

CITY OF SAN RAFAEL ADMINISTRATIVE ORDER

ADMINISTRATIVE ORDER OF THE CITY MANAGER PROHIBITING NEW CAMPING ON CERTAIN PUBLIC PROPERTY: MAHON CREEK PATH (EFFECTIVE DATE: DECEMBER 6, 2023)

This Administrative Order of the City Manager of the City of San Rafael prohibits new camping in the vicinity of the Mahon Creek Path in the City of San Rafael. This Order is effective as of December 6, 2023 (the “Effective Date”). This Order is being issued pursuant to the authority of the City Manager, under San Rafael Municipal Code section 19.50.030(B), to “absolutely prohibit camping, or adopt time, place, or manner conditions on camping, at any time in or on one (1) or more public properties, or portion thereof, where such camping is determined to be a threat to the public health, safety, or welfare.”

I. BACKGROUND

On July 17, 2023, the City Council of San Rafael adopted [Ordinance 2030](#) (the “Ordinance”) regulating camping on public property. The Ordinance was passed in response to public health, safety, and welfare concerns associated with encampments in the City. The Ordinance allows persons with no alternative shelter to camp on public property in the City, but under reasonable time, place, and manner conditions. The regulations, enacted under San Rafael Municipal Code (“SRMC”) chapter 19.50, require campers to maintain their belongings within a space no greater than 100 square feet (or 200 square feet if more than one person), and to separate their campsites by 200 feet. On August 11, 2023, several unhoused persons living in an encampment along the Mahon Creek Path filed a lawsuit in the U.S. District Court of the Northern District of California to challenge the legality of the Ordinance.¹ This litigation is ongoing.

On October 19, 2023, the Court issued an Order Granting in Part and Denying In Part Plaintiffs’ Motion for Preliminary Injunction (“Preliminary Injunction Order”), attached hereto as **Exhibit B** and incorporated herein. On November 2, 2023, the Court issued an Order Clarifying Scope of Preliminary Injunction, attached hereto as **Exhibit C** and incorporated herein. The Preliminary Injunction Order permits the City, during the pendency of the litigation or until further ordered, to enforce SRMC section 19.50 against members of the San Rafael Homeless Union (“Union”) who reside at the Mahon Creek Path encampment, with Court-ordered modifications and conditions. Among them, the City must allow 400 square-foot campsites for up to four people and campsites may be separated by 100 feet. The City is also required to designate the permissible campsites which comply with the Ordinance and establish an allocation and registration process so that there is an orderly process by which campers can find permitted campsites.

¹ *Boyd, et al. v. City of San Rafael, et al.*, N.D. Cal., Case No. 23-cv-04085-EMC.

The Union thereafter submitted to the City a list of 46 persons whom they state were camping at the Mahon Creek Path as of October 19, 2023. Using the list submitted by the Union, the City developed and submitted to the Court a map and a description of the process by which campsites may be allocated or claimed (the “Procedures”). The City’s Procedures, attached hereto as **Exhibit D** and incorporated herein, identify 14 campsites in the vicinity of the Mahon Creek Path, including nearby portions of Andersen Blvd. and Francisco Blvd. W. Each of the campsites is an area of 400 square feet, comprised of four 100 square-foot spaces, separated by a 100-foot buffer. Fifty-six (56) total camping spaces are identified. Under the Procedures, Mahon Creek Path residents protected by the injunction and/or currently camping along Lindaro Street may register themselves for one of the identified camping spaces.

Since the City submitted its Procedures to the Court, new persons not protected by the injunction have moved into the area covered by the City’s Procedures, and campers are relocating within the area, which is impeding the City’s ability to comply with the Court’s injunction. Persons should not be permitted to take up spaces that were available for registration by persons protected by the injunction or to populate areas that would make it impossible for the City to enforce the 100-foot separation between campsites. Persons relocating within the area should not be permitted to do so unless they are relocating to a campsite for which they have registered under the City’s Procedures. In order for the City to provide an orderly process by which campers can find permitted campsites under the injunction, the status quo must be maintained.

This Administrative Order adopts a prohibition on new camping in the vicinity of the Mahon Creek Path to maintain the status quo, at the areas designated as “Mahon Creek Path Vicinity – New Camping Prohibited” in **Exhibit A**. This Order is necessary to mitigate a substantial risk or risks to the public health, safety, or welfare, and such prohibitions are permissible under applicable law, including San Rafael Municipal Code section 19.50.030(B).

II. RECITALS

WHEREAS, on July 17, 2023, in response to public health, safety, and welfare concerns associated with encampments in the City, the City Council of San Rafael adopted [Ordinance 2030](#) regulating camping on public property; and

WHEREAS, the Ordinance allows persons with no alternative shelter to camp on public property in the City, but under reasonable time, place, and manner conditions. The regulations, enacted under SRMC chapter 19.50, require campers to maintain their belongings within a space no greater than 100 square feet (or 200 square feet if more than one person), and to separate their campsites by 200 feet; and

WHEREAS, on August 11, 2023, several unhoused persons living in an encampment along the Mahon Creek Path filed a lawsuit in the U.S. District Court of the Northern District of California to challenge the legality of the Ordinance; and

WHEREAS, on October 19, 2023, the Court issued a Preliminary Injunction Order and, on November 2, 2023, an Order Clarifying the Preliminary Injunction Order, attached as **Exhibits B and C**; and

WHEREAS, the Court's Preliminary Injunction Order permits the City to enforce its Ordinance during the pendency of the litigation under certain conditions and modifications, including 400 square-foot campsites for up to four people and campsites separated by 100 feet. The City is also required to designate the permissible campsites which comply with the Ordinance and establish an allocation and registration process so that there is an orderly process by which campers can find permitted campsites; and

WHEREAS, to comply with the Court's Preliminary Injunction Order, the City developed and submitted to the Court its Procedures, attached as **Exhibit D**, consisting of a map and a description of the process by which campsites may be allocated or claimed; and

WHEREAS, under the Procedures, Mahon Creek Path residents protected by the injunction and/or persons currently camping along Lindaro Street may register themselves for one of 56 camping spaces identified in the City's Procedures; and

WHEREAS, since the City submitted its Procedures to the Court, new persons not protected by the injunction have moved into the area covered by the City's Procedures, and persons are relocating within the area, which is impeding the City's ability to comply with the Court's injunction; and

WHEREAS, in order for the City to provide an orderly process by which campers can find permitted campsites under the injunction, the status quo must be maintained; and

WHEREAS, Section 19.50.030(B) of the San Rafael Municipal Code provides that, "[t]he city council or city manager may, by resolution or administrative order, absolutely prohibit camping, or adopt time, place, or manner conditions on camping, at any time in or on one (1) or more public properties, or portion thereof, where such camping is determined to be a threat to the public health, safety, or welfare;" and

WHEREAS, prohibiting new camping to maintain the status quo in the areas designated as "Mahon Creek Path Vicinity - New Camping Prohibited" in **Exhibit A** is necessary to mitigate a substantial risk or risks to the public health, safety, or welfare, and such prohibitions are permissible under applicable law, including San Rafael Municipal Code section 19.50.030(B).

III. ORDER

NOW, THEREFORE, pursuant to authority vested under section 19.50.030(B) of the San Rafael Municipal Code, the City Manager of the City of San Rafael hereby orders as follows:

A. New Occupants.

1. No person shall camp, including in a tent, on the ground, or in a motor home or other vehicle, or use or store camp facilities or camp paraphernalia, in the areas designated as “Mahon Creek Path Vicinity - New Camping Prohibited” in **Exhibit A**, or any portion thereof.

B. Existing Occupants.

1. The forgoing prohibition under subsection A shall not apply to persons occupying the areas designated as “Mahon Creek Path Vicinity - New Camping Prohibited” in **Exhibit A**, as of the Effective Date of this Order.

2. No person shall relocate from their current location to another location within the areas shown in **Exhibit A**, unless they have registered for a designated camping space in compliance with and pursuant to the City’s Procedures. This prohibition does not apply to and has no effect on any person who relocates out of the areas shown in **Exhibit A**.

3. Camping activities in the areas shown in **Exhibit A** are otherwise subject to applicable law, including SRMC section 19.50. This Order does not permit any person to camp on public property in the City if the person has alternative shelter available.

C. Effective Date.

1. The forgoing prohibitions under subsections A and B shall be effective on the Effective Date of this Order and shall remain in effect until a subsequent order of the City Manager or ordinance of the City Council.

IN WITNESS WHEREOF, the City Manager of the City of San Rafael has executed this Order as of the day, month and year below written.


CITY OF SAN RAFAEL:

DATE:


Cristine Alilovich (Dec 6, 2023 15:44 PST)
CRISTINE ALILOVICH, City Manager

Dec 6, 2023

ATTEST:
City Clerk


Lindsay Lara (Dec 6, 2023 20:00 PST)
LINDSAY LARA, City Clerk

Enclosures:

- Exhibit A – Map of Mahon Creek Path Vicinity – New Camping Prohibited
- Exhibit B – October 19, 2023, Preliminary Injunction Order
- Exhibit C – November 2, 2023, Order Clarifying the Preliminary Injunction Order
- Exhibit D – November 22, 2023, Defendants’ Notice of Procedures Per Preliminary Injunction

Exhibit A

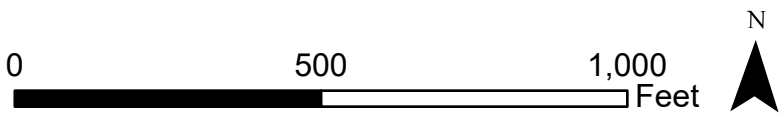
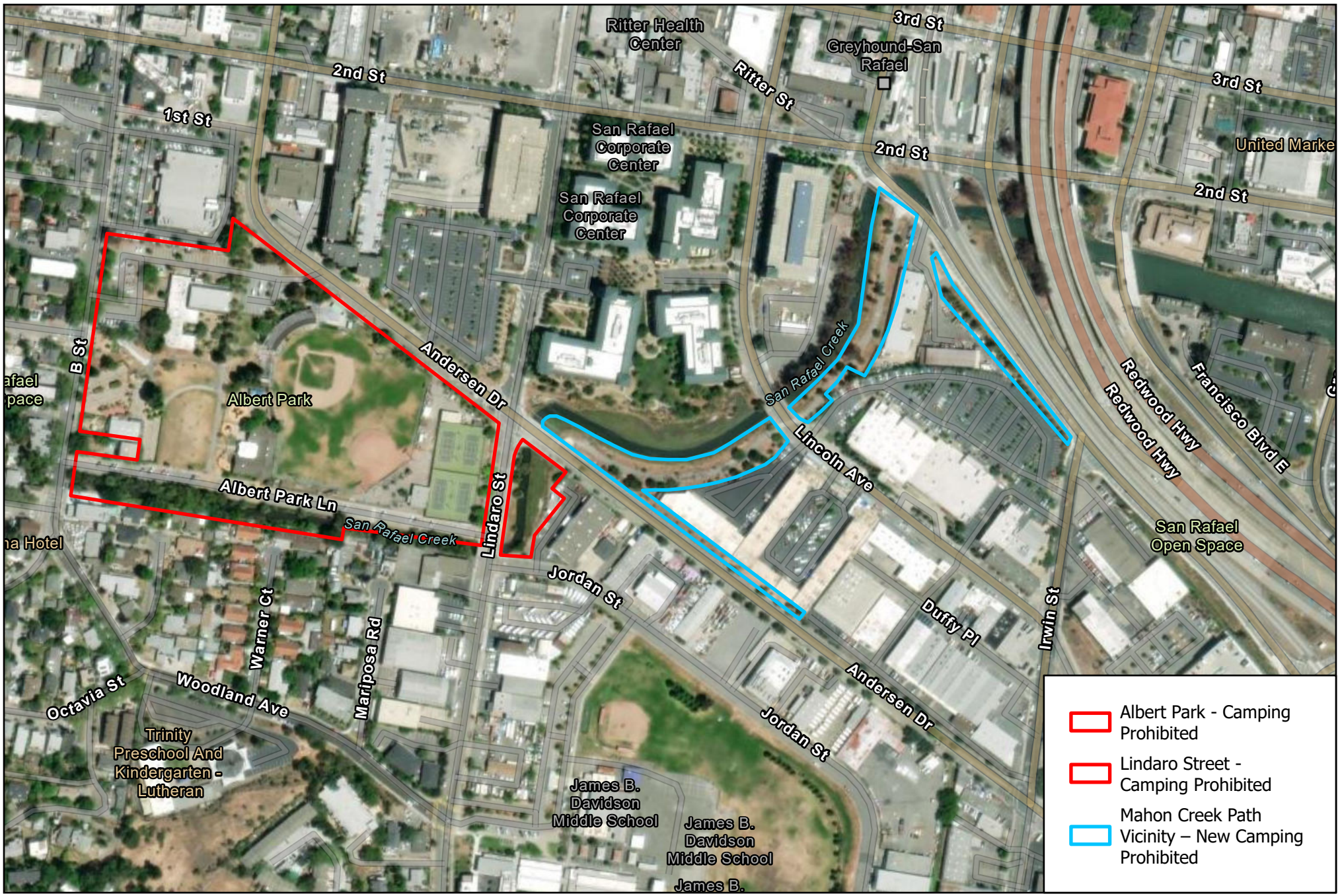


Exhibit B

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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 IN PART AND
DENYING IN PART PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

Docket No. 1

United States District Court
Northern District of California

Like many cities across our state, the City of San Rafael (the “City”) is faced with a problem with its unhoused citizens. The City concedes the number of unhoused on the streets exceeds the number of available shelter beds. Thus, consistent with *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the City understands it cannot criminalize those who are involuntarily unhoused. To address a large and growing encampment and health and safety concerns accompanying large encampments, the City, rather than establishing a safe sanctioned encampment area or taking an incremental approach to addressing its concerns, enacted an ordinance (the “Ordinance”) which wholly disperses the unhoused to campsites which, as a practical matter, can accommodate only one to two campers; these campsites must be separated by 200 feet, *i.e.*, nearly two thirds of the length of a football field. Although *Martin*, does not eliminate a city’s discretion to determine where unhoused persons may camp within the city, there are constitutional and statutory requirements that assure citizens, including the unhoused, due process, that require consideration of reasonable accommodation to those with disabilities, and that prevent citizens from being exposed to unreasonable dangers affirmatively created by governmental actors.

1 For the reasons stated below, the Court concludes that full enforcement of the Ordinance is
 2 likely to inflict irreparable harm upon the Plaintiffs and threatens to impinge upon certain legal
 3 rights. On the other hand, maintaining a blanket injunction and leaving the encampment in place
 4 would impose significant hardships upon the City and threaten its valid interest in safeguarding
 5 public health and safety. The Court will lift the broad temporary restraining order and issue a
 6 narrowly tailored preliminary injunction which permits enforcement of the Ordinance under
 7 limited conditions, conditions which accommodate the competing interests of both parties while
 8 minimizing their respective hardships.

9 I. BACKGROUND

10 The case at bar concerns the recent enactment and adoption of an ordinance by the City of
 11 San Rafael that prohibits camping, including sleeping, on certain public property without
 12 exception and imposes size, density, and proximity limitations on campsites. The Plaintiffs in this
 13 action include “Camp Integrity,” a self-named community of campers located in part of San
 14 Rafael’s Mahon Creek Path (“MCP”), the San Rafael Homeless Union (the “Union”), and thirteen
 15 residents at the MCP encampment¹. The MCP encampment is comprised of over 30 tents and
 16 offers a communal bathroom, handwashing station, and other resources. Plaintiffs seek a
 17 preliminary injunction preventing the Ordinance from going into effect. Defendants include the
 18 City and certain of its officials.

