From:	Melissa A. Morris
To:	Rogers, Natalie; _CityCouncilListPublic; Alvarez, Eddie; Stapp, Mark; MacDonald, Dianna; Fleming, Victoria; Rogers, Chris; Okrepkie, Jeff; Homeless; City Council Public Comments
Cc:	Alicia Roman; jhoffman; Mike Rawson; Ilene Jacobs; King, Terri; Magdalena R. McQuilla; Ray Fullerton
Subject:	[EXTERNAL] Item 12.4 (anti-camping ordinance), August 22, 2023, Santa Rosa City Council Meeting
Date:	Monday, August 21, 2023 2:03:31 PM
Attachments:	2023_08.08_Comment re 16.1 Camping Ordinance.pdf 081623 Restraining Order.pdf

Dear Mayor Natalie Rogers and Members of the City Council,

The Public Interest Law Project and California Rural Legal Assistance, Inc., write to resend our comment letter of August 8, 2023, regarding the City's proposed amendments to its anti-camping ordinance (item 12.4), as well as to make the Council aware of the Northern District of California's recent issuance of a temporary restraining order enjoining the City of San Rafael from enforcing an anti-camping ordinance that is very similar to the proposed ordinance before the Council. San Rafael's ordinance includes "an exception allowing camping or sleeping in public 'when there is no alternative shelter available to the person camping,'" but that exception does not apply in specific areas and types of locations within the City, similar to the so-called "place" restrictions in Santa Rosa's proposed ordinance. *Boyd v. City of San Rafael,* N.D. Cal. Case No. 23-cv-04085-EMC, Order Granting Plaintiffs' Motion for a Temporary Restraining Order (Aug. 16, 2023), 14. The court observed: "Because much land in San Rafael seems to fall under SMC section 19.50.030, and all land may be designated as camping-prohibited under SMC section 19.50.030(B), there is doubt as to whether, practically speaking, there is any land where the *Boise* exception can or will regularly apply." *Ibid.* Accordingly, the court found that the plaintiffs, who would be irreparably harmed by enforcement of the ordinance, had raised "serious questions" about whether the ordinance complied with the Ninth Circuit's holding in *Martin v. City of Boise*, 920 F.3d 584. *Boyd, supra,* at 14-15.

As discussed in our attached letter of August 8, the proposed ordinance will operate as a blanket ban on camping throughout the City even if it purports only to restrict the "time, place, and manner" of camping. Its enforcement against unhoused individuals living unsheltered in parks, under overpasses, and elsewhere on public land in Santa Rosa will therefore violate *Martin* and expose the City to further liability.

Sincerely,

Melissa A. Morris, Staff Attorney (she/her/hers)
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CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

PUBLIC INTEREST LAW PROJECT
1996-2021 CELEBRATING 25 YEARS OF ADVANCING JUSTICE

August 8, 2023

SENT VIA EMAIL: nrogers@srcity.org; citycouncil@srcity.org; ealvarez@srcity.org; MStapp@srcity.org; dmacdonald@srcity.org; vfleming@srcity.org; crogers@srcity.org; JOkrepkie@srcity.org; homeless@srcity.org.

Mayor Natalie Rogers
Santa Rosa City Council
Santa Rosa City Hall – 100 Santa Rosa Avenue
Santa Rosa, CA 95404

Re: August 8, 2023, City Council Agenda Item 16.1 (Camping Ordinance)

Dear Mayor Natalie Rogers and Members of the City Council:

California Rural Legal Assistance, Inc., and the Public Interest Law Project write on behalf of our clients regarding the proposed amendments to Chapter 11-22 of the Santa Rosa Municipal Code, regarding camping on public property. Our organizations represent the plaintiffs in *Vannucci et al. v. County of Sonoma et al.* (N.D. Cal. Case No. 3:18-cv-01955-VC), which challenges the City's pattern and practice of punishing unhoused individuals for camping and sleeping in public spaces when there is not adequate, accessible shelter available to meet those individuals' needs.

As the staff report for this item correctly notes, the City's "current Camping Ordinance prohibits camping on public property and conflicts with Martin v. City of Boise (Martin), a 2019 decision by the United States Court of Appeals for the Ninth Circuit that prohibits cities from criminally enforcing camping restrictions on public property if there is no alternative shelter available for those facing enforcement." Staff Report, p. 1. However, the proposed amendments will still effectively operate as a blanket ban on camping and will continue to criminalize homelessness; it will not bring the City into compliance with the Ninth Circuit's holding in *Martin,* nor will it resolve the constitutional and statutory violations set forth in the *Vannucci* litigation.

1. **The proposed ordinance's definition of camping is too broad and makes clear the City's intent to criminalize homeless status.**

The proposed ordinance defines "camping" to include, not only erection of tents and other structures but also "sleeping" and "preparation or cooking of a meal," and it absolutely bans camping in a number of locations, including in every City park. §§ 11-22-010, 11-22-020. Notably, this definition is far broader than the definition of "camp" set forth in section 11-22.010 of the existing City Code: "to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia."

