



URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)
Rules of Procedure Chapter III.C.5

**THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE
ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE
CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES**

Meeting Date: July 9, 2024

Item Description: Urgency Resolution: Adopt a Resolution reaffirming the City of Berkeley's commitments to enact no additional restrictions to effectively prohibit sleeping by an unhoused individual if there is no shelter space available in the jurisdiction for the unhoused individual to sleep, to not impose criminal penalties for sleeping in public spaces without first making an offer of shelter, and to construct, repurpose, and offer non-congregate shelter and permanent housing options whenever possible.

This item is submitted pursuant to the provision checked below:

- ☐ **Emergency Situation (54954.2(b)(1) - majority vote required)**
Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.
- ☒ **Immediate Action Required (54954.2(b)(2) - two-thirds vote required)**
There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:

On June 28, 2024, the U.S. Supreme Court released their 6-3 decision to uphold the City of Grants Pass' ban against unhoused people camping in public spaces, regardless of the availability in shelters. This urgent resolution reaffirms the City's refusal to criminalize unhoused and unsheltered residents for sleeping in public without first making an offer of shelter and commitment to creating, repurposing, and offering, (whenever possible, non-congregate) shelter options.



Cecilia Lunaparra
Councilmember, District 7

CONSENT CALENDAR

July 9, 2024

To: Honorable Members of the City Council

From: Councilmember Lunaparra, Councilmember Taplin (Co-Sponsor)

Subject: Rights Against the Criminalization of Unhoused Individuals Due to Their Status

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitments to enact no additional restrictions to effectively prohibit sleeping by an unhoused individual if there is no shelter space available in the jurisdiction for the unhoused individual to sleep, to not impose criminal penalties for sleeping in public spaces without first making an offer of shelter, and to construct, repurpose, and offer non-congregate shelter and permanent housing options whenever possible.

BACKGROUND

The City of Berkeley has made some of its most significant progress in humanely addressing the unhoused shelter crisis including through the passage of the Measure P transfer tax, unprecedented investments in shelter and services, and a 45% decrease in the number of unsheltered population between 2022 to 2024.

On May 16, 2024, the City Manager provided the City Council a Memorandum outlining the City of Berkeley's programs, funding sources, and support services, which have facilitated the permanent housing of nearly 1,200 people since 2021, as well as prevented the houselessness of many others.¹

Studies show women and LGBTQ+ people feel especially unsafe and vulnerable when unsheltered and that a post-pandemic rise in non-congregate shelter options have

¹ [City Manager Memorandum, May 16 2024](#)

significantly expanded California's shelter capacity.² Non-congregate shelter bed options have nearly doubled the City of Berkeley's shelter acceptance rates (from 43% to 79%) among unsheltered people living in encampments.³

CURRENT SITUATION AND ITS EFFECTS

On June 28, 2024, the U.S. Supreme Court released their 6-3 decision to uphold the City of Grants Pass' ban against unhoused people camping in public spaces, regardless of the availability in shelters. Decided along ideological lines, *Grants Pass v. Johnson* (2024) reverses law established in the Ninth Circuit Court of Appeals, where the "majority of the country's unsheltered people live."⁴ The majority opinion determines that the Eighth Amendment's "cruel and unusual punishment" clause does not prohibit cities from imposing criminal penalties against unhoused people sleeping outside.⁵ This decision effectively empowers local jurisdictions to ignore and bypass the solution to homelessness: housing.

In dissent, Supreme Court Justice Sonia Sotomayor wrote: "The majority... leaves the most vulnerable in our society with an impossible choice: Either stay awake or be arrested. ... I remain hopeful that our society will come together "to address the complexities of the homelessness challenge facing the most vulnerable among us." Ante, at 34. That responsibility is shared by those vulnerable populations, the States and cities in which they reside, and each and every one of us."⁶

The majority in *Grants Pass* notes "nothing in today's decision prevents States, cities, and counties from going a step further and declining to criminalize public camping altogether" meaning that jurisdictions like the City of Berkeley have discretion to follow the *Martin* precedent regardless of the decision.⁷

On November 9th, 2021, the City of Berkeley adopted a Resolution recognizing adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations.⁸ Although implementing the *Martin* policy within the City of Berkeley since 2018 has been challenging at times, Berkeley

