



Memorandum

TO: JOINT CITY COUNCIL/VALLEY
WATER DISTRICT BOARD

FROM: Omar Passons
Angel Rios, Jr.

**SUBJECT: OVERALL COORDINATION ON
UNHOUSED ISSUES**

DATE: November 8, 2023

Approved

Date

11/13/2023

RECOMMENDATION

Santa Clara Valley Water District (Valley Water) Board and the City of San José (City) Mayor and City Council receive an update and provide feedback on the overall coordination between the City and Valley Water on unhoused issues.

BACKGROUND

The 2023 Point-in-Time Homeless Census found a total of 4,386 persons experiencing unsheltered homelessness in San José as of January 24-25, 2023. This represented an 11% decrease from 2022. Valley Water estimates that approximately 2,300 unsheltered individuals across Santa Clara County have taken refuge on the agency's property and easements—more than 30% of the estimated 7,427 unsheltered population countywide. Valley Water owns and manages approximately 73.3 miles of streams and riparian and aquatic habitat throughout San José. Encampments along the waterways contribute largely to local pollution and the degradation of water quality and habitat in streams. These areas include threatened and endangered species, sensitive habitats, and public infrastructure critical to water supply, groundwater recharge, and flood risk reduction activities.

ANALYSIS

I. Specific Actions

A. Assembly Bill 1469 (Kalra) Valley Water Assisting Unsheltered People

Assembly Bill (AB) 1469 Valley Water Assisting Unsheltered People, authored by Assemblymember Ash Kalra (D – San José), was signed by Governor Newsom on October 10, 2023, and will take effect on January 1, 2024. In sponsoring AB 1469, Valley Water took proactive steps to gain the authority to use certain resources to assist unsheltered individuals living on public lands and along waterways in Santa Clara County. The City of San José supported Valley Water in this effort every step of the way.

The City of San José's Intergovernmental Relations team submitted three letters of support for this legislation, including a letter to Governor Newsom urging his signature.

AB 1469 amends the District Act to authorize Valley Water to assist unsheltered individuals living along streams, in riparian corridors, or otherwise in the district's jurisdiction, in consultation with a city or the County of Santa Clara, to provide solutions or improve outcomes for the unsheltered individuals. Specifically, the bill will allow Valley Water more flexibility to use district land and a part of an existing 1% ad valorem property tax for lasting encampment solutions. The intent is to work with local cities or the County to construct low-barrier navigation centers, supportive housing, transitional housing, affordable housing, or other facilities to assist unsheltered people. These facilities would be operated by a city, the County, or a non-profit with the appropriate expertise to provide shelter and services that can improve outcomes for unsheltered people.

AB 1469 will help Valley Water comply with federal case law that requires a legitimate offer of shelter before relocating an unsheltered individual from public land. In 2019, the U.S. Court of Appeals for the Ninth Circuit held that "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter." The United States Supreme Court declined to review the Ninth Circuit's decision, leaving it in effect in the western states covered by the Ninth Circuit, including California. This decision has been interpreted by some jurisdictions to mean a de facto requirement to offer shelter before unsheltered people may be relocated from public lands, with very limited life safety exceptions.

B. Collaboration on Cherry Avenue Emergency Interim Housing Site

The City of San José and Valley Water are in active negotiations for the City to construct nearly 100 Emergency Interim Housing (EIH) units along a portion of the Guadalupe River adjacent to Cherry Avenue. The project has been approved by both bodies, the site has been surveyed, and efforts are ongoing to develop a collaborative agreement to move forward toward construction.

Valley Water's interest in having the City develop EIH on its property is to facilitate the safe relocation of encampments of unsheltered individuals living in this reach of the Guadalupe River into an EIH community, thereby enabling protection of the waterway from encampment generated environmental impacts. Through a collaborative effort, City and Valley Water staff developed the concept of creating a Water Resources Protection Zone along Guadalupe River from Blossom Hill Road in the south to Branham Lane in the north. After the safe relocation of unsheltered individuals currently living in encampments into the EIH community, this reach of the waterway would be designated as a Water Resources Protection Zone, thus becoming and remaining a no camping zone. Joint City and Valley Water efforts would aim to protect this reach by ensuring that it remains clear of encampments in the future.