The City "may not criminalize the state of being 'homeless in public places'" or "conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets." *Martin*, 920 F.3d at 617 (internal citation omitted). However, the proposed ordinance makes setting up a tent or other structure, storing personal belongings, sleeping, and preparing food illegal "when it reasonably appears, in light of all the circumstances, that a person is using space on public or private property as a place of temporary or permanent living accommodation." The City, presumably, does not intend to ban picnicking, napping, or using a shade canopy in parks or other public spaces.. By the ordinance's own construction, the determinative factor for certain misdemeanor charges is not the time, place, or manner of the alleged activity but whether it appears that the suspect is homeless. Such a distinction violates the Eighth Amendment, raises equal protection concerns, and has a discriminatory effect on people of color and people with disabilities, as discussed in greater detail below.

2. The proposed ordinance will operate as a blanket ban on camping.

Nowhere in the proposed ordinance or staff materials is there information about where unhoused people *will* be allowed to camp on public property when shelter and housing are unavailable to them. And, indeed, a preliminary review of the proposed ordinance indicates that no such place exists. Under the proposed ordinance, camping is absolutely banned in all public parks, near public facilities, near schools, near creeks, under trees, near building entrances and exits, near driveways, near fire hydrants, and near transit facilities. Sleeping and camping would also be prohibited on all sidewalks "in a manner that impedes pedestrian passage on any sidewalk or walkway. § 11-22.020(B)(1). This vague language could conceivably be enforced anywhere where a pedestrian might have to alter their path of travel; the City has previously taken enforcement actions against unhoused individuals living on sidewalks even where there was adequate clearance for wheelchair-users and other pedestrians to pass without leaving the sidewalk. Taken together, all of these "place" limitations will leave nowhere in the City where unhoused people can camp.

Similarly, the proposed ordinance's restrictions on the "manner" of camping—even when no shelter is available—appear to be drafted in such a way that they can be enforced against any unhoused person at any time. For example, proposed ordinance would also prohibit setting up "a tent, structure, or other form of shelter for purposes of camping on public property under a tree canopy *or* within vegetation that could aid in spreading a fire to a nearby structure as determined by the Fire Marshal or designee." § 11-22.020(C)(11). As drafted, the proposed ordinance would prohibit camping under *any* tree. Camping under a tree is not per se a fire danger—after all, the state and county park campgrounds in the area are under and among trees. Rather than being narrowly tailored to address the concern of fire danger, the proposed ordinance is drafted in a way that allows for unlimited enforcement at the City's discretion.

3. Enforcement of the proposed ordinance will disproportionately harm people of color and people with disabilities.

As the City noted in its Homelessness Solutions Strategic Plan "Black, or African American, American Indian or Alaskan Native, and Native Hawaiian or other Pacific Islander populations are disproportionately represented among the population experiencing homelessness

when compared to the general population or the population experiencing poverty." City of Santa Rosa, *Homelessness Solutions Strategic Plan*, 2023-2027, available at https://www.srcity.org/DocumentCenter/View/37088/Final-Santa-Rosa-Homelessness-Solutions-Plan?bidId=, p. 6. Likewise, homelessness disproportionately impacts people with disabilities. *See* City of Santa Rosa, 2023-2031 Housing Element (adopted Feb. 14, 2023), available at https://www.santarosaforward.com/files/managed/Document/772/SANTA%20ROSA_2023-2031%20Housing%20Element_Adopted_2.14.23_revised_3.23.23_Tracked.pdf, pp. 4-55 to 4-56. The impact on unhoused people with mental health disabilities will be heightened by the City's dearth of non-congregate shelter options because congregate shelters like Sam Jones hall are often not accessible to people with certain mental health symptoms. The City has indicated that it plans to step up enforcement against people living unsheltered on public property after passing the ordinance. *See, e.g.,* https://www.pressdemocrat.com/article/news/santa-rosa-to-consider-regulations-on-where-homeless-camps-can-be-set-up/. Such increased enforcement will disproportionately impact Black, indigenous, and disabled City residents, raising further civil rights concerns.

4. Conclusion

Santa Rosa does not have adequate affordable housing and shelter to meet the needs of its unhoused residents; according to the 2022 point-in-time count, there were over a thousand people living unsheltered in the City. *See* Housing Element, p. 3-31. So long as there is not adequate, accessible shelter available, the City should not be enforcing camping bans against unhoused people living on public property. This draft ordinance, which expressly targets homeless people and effectively bans camping citywide, would not bring the City into compliance with *Martin.* Rather, adopting and enforcing this ordinance would continue the City's pattern and practice of criminalizing homelessness, exposing the City to further liability. And, as the staff presentation emphasizes, the ordinance is "[n]ot a solution to homelessness." Rather than criminalizing homelessness in public spaces, the City should focus on providing housing and shelter that are affordable and accessible to the people who need them.

This draft ordinance, which expressly targets homeless people and effectively bans camping citywide, would not bring the City into compliance with *Martin.* Rather, adopting and enforcing this ordinance would continue the City's pattern and practice of criminalizing homelessness, exposing the City to further liability. And, as the staff presentation emphasizes, the ordinance is "[n]ot a solution to homelessness." Santa Rosa does not have adequate affordable housing and shelter to meet the needs of its unhoused residents; according to the 2022 point-in-time count, there were over a thousand people living unsheltered in the City. *See* Housing Element, p. 3-31. So long as there is not adequate, accessible shelter available, the City should not be enforcing camping bans against unhoused people living on public property. Rather

than criminalizing homelessness in public spaces, the City should focus on providing housing and shelter that are affordable and accessible to the people who need them.

