

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SANCTIONED ENCAMPMENTS

DATE: November 28, 2017

PURPOSE

This memorandum updates the attached memorandum dated December 7, 2015 regarding permitted homeless tent camping on City property, since the memorandum from the Housing Department dated November 13, 2017 has referenced sanctioned encampments as a potential alternative to bridge housing communities authorized under AB 2176.

BACKGROUND

On December 1, 2015, the City Council approved a memorandum from Councilmembers Jones, Rocha, T. Nguyen, and Carrasco directing staff to explore a pilot sanctioned encampment in San José and to report back to the City Council. On December 8, 2015, the attached memorandum on Sanctioned Encampments was considered by the Council.

On December 8, 2015, the City Council directed Housing staff to continue to explore the operation of a sanctioned encampment pilot to meet the needs of unsheltered homeless people in the community. At council direction, the Housing Department coordinated with the County Office of Supportive Housing to identify potential operators and concepts for unconventional housing programs, including sanctioned encampments. While this approach did not result in the identification of partners for a specific City project due to a variety of regulatory barriers, Housing staff returned to Council on June 28, 2016, to share the results of this process and recommend exploration of a new State law to address these challenges and create a path forward for more immediate housing options. Council approved this new approach and staff began working with State legislators on potential approaches.

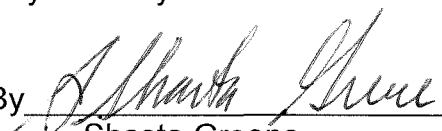
As a result of this work, on September 27, 2016, AB 2176, authored by Assembly member Nora Campos, was signed into law by Governor Jerry Brown. This bill amended the Shelter Crisis Act to authorize a five-year pilot program allowing the City of San José, upon a declaration of a shelter crisis and adoption of an ordinance establishing local building, health, and safety standards, to develop and operate bridge housing communities for the homeless in new or existing structures on City-owned or

City-leased property in compliance with other terms of the bill including transition plans for each resident.

CONCLUSION

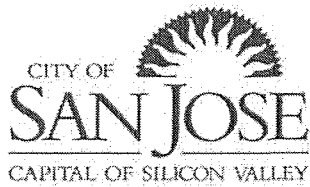
The analysis in the attached memo is unchanged by the adoption of AB 2176, since tent camping is not within the scope of "new or existing structures" authorized for bridge housing by that bill.

RICHARD DOYLE
City Attorney

By 
Shasta Greene
Sr. Deputy City Attorney

cc: David Sykes, City Manager
Jacky Morales-Ferrand, Director of Housing
Rosallynn Hughey, Interim Director of Planning, Building and Code Enforcement

Attachment: Memorandum on Sanctioned Encampment dated 12/07/2015.



Memorandum

TO: Mayor and City Council

FROM: Richard Doyle
City Attorney

SUBJECT: Sanctioned Tent Camping for
the Homeless

DATE: December 7, 2015

PURPOSE

Several Councilmembers have expressed significant interest in the possibility of a permitted homeless tent camp on city property. This memo is intended to discuss the possibilities for permitted homeless tent camping, and the municipal and state law constraints and the potential liabilities.

ANALYSIS

"Sanctioned" Encampments in California

Our research has indicated that only three California cities have established some type of sanctioned camping for homeless residents. The City of Fresno zoned private land for camping to allow a non-profit organization to run homeless shelters known as the Village and Community of Hope on privately owned land. Two California cities, Ventura and Ontario, have operated facilities on City-owned property that allow homeless persons with permits to camp on that property. Ontario was unusual in that by the end of its approximately five year operation period virtually all of the 127 permitted residents were housed in permanent housing. Ontario current has no sanctioned encampment.

Fresno's Village and Community of Hope are still open and the nonprofit owner of the sites provides shelter for approximately 125 persons. The facility is operated as a shelter and residents must leave the unheated "Tuff Sheds" every morning and may not return until evening. Ventura's River Haven tent camp, also run by a non-profit, has U-dome tents and is described as transitional housing. River Haven's permit limits occupancy to 30 persons.

