



Peace and Justice Commission

ACTION CALENDAR
November 12, 2024

To: Honorable Mayor and Members of the City Council
 From: Peace and Justice Commission
 Submitted by: Grace Morizawa, Chair, Peace and Justice Commission
 Subject: Resolution Opposing the Criminalization of Poverty and Homelessness

RECOMMENDATION

Adopt a resolution that the City of Berkeley Council opposing the criminalization of poverty and homelessness including:

City of Berkeley will continue to operate under the framework of *Martin v. Boise*, as permitted under the recent Supreme Court decision in *Grants Pass v. Johnson*, and refrain from any criminalization or effective prohibition of sleeping while unhoused, including citation or arrest simply for sleeping outside if no adequate shelter is available, without precluding enforcement of laws banning actions that threaten the health and safety of the whole community.

The City of Berkeley shall strengthen its commitment to connecting unhoused people with vital services including adequate short-term shelter and regional permanent supportive housing solutions.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The U.S. Supreme Court's 2024 decision in *Grants Pass v. Johnson* to reverse *Martin v. Boise* and threatens to make sleeping outside while being unhoused a crime regardless of the presence of shelter space.

Gov. Gavin Newsom's Executive Order N-1-24 on July 25, 2024 requires the removal of encampments on state lands and requests local governments to take the same action within their jurisdictions, while the Order provides no new funds for the creation of new housing or shelter, despite a shortfall of approximately 110,000 emergency shelter and transitional beds in California, and provides no direction as to where unhoused people should go once encampment evacuation orders are given.

Authorities in neighboring cities have moved to modify their policies to take advantage of the Grants Pass decision; these include the San Francisco Police Department, which now allows officers to enforce a misdemeanor for sitting or lying on a sidewalk between 7AM and 11PM, and without first requiring an offer of shelter.

The clearing of encampments has not been demonstrated to impact the long-term unhoused census; instead, it has been shown to increase the level of literal shelter-less (including tent or vehicle) sleeping by up to half.

At a special meeting on August 7, 2024, the Peace and Justice Commission adopted the following recommendation proposing City Council adopt a resolution opposing the criminalization of poverty and homelessness.

M/S/C: Lippman, McNeil

Ayes: Elias, Jacquin, Jivan, Lippman, McNeil, Mencher, Morizawa, Taylor

Noes: N/A

Abstain: N/A

Absent: Bohn, Guarino

BACKGROUND

The Berkeley City Council and of the City administration have given verbal commitments that they will not make use of the *Grants Pass v. Johnson* decision to cite or arrest unhoused persons to resolve encampments, and have conducted major cleanups with cooperation of the unhoused and enthusiastic participation of community members, and without citations, arrests, or removal.

ENVIRONMENTAL SUSTAINABILITY

No environmental effects.

RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070)

Homelessness and poverty cannot be solved merely through their criminalization; and a shift towards criminalization would seriously undermine the preferable holistic, integrated approach to addressing the low-income housing and homelessness crisis.

Given the Supreme Court recent ruling, Governor Newsom's executive order, and the quick response of some California cities to take advantage of the Grant Pass decision,

there is a need to formalize Berkeley's verbal commitment to not cite or arrest unhoused population for sleeping outside when there is no available shelter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

Okeya Vance-Dozier, Peace and Justice Commission Secretary, City Manager's Office
510-529-5376

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

Resolution Opposing the Criminalization of Poverty and Homelessness

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, the U.S. Supreme Court's 2024 decision in *Grants Pass v. Johnson* to reverse *Martin v. Boise* threatens to make sleeping outside while being unhoused a crime regardless of the presence of shelter space; and

WHEREAS, the clearing of encampments has not been demonstrated to impact the long-term unhoused census; instead, it has been shown to increase the level of literal shelterless (including tent or vehicle) sleeping by up to half;¹ and

WHEREAS, Gov. Gavin Newsom's Executive Order N-1-24 on July 25, 2024 requires the removal of encampments on state lands and requests local governments to take the same action within their jurisdictions, while the Order provides no new funds for the creation of new housing or shelter, despite a shortfall of approximately 110,000 emergency shelter and transitional beds in California, and provides no direction as to where unhoused people should go once encampment evacuation orders are given;² and