Sincerely,

Melissa A. Morris,
Public Interest Law Project

Jeffery Hoffman,
California Rural Legal Assistance, Inc.

cc: Santa Rosa City Attorney's Office
Homeless Action!

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BOYD ET AL,

Plaintiff,

v.

CITY OF SAN RAFAEL ET AL,

Defendant.

Case No. 23-cv-04085-EMC

ORDER GRANTING PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

Docket No. 18

The case at bar concerns a recent enactment and adoption of an ordinance by the City of San Rafael that limits camping, including sleeping, on public property. The new "Camping on Public Property" ordinance, combined with amendments to existing prohibitions, criminalizes camping within 100 feet of playgrounds, 10 feet of public utilities, and in other, identified public spaces. The statutory scheme also limits camp areas to 100 square feet for a single individual or 200 square feet for more than one individual and proscribes any encampment within 200 feet of another encampment. The ordinance will go into effect on August 16, 2023.

Plaintiffs in the instant case include Camp Integrity[1] and some of its individual members (collectively "Plaintiffs"). Camp Integrity is an organized camp community in San Rafael that provides a collectively funded bathroom and handwashing station as well as other support to campers. Plaintiffs seek a temporary restraining order to halt the ordinance from going into effect based on allegations that the ordinance is unconstitutional and violates the Eighth Amendment's Cruel and Unusual Punishment Clause, as interpreted by the Ninth Circuit Court of Appeals in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).

[1] Camp Integrity is located at the "Mahon Creek Path".

Having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel, and for the reasons set forth below, the Court hereby **GRANTS** the motion for temporary restraining order. This order enjoins the implementation of sections 19.50 and 19.20.080(C) of the San Rafael Municipal Code by Defendants until the hearing on the preliminary injunction motion is held.

I. PROCEDURAL HISTORY

Camp Integrity and ten individual plaintiffs filed their complaint and ex parte application for a temporary restraining order on Friday, August 11, 2023. *See* Docket No. 1. Defendants include the City of San Rafael, as well as the City Manager, Chief of Police, Assistant City Manager, Director of Public Works, Mayor of the City, and City Council Person. Defendant City of Rafael was personally served at the City Clerk's Office at 1400 Fifth Street, San Rafael CA 94901 around 1:00 pm on August 11th. *Id.* at 40. The same day, the Court filed a briefing schedule that was served on all parties via email. See Docket No. 14.

A hearing regarding Plaintiffs' motion for temporary restraining order was held on Tuesday, August 15, 2023, via Zoom Videoconference.

II. FACTUAL BACKGROUND

A. Parties

Individual Plaintiffs in this action are ten residents of Camp Integrity who do not otherwise have stable housing, along with the entity of Camp Integrity. *See, e.g.*, Docket No. 1 at 7. Camp Integrity is a grouping of campsites located in the Mahon Path, known as the "Mahon Creek Path" within San Rafael. Docket No. 16-1 at 3. The Camp is comprised of approximately 33 tents along with a handwashing station, communal bathroom, and cooling center. Docket No. 1 at 10; Docket No. 16-1 at 3. The Camp also receives donations of water, food, blankets, and other necessities from volunteers which are provided to its residents. Docket No. 1 ¶ 102.

The City of San Rafael has engaged in a number of efforts to address problems of homelessness in its borders, including funding housing navigation, outreach, and employment readiness services in the city. *See* Docket No. 16-2 at 3. Unfortunately, however, the city is presently unable to provide adequate shelter to its homeless population, as "units and shelters

available in the City are typically full, except occasional turnover averaging two beds per week." *Id.* at 2. Indeed, a 2022 survey of Marin County found that of the 348 homeless individuals in San Rafael 241 were unsheltered. *Id.* at 2. Individual Plaintiffs have submitted requests to the city for shelter placement and/or accommodations or otherwise are requesting help obtaining housing, but at this juncture have not been provided such housing. *See* Docket No. 1 ¶ 1; Boyd Decl., Ex. A; Metz Decl., Ex. B; Nelson Decl., Ex. C; Barrow Decl., Ex. B; Cook Decl., Ex. B; Aardalen Decl., Ex. B; Hensley Decl., Ex. A; Mendoza Decl., Ex. B.

The individual Plaintiffs assert that they have a variety of personal circumstances that lead them to rely heavily upon support from other, proximate campers and the communal resources available at Camp Integrity for survival. Docket No. 1 ¶¶ 78–104. Plaintiffs including Eddy Metz, Anker Aardalen, and Brian Nelson suffer from physical injuries such that they rely upon other campers to secure necessities such as food, water, and shade, and to move around. *Id.* ¶¶ 77–80, ¶¶ 86–87. Other Plaintiffs rely on the physical closeness of other campers to survive medical emergencies including drug overdose. *See id.* ¶¶ 92–97; Aardalen Decl. ¶ 6; Nelson Decl. ¶¶ 10–12. Plaintiffs also rely upon nearby campers for protection against rape, human trafficking, and domestic violence; safe campsites provide space away from abusers, whether unhoused or not. *See, e.g.*, Schonberg Decl. ¶¶ 1–23, 21–24; Huff Decl. ¶¶ 8–11; Mendoza Decl. ¶¶ 15, 17.