DISCUSSION

A. Shelter Crisis Act

Government Code Section 8698-8698.2 (the "Shelter Crisis Act") empowers a local government to declare a shelter crisis in a situation in which a significant number of

persons are without the ability to obtain shelter, resulting in a threat to their health and safety. Designated public facilities can be used for "emergency housing" after a City declaration of shelter crisis. The declaration applies to any public facility including parks, schools, and vacant or underutilized facilities, and after making a declaration the City would gain defenses to ordinary negligence connected with provision of emergency housing and the City would also enjoy a suspension of State and local "standards of housing, health, or safety" to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis. The declaration does not suspend the California Environmental Quality Act ("CEQA"), state or federal disability access laws, or zoning and general plan requirements.

If the City adopted a declaration of Shelter Crisis in order to allow an emergency camping facility, however, the declaration would not authorize a suspension of State and local "standards of housing, health, or safety" or provide defenses to negligence. This is because the Shelter Crisis Act's suspension is intended to facilitate the use of *existing* public facilities for emergency housing, not the use of undeveloped land for camping. This means that the facilities, the site and, to the extent applicable, the tents would need to comply with the building, fire and housing code. After the facilities are built in a code compliant manner, then the City could declare a Shelter Crisis to receive a defense to ordinary negligence connected with provision of emergency housing.

B. Special Occupancy Parks Act

If the City were to establish a new campground with common facilities and provide tents for habitation, then under state law the nature of the use would be as a "special occupancy park" rather than a traditional residential use. The State Special Occupancy Parks Act, enforced by the State Department of Housing and Community Development contains health and safety standards and building codes that apply to special occupancy parks. It allows camping for up to 30 days in those parks. City owned, operated, and maintained special occupancy parks are exempt from the Special Occupancy Parks Act. Therefore, if the City owns, operates and maintains a site, any camping and related facilities would be exempt from the restrictions in the Special Occupancy Parks Act.

C. Landlord Tenant Law

State landlord-tenant law provides rights to any person who hires a dwelling unit including tenants, lessees, boarders, lodgers, and others. This includes almost any kind of rental other than hotel, hostel or overnight shelter use, where parties must vacate the premises the following morning. These rights include that the unit be "tenantable" or "habitable" with hot and cold running water, sewage disposal, heat, and lighting, within the unit. Lack of habitability can be the basis for liability and legal action by the residents. These landlord-tenant law requirements will not apply in the event that tents or domes used at the project are given to the occupants. Alternatively, simple overnight shelter use, similar to Fresno's shelters, where persons are required to leave the following morning would also be exempt from landlord-tenant law.

D. California Environmental Quality Act and Other Codes

Before a site was approved by the City, review under the California Environmental Quality Act would be required and additionally, City owned sites might need to be rezoned and obtain General Plan Amendments to allow such a use. The City's facilities on the site would need to comply with the Americans with Disabilities Act ("ADA"), the California Disabled Persons Act, and the building code. The overall site design would also have to comply with the fire code.

CONCLUSION

State law does not prohibit the construction of a campground providing temporary housing for the homeless utilizing resident owned tents on a site owned, operated and maintained by the City, provided that the site is not barred from campground use, due to purchase with former redevelopment funding or other similar restricted funds. The State Shelter Crisis Act does not provide any relief from building or housing codes or from ordinary negligence for a newly constructed campground. Therefore, the City would need to comply with any the applicable building code, fire code, ADA and housing code requirements when constructing the facilities. CEQA review would need to be completed and any necessary general plan or zoning amendments obtained. After the facilities are built in a code compliant manner, then the City Council could declare a Shelter Crisis to receive a defense to ordinary negligence connected with provision of emergency housing.

RICHARD DOYLE
City Attorney

By 
S. SHASTA GREENE
Sr. Deputy City Attorney

cc: Norberto Dueñas, City Manager
Jacky Morales-Ferrand, Director of Housing
Harry Freitas, Director of Planning, Building and Code Enforcement