² [Terner Center: Shelter and Safety Among People Experiencing Homelessness During the COVID-19 Pandemic](#)

³ [City Manager Memorandum, May 16 2024](#)

⁴ [OPB: In Grants Pass, immediate effects of Supreme Court ruling are unclear](#)

⁵ [National Alliance to End Homelessness: The Supreme Court Rules on Homelessness: What it All Means](#)

⁶ [Supreme Court of the United States *Grants Pass v. Johnson* \(2024\) Decision](#)

⁷ [Supreme Court of the United States *Grants Pass v. Johnson* \(2024\) Decision](#)

⁸ [Resolution No. 70,101–N.S.](#)

has remained committed to offering shelter, with priority given to non-congregate shelter, for its unhoused population.

The need for local jurisdictions such as Berkeley to reaffirm their values and priorities in spite of threats to our civil liberties is dire. This resolution reaffirms the City's commitment to not imposing criminal penalties for sleeping in public spaces without first making an offer of shelter and commitment to creating, repurposing, and offering, (whenever possible, non-congregate) shelter options.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Councilmember Cecilia Lunaparra, 510-981-7170

Attachments:

1: Resolution

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

REAFFIRMING RIGHTS AGAINST THE CRIMINALIZATION OF UNHOUSED
STATUS

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 crime¹; and

WHEREAS, previously the U.S. Court of Appeals for the Ninth Circuit found in *Martin* that the Constitution prohibits local governments from criminalizing outdoor sleeping when there is no alternative²; and

WHEREAS, the Ninth Circuit relied on the Eighth Amendment's Cruel and Unusual Punishments Clause, which prohibits the government from criminalizing people based on their status; and

WHEREAS, *Martin* established a requirement across the entire Ninth Circuit that prohibited governments from criminalizing unhoused residents for sleeping outside if they lacked "access to alternative shelter" as defined as "a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters"; and

WHEREAS, while implementing the *Martin* policy within the City of Berkeley since 2018 has been challenging at times, during that same period the City made some of its most significant progress in humanely addressing the unhoused shelter crisis including through the passage of the Measure P transfer tax, unprecedented investments in shelter and services, and a 45% decrease in the number of unsheltered population between 2022 to 2024; and

WHEREAS, while the Supreme Court majority in *Grants Pass* reverses *Martin*, the dissent by Justice Sotomayor stated "[t]he Court wrongly concludes that the Eighth Amendment permits Ordinances that effectively criminalize being homeless"; and

WHEREAS, fortunately the majority in *Grants Pass* notes "nothing in today's decision prevents States, cities, and counties from going a step further and declining to criminalize public camping altogether" meaning that cities like Berkeley have discretion to follow the *Martin* precedent regardless of the decision; and

WHEREAS, the City Council seeks to reassure members of the public who may be concerned that the Grants Pass decision will result in a sudden change in City policies regarding the treatment of unhoused residents of Berkeley.

NOW THEREFORE BE IT RESOLVED by the City Council that it affirms the rights of

¹ [Supreme Court of the United States *Grants Pass v. Johnson* \(2024\) Decision](#)

² [Ninth Circuit *Martin v. City of Boise* \(2018\) Decision](#)

people within the City of Berkeley against criminalization for their unhoused status, and will support these rights by:

1. Directing the City Manager to ensure that there will be no additional restrictions enacted that effectively prohibit sleeping—a biological necessity—by an unhoused individual if there is no shelter space available in the jurisdiction for the unhoused individual to sleep.
2. Reaffirming that the Constitution does not allow the government to punish people for the status of being unhoused, and that the City will not effectively punish the status of being unhoused by imposing criminal penalties for sleeping in public spaces without first making an offer of shelter.
3. Committing to constructing, repurposing, and offering, whenever possible, non-congregate shelter options, which have doubled Berkeley's shelter acceptance rate to 79%³, and permanent supportive housing.

BE IT FURTHER RESOLVED that the Council shall instruct the City Clerk to transmit copies of this resolution including any future amendments thereto that shall be made, to every department, agency and commission and employee of the City of Berkeley.

³ [Daily Cal: Berkeley sees decrease in homelessness, unsheltered population nearly halved](#)