B. Ordinance at Issue

San Rafael Municipal Code section 19.50 prohibits camping on certain public property identified therein without exception, but provides an exception allowing camping on other, not identified public property "when there is no alternative shelter available to the person camping." SMC §§ 19.50.030, 19.50.040. When camping is allowed under the exception, the ordinance imposes size, density, and proximity conditions upon the camping. SMC §§ 19.50.040(B), (C). Namely, campsites are limited to 100 square feet for a single individual and 200 feet for all others and may not be within 200 feet of another camping area; campers may only occupy one camping area at a time. SMC §§ 19.50.040(C)(2)– (4); 19.50.20.

Under the statutory scheme, engaging in unlawful camping is subject to the enforcement provisions of SMC section 19.20.110, including criminal prosecution as a misdemeanor or

infraction under SMC section 1.42.010. Such an infraction is punishable by up to six months in jail and a $500 fine. SMC § 1.42.010. Put differently, engaging in prohibited camping under section 19.50 is a criminally prosecutable offense.

The ordinance's effective date is August 16, 2023, *i.e.*, 30 days after its adoption by the San Rafael City Council on July 17, 2023. *See* Docket No. 1-1, Ex. A at 6.

1. Definition of "Camping"

The ordinance defines "camp" or "camping" as "using public property as a place of residence or for living accommodation purposes." SMC § 19.50.020(A). This provision states:

> 1. Remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of public property and
>
> 2. One or more of the following:
>
> > (a) Possessing camp paraphernalia; or
> > (b) Using or erecting camp facilities or other form of shelter; or
> > (c) Making a fire, cooking, or consuming meals; or
> > (d) Engaging in one or more of the following:
> >
> > > (i) sleeping or making preparations to sleep (including the laying down of bedding for the purposes of sleeping); or
> > > (ii) Unattended storage of personal belongings, including storing camp paraphernalia or camp facilities.
>
> The combined activities of (1) and (2) constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation regardless of their intent or the nature of other activities in which the person might also be engaged.

SMC § 19.50.020(A).

In other words, "[r]emaining for prolonged or repetitious periods of time . . . and . . . consuming meals . . . or . . . sleeping or making preparations to sleep" constitute "Camping" under the ordinance. SMC § 19.50.020(A).

2. Prohibited Property Under Section 19.50.030

Camping is prohibited on certain types of public property without exception. Such prohibited property includes: (1) "Open space property"; (2) parking garages; (3); "Public Facilities"; (4) within 100 feet of playgrounds; (5) within 10 feet of any "Public utility

infrastructure"; or (6) in or on any sidewalk or "Public right-of-way." SMC § 19.50.030(A).

"Open space property" is defined as "any parcel or area of land or water which is essentially unimproved natural landscape area, such as rivers, streams, watershed and shoreline lands, forest and agricultural lands, ridges, hilltops, canyons and other scenic areas, acquired and/or leased by the city for open space purposes." SMC §§ 19.50.020(E), 19.10.020. **"**Public Facility" is defined as "any building, structure, or area enclosed by a fence located on public property, whether secured, unsecured, locked, unlocked, open, or enclosed." SMC § 19.50.020(G). **"**Public utility infrastructure" is defined as "public bathrooms, and electrical boxes, fire hydrants, and similar equipment used to provide public utility services, but does not include light or electrical poles." SMC § 19.50.020(J). **"**Public right-of-way" is defined as "land which by written instrument, usage or process of law is owned by, reserved for or dedicated to the public use for street or highway purposes, or other transportation purposes, whether or not such land is actually being used or developed specifically for those purposes." SMC §§ 19.50.020(I), 11.04.020.

Additionally, city council or a city manager may issue an administrative order prohibiting camping absolutely on *any* public property "determined to be a threat to the public health, safety, or welfare," at any time with no statutory temporal limit. SMC §§ 19.50.040(B).

3. Prohibited Property under Section 19.50.040

Camping is prohibited on any public property not covered under SMC sections 19.50.030. SMC § 19.50.040(A). An exception allows camping and "use of minimal measures for staying warm or dry while sleeping on such property, when there is no alternative shelter available to the person camping." SMC § 19.50.040(B).

When the exception applies, several conditions are imposed. SMC § 19.50.040(C). First, camping areas may only be used for "living accommodation purposes," including "sleeping and making preparations to sleep . . . by a person with no alternative shelter available to the person camping." SMC § 19.50.040(C)(1). Second, camping areas may not exceed 100 square feet for one individual or 200 square feet for more than one individual. SMC §§ 19.50.040(C)(2), 19.50.020(D). Third, no person may "use, establish, or occupy more than one camping area." SMC §§ 19.50.040(C)(3). Finally, camping areas must be 200 feet apart. SMC § 19.50.040(C)(4).

III. DISCUSSION

A. Standing

"To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). The injury must not be "too speculative." *Id.* "A plaintiff need not, however, await an arrest or prosecution to have standing to challenge the constitutionality of a criminal statute." *Boise*, 920 F.3d at 609 (finding claims by unhoused people seeking prospective relief against future enforcement of an allegedly unconstitutional anti-camping statue were justiciable). Rather,

> [w]hen the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.

Id. (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)).