19 San Rafael’s former anti-camping scheme prohibited camping in parks, buildings, or
 20 parking lots, but included an exception if the individual had no alternative shelter. (San Rafael
 21 Municipal Code (“SMC”) Section 19.20.080(C)). The City manager could absolutely prohibit
 22 camping in specific parks if there was a threat to public, health, safety, or welfare by
 23 administrative order. *Id.* The new statute, SMC section 19.50, designates certain, identified land
 24 in San Rafael as camping-prohibited, without exception. For all other land, an exception allows
 25 camping when the person camping has no alternative shelter. When camping is allowed, each
 26 campsite must be 200 feet apart and limited to 100 square feet for one person or 200 square feet for
 27

28 ¹ The encampment along the Mahon Creek Path (“MCP encampment”) is sometimes referred to as
 “Camp Integrity” throughout this Order.

1 all others—including belongings. Camping in violation of the statute is criminally punishable by
2 up to six months in jail and/or a \$500 fine.

3 On August 15, 2023, Judge Thompson issued a temporary restraining order to halt the
4 Ordinance from going into effect as planned on August 16, 2023, until a hearing on the
5 preliminary injunction. She found that serious questions were raised as to the merits of Plaintiffs’
6 claim that the Ordinance violates the Eighth Amendment’s Cruel and Unusual Punishment Clause,
7 as interpreted by the Ninth Circuit in *Martin*, 920 F.3d 584. See Docket No. 19, at 14–15, 15 n.2.
8 Specifically, she found serious doubt as to whether any areas in San Rafael remained available for
9 persons with no alternative shelter to camp, *i.e.*, sleep lawfully under the new Ordinance—thus
10 impermissibly criminalizing the status of homelessness under *Martin*. *Id.* Judge Thompson
11 declined to reach Plaintiffs’ other claims. *Id.* at 15 n.4.

12 The City has since submitted a map identifying areas where camping remains lawful in
13 San Rafael, which abates much concern regarding a simple violation of *Martin*. However, the
14 Ordinance poses significant danger to Plaintiffs, implicating their due process rights and rights
15 under the Americans with Disabilities Act, among others. Namely, the Ordinance effectively
16 limits campsites to one or two campers and isolates each campsite from the next by 200 feet,
17 depriving campers who need, for various reasons, some community to safely survive. Forced
18 isolation exposes unhoused women who have experienced victimization to sexual, domestic, or
19 other violence. It separates disabled Plaintiffs from caretakers upon whom they rely. It prevents
20 neighbors from administering aid in a medical emergency such as a drug overdose, something that
21 has occurred more than once in this campsite. Moreover, the Ordinance leaves the unhoused on
22 their own to find permissible places to camp, under circumstances where such campsites may be
23 relatively scarce. Further, unhoused persons face an indefinite risk of eviction and prosecution
24 were someone else to set up a camp near them, violating the mandated buffer zone, regardless of
25 knowledge or control. The City does not have a plan to mitigate these harms and resists
26 implementing any administrative scheme to assure an orderly allocation, assignment, or
27 registration of permissible campsites, leaving the unhoused displaced under the Ordinance to play
28 a game of musical chairs.

1 At the same time, the Court is acutely aware of the important health and safety concerns
2 posed by large, concentrated encampments that the City seeks to abate via the Ordinance,
3 including risk of fire, accumulation of refuse, and proliferation of criminal activity.

4 Thus, having considered the irreparable harm with which Plaintiffs are threatened, the
5 balance of hardships considering a narrowly tailored injunction, and the strength of the Plaintiffs'
6 showing on the merits, the Court hereby **GRANTS** in part and **DENIES** in part Plaintiffs' motion
7 for a preliminary injunction. The City may enforce SMC Section 19.50 at the Mahon Creek Path
8 encampment and against Plaintiffs in this action, but with conditions which permit Plaintiffs to
9 maintain some semblance of community, affording them an opportunity for mutual protection and
10 assistance while preserving the City's goal of breaking up large encampments. Specifically, while
11 the City is permitted to break up the encampment at issue, the City must allow 400 square-foot
12 encampments, housing up to four people, and may impose a 100-foot buffer between campsites
13 instead of 200-foot buffer. The City must also ensure there is a process clearly identifying
14 permissible sites and an orderly process by which such sites may be allocated or claimed. This
15 injunction relates only to those who have brought this suit, *i.e.*, the individual Plaintiffs with
16 standing and residents of the Mahon Creek Path encampment represented in this action by the
17 Plaintiff San Rafael Homeless Union.

18 **II. PROCEDURAL HISTORY**

19 Camp Integrity and ten individual plaintiffs filed their complaint and ex parte application
20 for a temporary restraining order and preliminary injunction on Friday, August 11, 2023. *See*
21 Docket No. 1. Defendants include the City of San Rafael, as well as the City Manager, Chief of
22 Police, Assistant City Manager, Director of Public Works, Mayor of the City, and City Council
23 Persons. *Id.* at 11–12. The City was personally served at the City Clerk's Office at 1400 Fifth
24 Street, San Rafael CA 94901 around 1:00 pm on August 11th. *Id.* at 40. The same day, the Court
25 filed a briefing schedule that was served on all parties via email. *See* Docket No. 14. Judge
26 Thompson held a hearing regarding Plaintiffs' motion for temporary restraining order on Tuesday,
27 August 15, 2023, via Zoom Videoconference. Judge Thompson granted Plaintiffs' request for
28 temporary restraining order. *See* Docket No. 19.

1 Subsequently, the parties filed additional briefs addressing Plaintiffs’ request for a
 2 preliminary injunction. Defendants filed an opposition and supporting declarations, Docket Nos.
 3 24–30, and Plaintiffs filed a reply in further support of their motion and supporting declarations,
 4 Docket No. 32. A hearing was held by this Court on Wednesday, September 6, 2023, via Zoom
 5 Videoconference. At that time, Defendants consented to extension of the TRO until parties could
 6 brief supplemental issues and the Court could hear additional oral argument. The parties
 7 submitted additional papers in support and opposition of the motion. *See* Docket Nos. 72, 74, 76.
 8 Plaintiffs filed a First Amended Complaint (“FAC”) on September 26, 2023, adding three
 9 individual Plaintiffs and the San Rafael Homeless Union as Plaintiffs. Docket No. 77 (“FAC”).
 10 The complaint was otherwise nearly identical. *Compare* Docket No. 1 *with* Docket No. 77. The
 11 Court again held oral argument on October 2, 2023. At that time, the parties put on live witnesses
 12 and the Court heard additional argument on October 3, 2023.

13 III. FACTUAL BACKGROUND

14 Individual Plaintiffs in this action are thirteen residents of Camp Integrity who do not
 15 otherwise have stable housing, along with the entities Camp Integrity and the San Rafael
 16 Homeless Union. Docket No. 1 ¶ 1; FAC at 10, 12. The MCP encampment where Plaintiffs²
 17 reside receives donations of water, food, and blankets, and features a communal handwashing
 18 station and cooling center. *See* Docket No. 1 at 10, ¶ 102. There were about 33 tents in Plaintiffs’
 19 encampment, which is in part of the Mahon Creek Path in San Rafael, at the outset of this
 20 litigation. Docket No. 16-2 at 3. The City now estimates that there are 61 tents at the Path. The
 21 encampment has grown in recent months following closure of other encampments in the City.

22 Defendants recognize that the City of San Rafael is presently unable to provide adequate
 23 shelter to its homeless population. *See id.* at 2–3. Specifically, the City acknowledges that “units
 24 and shelters available in the city are typically full, except occasional turnover averaging two beds
 25 per week.” *Id.* at 2. A 2022 Point in Time (“PIT”) count of the homeless population in Marin
 26 County conducted by the City, as was required by the Department of Housing and Urban
 27

28 ² Hereinafter “Plaintiffs” refers to the Individual Plaintiffs unless otherwise specified.

1 Development (“HUD”), found that there were 348 homeless individuals in San Rafael and 241
 2 were unsheltered. *Id.* at 2; Docket No. 24 at 5. The City believes this figure is overinclusive
 3 because the PIT count of 348 people included those living on public property, private property,
 4 and offshore areas. Docket No. 24 at 5. The City now estimates that 120 persons are unsheltered
 5 and living on public property in San Rafael. *Id.*; Murphy Decl. ¶ 5. The City does not explain
 6 why the PIT estimation of 241 unsheltered persons in San Rafael is not accurate. Regardless,
 7 under either scenario, shelter space is insufficient to house the unsheltered population in San
 8 Rafael at present. Many of the Plaintiffs have submitted requests to the City for shelter placement
 9 and all assert that they want long-term housing. *See* Docket No. 1 ¶ 1; Docket No. 1-2, Boyd
 10 Decl., Ex. A, Metz Decl., Ex. B Nelson Decl., Ex. C, Barrow Decl., Ex. B, Cook Decl., Ex. B;
 11 Docket No. 1-3, Aardalen Decl., Ex. B; Docket No. 1-4, Hensley Decl., Ex. A, Mendoza Decl.,
 12 Ex. B.

13 The City’s current response was to enact an ordinance designed to break up large
 14 encampments like the encampment at the Mahon Creek Path and disperse unhoused individuals
 15 throughout the City. At the center of this litigation is the City’s evident intent to enforce the new
 16 Ordinance against the MCP encampment.

17 **A. Statutory Scheme**

18 The previous anti-camping statute in San Rafael prohibited camping in any park, building,
 19 or portion thereof, including the parking lot of any such area. SMC § 19.20.080(C)(1). The
 20 statute included an exception allowing camping in all of these areas when no alternative shelter
 21 was available to the person camping. SMC § 19.20.080(C)(3).

22 The new statute identifies certain areas where camping is banned without exception
 23 (Section 19.50.030); for all other land, camping is allowed under an exception for persons who
 24 have no alternative shelter available (Section 19.50.040(A)–(B)).

25 To this end, Section 19.50.030 prohibits camping absolutely at:

- 26 • Open space property. (“Any parcel or area of land or water which is essentially
 27 unimproved natural landscape area, such as rivers, streams, watershed and shoreline
 28 lands, forest and agricultural lands, ridges, hilltops, canyons and other scenic areas,

1 acquired and/or leased by the city for open space purposes.”). SMC §§ 19.50.020(E),
2 19.10.020.

3 • Public rights-of-way and sidewalks, “or portion[s] thereof.” (“Public right-of-way” is
4 defined as “land which by written instrument, usage or process of law is owned by,
5 reserved for or dedicated to the public use for street or highway purposes, or other
6 transportation purposes, whether or not such land is actually being used or developed
7 specifically for those purposes.”). SMC §§ 19.50.020(I), 11.04.020.

8 • Public facilities. (“Any building, structure, or area enclosed by a fence located on
9 public property, whether secured, unsecured, locked, unlocked, open, or enclosed.”).
10 SMC § 19.50.020(G).

11 • Within 10 feet of any public utility. (“Public bathrooms, and electrical boxes, fire
12 hydrants, and similar equipment . . . but does not include light or electrical poles.”).
13 SMC § 19.50.020(J) .

14 • Within 100 feet of any playground.

15 • City-owned parking garages.

16 • Any public property “determined to be a threat to the public health, safety, or welfare,”
17 when designated as such by the city council or city manager via administrative order or
18 resolution. SMC § 19.50.030(B).

19 The new statute also introduces size, density, and proximity limitations when camping is
20 allowed in section 19.50.040(C). Campsites may not extend beyond 100 square feet for one
21 person or 200 square feet for two or more people. SMC §§ 19.50.040(C)(2), 19.50.020(D). All
22 items must be kept within the campsites and if not, will be treated as abandoned property and may
23 be discarded. SMC § 19.50.040(C)(2)(a)–(b). Campsites may not be within 200 feet of any other
24 campsite. SMC § 19.50.040(C)(4).

25 Key definitions including an updated definition of the term “camp” or “camping,” are in
26 SMC section 19.50.020. Further, the Ordinance allows for punishment of up to six months in jail
27 and/or a \$500 fine if found to be camping in violation of the statute. SMC §§ 19.20.110, 1.42.010.

28

1 **B. Harm to Plaintiffs if the Ordinance is Enforced in Full**

2 Plaintiffs explain that (1) they rely on other, proximate campers and communal resources
3 for survival and (2) they fear isolation imposed by the Ordinance will expose them to serious and,
4 in some cases, life-threatening harms. Docket No. 1 ¶¶ 78–104.

5 **Caretakers and resources for physically disabled Plaintiffs.** Certain Plaintiffs have
6 suffered physical injuries causing them to rely on others to get food, water, and shade and to move
7 around. *Id.* ¶¶ 78–80, ¶¶ 86–87. Plaintiff Anker Aardalen mostly uses a wheelchair due to a
8 dislocated knee. Docket No. 1-3, Aardalen Decl., Ex. I ¶¶ 11–12. Mr. Aardalen relies on nearby
9 campers to get access to food, water, and other resources. *Id.*; Docket No. 1 ¶¶ 86–87. Plaintiff
10 Eddy Metz has a torn meniscus in his left knee, aggravated by a previous camp eviction. Docket
11 No. 1-2, Metz Decl., Ex. E ¶ 6. This injury makes it difficult for Mr. Metz to walk. *Id.*
12 Accordingly, Mr. Metz “rel[ies] heavily” on neighbors at Camp Integrity to bring him water and
13 food each day. *Id.* ¶¶ 9–10. Plaintiff Brian Nelson suffers from sleep apnea and relies upon a
14 CPAP machine; he needs access to electricity, which is more available in a communal campsite.
15 Docket No. 1 ¶ 80; Docket No. 1-2, Nelson Decl., Ex. C at 74–75. All Plaintiffs with disabilities
16 expect to lose critical assistance in gaining access to food, water, shade, and housing services if
17 they are forced to camp away from their community. Docket No. 1 ¶ 87.

18 **Protection from gender-based violence and crime.** Other Plaintiffs rely on fellow
19 campers for protection against sexual and domestic violence and human trafficking; safe campsites
20 provide space away from abusers and camping in a group offers protection from attacks. *See, e.g.,*
21 Docket No. 1-3, Schonberg Decl., Ex. K ¶¶ 1–24, Huff Decl., Ex. J ¶¶ 8–11; Docket No. 1-4,
22 Mendoza Decl., Ex. N ¶¶ 15, 17. Ms. Mendoza, who was a childhood victim of sexual abuse has
23 been attacked while living on the street and relies on others she trusts to protect her. Docket No.
24 1-4, Mendoza Decl., Ex. N ¶¶ 13, 16–17. In one instance, Ms. Mendoza was defended against a
25 stalker by fellow members of the MCP encampment who persuaded the man to leave her alone.
26 *Id.* ¶¶ 15, 17. Another Plaintiff, Ms. Huff, is a victim of domestic violence and has been raped
27 multiple times while living on the street. Docket No. 1-3, Huff Decl., Ex. J ¶¶ 3, 8–11. Ms. Huff
28 has also survived human trafficking at the hands of a prison gang that continues to threaten her

1 and sometimes watches or follows her in San Rafael. *Id.* ¶ 8. Ms. Huff relies on nearby campers
2 to protect her from these former abusers and to prevent future attacks. *Id.* ¶ 10. She explains the
3 MCP encampment “is one of the few places that [she] feel[s] safe.” *Id.* ¶ 11. For these women
4 and others, camping communally appears to be vital. As Plaintiff Shaleeta Boyd explained in her
5 testimony, there are no locks on tents, and they can be cut open; being a woman in this situation is
6 terrifying.