C. Coyote Creek Flood Protection Project: Working Together for Alternatives

In 2020, the Federal Energy Regulatory Commission issued a directive to Valley Water to drain Anderson Dam to dead pool and commence a retrofit project to ensure seismic safety. A component of the Anderson Dam Seismic Retrofit Project includes constructing a bypass tunnel that may increase the possibility of flooding in downstream Coyote Creek areas during construction. To reduce the downstream flood risk, Valley Water will construct substantial flood improvements prior to the opening of the bypass tunnel. The Coyote Creek Flood Protection Project (Project) consists of two phases and is an important component of the overall Anderson Dam Seismic Retrofit Project. The Anderson Dam Seismic Retrofit Project cannot proceed without the bypass tunnel in place, and the bypass tunnel cannot open until the flood improvements are complete. The Project is a critical public health and safety project that will provide protections designed to prevent a recurrence of the catastrophic flooding from 2017.

To facilitate the Project, Valley Water and the City have partnered to enter into a cost-sharing agreement to safely relocate unsheltered individuals who were residing within the project construction footprint. Through this agreement, the City provides the direct and necessary outreach services and connections to available shelter or temporary housing alternatives that are needed to safely relocate people and prevent re-encampment in the active work zone. This agreement represents a tremendous example of collaborative work between the City and Valley Water to address the safety needs of unsheltered individuals while simultaneously providing necessary flood risk reduction along the waterway. The following are the most up-to-date outcomes based on the City's data through October 2023:

- 200 people in the project zone as of May 1, 2023
- 37 of the total people above declined to engage in any communication
- 163 people were provided services since inception
- 42 people were placed into City EIH
- 28 people exited the project zone to other non-EIH destinations

II. City and Valley Water Criteria for Encampment Abatement

A. Understanding Abatement

As the efforts above demonstrate, the City of San José and Valley Water continue to expand efforts to provide temporary and permanent housing as often as resources allow. Abatement is a last resort associated with specific reasons that both organizations have laid out in policies adopted by each. It is useful to understand the circumstances under which each organization may abate (or “clear”) an encampment. Of note, the City recently enacted a shelter crisis declaration and declared homelessness a local emergency. One of the impacts of these actions is the ability to accelerate establishing shelter and safe outdoor sleeping locations that could significantly reduce the need for abatements by

giving people experiencing homelessness more places that they are allowed to be while more housing resources are added.

B. Valley Water Reasons for Abatement and Risk Assessment Tool

Valley Water staff normally coordinates planned activities with City representatives based on the encampment reports collected through Valley Water's Access Valley Water online submittal system and City of San José's Beautify San Jose online intake form.

When performing work critical to its core mission, Valley Water will safely relocate encampments on Valley Water property, including Valley Water right of way, through coordinated efforts with other public agencies if the following criteria are met:

- (a) The encampment is in the path of, interferes with, or obstructs access to:
 - (i) flood protection/water infrastructure facilities or projects, or
 - (ii) maintenance projects, facilities, or maintenance access roads, or
 - (iii) designated mitigation or vegetation management sites.
- (b) The encampment poses an immediate safety risk. An immediate safety risk is one that involves the safety of Valley Water staff. Safe relocation of encampments may also be conducted in response to public safety issues as determined by local jurisdictions such as a city, the County, or local police or fire departments. In the case of a public safety issue, Valley Water will assist local jurisdictions in addressing encampments on property where Valley Water holds land rights.