Camp Integrity, as it exists, does not comport with the ordinance, and the Camp's members are vulnerable to prosecution. *See* Powelson Decl. Ex. L ¶ 6. Camp Integrity is comprised of individual camps close to one another, violating, at a minimum, the ordinance's prohibition of multiple encampments within 200 feet of each other. City officials have stated "[w]e know that at the Mahon Creek Path, individuals camping there will be displaced" due to the ordinance. Powelson Decl., Ex. A. Further, According to Plaintiffs, defendant Chris Hess stated that, "[t]he city's primary concern [for implementation] is the Mahon Creek Path Encampment [Camp Integrity] where we have 30 to 35 campsites currently." Powelson Decl., Ex. L ¶ 6. The Agenda Report for adoption of the ordinance is almost entirely focused upon the Mahon Creek Path suggesting that campers on the path are the primary target of the ordinance. *See* Docket No. 16-2 at 3–4, 6, 8. Plaintiffs, for their part, have evidenced an intention to engage in conduct proscribed by the statute, *i.e.*, remaining at Camp Integrity, if for no other reason than they do not know of any other place to go. *See, e.g.*, Metz Decl., Ex. E ¶ 13. According to Plaintiffs and Defendants, the shelters in Marin County are full. Docket No. 1 ¶ 1; Docket No. 16-2. Further, the City of San Rafael, has not been able to meet Plaintiffs' requests for housing. *See, e.g.*, Metz Decl., Ex. B.;

Nelson Decl., Ex. C; Barrow Decl., Ex. B. Plaintiffs also assert that the city has not explained where Plaintiffs may lawfully relocate under the ordinance. *See, e.g.*, Powelson Decl., Ex. A. Accordingly, a credible threat of prosecution exists under the challenged ordinance. As constitutional rights are also at issue in this case, requirements of standing are satisfied.

B. Temporary Restraining Order

Under Federal Rule of Civil Procedure 65, the Court has the authority to issue preliminary injunctive relief. Requests for temporary restraining orders are governed by the same general standards that govern the issuance of a preliminary injunction. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977); *Stuhlbarg lnt'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

A party seeking such preliminary relief must meet one of two variants of the same standard. The traditional *Winter* standard requires the movant to show that (1) it "is likely to succeed on the merits;" (2) it "is likely to suffer irreparable harm in the absence of preliminary relief;" (3) "the balance of equities tips in [its] favor;" and (4) "an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the "sliding scale" variant of the same standard, "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *All. for the Wild Rockies v. Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017) (emphasis in original) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)).

1. Irreparable Harm

Plaintiffs assert that, if the ordinance goes into effect, they will suffer irreparable harm to their health, safety, and civil liberties. Docket No. 1 ¶¶ 105–06. Plaintiffs assert that they will either be subject to injury, violence, and perhaps death, if Camp Integrity is disbanded and campers are forced to camp in isolation or face arrest if they remain. *Id.*

Plaintiffs articulate valid concerns regarding their health and safety. Namely, Plaintiffs would be prevented from accessing the communal benefits of Camp Integrity, including shared

resources of food, water, bathrooms, and handwashing stations, and the protection afforded by physical closeness to other campers.

Certain plaintiffs suffer from physical injuries and must rely on other, proximate campers to acquire basic human needs including food, water, and protection from the elements. According to Plaintiffs, Camp Integrity not only offers a central location where necessities can be obtained, but it also includes individuals that can assist in acquiring them. For example, 64-year-old plaintiff Eddy Metz has a torn meniscus in his left knee, aggravated by a previous camp eviction, making it difficult for him to walk or move around. Metz Decl. ¶¶ 2, 6. Accordingly, Mr. Metz asserts that he "rel[ies] heavily" on neighbors at Camp Integrity to bring him water and food on a daily basis. *Id.* ¶¶ 9–10; *see also* Nelson Decl. ¶ 6; Docket No. 1 ¶ 80. Mr. Metz also expressed to this Court at oral argument that his physical condition prevents him from walking more than twenty feet without difficulty, limiting his ability to travel to a bathroom. This issue, compounded with other medical problems, has led him to soil himself when a bathroom is not physically proximate. Without access to such readily available assistance from campmates, or proximity to bathroom facilities, Plaintiffs such as Mr. Metz face malnourishment, thirst, and other complications.

Other plaintiffs rely on physically close campers to intervene in the case of medical emergencies; in this way, proximity is lifesaving. S*ee, e.g.*, Aardalen Decl. ¶ 6. Specifically, plaintiff Anker Aardalen recently suffered from an accidental overdose and was saved by the administration of Narcan by a camper. *Id.* Some plaintiffs have saved numerous lives at Camp Integrity through such intervention. *See, e.g.*, Nelson Decl. ¶¶ 10–12. According to Dr. Jeffrey Schonberg, Ph.D., a researcher focused on people experiencing homelessness in the Bay Area, the ordinance poses an increased risk of drug overdose because "the single largest risk factors for overdose is using in isolation." Schonberg Decl. ¶¶ 1–23, 21–24.