WHEREAS, Los Angeles Mayor Karen Bass has criticized the executive order, stating, "Strategies that just move people along from one neighborhood to the next or give citations instead of housing do not work,"³ and

WHEREAS, authorities in neighboring cities have moved to modify their policies to take advantage of the Grants Pass decision; these include the San Francisco Police Department, which now allows officers to enforce a misdemeanor for sitting or lying on a sidewalk between 7AM and 11PM, and without first requiring an offer of shelter;⁴ and on

¹ "Annual Trends Among the Unsheltered in Three Los Angeles Neighborhoods", Rand, https://www.rand.org/pubs/research_reports/RRA1890-4.html

² "Gavin Newsom orders state agencies to move homeless people out of camps — but to where?," CalMatters, July 25, 2024, <https://calmatters.org/housing/homelessness/2024/07/newsom-homeless-encampments-order/>

³ Calmatters

⁴ "Enforcement of Laws to Address Lodging, Encampments on Public Streets, Sidewalks, Plazas, or other Public or on Private Property or Blocking Access to those Areas," San Francisco Police Department, 7-31-2024, https://newspack-missionlocal.s3.amazonaws.com/mission/wp-content/uploads/2024/07/sfpd_notice_ML.pdf and "SFPD tells officers to clear homeless tents ahead of 'very aggressive' enforcement," Mission Local, 7-31-2024, <https://missionlocal.org/2024/07/sfpd-tells-officers-to-clear-homeless-tents-ahead-of-very-aggressive-enforcement/>

July 29, the Fresno City Council unanimously approved an ordinance to ban “public camping” with penalties up to a year in jail and/or a \$1,000 fine;⁵ and

WHEREAS, homelessness and poverty cannot be solved merely through their criminalization; and

WHEREAS, a shift towards criminalization would seriously undermine the preferable holistic, integrated approach to addressing the low-income housing and homelessness crisis; and

WHEREAS, sweeps disrupt the ability of case workers to connect with their clients, further delaying the possibility of connecting unhoused people with vital services including housing; and

WHEREAS, subjecting people already experiencing the most extreme economic distress to expensive citations can only serve to further compound their destitution; and

WHEREAS, members of the Berkeley City Council and of the City administration have given verbal commitments that they will not make use of the *Grants Pass v. Johnson* decision to cite or arrest unhoused persons to resolve encampments, and have conducted major cleanups with cooperation of the unhoused and enthusiastic participation of community members, and without citations, arrests, or removal.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that the City of Berkeley will continue to operate under the framework of *Martin v. Boise*, as permitted under the recent Supreme Court decision in *Grants Pass v. Johnson*, and refrain from any criminalization or effective prohibition of sleeping while unhoused, including citation or arrest simply for sleeping outside if no adequate shelter is available, without precluding enforcement of laws banning actions that threaten the health and safety of the whole community.

BE IT FURTHER RESOLVED, that the Berkeley City Council opposes Executive Order N-1-24, and urges Governor Newsom to engage with community organizations over comprehensive policy reforms that sustainably and humanely address the needs of the unhoused in California without encampment sweeps.

BE IT FURTHER RESOLVED, that the City of Berkeley shall strengthen its commitment to connecting unhoused people with vital services including adequate short-term shelter and regional permanent supportive housing solutions.

⁵ “Fresno Approves Anti-Camping Law Despite Raucous Protests,” GV Wire, 7-29-2024, https://gvwire.com/2024/07/29/fresno-approves-anti-camping-law-despite-raucous-protests/?fbclid=IwY2xjawEbUKhleHRuA2F1bQlxMQABHTFGD7sZ1IhaGrkdce-7_3USx_c6zuZ3LDsWI4dIsQXRgDltbbefyt1jVA_aem_5bvGZfVPOFLg8QeZpxGQyg

BE IT FURTHER RESOLVED, that the Council directs the City Clerk to transmit copies of this resolution to every department, employee, and commission of the City of Berkeley, and to Governor Gavin Newsom and Berkeley's state legislative representatives.
