed to balancing the needs of all its residents in an equitable way when setting and implementing policy.

Outreach Opportunity

In areas where the City has supported encampments with health and hygiene interventions, there has been success in identifying and working with site leadership. Once the City Council makes recommendations on the above questions that staff can bring back in a Resolution, staff recommends the following actions:

1. Create and distribute outreach material that explains the restrictions on encampment locations and their rationale so that the Oaklanders experiencing unsheltered homelessness are informed about community standards and are pro-actively given the opportunity to comply with these standards.
2. Identify complaints that can be mitigated by encampment residents themselves. For example, having a designated garbage location and providing plastic garbage bags to encampments will help limit the potential vector problems that encampments face.
3. Report directly to encampment residents the complaints the City has received about the encampment (such as disturbing the peace or blocking traffic lanes) in a timely manner. This will give those persons the opportunity to self-govern, change behaviors if necessary, and develop accountability that will improve the quality of life in the encampment and the surrounding area.
4. Meet with and encourage advocates such as the Homeless Advocacy Working Group (HAWG) to share these standards in partnership with the City.

Once the City Council has provided clear direction to staff, there are implementation challenges for monitoring, working with encampments to meet guidelines, and enforcement issues that will need to be addressed. Staff will need to assess how much of the city might be impacted by restrictions, what parts of the city people would relocate to if an encampment is closed, and what the impacts of that move will be on the sheltered and unsheltered community. There are existing encampments with health/hygiene services currently supported by the City that might no longer fit within restricted locations. Staff will need to create a realistic implementation timeline that manages the expectations for sheltered and unsheltered residents given existing resources.

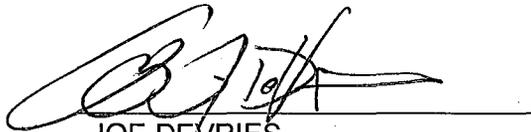
In recommending that the City Council develop such a policy framework, staff is not endorsing sanctioned encampments, nor affirming a belief that living outside indefinitely is an acceptable solution for homelessness. Staff will continue, as resources allow, to provide offers of outreach, services, and housing to people throughout Oakland's encampments, whether they are in compliance with such a framework or not. Rather, the proposed goal is to create clear, transparent, achievable, and enforceable standards that upgrade the living conditions within encampments and within the neighborhoods they exist, for as long as crisis conditions persist. Continuing to address the crisis on an encampment-by-encampment basis is not sustainable and a universal approach should be informed by Council policy guidance. Staff recommends that the City Council create a citywide agreement among sheltered and unsheltered residents that upgrades living conditions for everyone.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report From The City Administrator On Progress Towards Implementing The Homeless Encampment Management Program Recommendations Approved By City Council On July 9, 2019.

For questions regarding this report, please contact Joe DeVries, Assistant to the City Administrator at (510) 238-3083.

Respectfully submitted,



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