Female plaintiffs also assert that they rely on nearby campers for protection, including against rape, human trafficking, and domestic violence. For example, Plaintiff Courtney Huff lives at Camp Integrity intermittently "for her personal survival" due to domestic violence and human trafficking issues. *Id.* ¶ 1 n.1; Huff Decl. ¶¶ 8–9. Ms. Huff relies on nearby campers to protect her from her abusers. Huff Decl. ¶ 10. She states "[Camp Integrity] is one of the few places that I feel

safe." *Id.* ¶ 11. Plaintiff Amalia Mendoza attests that she similarly relies on the people at Camp Integrity for protection. Mendoza Decl. ¶ 15. For example, her male friends at Camp Integrity protected her from a man who was stalking her and persuaded him to leave her alone. *See Id.* ¶¶ 15, 17. Dr. Schonberg also asserts that "SMC 19.50 will significantly increase the risk of sexual assault, domestic violence, and human trafficking perpetrated against women who are unhoused." Schonberg Decl. ¶ 12. This is, in part, because the absence of capable guardians is a key factor in likelihood of victimization; the ordinance decreases access to capable guardians because of the "explicit focus on isolating unsheltered people into small, decentralized campsites." *Id.* ¶ 14. Further, Dr. Schonberg states that a victims' inability to live in chosen communities with those that make them feel safe hinders recovery and maintenance of mental, emotional, and physical well-being. *Id.*

Given these assertions, Plaintiffs have sufficiently shown that they will likely suffer irreparable injury if the ordinance goes into effect.

2. Balance of Hardships

Plaintiffs allege that Camp Integrity members will endure serious and severe hardships if the ordinance takes effect, as outlined above. These hardships may include rape, human trafficking, domestic violence, overdose, starvation, and isolation. While the City of San Rafael's purposes in adopting the ordinance include prevention of damage to public property and health and safety hazards stemming from large encampments, the city has not clarified precisely what harm it would endure by delaying implementation of its ordinance for a few weeks. In other words, it is not apparent from the filings or from oral argument why the *immediate* implementation of the ordinance is necessary. Rather, counsel for Defendants stated at oral argument that the city would not clear the Mahon Creek Path campers until three weeks following the provision of notice to campers, indicating that some delay in clearing of the camp is acceptable to the city. Further, the City of San Rafael stated that it has not been fully enforcing its operative anti-camping regulations to date. Docket No. 1, Ex. A at 9. This lack of impetus by the city to curtail camping thus far suggests there is no immediate need to enforce the new ordinance.

This case can be contrasted with the circumstances in *Where Do We Go Berkeley v.*

California Department of Transportation, 34 F.4th 852 (9th Cir. 2022). In *Where Do We Go Berkeley* the Ninth Circuit Court of Appeals overturned preliminary relief granted to plaintiffs challenging an ordinance allowing the breakup of an encampment, noting that the district court improperly weighed the hardships imposed upon the government. 34 F.4th at 864–65. However, there, the record showed that the encampments were "in need of *urgent* relocation," because they were located on the side of the road in an area used for drivers to regain control of a car safely. *Id.* at 855–56, 864–65 & n.6 (emphasis added). The government in that case also had a mechanism to establish which campsites were high-priority for clearing based on a risk-level system. *Id.* The campsite at issue had been designated "Level 1," *i.e.*, a high-risk location that "pose[s] *imminent* threats to safety or infrastructure." *Id.* at 861 (emphasis added). Further, the injunction there was set to last for six months, vastly longer than the temporary relief considered here, increasing hardships imposed on the enjoined party. *See id.* at 856. In the case at bar, while Defendants identify general health and safety hazards posed by encampments that have been going on for some time, they have not made clear what hardship it would endure if it cannot implement its ordinance immediately, as opposed to in a few weeks once parties may be heard more fully.

The purpose of preliminary injunctive relief is to maintain the status quo. *See, e.g., King v. Saddleback Junior Coll. Dist.*, 425 F.2d 426, 427 (9th Cir. 1970). Here the status quo is the absence of the ordinance. Given this commanding principle, the hardships set forth by Plaintiffs, and the absence of hardships the city will endure by a brief delay in the enforcement of the ordinance, if any delay occurs at all, the balance of hardships tips *sharply* in favor of Plaintiffs.

3. Public Interest

According to Defendants, the Camping on Public Property ordinance addresses health and safety concerns to the public posed by campsites, and those caused specifically by campers at the Mahon Creek Path location. Docket No. 16-2 at 6. Defendants note that there have been a growing number of complaints filed regarding encampments at the Mahon Creek Path since April 2023 including for criminal activity and nuisance issues. *Id.* at 3.

The city has explained that concentrated campsites pose specific concerns, including "considerable garbage and waste" and that the area may become "a magnet for illegal activity."

Id. at 4. The ordinance specifically seeks to address increased volume of public safety calls and calls for service at the area, including for sanitation, human waste, biohazards, refuse, vandalism, theft, physical fights amongst the campers, drug possession and overdose, and other disruptive behavior, among others. *Id.* at 6. The city notes that these issues, which are increased in high-concentration encampments, pose a negative impact on neighboring residents, businesses, and the community. *Id.*

The city explains that the campsite at the Mahon Creek Path has grown over the last several months, from 19 tents in May of this year, to 27 tents in early June, and 33 tents later that same month. *Id.* at 3. City staff who interviewed new arrivals learned that newcomers were there due to displacement after another campsite, similar to Camp Integrity, was recently closed and cleared by the California Department of Transportation. *Id.*

When campsites are cleared campers go somewhere else; campers do not disappear. This is exemplified by the fact that Camp Integrity's growth, and related issues, came at least in part from the clearing of another camp. *Id.* While dispersing the unhoused may momentarily serve to address health and safety concerns in the immediate area, hazards posed by campsites will not be eliminated entirely, but moved to other spaces, and in turn, to other neighboring residents and businesses. This is not necessarily a benefit to the public. Indeed, given that the ordinance at issue prevents unhoused people from camping in any "Open space area," such as fields, parks, and clearings, unhoused populations may likely move into more populated areas, bringing the hazards identified by the city closer to the doorsteps of residents and businesses. This has the potential to increase harm to the public and the number of interactions between unhoused and others in the community, *i.e.*, potential for incidents amongst the two groups.