7 In support of the above, Dr. Jeffrey Schonberg, Ph.D., a researcher focusing on people
8 experiencing homelessness in the Bay Area, has offered an expert report analyzing the impact of
9 SMC Section 19.50 on unhoused persons. *See* Docket No. 1-3, Schonberg Decl., Ex. K. Dr.
10 Schonberg explains the Ordinance will “significantly increase the risk of sexual assault, domestic
11 violence, and human trafficking perpetrated against women who are unhoused.” *Id.* ¶ 12. This is
12 because the statute decreases women’s access to capable guardians and increases exposure to
13 offenders—key factors in victimization of unhoused women. *Id.* ¶¶ 13–14. Being afforded
14 sufficient protection from abusers is particularly important because 39% of unsheltered women
15 report intimate partner violence while living on the street. *Id.* ¶ 14. Women are also susceptible to
16 attack by strangers; 49% of attacks of unsheltered persons are committed by someone the person
17 does not know. *Id.* ¶ 15. Because, under the Ordinance, unsheltered women would not have a
18 central location to access resources, they must travel more often to obtain food, water, and other
19 necessities, increasing the opportunity to be attacked. *Id.* ¶¶ 16–17. At oral argument, even Lynn
20 Murphy, the City’s mental health liaison, agreed in her testimony that camping in isolation could
21 be devastating to an unhoused person. Specifically, Ms. Murphy stated, “I completely agree with
22 Dr. Schonberg that isolation can be devastating, [as is] a lack of social connectiveness.” Ms.
23 Murphy continued that she believes that that connectiveness “can exist in a group of three or four
24 people.”

25 **Protection against theft.** Similarly, the Plaintiffs camp in groups to offer protection from
26 crime including theft. Mr. Nelson explained that he relies on nearby campers to protect his
27 belongings, including his medical machines, from being stolen if he needs to be away from camp.
28 Docket No. 1-2, Nelson Decl., Ex. C at 75. Similarly, Ms. Boyd testified that her tent and all of

1 her belongings were stolen while she was camping away from most tents on the Mahon Creek
2 Path. Though there was one tent across the path from her, that person did not offer her protection.
3 However, her items and tent have not been stolen since she moved to the larger cluster of tents.

4 **Needs of those with potential psychological disabilities.** Several Plaintiffs suffer from
5 psychological disabilities because of violence they have endured and thus rely on nearby campers
6 to feel safe and to manage these disabilities. Ms. Mendoza states she suffers from PTSD from
7 childhood sexual abuse. Docket No. 1-3, Mendoza Decl., Ex. N ¶¶ 11, 13. Accordingly, Ms.
8 Mendoza must camp near multiple people that she trusts to fall asleep and prevent mental health
9 episodes. Docket No. 1-4, Mendoza Decl., Ex. A at 151–52. Ms. Huff similarly is a survivor of
10 childhood sexual abuse and has complex PTSD as a result. Docket No. 1-3, Huff Decl., Ex. J ¶ 5.
11 Ms. Huff relies upon sleeping near people that will protect her from her abusers so she can feel
12 and be safe. *Id.* ¶¶ 9–10. Mr. Nelson was attacked by knife earlier this year. Docket No. 1 ¶ 80;
13 Docket No. 1-2, Nelson Decl., Ex. C at 77. He was stabbed by someone that he did not know
14 sixteen times. *Id.* As a result of this event, Mr. Nelson suffers from PTSD that is triggered when
15 he is not around familiar people. *Id.* at 74, 77. Plaintiff Amanda Binkley suffers from anxiety,
16 PTSD, and depression that would be aggravated by being isolated in an atomized campsite. FAC
17 ¶ 87. Similarly, Plaintiff Anthony Tringali suffers from depression that would be aggravated by
18 social isolation. *Id.* ¶ 88.

19 Plaintiffs that suffer from physical and psychological disabilities have submitted requests
20 for reasonable accommodation to the City to no avail. Plaintiffs Amalia Mendoza, Brian Nelson,
21 Christie Marie Cook, Eddy Metz, and Anker Aardalen submitted Requests for Reasonable
22 Accommodations to the City. Docket No. 1-4, Mendoza Decl., Ex. A; Docket No. 1-2, Nelson
23 Decl., Ex. C; Docket No. 1-2, Cook Decl., Ex. A; Docket No. 1-2, Metz Decl., Ex. B; Docket No.
24 1-3, Aardalen Decl., Ex. C (“Accommodation Requests”). In addition to requesting housing,
25 Plaintiffs request the ability to camp near others. *Id.* Namely, Mr. Aardalen who cannot walk
26 easily requests the ability to remain near other campers and resources so he can have continued
27 access to food, water, shade, and other life-sustaining resources. Docket No. 1 ¶¶ 79, 86. Ms.
28 Mendoza and Ms. Huff request the ability to sleep near other safe campers to prevent mental

1 health episodes caused by PTSD from sexual trauma. Docket No. 1-4, Mendoza Decl., Ex. A at
 2 22–23; Docket No. 1-3, Huff Decl., Ex. J ¶¶ 10–11. Mr. Nelson requests the ability to camp
 3 communally to allow access to electricity as is needed for his CPAP machine and to accommodate
 4 PTSD from the stabbing attack that he endured. *See* Docket No. 1-2, Nelson Decl., Ex. C at 74–
 5 75. The requests were submitted, at the latest, in mid-August. *See* Accommodation Requests. At
 6 present, the City has not engaged in an interactive process with Plaintiffs to discuss
 7 accommodations despite its policy requiring that the City respond to requests within fifteen days
 8 of its receipt. Docket No. 72, Jeppson Decl. ¶ 2. The City has not expressed any intention to
 9 respond to Plaintiffs’ requests.

10 **Prevention of drug overdose and help in emergency situations.** Other Plaintiffs fear
 11 being separated from neighbors who could save them by administering Narcan or adrenaline in
 12 case of an accidental drug overdose. Docket No. 1 ¶¶ 92–97; Docket No. 1-3, Aardalen Decl., Ex.
 13 I ¶ 6; Docket No. 1-2, Nelson Decl., Ex. F ¶¶ 9–11. Mr. Aardalen was saved from an accidental
 14 overdose recently by a nearby camper. Docket No. 1-3, Aardalen Decl., Ex. I ¶ 6; Docket No. 1 ¶
 15 92. Brian Nelson attests that his training as a veterinary technician makes him able to administer
 16 adrenaline effectively, and that he has revived four people during overdoses. Docket No. 1-2,
 17 Nelson Dec., Ex. F ¶¶ 9–12. At oral argument on October 2, 2023, Plaintiffs indicated that there
 18 was recently another overdose at the MCP encampment and an incident where an individual
 19 suffered an epileptic seizure and received emergency care from nearby campers. Dr. Schonberg
 20 explained in his testimony that in emergency situations such as these, time and proximity is of the
 21 essence and campers rely on each other for help. Ms. Murphy agreed in her testimony that using
 22 drugs in a group instead of isolation offers protection; she testified that an effective tactic is to
 23 have one person remain sober with Narcan available while other campers use drugs to prevent
 24 mortal outcomes. Dr. Schonberg estimates that the Ordinance, if enforced, will result in a 15%-
 25 25% increase in drug overdose deaths because “one of the single largest risk factors of overdose is
 26 using in isolation.” Docket No. 1-3, Schonberg Decl., Ex. K ¶ 21.

27 **Hindered access to community support and resources.** As a general matter, Plaintiffs
 28 allege that communal camping is vital for access to food, water, shelter, and resources including

1 handwashing stations, bathrooms, and air-cooling stations. *See* Docket No. 1 at 10, ¶¶ 91, 102,
2 104. Further, a centralized encampment provides a singular location where volunteers drop off
3 donations of water, food, blankets, and other necessities. *See id.* ¶ 102. Ms. Murphy testified that
4 she cannot state with certainty whether the volunteer organizations that visit the now larger,
5 centralized encampments have the means to conduct visits and/or outreach to all campsites in San
6 Rafael if dispersed. One vital resource for Plaintiffs that would be jeopardized, as explained at
7 oral argument, is access to phone charging stations; without a phone Plaintiffs cannot make phone
8 calls for help in case of emergency or conduct calls to make appointments, seek employment,
9 receive medical care, or pursue housing opportunities. Ms. Murphy testified that solar charging
10 stations are sometimes distributed in encampments. It is not clear whether campers would have
11 access to these chargers if scattered, and Plaintiffs may also be hindered from sharing mobile
12 devices in emergencies if separated.

13 In general, Dr. Schonberg explains that the Ordinance is also dangerous because it breaks
14 up “essential survival strategies based on community acts of obligation and reciprocation.”
15 Docket No. 1-3, Schonberg Decl., Ex. K ¶ 11. In other words, unhoused persons establish a
16 communal framework whereby they exchange favors to stay alive. Dr. Schonberg testified that
17 the Ordinance’s disallowance of community encampments interferes with the acquisition and
18 exchange of “informal social capital” through the maintenance of relationships with others on the
19 streets. This informal social capital is the currency by which unhoused people gain protection,
20 support, and resources to survive, *i.e.*, by having one another’s backs. The Ordinance hinders this
21 mutual exchange of assistance. The Ordinance also disrupts this delicate and important communal
22 framework in other ways. As one example, Jason Sarris, member of the County of Marin
23 Homeless Policy Steering Committee (“HPSC”) warns that the Ordinance “pit[s] the unhoused
24 against one another” because of the need to self-police a 200-foot buffer around each campsite.
25 Docket No. 32-12, Sarris Decl. ¶ 9(c).

26 The eventualities of isolation for unhoused persons in vulnerable categories is particularly
27 important because many unhoused persons fit this description. Dr. Schonberg testified that a large
28 portion of the unhoused population suffers from mental health or substance abuse issues and

1 nearly all unhoused persons suffer insecurity of access to food and other necessities.

2 **Instability and uncertainty for the unhoused.** In addition to disrupting the communal
3 frameworks on which Plaintiffs rely, the Ordinance introduces chaos into an already unsafe and
4 unpredictable situation (homelessness). The City has prepared a street level map showing how
5 many campsites can be accommodated in the City in identified parks and public spaces. *See*
6 Docket No. 74, Ahuja Decl., Ex. A. However, the map does not show where those campsites can
7 be maintained with any precision. *See id.* at 17. The City has asserted in its filings and at oral
8 argument that it does not intend to set forth an allocation process, *e.g.*, establishing designated
9 campsites or assigning land on, for example, a first-come-first-serve or need basis. *See* Docket
10 No. 72 at 16 (“To be clear, allowable space will *not* be allotted.”). The Ordinance does not
11 establish any system for designating space for campers, for resolving competing claims for space,
12 or establish how intrusion by a third-party camper into the required buffer space is to be resolved.
13 Indeed, the City explains that it may evict all campers regardless of who maintained their campsite
14 first. *See id.* (“But if [who was there first] is uncertain or disputed, everyone is going to have to
15 leave.”). The City also does not offer any assistance or explanation of how campers are to
16 physically move their tents and sleeping gear if forced out of their campsite. Accordingly, the
17 Plaintiffs face uncertainty as to where to go, how to get there, along with continued, unpredictable
18 eviction and the ensuing hardship of relocation. This hardship may fall disproportionately upon
19 more vulnerable persons (*e.g.*, those with physical disabilities or women) who are unable to
20 effectively self-police their campsite buffer. The hardship will be exacerbated if the number of
21 unsheltered persons in San Rafael is 241 as the per the City’s 2022 PIT estimate compared to its
22 present estimate of 120 persons which would make available permissible campsites scarcer.
23 *Compare* Docket No. 24 at 5 *with* Docket No. 16-2 at 2–3.

24 **C. Harm to the City**

25 On the other hand, the City has identified substantial health and safety problems with the
26 current encampment as large as it is, and which appears to be growing. The City asserts that the
27 Mahon Creek Path encampment and large encampments pose increased risk of fire, harm to
28 neighboring businesses, increased levels of criminal activity, increased level of emergency

1 response calls, safety concerns for middle school students using the Mahon Creek Path to get to
2 school, waste and refuse issues, and hindrance on outreach.

3 **Fire hazards.** Fire Chief of the San Rafael and Marinwood Fire Departments, Darin
4 White, identified fire risks at the MCP encampment including unsafely rigged generators at the
5 campsites. Docket No. 24 at 9; Docket No. 16, White Decl. ¶¶ 2–3. Chief White testified at oral
6 argument that larger encampments present heightened fire risk because of accumulation of
7 flammable materials such as cardboard, wooden pallets—which are often made of dried instead of
8 fresh wood—and plywood. Further, modern tents are made of highly flammable materials
9 including polyester. Chief White explained that as a general matter, there is an increased risk of
10 fire in large encampments because tents close together are especially prone to ignition and rapid
11 spread, and also because campers tend to accumulate debris between tents that can spread fire.
12 Docket No. 16, White Decl. ¶¶ 4–5. In some other areas in San Rafael aside from the MCP
13 encampment, there are risks of wildfires. *See id.* ¶ 6. Chief White further testified at oral
14 argument that the presence of dried vegetation, gas canisters, cigarettes, improper wiring, and use
15 of indoor outlets outside. At the MCP encampment, a lamp post electrical wiring had been tapped
16 into, presenting fire risk.

17 Chief White also explained that cooking near a tent poses fire risks. Chief White testified
18 that it would be unsafe to have two to three tents within a 200 square foot space, both because of
19 proximity of the tents and because using any sort of cooking mechanism in that amount of space
20 would not allow sufficient distance between the tent and the cooking apparatus. Chief White also
21 testified that although fire risks are posed by singular tents, smaller clusters, as well as large
22 encampments, the larger the encampment, the larger the fire risk. Chief White also explained that
23 100 feet of distance between tents would provide a safe fire buffer.

24 **Harm to neighboring businesses.** Carl Huber, Lieutenant in the San Rafael Police
25 Department (“SRPD”) attests that employees no longer feel safe working near the encampment
26 and two employees quit. Docket No. 28, Huber Decl. ¶ 11. Lieutenant Huber further attests an
27 occupant of the MCP encampment (not party to this suit) attempted to sexually assault the
28 manager of a nearby food retailer and masturbated in front of her; this occurred approximately 100

1 feet away from the camp. *Id.* ¶ 12.

2 **Increase in criminal activity and safety calls and the “interior-exterior” problem.**

3 Lieutenant Huber attests that large encampments have higher levels of criminal activity in and
4 around the campsite compared to individual encampments. Huber Decl. ¶¶ 4–10. The tents on the
5 exterior act as a barrier to internal areas, providing a greater ability to conceal criminal activity
6 and posing difficulty for emergency responders to get into the camp. *Id.* ¶ 16. Further, as the
7 MCP encampment grew, there was a notable increase in criminal cases and calls to the police,
8 particularly for theft. *Id.* ¶¶ 10, 12. There was likewise an increase in safety calls. *Id.* ¶ 6. One
9 Plaintiff was arrested for selling methamphetamine at the MCP encampment, though he denies
10 that allegation.

11 The City emphasizes the difficulties posed specifically by larger encampments. Namely,
12 Lieutenant Huber testified in his declaration that “larger concentrated encampments” suffer from
13 increased levels of violence, criminality, impacts to surrounding neighbors, and non-emergency
14 and emergency calls as compared to “isolated individual or small encampments.” *Id.* ¶ 4.
15 Similarly, Ms. Murphy testified at oral argument that large encampments generally come with a
16 sense of lawlessness. Ms. Murphy further testified that at a nearby encampment, the Menzies Lot,
17 a shooting occurred after the encampment grew somewhere around three to six tents, and a camper
18 self-started a fire at the encampment.