Additionally, Valley Water has developed a Water Resources Encampment Risk Assessment (Risk Assessment) to assist staff in determining how to prioritize encampments for abatement. The Risk Assessment is a transparent way to document risks that an encampment may pose to Valley Water facilities. This assists staff in protecting natural resources and water quality, as well as the health and safety of employees and others who use Valley Water land, facilities, and waterways, while considering the risks of fuel loading, wildfire vulnerability, and riparian habitat conversion.

Valley Water uses the Risk Assessment to assess various risk factors associated with the location of encampments, safety issues, environmental factors, and adjacent facilities to determine if safe relocation is necessary. However, if cities and law enforcement do not support relocation, Valley Water cannot conduct these activities on its own because the District Act does not provide Valley Water with police powers.

Valley Water and the City of San José have had preliminary discussions about how best to align their respective risk assessments to maximize consistency. Valley Water has a compelling interest in protecting its land, facilities, and waterways from damage and environmental hazards, particularly in areas that are not open to the public. This interest becomes even more critical when Valley Water has undertaken habitat enhancement

efforts upon the land and must maintain those enhancements to comply with regulatory agency requirements.

While performing cleanup activities, Valley Water's Encampment Cleanup Team educates unsheltered individuals on being "Good Neighbors." This can include information on bagging their trash, confining and organizing their encampment footprint, and storing personal items within their encampment structure. Valley Water aims to minimize abating encampments; however, encampments that rate high or extreme on the Risk Assessment may be subject to abatement because of the presence of increased risk factors.

C. City of San José Reasons for Abatement

The City Council adopted an Encampment Management Strategy because there are currently not enough resources to house/shelter the more than 4,400 people who experience homelessness on San José streets or in vehicles on any given night. The memorandum regarding that Encampment Management policy was adopted by the City Council on April 29, 2022 (Item 7.1).

The current City Setback Guidelines define areas that will be abated.

Locations and Conditions:

- School Buffer Zone
 - Definition: Tents, built structures, or other belongings that are erected or stored within 150' of an elementary, middle, or high school property
- Blocking Public Right-of-Way
 - Definition: Sidewalks; streets; trails; medians; permitted events at City facilities; City facility (park restroom, playground, community center, library, fire station, etc.)
- Health and Safety Conditions
 - Definition: Fire danger; vehicle or pedestrian danger; unauthorized access to electrical; potential for drowning if flooding occurs; significant reoccurring or unresolved unsanitary conditions; severe vector control issue; adjacent to residential fencing/wall
- Obstruction to Critical Infrastructure
 - Definition: Infrastructure degradation; public operations and maintenance; construction project (on land or waterways); hospital and trauma centers

Actions During Abatement Activities

The City's current practice with regard to abatements provides for advanced notice for all non-emergency abatements on City property and includes outreach or notification for the purpose of connecting people to housing and services as these are available. In addition, the City's current practice suspends abatement activities when the weather forecast indicates the temperature will exceed 88 degrees, if there is heavy rain, or if air quality is poor because of smoke from nearby wildfires.

Except in cases of emergency abatement, per the Encampment Management Policy, the City posts a 72-hour notice of abatement at the encampment site to give a person the opportunity to relocate. After that time, an abatement may happen, typically any time between four days and two weeks, depending on the number of pending actions, inclement weather, or other factors.

Moving forward, the City will continue to follow its existing setback guidelines for locations where people are not permitted to establish encampments. It will also continue the 12x12 Good Neighbor Policy established to manage encampments and maintain cleanliness as much as possible while alternative solutions are found. Further refinements to these policies may be made as needed, in coordination with appropriate Department staff, by the Administration or through Council direction and communicated publicly.

III. Looking Ahead

The City of San José and Valley Water will continue to collaborate on the Cherry Avenue EIH site, the remaining sections of the Coyote Creek Flood Protection Project, as well as seeking further ways to serve and support unhoused residents while protecting the region's natural resources.

COORDINATION

This memorandum has been coordinated with Valley Water and the City Manager's Office of Administration, Policy, and Intergovernmental Relations.

/s/
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/s/
OMAR PASSONS
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