Dispersing high-concentration campsites and requiring that those campsites be spread out may mitigate the increased health and safety hazards specific to these sites. However, spreading out campsites also appears to come with its own negative impact on those same health and safety hazards. Defendants' filings show that residents at the Mahon Creek Path encampment have been working collaboratively with the city regarding waste and refuse in the area, including that "many [but not all] occupants have kept orderly campsites and used bags provided by the city to collect

trash." *Id.* at 4. In collaboration with residents, the city has conducted weekly pickups of trash every Thursday from the Mahon Creek Path camp, and organizations have sent volunteer teams to address scattered waste at the campsite weekly. *Id.* Further, the Specialized Assistance for Everyone ("SAFE") Team maintains a presence at the campsite, building relationships with individuals that might require crisis and mental health services. *Id.* If campers are dispersed throughout the city, this may hinder the organized, communal cleaning that has been taking place amongst Mahon Creek Path campers, the city, and SAFE—as there would no longer be a central location to focus efforts or to coordinate with those who are unhoused. Further, since campers would be spread out, those campers willing to clean up trash will not be proximate to unwilling campers, preventing cleaning of waste by willing campers of those unwilling campers. Volunteer teams and organizations may also be unable to expend additional resources to stretch far and wide to collect trash and other waste or build relationships with unhoused individuals that may require crisis and mental health services (services that likely mitigate health and safety hazards).

The public interest is also not served by facilitating sexual violence and human trafficking in the City of San Rafael, which is a risk posed by dispersing unhoused populations throughout the area. *See, e.g.*, Schonberg Decl. ¶¶ 12–14.

Accordingly, while the court recognizes that the health and safety hazards identified by Defendants are important, it is not clear on the record that the public interest would be served by allowing the ordinance to go into effect immediately, without more clarity on where unhoused populations will be able to go, or what resources will remain accessible to them once dispersed. Thus, this factor weighs slightly in favor of granting temporary relief, which will serve the public interest and maintain the status quo—at least in the short term.

4. Likelihood of Success on the Merits/Serious Question

Since the balance of hardships tips sharply in Plaintiffs' favor and the other factors have been satisfied, Plaintiffs need only show that there are "serious questions" on the merits in order to obtain preliminary injunctive relief. *Alliance For The Wild Rockies v. Cottrell,* 632 F.3d 1127, 1134–35 (9th Cir. 2011). A "serious question" is one which the plaintiff "has a fair chance of success on the merits." *Sierra On-Line, Inc. v. Phoenix Software Inc.*, 739 F.2d 1415, 1421 (9th

Cir. 1984). Whereas here a document is filed pro se, the document is "'to be liberally construed,'" and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)) (citations omitted).

Among other claims, Plaintiffs assert that SMC sections 19.50 and 19.20.080(C) violate the Eighth Amendment's Cruel and Unusual Punishment Clause for impermissibly criminalizing involuntary acts and status. Plaintiffs have pleaded that serious questions exist as to the merits of this claim.

The Eighth Amendment states that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. The latter clause has been interpreted as including substantive limits upon what conduct may be criminalized. *Boise*, 920 F.3d at 615. Specifically, the state may not criminally punish an "involuntary act or condition if it is the unavoidable consequence of one's status or being." *Id.* The *Boise* court explained that "[h]uman beings are biologically compelled to rest," and doing so in public is unavoidable if a person is unhoused and has nowhere else to go. *Id.* at 617. Accordingly, an ordinance would be unconstitutional "insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them." *Id.* at 604; *see also Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023) (affirming and extending the holding of *Boise* as preventing criminalization of not only necessary act of sleep but use of articles necessary to facilitate act of sleeping). The *Boise* court also recognized that the need to eat and "engage in other life-sustaining activities," are similarly compulsory for humans. *Id.* at 617.

In *Boise*, the court found unconstitutional an ordinance that criminalized sleeping on public property. *Id.* at 618. The city issued a protocol disallowing enforcement of the ordinance when shelters lacked overnight space, as reported by the shelters. *Id.* at 606–07. However, the court recognized that, in practice, this did not mean individuals had an alternative shelter available. *Id.* at 605–06, 609–610. In reality, one of the shelters always claimed to have space available even when an individual may have been turned away for other reasons, including failure to enroll in a

religious program or for staying in the space for too many consecutive nights. *Id.* at 605–06, 609–610. Thus, no alternative shelter was truly available to unhoused people when the ordinance was being enforced and so, the ordinance was deemed unconstitutional. *Id.*

Here, the statutory scheme provides an exception allowing camping or sleeping in public "when there is no alternative shelter available to the person camping," SMC § 19.50.040(B), but the exception may not satisfy the holding of *Boise*. The exception only applies to land that is not identified in SMC section 19.50.030. Land identified in section 19.50.030 is robust, and includes:

- Natural landscape areas including rivers, streams, shoreline lands, forests, agricultural lands, ridges, hilltops, canyons, and other scenic areas. SMC §§ 19.50.030(A)(1), 19.50.020(E), 19.10.020;
- Sidewalks or land "owned by, reserved for or dedicated to the public use" for "street or highway purposes, or other transportation purposes," "whether or not such land is actually being used or developed specifically for those purposes." SMC §§ 19.50.030(A)(6), 19.50.020(I), 11.04.020;
- Area within 10 feet of a public bathroom, electrical box, fire hydrant or other utility service. SMC §§ 19.50.030(A)(5), 19.50.020(J);
- Area within 100 feet of a playground. SMC § 19.50.030(A)(4);
- Any parking garage of the city. SMC § 19.50.030(A)(2); and
- Any building, structure, or area enclosed by a fence. SMC §§ 19.50.030(A)(3); 19.50.020(G).