19 **Safety risks to students using the path to go to school.** Students at San Rafael’s
20 Davidson Middle School use the Mahon Creek Path to travel from the San Rafael Transit Center
21 to school. *Id.* ¶ 13. Parents expressed concern as the school year commenced. *Id.*

22 **Waste and refuse.** The City also asserts that the MCP encampment presents waste issues,
23 including an increased burden on the City in collecting trash. Docket No. 25, Montes Decl. ¶ 5;
24 Docket No. 27, Murphy Decl. ¶ 12. Although it is obvious that unhoused campers, even if
25 separated, would produce refuse as any human would, the City contends that campers tend to
26 accumulate more things and produce more waste in the aggregate when there are large
27 encampments. To this end, Fire Chief White testified that in large encampments, campers tend to
28 fill space between tents with debris and accumulated items. On the other hand, the City and

1 Plaintiffs have each submitted filings showing that residents at the MCP encampment want to and
 2 do engage in regular cleanings of their campsite—including having lobbied the City for trash
 3 pickups, and there is an argument that centralized collection of trash is more efficient than
 4 collecting refuse from individual and small encampments spread throughout the City. *See, e.g.*,
 5 Docket No. 32-1, Ex. B at 13; Docket No. 16-2 at 4; Docket No. 32 ¶ 6.

6 **Making things too comfortable for the unhoused.** At oral argument Ms. Murphy also
 7 testified that larger encampments make the unhoused too comfortable and social with one another
 8 and thus hinder pursuit of alternative housing. She explained some people do not want to leave
 9 camp to go to the DMV to obtain an ID or to go to housing appointments, preventing their ability
 10 to get access to housing long-term. *See also* Docket No. 72-5, Murphy Supp. Decl. ¶ 7. The City,
 11 however, did not present any specific evidence that this was the case with the Plaintiffs.

12 **Hindrance on outreach.** The City also asserts that community groups are intimidated by
 13 having to approach large, concentrated camps, hindering outreach. Docket No. 27, Murphy Decl.
 14 ¶ 17. Notably, however, there is no evidence that social workers have actually been hindered in
 15 their outreach to unhoused campers at Camp Integrity. Moreover, it seems obvious that it is more
 16 efficient to have unhoused individuals proximate to organized and identified areas rather than
 17 scheduled throughout the City.

18 **IV. DISCUSSION**

19 **A. Justiciability**

20 1. Standing

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

28 [w]hen the plaintiff has alleged an intention to engage in a course of

1 conduct arguably affected with a constitutional interest, but
2 proscribed by a statute, and there exists a credible threat of
3 prosecution thereunder, he should not be required to await and
4 undergo a criminal prosecution as the sole means of seeking relief.

5 *Id.* (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). In assessing
6 threat of prosecution, the court should consider whether plaintiffs have a concrete plan to violate
7 the law in question and whether prosecuting authorities have communicated a specific warning or
8 threat to initiate proceedings. *Teter v. Lopez*, 76 F.4th 938, 946 (9th Cir. 2023) (citing *Unified*
9 *Data Servs., LLC v. FTC*, 39 F.4th 1200, 1210 (9th Cir. 2022)).

10 a. Individual Plaintiffs

11 Except for two people, the individual Plaintiffs here have established standing. As
12 explained in depth in assessing irreparable harm, individual Plaintiffs assert an actual and concrete
13 injury caused by the City's Ordinance; Plaintiffs have met standing requirements.

14 Additionally, there is at least a credible threat of prosecution here, as is required to
15 establish standing in the pre-enforcement posture. The MCP encampment as it exists violates San
16 Rafael's new anti-camping scheme, leaving its residents subject to prosecution. *See* Docket No. 3,
17 Powelson Decl. Ex. L ¶ 6. Plaintiffs' encampment is comprised of individual camps close to one
18 another, violating, at a minimum, the Ordinance's prohibition of multiple encampments within
19 200 feet of each other. Plaintiffs are thus currently engaging in behavior proscribed by the statute,
20 *i.e.*, residing at the MCP encampment. *See, e.g.*, Docket No. 1 ¶ 53; Docket No. 1-2, Nelson
21 Decl., Ex. A ¶¶ 11–13; Docket No. 1-4, Mendoza Decl., Ex. C at 28. The City, for its part, has
22 communicated its intent to enforce the Ordinance against residents of the MCP encampment. City
23 officials have stated “[w]e know that at the Mahon Creek Path, individuals camping there will be
24 displaced” due to the Ordinance. Docket No. 1-3, Powelson Decl., Ex. A. Further, Defendant
25 Christopher Hess acknowledged that, “[t]he city's primary concern [for implementation] is the
26 Mahon Creek Path Encampment [Camp Integrity] where we have 30 to 35 campsites currently.”
27 Powelson Decl., Ex. L ¶ 6. The Agenda Report for adoption of the Ordinance is almost entirely
28 focused upon the Mahon Creek Path, suggesting campers on the path are the primary target of the
 Ordinance. *See* Docket No. 16-2 at 3–4, 6, 8. Accordingly, for the individual Plaintiffs *that*
 continue to reside at the Mahon Creek Path, a credible threat of prosecution exists under the

1 challenged Ordinance.

2 On the other hand, some individual Plaintiffs no longer reside at the MCP encampment.
 3 Namely, Shaleeta Boyd testified at oral argument on October 2, 2023, that she has alternative
 4 housing and is no longer living at the Mahon Creek Path. Further, Lynn Murphy testified at oral
 5 argument on October 2, 2023, that Plaintiff Eddy Metz has moved out of the MCP encampment
 6 and is now residing upon a nearby street. Plaintiffs did not originally dispute this assertion at oral
 7 argument. However, subsequently, Mr. Metz contends that he remains part of “Camp Integrity”
 8 though he has moved outside of the nuclear cluster of tents on the Mahon Creek Path. *See* Docket
 9 No. 97. As the record contains sparse information about the characteristics of encampments along
 10 the street where Mr. Metz is currently residing, and at present the City has not evidenced an intent
 11 to enforce the new statute or former anti-camping ordinance³ beyond the large cluster of tents on
 12 the Mahon Creek Path, Mr. Metz lacks standing to challenge the Ordinance currently. Ms. Boyd
 13 likewise lacks standing as she is presently housed and does not reside at the Path.⁴

14 b. Organizational Plaintiffs

15 “The doctrine of associational standing permits an organization to ‘sue to redress its
 16 members’ injuries, even without a showing of injury to the association itself.’” *Or. Advocacy Ctr.*
 17 *v. Mink*, 332 F.3d 1101, 1109 (9th Cir. 2003) (quoting *United Food & Comm. Workers Union Loc.*
 18 *751 v. Brown Group, Inc.*, 517 U.S. 544, 552 (1996)). An association has standing to sue on behalf
 19 of its members when: “(1) its members would otherwise have standing to sue in their own right;

20 _____
 21 ³ The City has provided notice of its intent to enforce SMC § 19.020.080(R) – a section of the San
 22 Rafael Municipal Code in existence prior to adoption of the Ordinance that is separate from the
 23 previous anti-camping statute (which is SMC § 19.020.080(C)) at the Lindaro street encampments.
 24 *See* Docket No. 94. This subsection prohibits erecting buildings on public land and the City
 25 intends to enforce SMC § 19.020.080(R) by removing wooden pallets at the encampment and
 26 providing tents to those affected. *Id.* In other words, the City is not enforcing the anti-camping
 27 statutes at issue in this suit (SMC § 19.020.080(C) and § 19.50) at campsites on Lindaro street.
 28 Should the City endeavor to enforce the former anti-camping statute or new Ordinance against the
 Lindaro street encampment (i.e. require the eviction or dispersal of residents), the standing
 calculus for Mr. Metz would change.

⁴ While Courtney Huff explains that she lives in an apartment occasionally, she testified that she
 resides at the MCP encampment for periods of time due to safety concerns. This may undermine
 success on her Eighth Amendment claim, which provides protections for those who are
involuntarily homeless, but this does not entirely negate her having standing at this juncture.
 Voluntarily or not, Ms. Huff intends to violate the ordinance by residing at the MCP encampment.

1 (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the
2 claim asserted nor the relief requested requires the participation of individual members in the
3 lawsuit.” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021) (citing *Hunt v.*
4 *Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). The third prong is a “judicially
5 fashioned and prudentially imposed” question, as opposed to a constitutional requirement of
6 standing. *Mink*, 322 F.3d at 1113 (citing *United Food & Comm. Workers Union Loc. 751*, 517
7 U.S. at 557 (“[T]he third prong of the associational standing test is best seen as focusing on these
8 matters of administrative convenience and efficiency, not on elements of a case or controversy
9 within the meaning of the Constitution.”)).

10 Under the first prong, the organization is “not required to identify individual Constituents
11 who satisfy each element of standing.” *Disability Rts. Cal. v. Cnty. of Alameda*, 2021 WL
12 212900, at *7 (N.D. Cal. Jan. 21, 2021) (citing *Mink*, 322 F.3d at 1112). Rather, the question is
13 whether the organization has established that “at least one” of its constituents “would have had
14 standing.” *Id.* (citing *Mink*, 322 F.3d at 1112). The Union’s members include residents of the
15 MCP encampment. FAC at 10. As explained above, at least one of the Union’s members, *i.e.*,
16 individual Plaintiffs, have standing to sue, establishing the first prong of standing. *See G.G. by &*
17 *through A.G. v. Meneses*, 638 F. Supp. 3d 1231, 1241 (W.D. Wash. 2022) (finding first prong
18 satisfied where individual plaintiffs that were members of the organization had standing).

19 As to the second prong, there is no doubt the interests the Union seeks to protect here are
20 germane to its purpose. *See Am. Unites for Kids*, 985 F.3d at 1096. The Union’s defined mission
21 is to “organize, represent, advocate for, and support” its members. FAC at 10. Protecting the
22 constitutional rights of unhoused persons and ensuring that unhoused persons have continued
23 access to food, shelter, water, and safety fall squarely within the Union’s stated purpose. *See Am.*
24 *Unites for Kids*, 985 F.3d at 1097 (explaining that where there is a close connection between the
25 organization’s mission and the interests of others it seeks to represent, organizational standing is
26 appropriate); *G.G. by & through A.G.*, 638 F. Supp. 3d at 1241 (finding nonprofit disability rights
27 organization had associational standing to bring claims on behalf of disabled members as rights of
28 people with developmental disabilities was an interest the organization sought to protect).

1 As to the third prong, this is a prudential consideration “designed to promote efficiency in
2 adjudication.” *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 951 n.9 (9th Cir. 2002).
3 Here, allowing the Union to assert claims on behalf of its members promotes judicial efficiency by
4 avoiding multiple, individual lawsuits being filed on behalf of each resident of the encampment.
5 Further, the nature of the claims asserted do not counsel against associational standing. *See*
6 *Laborers Int’l Union Loc. 261 v. City & Cnty. of San Francisco*, 2022 WL 2528602, at *6 (N.D.
7 Cal. July 6, 2022) (explaining that unlike claims seeking damages which requires individualized
8 proof, claims seeking injunctive relief are well-suited for adjudication by organizational plaintiff)
9 (citing *Comm. for Immigrant Rts. of Sonoma Cnty. v. Cnty. of Sonoma*, 644 F. Supp. 2d 1177,
10 1194 (N.D. Cal. 2009)). Thus, the Court sees no need to find that the organization lacks standing
11 as a matter of prudence. The Union has established organizational standing.

12 On the other hand, “Camp Integrity,” is not properly before the Court because it is not
13 represented by counsel. *See* Local Rule 3-9(b); *In re Am. W. Airlines*, 40 F.3d 1058, 1059 (9th
14 Cir. 1994) (“Corporations and other unincorporated associations must appear in court through an
15 attorney.”). Accordingly, the San Rafael Homeless Union and the individual Plaintiffs, apart from
16 Eddy Metz and Shaleeta Boyd who no longer reside along the Mahon Creek Path, have
17 established standing and may properly pursue the claims asserted in this action.

18 2. Nature of claims (facial versus as applied)

19 Defendants argue that the Plaintiffs may only assert a facial claim to the Ordinance, and
20 thus this claim is completely meritless because to prevail, the Plaintiffs must meet the rigorous
21 burden of demonstrating that the Ordinance is unlawful in all circumstances. Docket No. 24 at
22 20–21 (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Though Plaintiffs allege that
23 the statute is facially unconstitutional *e.g.*, for violating the First Amendment, *see* Docket No. 77
24 ¶¶ 57–71, Plaintiffs also allege that the statute is unconstitutional as applied to them because of
25 circumstances rendering them particularly vulnerable. *See id.* ¶¶ 17, 75–104. Plaintiffs may assert
26 claims challenging the validity of a statute as applied to a subset of the population in a pre-
27 enforcement posture. *See, e.g., Johnson v. City of Grants Pass*, 72 F.4th 868, 883 n.15, 883–84,
28 890 (9th Cir. 2023) (finding statute unconstitutional under Eighth Amendment as applied to

1 involuntarily homeless plaintiffs where standing was premised on credible risk of future
2 enforcement of statute); *Isaacson v. Horne*, 716 F.3d 1213, 1230 n.15 (9th Cir. 2013) (“That the
3 statute has not yet been applied to any of the plaintiffs does not preclude them from bringing a pre-
4 enforcement, as-applied challenge. Many such challenges have been entertained in the past.”)
5 (collecting cases). As in *Grants Pass*, Plaintiffs here assert constitutional violations upon
6 enforcement of the Ordinance against a subset of the unhoused population including those with
7 vulnerabilities and/or disabilities. 72 F.4th at 883–84.

8 Defendants also argue that as to an as-applied challenge, such a challenge is premature
9 because no enforcement action has been taken against Plaintiffs. *See* Docket No. 24 at 21 n.4.
10 However, the threat of enforcement against the MCP encampment is concrete and substantial. The
11 San Rafael City Council Agenda Report, which ultimately recommends adoption and enactment of
12 SMC Section 19.50, explained explicitly that the Ordinance was needed because of circumstances
13 at the MCP encampments. *See* Docket No. 16-2 at 3–4. The Report explains that it had received
14 growing complaints related to “growing encampments at the Mahon Creek Path,” among other
15 encampments. *Id.* at 3. The Report continues: “By far the majority of complaints and San Rafael
16 Police Department calls for service come from the encampments of approximately 33 tents (as of
17 June 28, 2023) at the Mahon Path (also known in the community as the ‘Mahon Creek Path.’” *Id.*
18 The Report goes on to outline additional, specific conditions at the MCP encampment, and
19 ultimately recommends the adoption of the Ordinance to curb the concerns due to this
20 encampment. *See id.* at 3–6. The legislative record makes clear the City’s intent to enforce the
21 Ordinance against the encampment at the Mahon Creek Path. The City has not disclaimed such
22 intent in this litigation. To the contrary, the City hosted an event on August 7, 2023, and August
23 14, 2023, at the Mahon Creek Path encampment to prepare for enforcement of the Ordinance that
24 was originally to go into effect on August 16, 2023; the City distributed a flyer explaining how the
25 camp had to change per the size and proximity limitations. *See* Docket No. 30 ¶ 8, Ex. 14. And in
26 an email between Christopher Hess, the Assistant Director of Community Development for San
27 Rafael, and an advocate for Plaintiffs, Mr. Hess stated that per SMC Section 19.50, “[w]e know
28 that at the Mahon Creek Path, individuals camping there will be displaced.” Docket No. 1-3 at

1 128.

2 Thus, Plaintiffs may properly challenge the Ordinance though it has not yet been enforced
3 against them. *See Grants Pass*, 72 F.4th at 883–84; *see also Robinson v. Att’y Gen.*, 957 F.3d
4 1171, 1177 (11th Cir. 2020) (“[A] plaintiff may establish standing to bring an as-applied/pre-
5 enforcement challenge by showing that either ‘(1) [she] was threatened with prosecution; (2)
6 prosecution is likely; or (3) there is a credible threat of prosecution.’”) (quoting *Am. Charities for*
7 *Reasonable Fundraising Regulation, Inc. v. Pinellas Cnty.*, 221 F.3d 1211, 1214 (11th Cir. 2000)).

