



Office of the City Manager

ACTION CALENDAR
NOVEMBER 12, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Peter Radu, Assistant to the City Manager

Subject: Companion Report: Resolution Opposing the Criminalization of Poverty and Homelessness

RECOMMENDATION:

The City Council has already adopted an encampment policy that is consistent with the Commission's resolution by adopting the amended September 10, 2024 item, "Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code." Therefore there is no need to take any action on the Peace and Justice Commission's resolution and the City Manager recommends taking no action.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS:

The Peace and Justice Commission's resolution calls for city staff to continue to adhere to the *Martin v. Boise* standard before closing any encampments, "without precluding enforcement of laws banning actions that threaten the health and safety of the whole community." The Commission's report provides no further clarification on what types of health and safety exceptions should be considered acceptable in deviating from the *Martin* standard.

On September 10, 2024, Councilmembers Kesarwani, Wengraf and Humbert proposed the item, "Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code." This resolution was adopted with amendments that evening by Council, and it states that the City will "continue to offer interim housing (generally a shelter offer, with a preference for non-congregate options) when closing encampments, in accordance with the City's existing "Housing First" approach and best practices guidance from the federal government" – in other words, that the City will continue to adhere to the *Martin* standard. However, the item spells out several specific health and

safety exceptions to this standard, where enforcement could happen in the absence of shelter.

Because the Sept 10, 2024 item achieves the spirit of the Peace and Justices' resolution but adds more guidance for staff to implement it, staff recommend taking no action on the Commission's recommendation and instead defer to the Sept 10, 2024 Council resolution.

Additionally, the Peace and Justice Commission's resolution would have the City Council oppose Governor Newsom's Executive Order N-1-24¹ (July 25, 2024) on encampments. There is nothing binding about this order on the City of Berkeley's operations, so staff have no operational concerns with the order as written. Moreover, the order states,

"Local governments are encouraged to adopt policies consistent with this Order and to use all available resources and infrastructure, including resources provided by the State's historic investments in housing and intervention programs where appropriate and available, to take action with the urgency this crisis demands to humanely remove encampments from public spaces, prioritizing those encampments that most threaten the life, health, and safety of those in and around them."

With the adoption of the Sept 10, 2024 resolution, it is staff's view that the Council has already adopted such a policy.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with this recommendation.

BACKGROUND

On September 21, 2023, the City Manager sent an off-agenda memo to the Council with a draft encampment policy, in response to a series of 2018 referrals from the City Council to draft such a policy. City staff presented this policy to the Homeless Services Panel of Experts at their October 4, 2023 regular meeting. That evening, the Homeless Panel created a subcommittee to further address this policy, but no further action has been taken by the full Panel on this issue since then.

At its August 7, 2024 meeting, the Peace and Justice Commission adopted a recommendation proposing the City Council adopt a resolution opposing the criminalization of poverty and homelessness, with some limited exceptions for health and safety impacts to the community:

M/S/C: Lippman, Taylor Ayes: Morizawa, Lippman, Mencher, McNeil, Taylor, Jacquilin, Elias, Jivan

¹ See: <https://www.gov.ca.gov/wp-content/uploads/2024/07/2024-Encampments-EO-7-24.pdf>

Noes: None

Abstain: None

Absent: None

On September 10, 2024, the City Council adopted Resolution No. 71,513-N.S., "Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods, with the second reading approved by City Council on September 24, 2024." On October 7, 2024, the City Manager promulgated an off-agenda memo to the Council titled, "Implementation of Berkeley's New Encampment Policy."

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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