Put differently, the statutory scheme as written may not leave many, if any, places for the unhoused to camp or sleep in public. In addition, the ordinance grants power to the city council or city manager to prohibit camping absolutely on any public property "determined to be a threat to the public health, safety, or welfare," at any time. SMC §§ 19.50.030(B).

Because much land in San Rafael seems to fall under SMC section 19.50.030, and all land may be designated as camping-prohibited under SMC section 19.50.030(B), there is doubt as to whether, practically speaking, there is any land where the *Boise* exception can or will regularly apply. As such, it is questionable whether there is enough exception-friendly land to

accommodate the unhoused population of San Rafael that do not have access to other shelter—an unfortunately high number of people.[2] This issue is compounded by the ever-present requirement that camps be 200 feet apart from one another. Accordingly, even if some space is exception-friendly, that space must also be large enough to allow for spreading out of the camps to be lawful.

Thus, there is doubt, based on this record that the exception is viable.[3] Without the exception, the ordinance is a clear violation of *Martin v. City of Boise* for the proscription of sleeping in public. Thus, there are "serious questions" going to the merits present in this case.[4]

C. Appointment of Counsel

Plaintiffs have requested that counsel be appointed to them. There is no absolute constitutional guarantee to counsel in civil cases. *Mercado v. Kijakazi*, 2023 U.S. Dist. LEXIS 35439, *6 (S.D. Cal. March 2, 2023) (citing *Hedges v. Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994). Whether or not to appoint counsel, under 28 U.S.C. section 1915(e)(1), is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Id.* (quoting *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)). Before the court may exercise this discretion, Plaintiffs must make a reasonably diligent effort to obtain counsel. *Id.* (citing *Bailey v. Lawford*, 835 F. Supp. 550, 552 (S.D. Cal. 1993). Plaintiffs' motion for appointment for counsel lacks information regarding attempts to secure counsel. *See* Docket No. 3-1 at 1. Thus, the Court will not appoint counsel at this time.

The Court advises Plaintiffs that the district court has produced a guide for pro se litigants

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[2] The City of San Rafael seemingly does not have clear guidance available as to what land is amenable to the camping/sleeping exception. *See, e.g.*, Powelson Decl., Ex. A. The question of what land would be considered exception-friendly compared to exception-prohibited was not clarified fully at oral argument. For example, no specific examples of exception-friendly land were provided. The city has also acknowledged that there is insufficient unit and shelter space to support its homeless population, with just two beds becoming available per week and at least 241 individuals without shelter as of 2022. Docket No. 16-2 at 2.

[3] The statutory scheme, including its exception may also be insufficient under *Boise* for failure to sanction other compulsory, life-sustaining activities for humans including eating.

[4] Because the Court finds that Plaintiffs' Eighth Amendment claim presents "serious questions" going to the merits, it declines to consider the validity of other claims asserted at this time. However, it notes its interest in understanding vagueness concerns, particularly as it relates to property amenable to the camping exception. *See* Docket No. 1 ¶¶ 52–53.

called *Representing Yourself in Federal Court: A Handbook for Pro Se Litigants*, which provides instructions on how to proceed at every stage of your case, including discovery, motions, and trial. It is available electronically online (https://cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf) or in hard copy free of charge from the Clerk's Office.

The Court further advises Plaintiffs that assistance may be available through the Legal Help Center. Parties can make an appointment to speak with an attorney who can provide basic legal information and assistance. The Help Center does not see people on a "drop-in" basis and will not be able to represent parties in their cases. There is no charge for this service. The Help Center's website is available at https://cand.uscourts.gov/about/court-programs/legal-help-desks/.

IV. CONCLUSION

Considering the above, the Court finds that a temporary restraining order is appropriate until Plaintiffs' motion for preliminary injunction may be heard. The Court **ORDERS** that Defendants be temporarily enjoined from enforcing San Rafael Municipal Code sections 19.50 and 19.20.080(C) until preliminary injunction hearing is held, which the Court expects to take place on September 6, 2023, but not beyond twenty-eight days from this order. Federal Rule 65 provides that when notice is provided, a temporary restraining order may issue for fourteen days and extend to twenty-eight days for good cause. *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1156 n.1 (9th Cir. 2018). Because this Court is unable to schedule a preliminary injunction hearing before September 6, 2023, it concludes that good cause exists to extend the Temporary Restraining Order beyond the fourteen days authorized by F.R.C.P. 65(b)(2), through the date of the preliminary injunction hearing—but not to extend beyond twenty-eight days. *See Hall v. Val-Chris Invs., Inc.*, 2023 U.S. Dist. LEXIS 132666, *15 n.4 (S.D. Cal. July 31, 2023).

IT IS SO ORDERED.

Dated: August 15, 2023

TRINA L. THOMPSON
United States District Judge