8 **B. Preliminary Injunction**

9 Under Federal Rule of Civil Procedure 65, the Court has the authority to issue a
10 preliminary injunction. A party seeking such preliminary relief must meet one of two variants of
11 the same standard. The traditional *Winter* standard requires the movant to show that (1) it “is
12 likely to succeed on the merits;” (2) it “is likely to suffer irreparable harm in the absence of
13 preliminary relief;” (3) “the balance of equities tips in [its] favor;” and (4) “an injunction is in the
14 public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the
15 “sliding scale” variant of the same standard, “if a plaintiff can only show that there are ‘serious
16 questions going to the merits’—a lesser showing than likelihood of success on the merits—then a
17 preliminary injunction may still issue if the ‘balance of hardships tips *sharply* in the plaintiff’s
18 favor,’ and the other two *Winter* factors are satisfied.” *All. for the Wild Rockies v. Peña*, 865 F.3d
19 1211, 1217 (9th Cir. 2017) (emphasis in original) (quoting *Shell Offshore, Inc. v. Greenpeace,*
20 *Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)).

21 1. **Irreparable Harm**

22 Irreparable harm is traditionally defined as harm for which there is no adequate legal
23 remedy, such as an award of damages. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068
24 (9th Cir. 2014). The harm must be likely to occur not merely possible. *Winter*, 555 U.S. at 22.
25 Where, as here, the threat alleged is sufficiently serious the requisite likelihood of harm is
26 lowered. *See, e.g., Roman v. Wolf*, 977 F.3d 935, 944 (9th Cir. 2020) (finding likelihood of
27 irreparable harm based on risk of death from COVID-19 which was approximately one percent at
28 that time according to the Center for Disease Control and Prevention).

1 As detailed, above, Plaintiffs allege serious risk of harm caused by the imposition of
 2 isolated camping by unhoused persons as prescribed by the Ordinance. These harms include
 3 increased risk of psychological harm from isolation; exacerbation of drug use, enhanced risk of
 4 drug overdose, and possibly death in the absence of intervention by neighbors; exposure to sexual
 5 and domestic violence and human trafficking; and at the very least a credible fear in those
 6 previously victimized. “[T]he threat of physical danger and harm absent injunctive relief qualifies
 7 as irreparable.” *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1041 (S.D. Cal. 2022)
 8 (citing *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011)). *See also Sacramento Homeless*
 9 *Union v. Cnty. of Sacramento*, 2022 WL 4022093, at *8 (E.D. Cal. Sept. 2, 2022) (exposure to
 10 excessive heat due to clearing of an encampment during a heat wave presented irreparable harm);
 11 *L.A. All. for Human Rights v. City of L.A.*, 2020 WL 2615741 (C.D. Cal. May 22, 2020) *vacated*
 12 *per stipulation*, 2020 WL 3421782 (C.D. Cal. June 18, 2020) (exposure to toxic fumes and
 13 hazardous waste was irreparable harm).

14 The City argues, however, that Plaintiffs have “simply not shown that they will suffer such
 15 harms merely by being required to distance their campsites 200 feet from one another.” Docket
 16 No. 24 at 30. Defendants also note that the City’s regulations do not disallow multiple people to
 17 camp together in one campsite, abating risks. *Id.* at 31.

18 Plaintiffs outline the importance of having campers in close proximity. Plaintiffs include
 19 women who rely on camping next to other people they trust to deter instances of domestic
 20 violence, rape, and other gender-based crime. Docket No. 1-3, Huff Decl., Ex. J ¶¶ 8–11; Docket
 21 No. 1-4, Mendoza Decl., Ex. N ¶¶ 15, 17. As Plaintiff Shaleeta Boyd explained in her testimony,
 22 there are no locks on tents, and they can be cut open; being a woman in this situation is terrifying.
 23 Plaintiffs similarly rely on camping near others to deter theft—including of important items such
 24 as medical machines. *See* Docket No. 1-2, Nelson Decl., Ex. C at 75. Indeed, Plaintiff Shaleeta
 25 Boyd suffered theft when camping away from the large MCP encampment but did not have items
 26 stolen once she moved closer to a larger cluster of tents along the Path.⁵ Plaintiffs with physical

27 _____
 28 ⁵ While Ms. Boyd lacks standing her testimony exemplifies the harm other Plaintiffs face if the
 Ordinance goes into effect.

1 disabilities rely upon nearby campers to get access to food, water, and other resources. *See, e.g.*,
 2 Docket No. 1-3, Aardalen Decl., Ex. I ¶¶ 11–12. Other Plaintiffs rely upon nearby campers to
 3 help them in emergency situations, including in the event of overdose. *See* Docket No. 1 ¶¶ 92–
 4 97; Docket No. 1-3, Aardalen Decl., Ex. I ¶ 6; Docket No. 1-2, Nelson Decl., Ex. F ¶¶ 10–12.
 5 Indeed, Plaintiff Aardalen was saved from an accidental overdose by a nearby camper. Docket
 6 No. 1-3, Aardalen Decl., Ex. I ¶ 6; Docket No. 1 ¶ 92. And at oral argument, Plaintiffs explained
 7 that another camper recently suffered an epileptic seizure but was helped by a person camping
 8 nearby.

9 The Ordinance effectively limits campsites to one or two campers. While the Ordinance
 10 theoretically allows more than one person per campsite, it limits the size of each campsite to 200
 11 square feet and requires all belongings be stored therein or discarded. *See* SMC §§
 12 19.50.040(C)(2), 19.50.020, 19.50.040(C)(2)(a)–(b). This effectively limits the number of
 13 campers per campsite to two persons. The Ordinance recognizes that 100 square feet is the
 14 benchmark for an individual camper. *See* SMC §§ 19.50.040(C)(2), 19.50.020 (“A camping area
 15 occupied by one person shall not exceed 10ft. by 10ft., (100 sq. ft. total), inclusive of camp
 16 facilities, camp paraphernalia, and personal property.”). Though the Ordinance phrases the square
 17 footage in terms of maximum size, the benchmark reflects an estimation of a common size of an
 18 existing, single-person campsite.⁶ Further, Chief White testified that fire risks are posed by
 19 cooking or having any source of radiant heat next to a tent. Crowding more than two persons
 20 within 200 square feet, along with their belongings and cooking apparatuses, increases the risk of
 21 fire posed to a campsite’s occupants. Although the Court makes no ruling on this record as to
 22 whether allotment of less than 100 square feet is habitable for a single camper, having more than
 23 two persons within 200 square feet could well present a significant risk to safety.⁷

24
 25 ⁶ This estimation of 100 square feet per camper is in line with, though slightly below, that of the
 26 U.S. Forest Service’s estimation of a typical campsite space, which is 10 by 12 feet or 120 square
 27 feet. *See Accessibility Guidebook for Outdoor Recreation and Trails*, USDA, U.S. FOREST
 28 SERVICE (April 2006) <https://www.fs.usda.gov/t-d/pubs/htmlpubs/htm06232801/page15.htm>.

⁷ There is a further problem with the square footage for campsites. The City assumes, in counting
 the number of campsites that are available in San Rafael under the Ordinance, that many campsites
 will be comprised of 50 square feet. *See* Docket No. 74, Ahuja Decl., ¶ 5. At oral argument,

1 Thus, in effect, the Ordinance limits encampments to one to two persons, separated by at
2 least 200 feet. Separating solo campers or a pair of campers by 200 feet between campsites
3 prevents this vital proximity; 200 feet is over half of a football field, limiting the ability of a
4 neighbor to know of or respond to a drug overdose or to act as a deterrent to thefts or gender-based
5 violence. This distance dilutes the effect of collectiveness that affords mutual protection and
6 support discussed above.

7 The expert report submitted by Dr. Schonberg summarizes the harm caused by the
8 Ordinance because of its “explicit focus on isolating unsheltered people into small, decentralized
9 campsites.” Docket No. 1-3, Ex. K. Schonberg Decl. ¶ 14. This isolation is detrimental because
10 “the single largest risk factors for overdose is using in isolation,” and because limited access to
11 “capable guardians” is a key factor in likelihood of victimization of unhoused women. *Id.* ¶¶ 1–3,
12 13, 19–24. Further, the Ordinance reduces the number of proximate people that can offer help and
13 pool resources. *Id.* ¶ 15. Access to limited resources also increases the need to stray from camp,
14 exposing unhoused women to attacks by strangers. *Id.* ¶¶ 15–16. Dr. Schonberg further explains
15 that establishing a larger network of relationships based on reciprocating favors and obligations is
16 vital to unhoused people, and this network of support would be hindered under the statute. *Id.* ¶¶
17 14, 18. Ultimately, Dr. Schonberg concludes that “communities of more than two, isolated
18 peoples are essential for survival.” *Id.* ¶ 18.

19 Accordingly, the Ordinance imposes the kind of isolation (*i.e.*, campsites comprised of
20 only two, isolated people) which presents the substantial risk of harms posed by isolation
21 described by the Plaintiffs and Dr. Schonberg.

22 And these harms are not speculative, as the City alleges. Specifically, as to drug overdose,
23 the City argues that “Plaintiffs have not shown that *any* of them are individually at risk for [death
24 due to drug overdose], which is entirely speculative.” Docket No. 24 at 31 (emphasis in original).

25
26 _____
27 counsel for Defendants estimated that at least half of the available campsites in San Rafael are
28 limited to 50 square feet. At the same time, at the hearing, the City’s counsel indicated that it
expected most campsites would be permitted to occupy 100 square feet. This raises a question of
how many camp sites which accommodate 100 square feet per camper are truly available. The
record is unclear.

1 However, one Plaintiff was recently saved from an accidental drug overdose by a nearby camper.
2 Docket No. 1-3, Aardalen Decl., Ex. I ¶ 6; Docket No. 1 ¶ 92. Another Plaintiff saved numerous
3 lives of others at Camp Integrity by administering adrenaline during overdoses. Docket No. 1-2,
4 Nelson Decl., Ex. F ¶¶ 10–11. At oral argument, Plaintiffs explained that yet another overdose
5 recently occurred at the encampment, prompting emergency response from nearby campers.
6 Given that Plaintiffs have already saved and been saved, the prevalence of drug addiction among
7 the unhoused as reflected in the testimony of Dr. Schonberg, and the assessment of Dr. Schonberg
8 as to risk of overdose, the risk of harm is not “entirely speculative” as Defendants assert. Docket
9 No. 24 at 31. And for reasons stated above, the risk of physical and psychological harm to victims
10 of sexual and domestic violence resulting from isolation is not speculative based on the record
11 thus far. Nor is the harm to those with disabilities who rely on others for assistance speculative.

12 In addition to the physical harms that Plaintiffs face under the Ordinance due to isolation,
13 Plaintiffs also face severe instability and uncertainty under its enforcement. Namely, and as
14 discussed in detail below, campers lack notice and clarity as to what space remains available to
15 them for camping. Although the City provided a map outlining available campsites, this map does
16 nothing to show which areas are already occupied; a Plaintiff could manage to transport all their
17 items to a camping-permissible area, only to learn it is already housing other campers. Further,
18 without any sort of allocation or designation process, Plaintiffs are subject to eviction and even
19 criminal prosecution if a third party sets up a campsite impermissibly close to Plaintiffs’ tents.
20 Thus, even if Plaintiffs find an unoccupied space to camp, Plaintiffs face a never-ending threat of
21 displacement and criminal prosecution at no fault of their own.

22 Finally, and in addition to the above harms, the Ordinance presents irreparable harm to
23 Plaintiffs because of the potential constitutional injuries posed as discussed below. The Ninth
24 Circuit has recognized that “an alleged constitutional infringement will often alone constitute
25 irreparable harm.” *Associated Gen. Contractors of Cal., Inc. v. Coal. of Econ. Equity*, 950 F.2d
26 1401, 1412 (9th Cir. 1991). As discussed below, Plaintiffs here have set forth meritorious claims
27 as to violations of their constitutional rights under the Fourteenth Amendment among other federal
28 statutes.

1 Accordingly, Plaintiffs have made an adequate showing that the Ordinance exposes them
2 to serious, irreparable harm. *See Winter*, 555 U.S. at 22.

3 2. Balance of Hardships

4 If the Court were to consider only a choice between enjoining the enforcement in toto and
5 denying any injunctive relief, the balance of hardships would tilt slightly but not decidedly in
6 favor of Plaintiffs, in view of the substantial concerns of the City with the current encampment.
7 There is a serious risk of hardship and harm to Plaintiffs if injunctive relief were denied in whole,
8 including risk of grave bodily injury (rape, domestic violence, and other forms of victimization),
9 malnourishment, and even death. *See, e.g.*, Docket No. 1-3, Schonberg Decl., Ex. K ¶¶ 1–24;
10 Docket No. 1-3, Huff Decl., Ex. J ¶¶ 8–11, Docket No. 1-4, Mendoza Decl., Ex. N ¶¶ 15, 17,
11 Docket No. 1-3, Aardalen Decl., Ex. I ¶ 6; Docket No. 1 ¶ 92, Docket No. 1-2, Nelson Decl., Ex.
12 F ¶¶ 10–12. However, there are substantial health and safety risks to the City were the Court to
13 grant a complete injunction, leaving the encampment as-is. Indeed, the encampment has grown
14 since the onset of the litigation, as has accumulated waste and refuse in the area. Docket No. 25,
15 Montes Decl. ¶ 5; Docket No. 27, Murphy Decl. ¶ 12. The testimony of City officials by way of
16 declaration and at oral argument establishes that there are fire risks posed by the encampments that
17 are difficult to mitigate. *See* Docket No. 15; White Decl. ¶¶ 2–5. There has also been an increase
18 in safety calls and criminal activity at the encampment, incidents of harassment against
19 neighboring businesses and workers, and threats posed to students wishing to utilize the path to
20 get to school. Docket No. 28, Huber Decl. ¶¶ 4–10, 12, 16. Further, larger encampments can pose
21 an “interior-exterior” problem where tents on the exterior act as a barrier to internal areas,
22 promoting criminal activity on the interior and hindering emergency responders from getting into
23 the camp – although there is no specific evidence this is the case with the current configuration of
24 Camp Integrity. *Id.* ¶ 16. Ms. Murphy testified that, in a similar vein, large encampments come
25 with a sense of lawlessness. In short, the City faces substantial hardship if an injunction fully
26 enjoins the Ordinance; the Plaintiffs face substantial hardships if no injunction issues and the
27 Ordinance is fully enforced.

28 However, a more limited injunction narrowly tailored to the interests of the parties could

1 be issued which requires the City: (1) to permit clusters of up to four persons, occupying up to 400
2 square feet, separated by a distance of 100 feet; (2) to adopt a system of designating and allocating
3 campsites; (3) to offer limited support in case of relocation including transportation to the new site
4 upon eviction, and provision of new tents if the existing structure cannot be transported or
5 accommodated at the new site; and (4) to prevent relocation of an individual who has requested an
6 accommodation on account of disability until the City has engaged in the interactive process with
7 that individual. “When deciding whether to issue a narrowly tailored injunction, district courts
8 must assess the harms pertaining to injunctive relief in the context of that narrow injunction.”
9 *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1022 (9th Cir. 2009). Under such a limited
10 injunction, the balance of hardships shifts.

11 Under the narrower injunction, much of the harm imposed upon the City is
12 eliminated. Requiring that four persons be permitted to exist within 400 square feet, but
13 permitting enforcement of the Ordinance generally, allows the City to abate nearly all harm posed
14 by encampments. As to the risk of fire, Chief White testified at oral argument that the bigger the
15 encampment the greater the risk of fire. Conversely, allowing the City to pare down the MCP
16 encampment from sixty-or-so tents to a cluster of four would substantially mitigate the risk of fire.
17 Allowing 400 square feet instead of 200 square feet per campsite also provides fire safety benefits.
18 Specifically, Chief White testified that housing four tents within 200 square feet would pose risk
19 of fire, yet there is no limit on the number of campers or tents per campsite under the Ordinance.
20 Accordingly, permitting 400 square feet for four persons would temper risk of fire by allowing
21 some space amongst tents and between tents and ignition sources within a given campsite.⁸

22 As to criminal activity and safety concerns, applying the City’s logic that criminal activity
23 and safety issues grow commensurately with the encampment, Docket No. 28, Huber Decl., ¶ 4
24 (“As an encampment grows in size, the opportunity for conflict within the encampment between
25

26 ⁸ Further, increasing the square footage would allow campsites to remain accessible by leaving
27 space for clear floor or ground space around the tents. *See Accessibility Guidebook for Outdoor*
28 *Recreation and Trails*, USDA, U.S. FOREST SERVICE (April 2006) <https://www.fs.usda.gov/t-d/pubs/htmlpubs/htm06232801/page15.htm> (“A minimum 48-inch (1,220-millimeter) clear floor or ground space must be provided on all sides of the tent [and] on tent pads and platforms that are required to be accessible.”).

1 encampment members and with the surrounding public increases exponentially.”), it follows that
2 reducing an encampment from sixty-or-so tents to four would vastly reduce the concerns regarding
3 criminality and safety. Separately, Ms. Murphy testified that large encampments come with a
4 sense of lawlessness. However, there is nothing in the record to show that four tents within a 400
5 square foot space compared to four tents within a 200 square foot space would pose increased
6 lawlessness. Finally, there can be no “interior-exterior” problem in a four-tent cluster because, as
7 a matter of geometry, each tent would be on the exterior. Thus—an injunction requiring 400
8 square feet per campsite imposes little, if any hardship upon the City, and serves to reduce fire
9 risks. For Plaintiffs, however, this difference is meaningful. Namely, it ensures that Plaintiffs can
10 remain in groups of three to four, which is essential for survival, without having to crowd into the
11 space in a way that is unsafe.

12 Nothing in the record suggests requiring a 100-foot buffer between campsites instead of a
13 200-foot buffer would interfere with any of the health and safety goals of the City. As a general
14 matter, the City’s goal is to break up large, highly concentrated encampments. *See* Docket No. 24
15 at 34. Imposing a 100-foot buffer (one-third of a football field) between campsites that contain
16 one to four campers achieves that goal. Further, as to fire safety, Chief White testified at the
17 evidentiary hearing that 100 feet between tents is a good fire buffer. Another of the City’s concern
18 is that debris tends to accumulate between tents if they are placed close together. However, the
19 Ordinance allows the City to clear items left beyond the bounds of each campsite. SMC
20 § 19.50.040(C)(2)(b) (“Items stored, kept, discarded, or otherwise existing outside of the camping
21 area shall be presumed to be unattended personal property or trash or debris and may be stored or
22 discarded according to city policy.”). Given that 100 feet is a substantial distance, any items left
23 or discarded between campsites remain easily identifiable as distinct from the campsite and can be
24 cleared by the City as appropriate.

25 Importantly, at oral argument, counsel for Defendants conceded that it could not identify
26 any meaningful difference for the City in imposing a buffer of say 150 feet compared to 200 feet
27 in abating crime or other concerns posed by large encampments. To be sure, at some point the
28 reduced distance between tents would cease to “break up” the large encampment. But there is

1 nothing in the record to suggest that 100 feet, like 150 feet, is meaningfully different from 200 feet
2 in accomplishing the City’s goals. Indeed, the Ordinance utilizes a 100-foot buffer between
3 campsites and playgrounds, 19.50.030(A)(4), implying that 100 feet is indeed a sufficient buffer
4 around a given campsite. All in all, imposing a 100-foot instead of a 200-foot buffer would not
5 impose any significant hardship upon the City. On the other hand, the Plaintiffs’ hardships would
6 be greatly reduced by this change. Specifically, a 100-foot buffer, instead of 200-foot buffer
7 allows campers to remain in shouting distance of one another and allows neighboring campers to
8 keep a watchful eye on each other’s campsites—both which are helpful in an emergency and for
9 deterrence purposes.

10 Accordingly, under this limited injunction, the hardships imposed upon the City are
11 greatly reduced in terms of the health and safety risks that are posed by encampments.

12 To be sure, the City resists establishing some kind of orderly means of allocating camping
13 sites. *See* Docket No. 72 at 16. Particularly, the City’s counsel and Ms. Murphy expressed at oral
14 argument that the City does not want to be viewed as having sanctioned camping in any area.
15 However, the City has not demonstrated that adopting an allocation process is not feasible or
16 administrable. Other cities wishing to enforce anti-camping measures have been able to do so.
17 Indeed, at oral argument counsel for the San Rafael Homeless Union explained that such an
18 approach was effectively taken by the cities of Novato and Sausalito. *See also Sausalito/Marin*
19 *Cnty. Chapter of Cal. Homeless Union v. City of Sausalito*, 522 F. Supp. 3d 648, 652 (N.D. Cal.
20 2021), *modified in part sub nom. Sausalito/Marin Cnty. Chapter of Cal. Homeless Union v. City of*
21 *Sausalito*, No. 21-CV-01143-EMC, 2021 WL 2141323 (N.D. Cal. May 26, 2021) (relocating
22 campers from one park to allocated spaces set up in a nearby park). And the notion that the City
23 might be seen as officially sanctioning camping by the unhoused is illusory, as this action would
24 be ordered by the Court, not enacted by the City.

25 Under this arrangement, the balance of hardships imposed upon Plaintiffs in the absence of
26 injunctive relief, compared to the hardships imposed upon Defendants under a limited injunction
27 tips *sharply* in Plaintiffs’ favor. *See Ahlman v. Barnes*, 445 F. Supp. 3d 671, 693 (C.D. Cal. 2020)
28 (“Faced with . . . preventable human suffering, the Ninth Circuit has little difficulty concluding

1 that the balance of hardships tips decidedly in plaintiffs’ favor.”); *Sacramento Homeless Union*,
 2 2022 WL 4022093, at *6 (city’s interests were “far outweighed by the Plaintiffs’ interest in their
 3 own health and welfare”); *Le Van Hung v. Schaaf*, 2019 WL 1779584, at *7 (N.D. Cal. Apr. 23,
 4 2019) (residents of encampments are members of the community, and “their interests, too, must be
 5 included in assessing the public interest”).

6 Thus, a limited injunction is warranted if Plaintiffs raise at least “serious questions” on the
 7 merits of their legal claims, and if the injunction is supported by the public interest.

8 3. Likelihood of Success or Serious Questions as to the Merits

9 Plaintiffs assert claims including violation of the Fourteenth Amendment “state-created
 10 danger” doctrine, Due Process, Americans with Disabilities Act (“ADA”), and the Eighth
 11 Amendment. Plaintiffs raise at least “serious questions” under the Fourteenth Amendment “state-
 12 created danger” doctrine and due process clause and under the ADA.

13 a. Fourteenth Amendment state-created danger

14 The Ninth Circuit recognizes a substantive due process violation under the Fourteenth
 15 Amendment where a state actor “affirmatively place[s] an individual in danger by acting with
 16 deliberate indifference to [a] known or obvious danger in subjecting the plaintiff to it.” *Kennedy*
 17 *v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006). Deliberate indifference exists where
 18 the defendant “disregard[s] a known or obvious consequence of [its] action.” *Patel v. Kent Sch.*
 19 *Dist.*, 648 F.3d 965, 974 (9th Cir. 2011).

20 The City argues that, as a threshold matter, Plaintiffs’ claim is not viable because it rests
 21 upon prospective harm (as opposed to retrospective harm) and a legislative act (as opposed to
 22 conduct by an individual state actor). These arguments fail at this preliminary stage of litigation.

23 The Ninth Circuit has recognized a viable state-created danger claim where the plaintiff
 24 fears future harm and seeks prospective, injunctive relief. Specifically, the Ninth Circuit has held
 25 that “[t]he state-created danger doctrine may also be invoked to enjoin deportation” where the
 26 plaintiff faces risk of torture or harm in their home country. *Morgan v. Gonzales*, 495 F.3d 1084,
 27 1093 (9th Cir. 2007) (citing *Wang v. Reno*, 81 F.3d 808, 818-19 (9th Cir. 1996)). In *Wang*, the
 28 court granted such an injunction to prevent the deportation of the plaintiff where he faced a high

1 likelihood of harm at the hands of the Chinese government based upon the United States
2 government's act. 81 F.3d t 818–19. *Cf. Hernandez v. Barr*, 804 F. App'x 566, 569 (9th Cir. 2020)
3 (no state-created danger by deportation where harm upon return was not sufficiently likely).
4 There is no basis for the proposition that a party threatened with real harm stemming from a
5 constitutional violation, must await a violation and injury and then sue for retrospective damages,
6 rather than sue prospectively to prevent it, so long as the requisites for standing for injunctive
7 relief are met. In this regard, the due process against the infliction of state created danger is no
8 different from other constitutional rights.

9 It is therefore not surprising that this Court has rejected the argument that such claims
10 cannot rest upon future harms. *Navarro v. City of Mountain View*, 2021 WL 5205598, at *5 (N.D.
11 Cal. Nov. 9, 2021) (finding plausible state-created danger claim premised upon future harms
12 imposed by anti-parking Ordinance enforced against the unhoused). And thus, this Court and
13 others regularly grant prospective, injunctive relief to prevent such future harm. *Sacramento*
14 *Homeless Union*, 617 F. Supp. 3d at 1198–99 (enjoining clearing of encampment during extreme
15 heat waved based upon risk of harm, *i.e.*, heat-related illness or death); *Santa Cruz Homeless*
16 *Union v. Bernal*, 514 F. Supp. 3d 1136, 1143, 1146 (N.D. Cal. 2021) (enjoining enforcement of a
17 COVID-19 Executive Order allowing closure and clearing of homeless encampment based upon
18 greater risk of contracting the virus); *Mary's Kitchen v. City of Orange*, 2021 WL 6103368, at
19 *11–12 (C.D. Cal. Nov. 2, 2021) (enjoining eviction of kitchen feeding homeless during period of
20 strong winds and harsh winter based upon risk of harm to homeless population); *Jeremiah v.*
21 *Sutter Cnty.*, 2018 WL 1367541, at *5–6 (E.D. Cal. Mar. 16, 2018) (enjoining enforcement of
22 anti-camping Ordinance during winter months based upon risk from cold weather upon eviction).

23 Further, the Ninth Circuit has not limited application of the doctrine to tortious behavior of
24 individual state actors. Rather, the Ninth Circuit has recognized that a state-created danger claim
25 may rest on city-wide policy, so long as the harm posed is sufficiently particularized to a group of
26 plaintiffs. *See, e.g., Sinclair v. City of Seattle*, 61 F.4th 674, 681 (9th Cir. 2023) (recognizing
27 viability of state-created danger claim based upon policy adopted by the city in face of mass
28 protests (“CHOP”) but finding no state-created danger where plaintiff failed to show particularized

1 harm to plaintiff).⁹ In *Sinclair*, the court distinguished *Hunters Capital LLC v. City of Seattle*,
 2 another CHOP case, that found plaintiff stated a state-created danger claim. 499 F. Supp. 3d 888,
 3 902 (W.D. Wash. 2020). The *Sinclair* court explained that in *Hunters Capital*, the plaintiffs
 4 involved a group that lived or owned businesses within the CHOP zone, “significantly narrowing
 5 the class of persons exposed to the alleged state-created danger,” meeting requirements of
 6 particularity. *Sinclair*, 61 F.4th at 683 (citing *Hunters Capital*, 499 F. Supp. at 902).

7 District courts in the circuit have found that a state-created danger claim can support the
 8 enjoinder of city ordinances and eviction actions against homeless persons. *See, e.g., Navarro*,
 9 2021 WL 5205598, at *5 (denying motion to dismiss state-created danger claim seeking
 10 enjoinder of anti-parking ordinance preventing parking RVs); *Jeremiah*, 2018 WL 1367541, at
 11 *5 (enjoining anti-camping ordinance based on state-created danger doctrine).

12 Accordingly, the question is whether Plaintiffs have shown sufficient levels of particularity
 13 to render their state-created claim viable. Here, the facts are very similar to those in *Navarro*,
 14 where this Court found sufficient particularity as to a class of unhoused persons impacted by an
 15 anti-parking ordinance. 2021 WL 5205598, at *5. The Court there distinguished the case from
 16 *Bologna v. City and County of San Francisco*, where Judge Illston declined to apply the doctrine
 17 to the entire “population of a city.” 2009 U.S. Dist. LEXIS 69985, at *16 (N.D. Cal. Aug. 11,
 18 2019). Rather, the doctrine applies “when a state actor creates a risk that is specific to a small
 19 group of individuals, rather than to the general public.” *Navarro*, 2021 WL 5205598, at *5.

20 Here, unlike in *Sinclair* where the city’s CHOP policy impacted all city residents equally,
 21 the Ordinance poses dangers specific to unhoused persons at Camp Integrity and who have
 22 standing as discussed above. 61 F.4th at 683. This is more like *Hunters Capital*, where the

23 _____
 24 ⁹ *See also Henry A. v. Willden*, 678 F.3d 991, 1003 (9th Cir. 2012) (finding claim asserting
 25 systemic policies and failure to train by municipality could support state-created danger claim but
 26 affirming dismissal with leave to amend to cure errors in complaint); *Brazda v. City of Reno*, 105
 27 F.3d 664 (9th Cir. 1997) (implicitly recognizing state-created danger claim may rest on policy of
 28 City Police Department by finding claim failed because plaintiff did not offer evidence to support
 the policy’s existence); *Pleasant v. Miranda*, 2022 WL 2304221, at *2 (9th Cir. June 27, 2022)
 (finding that city custom of allowing deputies to give courtesy ride to plaintiff did not support
 state-created danger claim because the harm did not occur during the ride and thus did not cause
 the danger posed).

1 plaintiffs included a narrow subset of the population (people who lived or owned businesses in the
2 CHOP area) than like *Sinclair*. *Id.* (citing *Hunters Capital*, 499 F. Supp. 3d at 902). Further, in
3 *Sinclair* the Ninth Circuit found it relevant that the city had never known of the plaintiff before the
4 harm befell him in finding lack of particularity. 61 F.4th at 682. Dissimilarly here, the City’s
5 mental health liaison, Lynn Murphy, knows the Plaintiffs and has interacted with them on several
6 occasions. *See* Docket No. 27, Murphy Decl ¶ 24. Defendants have taken several trips to the
7 MCP encampment. *See* Docket No. 71. And further, the City Council Agenda Report proposing
8 adoption of the Ordinance at issue specifically discussed the MCP encampment in recommending
9 the Ordinance be adopted. *See* Docket. No. 16-2 at 3–6. Thus, there is a particularized danger and
10 action directed at Plaintiffs here. Given that the relief Plaintiffs seek has not been foreclosed by
11 the Ninth Circuit, there is no threshold per se bar to Plaintiffs’ claims at this preliminary injunction
12 phase.

13 Turning to the substance of Plaintiffs’ claim: there is substantial evidence in the record
14 establishing that the City’s new statutory scheme places Plaintiffs in danger of sexual and
15 domestic violence, victimization as to crime, death due to drug overdose, and inability to access
16 food, water, and shelter. Docket No. 32-6, Schonberg Supp. Decl. ¶¶ 7–27. The statute is
17 expected to increase drug overdose deaths by 15-25% in San Rafael because of the risks posed by
18 using in isolation and other consequences of breaking up encampments, including involuntary
19 displacement. *Id.* ¶¶ 21–25 (citing Barocas et al., *Population-Level Health Effects of Involuntary*
20 *Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*,
21 *JAMA* (2023)). Unhoused women face a significant increase of violence under the Ordinance. *Id.*
22 ¶¶ 23–27. Dr. Schonberg concludes that “communities of more than two, isolated peoples are
23 essential for survival,” which as explained above is not truly viable under the Ordinance. *Id.* ¶ 18.
24 Further, the Ordinance stands to destabilize the communal frameworks on which individuals rely
25 for survival due to the need to self-police a large area around each campsite and hinders exchange
26 of informal social capital. *See* Docket No. 32-12, Sarris Decl. ¶ 9(c).

27 In addition to the evidence presented by Dr. Schonberg, Mr. Sarris, and the testimony of
28 the individual Plaintiffs, the City’s mental health liaison, Lynn Murphy, conceded at oral

1 argument on October 2, 2023, that camping in isolation poses devastating risk to unhoused
2 persons. And further, Dr. Schonberg testified that a large portion of the unhoused population have
3 vulnerabilities including physical disabilities or substance use or abuse. This increases the danger
4 posed to this population.

5 District courts recognize that the clearing of homeless encampments may present a state-
6 created danger claim when residents are exposed to increased risk of harm due to its clearing. *See,*
7 *e.g., Janosko v. City of Oakland*, 2023 WL 187499, at *3 (N.D. Cal. Jan. 13, 2023) (finding
8 eviction of residents of encampment during severe rainstorms and pandemic presented serious
9 questions on merits of state-created danger claim, as removing residents would affirmatively
10 expose unhoused to harsher, more dangerous conditions compared to remaining at the camp);
11 *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1102 (E.D. Cal. 2012) (similar); *Jeremiah*, 2018
12 WL 1367541, at *5 (similar).

13 Significantly, the Ninth Circuit has found a due process violation under the state-created
14 danger theory in other contexts where the defendant makes conditions worse for the plaintiff, even
15 where exposure to harm already existed. *See Martinez v. City of Clovis*, 943 F.3d 1260, 1272 (9th
16 Cir. 2019) (finding state-created danger where officer provoked abuser which led to another
17 instance of domestic violence). The Ninth Circuit has also held that exposing the plaintiff to crime
18 constitutes a state-created danger. *See Wood v. Ostrander*, 879 F.2d 583, 590 (9th Cir. 1989)
19 (finding state-created danger where officer impounded the car plaintiff was in and left her alone in
20 high-crime area at 2:30 a.m.). Similarly, when a state actor cuts off access to life-sustaining
21 resources this may constitute a state-created danger. *Penilla v. Huntington*, 115 F.3d 707, 710
22 (9th Cir. 1997) (cancelling call to paramedics where an individual needed medical care constituted
23 substantive due process violation).

24 With respect to the requirement that the City be determined to act with deliberate
25 indifference, the harms to vulnerable campers described above, including women victimized by
26 violence and those whom require assistance of others, seem obvious. To the extent they were not
27 apparent to the City, that risk has now been made clear by way of the declarations, reports,
28

1 testimony, and other evidence presented in this litigation.¹⁰

2 To be sure, the Ninth Circuit has yet to definitively rule on the application of the doctrine
 3 to situations where a city endeavors to clear homeless encampments, thus leaving the unhoused in
 4 more vulnerable and dangerous conditions. And the Circuit has not addressed the situation where
 5 there is specific evidence of substantial risk of harm to vulnerable, unhoused individuals should
 6 they be forced into isolated campsites. *LA Alliance for Human Rights v. County of Los Angeles*
 7 addresses the general subject matter of homelessness but does not speak to these precise issues.
 8 14 F.4th 947, 958 (9th Cir. 2021). There, plaintiffs including business and property owners,
 9 landlords, and housed residents of the Skid Row area sued the County for numerous policies and
 10 practices regarding homelessness that allegedly resulted in unsafe conditions posed to residents
 11 and business owners in the Skid Row area. *Id.* at 952–53. The court granted an extensive
 12 preliminary injunction requiring, among other things, that the County offer housing to all
 13 unhoused persons in the Skid Row area in an effort to clear the encampments and the escrow of
 14 one billion dollars to address homelessness. *Id.* at 955–56 The Circuit overturned the injunction,
 15 in part because plaintiffs lacked standing as the injunction was premised upon race-based harms,
 16 including state-created danger posed to Black families in the area, yet plaintiffs did not offer
 17 evidence establishing their race. *Id.* at 957–58.¹¹

18 Thus, the contours of the doctrine in the present context remain ill-defined. Testing its
 19

20 ¹⁰ Plaintiffs are not the only ones that have brought harms posed by the Ordinance to the City’s
 21 attention. In a letter penned by some members of the Lived Experiences Advisory Board
 22 (“LEAB”) on which certain Defendants in this suit sit, to the San Rafael City Council, the LEAB
 23 identified numerous harms that the Ordinance would impose upon the unhoused. Docket No. 32-
 24 12, Sarris Decl. ¶¶ 6, 9 & Ex. A (“[W]e have found the ordinance unacceptable and contrary to
 25 requirements [of the] United States Interagency Council on Homelessness.”). The LEAB further
 26 implored the San Rafael City Council to engage in mitigation efforts, including designating
 27 sanctioned encampments and offering central locations for support. *Id.* ¶¶ 5–7. Such a
 28 collaborative approach has been taken by the City of Novato, for example, and would serve to
 mitigate the harm to Plaintiffs while meeting needs of the City. The City has declined to engage
 in such efforts, supporting a finding of deliberate indifference. *See Polanco v. Diaz*, 76 F.4th 918,
 926 (9th Cir. 2023) (finding transfer of inmates during pandemic while declining to engage in
 mitigation efforts presented a state-created danger).

¹¹ Though not precisely on point, *LA Alliance for Human Rights* implicitly recognizes that a state-
 created danger claim based upon policies and practices pertaining to the homeless is viable,
 provided plaintiffs have standing and the remedy redresses the harms. 14 F.4th at 958.

1 outer limits, the City asks whether the doctrine would prevent eviction of a squatter who would be
2 forced out into the elements upon eviction. Docket No. 72 at 11. (The City does not posit the
3 additional scenarios of whether the state might bear some constitutional responsibility if, for
4 example, the squatter is forced out into subzero temperatures with no available shelter.) Such a
5 hypothetical raises the question, *inter alia*, what is the appropriate baseline by which to measure
6 whether the state has caused an increase in danger? That question is raised inferentially here:
7 since this suit was filed, more campers have joined the MCP encampment. The precise baseline is
8 not entirely clear. *Cf. Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060–61 (9th Cir.
9 2014) (defining the “status quo” amongst parties for purposes of a preliminary injunction as the
10 “legally relevant relationship between the parties before the controversy arose”). While some
11 residents of the MCP may have stronger claims of endangerment than others, the Ordinance treats
12 all residents the same, disregarding the dangers it poses particularly to those who are especially
13 vulnerable; it sets forth no real procedures to determine who needs to be accommodated and how
14 their need to be free from serious danger can be met. The Ordinance ignores the realities facing
15 each individual and instead imposes a blanket restriction on density which effectively isolates
16 unhoused campers regardless of their needs.

17 In summation, although the contours of the doctrine in this context have not been decided
18 by the Ninth Circuit, the cases thus far decided by the Circuit establish the general due process
19 proposition advanced by Plaintiffs. Given the logic of the doctrine and the body of district court
20 cases applying it to similar situations involving the treatment of unhoused individuals and groups,
21 the Court concludes the Plaintiffs have raised at least serious questions on the merits of this due
22 process claim at this preliminary juncture.

23 b. Americans with Disabilities Act

24 Title II of the ADA provides that “no qualified individual with a disability shall, by reason
25 of such disability, be excluded from participation in or be denied the benefits of the services,
26 programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42
27 U.S.C. § 12132. Its implementing regulations require state agencies to “make reasonable
28 modifications in policies, practices, or procedures when the modifications are necessary to avoid

1 discrimination on the basis of disability, unless the public entity can demonstrate that making the
2 modifications would fundamentally alter the nature of the service, program, or activity.” 28
3 C.F.R. § 35.130(b)(7)(i).

4 Plaintiffs establish that the statute forces them to camp in ways that are incompatible with
5 their disabilities including physical injury, PTSD from childhood sexual trauma, sleep apnea, and
6 schizophrenia. Docket No. 1 ¶¶ 76–88. To this end, Plaintiffs Amalia Mendoza, Brian Nelson,
7 Christie Marie Cook, and Anker Aardalen submitted Requests for Reasonable Accommodations to
8 the City. *See* Accommodation Requests. In addition to requesting housing, Plaintiffs request the
9 ability to camp near others. *Id.* Namely, Plaintiff Amalia Mendoza attests that because of her past
10 childhood sexual trauma and PTSD she cannot sleep unless she is close to multiple other people
11 that she trusts. Docket No. 1-4, Mendoza Decl., Ex. A at 22–23; Docket No. 1 ¶ 82. This
12 provides protection and prevention of mental health episodes. Docket No. 1-4, Mendoza Decl.,
13 Ex. A at 22–23. Mr. Aardalen has a dislocated knee and needs nearby caretakers to get access to
14 food and water because he cannot walk easily. Docket No. 32 ¶¶ 79, 86. Further, Mr. Nelson has
15 sleep apnea and requires use of a “CPAP” machine, and thus needs access to electricity. Docket
16 No. 1-2, Nelson Decl., Ex. C. Mr. Nelson also suffers from PTSD from a stabbing attack he
17 suffered which is aggravated when not near familiar people. *Id.* Similarly, Ms. Binkley and Mr.
18 Tringali suffer from anxiety, PTSD, and depression (due to severe domestic violence suffered in
19 the case of Ms. Binkley) that is aggravated by isolation. *See* Docket No. 77 ¶¶ 87–99, 102.

20 Defendants argue adjudicating the claim is premature unless and until Plaintiffs submit
21 reasonable requests for accommodation and those requests are denied. Docket. No. 72 at 12–16.
22 However, Plaintiffs submitted requests for accommodation in mid-August. *See* Accommodation
23 Requests. But the City has not engaged in an interactive process with Plaintiffs despite its policy
24 requiring a response within fifteen days. Docket No. 72-2, Jeppson Decl. ¶ 2(b). The refusal to
25 engage in the accommodation process may constitute a denial of a request. *Whitehead v. Pacifica*
26 *Senior Living Mgmt. LLC*, 2022 WL 313844, at *2 (9th Cir. Feb. 2, 2022) (finding that in the
27 context of the Fair Employment and Housing Act, “[a]n employer’s refusal to engage in good faith
28 in an interactive process with the employee to provide the requested accommodation” may violate

1 the Act); *Groome Res., Ltd. v. Par. of Jefferson*, 234 F.3d 192, 197–98 (5th Cir. 2000) (finding
2 inaction and delay in context of considering accommodation to Fair Housing Act may constitute
3 denial); *McCray v. Wilkie*, 966 F.3d 616, 621 (7th Cir. 2020) (holding delay in providing
4 accommodation in the employment context can amount to failure to accommodate).

5 Furthermore, the Ordinance makes no specific or special recognition of the unhoused and
6 the urgency of their need for accommodation should they be faced with imminent eviction from
7 the current campsites which are accommodating their needs. Relying solely on the current ADA
8 grievance process which, taking it through the internal appeals process, could take two months or
9 more, does not address the specific needs of those facing an imminent housing crisis.

10 On the merits of this claim, there is a threshold issue of what constitutes a “program”
11 within the meaning of the statute and whether Plaintiffs’ disabilities are impacted by the
12 Ordinance. Defendants argue that there is no “program” here giving rise to an ADA claim.
13 Docket No. 16 at 8. However, this argument is incompatible with *Where Do We Go Berkeley*,
14 which explained: “the ADA’s prohibition on discrimination in public programs ‘brings within its
15 scope anything a public entity does,’” including the way that government entities enforce their
16 laws. 32 F.4th 852, 861 (9th Cir. 2022) (citing *Barden v. City of Sacramento*, 292 F.3d 1073,
17 1076 (9th Cir. 2002)) (clearing of encampment constituted a program under the ADA).

18 To be sure, the Ninth Circuit in *Where Do We Go Berkeley* made clear that to analyze an
19 ADA claim, the scope and function of the “program” at issue must be clearly defined. 32 F.4th at
20 861–82. Precisely what constitutes the scope of an applicable “program” appears nebulous. In
21 *Where Do We Go Berkeley*, the court narrowly defined the “program” as clearing “level 1” (*i.e.*,
22 high risk encampments) with “72 hours’ notice before clearing and possible coordination with
23 local partners.” *Id.* at 862. This definition contrasts with that in *LA Alliance for Human Rights v.*
24 *County of Los Angeles*, where the court defined the “program” broadly: “Skid Row area sidewalks
25 are a service, program, or activity of the City within the meaning of Title II of the ADA.” 14
26 F.4th 947, 959 (9th Cir. 2021). The scope of the definition of the applicable program informs
27 whether any proposed alternation is fundamental; the broader the definition, the more extensive
28 the alteration for accommodation may be before it may be deemed fundamental.

1 Here, to the extent there is a program – and there undoubtedly is – the City narrowly
2 defines its program as “breaking up the two large, concentrated encampments . . . (Mahon Creek
3 Path and Andersen Boulevard), by giving the occupants several weeks’ notice and providing them
4 with relocation assistance and access to support services.” Docket No. 24 at 29. Even assuming
5 the City’s narrow description of its program is appropriate, there are viable modifications available
6 here that can accommodate the ADA needs of disabled campers. To determine if the modification
7 fundamentally alters the program, the court should consider if it changes the “essential nature” of
8 the program. *Reed v. City of Emeryville*, 568 F. Supp. 3d 1029, 1043 (N.D. Cal. 2021). This
9 includes how the modification impacts the goals of the program and if it hinders addressing public
10 risks the program targets. *See Where Do We Go Berkeley*, 32 F.4th at 862.

11 Allowing smaller tent clusters (four or fewer persons within 400 square feet) maintains the
12 program’s central purpose of breaking up *large and highly concentrated* encampments filled with
13 dozens of tents—which is the City’s stated focus. *See* Docket No. 24 at 29. For example,
14 Lieutenant Huber explains that large encampments are dangerous because they impose a barrier of
15 tents on the outside, creating an inaccessible and unmonitored interior where criminal activity can
16 thrive. Docket No. 28, Huber Decl. ¶ 16. Establishing smaller clusters is still congruent with the
17 City’s goal and does not pose the same interior-exterior problem of large encampments (since an
18 encampment of four persons cannot by geometric definition have an interior section). Similarly,
19 Lieutenant Huber testified that the rise of violence, criminality, emergency calls, and impacts on
20 the surrounding community are problematic in “larger concentrated encampments,” as compared
21 to “isolated individual or small encampments.” Docket No. 28, Huber Decl. ¶¶ 4, 16. Likewise,
22 Ms. Murphy defines “smaller encampments,” *i.e.*, safer encampments in the City’s view as those
23 that are “under four people.” Docket No. 72-5, Murphy Supp. Decl. ¶ 9. A one-person increase in
24 the number of campers (four vs. three) and increase in square footage to accommodate such
25 clusters (400 square feet vs. 200 square feet) is a minimal adjustment and would be one of degree,
26 and not kind, and certainly is not fundamental alteration. *Cf. Rose v. Rhorer*, 2014 WL 1881623,
27 at *4 (N.D. Cal. May 9, 2014) (finding automatic extension of shelter bed reservations for disabled
28 would fundamentally alter program from short-term facility for all to long-term facility for the

1 disabled).

2 Finally, Defendants argue that the Plaintiffs have failed to “connect the dots” by showing
3 how Plaintiffs’ disabilities are impacted by the “program” or how they have been otherwise
4 discriminated against in its implementation. Docket No. 16 at 8. However, Plaintiffs have
5 established that the Ordinance in its present form does not accommodate Plaintiffs’ disabilities.
6 Mr. Aardalen who has difficulty walking would be separated from caretakers that bring him food
7 and water. Docket No. 1 ¶¶ 79, 86. The Ordinance prevents Ms. Mendoza from sleeping near
8 multiple other people that she trusts to avoid triggering mental health episodes caused by PTSD
9 from sexual trauma. Docket No. 1-4, Mendoza Decl., Ex. A at 22–23; Docket No. 1 ¶ 82. Mr.
10 Nelson relies upon a CPAP machine to treat sleep apnea and would not be able to find a source of
11 electricity if separated from his communal encampment. Docket No. 1-2, Nelson Decl., Ex. C at
12 27–28. Mr. Nelson, Mr. Tringali, and Ms. Binkley also have asserted that their psychological
13 disabilities including depression, PTSD, and anxiety (caused from prior domestic violence and
14 physical assault) are aggravated by being forced to camp in isolation. *See* Docket No. 77 ¶¶ 89,
15 90, 103; Docket No. 1-2, Nelson Decl., Ex. C. Given the evidence of the prevalence of special
16 needs among the unhoused as Dr. Schonberg describes, there are likely others in the camp who
17 require some accommodation. Thus, the Plaintiffs have shown that their disabilities are impacted
18 by the “program,” *i.e.*, the clearing of the encampment. Nor has the City engaged the Plaintiffs in
19 an interactive process to see what specific accommodations can be afforded.

20 Accordingly, Plaintiffs have raised a serious question as to whether their rights under the
21 ADA would be violated in the absence of at least narrow preliminary injunctive relief requiring
22 that unhoused individuals be allowed to camp in a cluster of up to four people within 100 feet of
23 other encampments and requiring the City engage in the interactive process before enforcing the
24 Ordinance against Plaintiffs.

25 c. Fourteenth Amendment due process

26 Plaintiffs also raise additional due process concerns. First, our jurisprudence recognizes
27 the fundamental maxim that “[g]uilt is personal.” *Scales v. United States*, 367 U.S. 203 (1961).
28 *See St. Ann v. Palisi*, 495 F.2d 423, 425–26 (5th Cir. 1974) (explaining that the due process clause

1 of Fourteenth Amendment protects an individual’s right to be punished only on basis of personal
2 guilt); *Levy v. Louisiana*, 391 U.S. 68 (1968) (denying illegitimate children the ability to pursue
3 wrongful death claims under state statute violates constitution as children are not to be deprived
4 due to the indiscretion of their parents). Imposing penalties for someone else’s conduct conflicts
5 with due process. In a similar vein, *mens rea* is typically a required element of a crime. *See*
6 *Staples v. United States*, 511 U.S. 600, 605 (1994) (“The existence of a *mens rea* is the rule of,
7 rather than the exception to, the principles of Anglo–American criminal jurisprudence.”) (citing
8 *United States v. United States Gypsum Co.*, 438 U.S. 422, 436–437 (1978)). Otherwise, criminal
9 sanctions may improperly be imposed upon persons whose mental state made their actions entirely
10 innocent. *See id.* at 606–15.

11 Here, because of the strict density limits imposed by the Ordinance severely restricting
12 where unhoused individuals can camp, the unregulated nature of the designation and allocation of
13 those limited permissible campsites for the unhoused leaves Plaintiffs exposed to being evicted
14 and/or criminally prosecuted as a result of actions taken not by them but by a third party. *See*
15 SMC § 19.50.040(C)(4). Specifically, the Ordinance makes it illegal to maintain a campsite
16 within 200 feet of another campsite without limitation. *Id.* The City has asserted in its filings and
17 at oral argument that it does not intend to set forth an allocation process, *e.g.*, establishing
18 designated campsites or assigning land on *e.g.* a first-come-first serve or need basis. *See* Docket
19 No. 72 at 16 (“To be clear, allowable space will *not* be allotted.”). Rather, the unhoused will be
20 left to find space to camp adhering to the specific proximity requirements of the Ordinance on
21 their own, and to self-police the space around their tent to remain compliant. Thus, unhoused
22 persons are subject to potential eviction or prosecution for violating the Ordinance if a camp is set
23 up by someone else within 200 feet, regardless of consent and even awareness (*e.g.*, if a tent is set
24 up nearby while the person is sleeping or away from camp) of the camper. While the City simply
25 says if there is a conflict, the police may be called to resolve the conflict, there is no procedural
26 due process attached to that process. To make matters worse, the City says if the policy cannot
27 determine who is right, both campers will be subject to eviction. Docket No. 72 at 17. While the
28 City analogizes this as two people wanting to sit on the same public bench, *see id.*, the decision as

1 to where one can camp and claim things necessary for survival is far more consequential. Where
2 the essentials to survival are potentially scarce, the unhoused cannot simply be relegated to a game
3 of musical chairs.

4 There is another due process problem regarding fair notice. Specifically, without an
5 allocation or registration process the unhoused will not know which spaces remain unoccupied
6 throughout the City because of proximity requirements (relative to both other campers and City
7 structures such as playgrounds) and thus where they can camp lawfully under the Ordinance. This
8 makes it particularly difficult for persons with health or safety concerns, or limited mobility to
9 find suitable space (*e.g.*, space big enough to house multi-person site, or close to proximity) and
10 avoid violating the Ordinance. Again, as noted above, this problem can be particularly acute if
11 there is a relative scarcity of available campsites insofar as the number of unsheltered persons in
12 San Rafael is better approximated by the 2022 PIT estimate of 241 unsheltered persons as opposed
13 to the City's current count of 120 unsheltered persons. *Compare*, Dkt. No. 24 at 5 with Docket
14 No. 16-2 at 2–3.

15 For these reasons, Plaintiffs have raised at least “serious questions” as to the merits of their
16 claims that the Ordinance violates constitutional principles of due process.

17 d. Eighth Amendment

18 Plaintiffs also assert that SMC section 19.50 violates the Eighth Amendment's Cruel and
19 Unusual Punishment Clause for impermissibly criminalizing involuntary acts and status. The
20 Eighth Amendment states that, “[e]xcessive bail shall not be required, nor excessive fines
21 imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The latter
22 clause has been interpreted as including substantive limits upon what conduct may be
23 criminalized. *Martin*, 920 F.3d at 615. Specifically, the state may not criminally punish an
24 “involuntary act or condition if it is the unavoidable consequence of one's status or being.” *Id.* at
25 616. The *Martin* court explained that “[h]uman beings are biologically compelled to rest,” and
26 doing so in public is unavoidable if a person is unhoused and has nowhere else to go. *Id.* at 617.
27 Accordingly, an ordinance would be unconstitutional “insofar as it imposes criminal sanctions
28 against homeless individuals for sleeping outdoors, on public property, when no alternative shelter

1 is available to them.” *Id.* at 604. In *Grants Pass*, the Ninth Circuit affirmed the holding of
2 *Martin*, and clarified that the protection applied to individuals that are involuntarily unhoused. 72
3 F.4th at 896.

4 Previously, Judge Thompson issued a temporary restraining order to halt the enforcement
5 of the Ordinance, finding that at least “serious questions” were raised as to the merits of Plaintiffs’
6 claim that the Ordinance violates the Eighth Amendment’s Cruel and Unusual Punishment Clause,
7 as interpreted by the Ninth Circuit Court of Appeals in *Martin*, 920 F.3d 584. *See* Docket No. 19.
8 Specifically, the Court found that the anti-camping exception in the ordinance, designating some
9 land as camping-permissible appeared to be non-viable, given the broad categories of exception-
10 prohibited property, lack of clarification by the City as to where camping was permitted, and the
11 requirement that campsites be 200 feet apart to be lawful. *Id.* at 12–15, 15 n.2. Subsequently,
12 Defendants submitted a map into evidence identifying camping-permissible land. Docket No. 74,
13 Ahuja Decl., Ex. A.

14 Under *Martin*, some regulation of camping by the City is permissible so long as there are
15 still areas where the unhoused can sleep throughout the City. The *Martin* court wrote “we in no
16 way dictate to the City that it must . . . allow anyone who wishes to sit, lie, or sleep on the streets .
17 . . . at any time and at any place.” 920 F.3d at 617; *see also Sausalito/Marin Cnty. Chapter of*
18 *California Homeless Union v. City of Sausalito*, 2021 WL 5889370, at *2 (N.D. Cal. Dec. 13,
19 2021) (“*Martin* prohibits a ban on all camping, not the proper designation of permissible areas.”).
20 Accordingly, courts applying *Martin* find it constitutional to impose geographical limits on
21 camping so long as there is somewhere else that an unhoused person can sleep within city limits.
22 For example, in *Gomes v. County of Kauai*, the court found no *Martin* violation where camping
23 was disallowed in one park in the city. 481 F. Supp. 3d 1104, 1109 (D. Haw. 2020); *see also*
24 *Boring v. Murillo*, 2022 U.S. Dist. LEXIS 198089, at *14–15 (C.D. Cal. Aug. 11, 2022) (finding
25 statute sound if moving unhoused from downtown to residential areas).

26 Section 19.50.030 prohibits camping absolutely in: open space property; public facilities;
27 public rights-of-way; within 10 feet within public utility infrastructure; within 100 feet of
28 playgrounds; City parking garages; and anywhere the City council or City manager designates as a

1 health/safety risk.

2 The exception allowing for camping in all other areas includes no illustrative language.
3 SMC § 19.50.040. However, the City has submitted a map into evidence identifying where
4 camping remains permissible within the City of San Rafael. Docket No. 74, Ahuja Decl., Ex. A.
5 The City argues that County land should be considered in determining if there is adequate space in
6 San Rafael for camping. Docket No. 72 at 7.

7 However, County land is not properly considered in the calculation as the County rejects
8 the City's assertion that County land is regularly available for camping. *See* Docket. No. 86, Ex.
9 A (Letter from Brian Washington, County of Marin Counsel). Setting aside County land, the
10 City's map expresses that camp-friendly land in the City, in consideration of the distancing
11 restrictions and features including buildings, playgrounds, and ball fields, allows 262 campsites to
12 be maintained.¹² *Id.* ¶ 5. Based on the City's estimate, there are approximately 120 unsheltered
13 persons in the City of San Rafael; however, the City's 2022 PIT survey of Marin County estimated
14 241 unsheltered persons in San Rafael. *Compare*, Docket No. 24 at 5 *with* Docket No. 16-2 at 2–
15 3. Under either estimation, there seems to be enough campsites to literally house the unsheltered
16 population in San Rafael, though the City will near its capacity according to the PIT estimation.

17 However, while there appears to be an adequate number of campsites, the matter is not free
18 from doubt. As noted above, many residents will need to live in a small community of four
19 campers who, according to the evidence, will need, *e.g.*, 400 square feet per campsite. The City's
20 map does not indicate how many such clusters may be accommodated. Also, there is a question
21 whether all single campers who need more than 50 square feet may be accommodated, and at this
22 juncture, there is no evidence that 50 square feet is sufficient for all single campers. As discussed

23 _____
24 ¹² The City also argues that the estimation is underinclusive because sidewalks and rights of way
25 remain available but are too numerous to be mapped by the City. This is not persuasive because
26 the text of the statute provides: "No person or persons shall camp in or on any public right-of-way
27 or sidewalk, ***or portion thereof, or*** in a manner that obstructs, blocks, or otherwise interferes with
28 use of or access to a public right-of-way or sidewalk." 19.50.020(A)(6) (emphasis added). The
City's interpretation that this leaves open camping on portions of sidewalks if not obstructing the
path is untethered from its language. *See, e.g., Wills v. City of Monterey*, 617 F. Supp. 3d 1107,
1120–21 (N.D. Cal. 2022) (finding city's interpretation of sidewalk ordinance was not supported
by language used in the statute).

1 above, the Court has some skepticism since it appeared that based on experience, 100 square feet
2 is the typical size of the average camper. As the City indicated at oral argument, more than half of
3 the identified sites will accommodate only 50 square feet of camping. If the number of unhoused
4 persons in San Rafael is 241 per the PIT estimate, there remains a question whether there are a
5 sufficient number of permissible camp sites for the unhoused in San Rafael. Nonetheless, the
6 Plaintiffs have not presented any evidence suggesting that the designated campsites are not
7 adequate, and thus the Court finds that at this juncture, the Plaintiffs have not raised serious
8 questions that there is a basic violation of *Martin*, provided the City demonstrates in a revised
9 map, consistent with the conditions imposed, that there are enough campsites for the unhoused.

10 It should be further noted that district courts applying *Martin* require that land where
11 camping remains available be sufficiently habitable qualitatively to satisfy the Eighth Amendment.
12 In *Warren v. City of Chico*, the court found a temporary shelter facility on an airport tarmac could
13 not be considered alternative shelter sufficient to satisfy the Eighth Amendment. 2021 WL
14 2894648, at *7–8 (E.D. Cal. July 8, 2021). The court explained that “[the site is] asphalt tarmac
15 with no roof and no walls, no water and no electricity . . . It affords no real cover or protection to
16 anyone.” *Id.* The Plaintiffs do not raise any specific issues with the areas identified as camp-
17 friendly by the City in Plaintiffs’ latest filings. *See* Docket No. 76 at ¶¶ 21–28. Thus, based on
18 the present record, Plaintiffs’ claims do not raise serious questions as to the merits of a *Martin*
19 claim based upon the quality of camping-permissive land in San Rafael.

20 However, the Court notes that *Grants Pass* establishes that cities cannot enforce anti-
21 camping ordinances to the extent that they prohibit “the most rudimentary precautions” a homeless
22 person might take against the elements, *i.e.*, bedding or tents. 72 F.4th at 891. So, while there are
23 not serious questions presented as to the Eighth Amendment claim, there are constitutional
24 concerns imposed to the extent that Defendants plan to confiscate Plaintiffs’ tents that do not fit
25 within spaces available under the Ordinance (as modified by this preliminary injunction) without
26 replacing such rudimentary needs as bedding and a tent. Defendants expressed some willingness
27 to replace tents at oral argument on October 2, 2023, though it is not clear the precise
28

1 circumstances in which the City intends to do so.¹³

2 4. Public interest

3 As discussed above, the primary risks imposed upon the public are abated under the
 4 Court's narrow injunction which limits encampments to up to a maximum of four persons within a
 5 400 square foot area and requires campsites to be separated by 100 feet. This narrow injunction
 6 largely abates risk of fire, increased criminal activity, safety calls, and incidents of harassment to
 7 the surrounding public which arguably grow commensurately with the number of tents in an
 8 encampment. *See, e.g.*, Docket No. 28, Huber Decl. ¶ 4 (“As an encampment grows in size, the
 9 opportunity for conflict within the encampment between encampment members and with the
 10 surrounding public increases exponentially.”); Docket No. 72-5, Murphy Supp. Decl. ¶¶ 6–9
 11 (similar). This is also supported by the testimony of Chief White at oral argument that the more
 12 tents in an encampment, the greater the fire risk.

13 Conversely, implementation of the Ordinance in full may impair the public's interest. The
 14 statute makes it harder for community organizations to find the unhoused and offer help. Docket
 15 No. 32-12, Sarris Decl. ¶ 9(e). This may further entrench homelessness in the community. *Id.*
 16 Ms. Murphy recognized this concern, as she testified that unhoused persons rely on Narcan and
 17 solar charging stations being distributed throughout campsites, but she could not confirm that the
 18 volunteer organizations have the resources to visit dispersed campsites in San Rafael (as opposed
 19 to a few, central encampments as they currently stand). The public also does not benefit from
 20 facilitating sexual and domestic violence within its borders. Further, where, as here, Plaintiffs
 21 establish a potential violation of the United States Constitution, “[p]laintiffs have also established
 22 that both the public interest and the balance of the equities favor a preliminary injunction” because
 23 the public has an interest in upholding the federal law. *Ariz. Dream Act Coal.*, 757 F.3d at 1069.
 24 A narrowly tailored injunction protects the public's interest in helping to provide meaningful
 25

26 _____
 27 ¹³ In addition to the above claims, Plaintiffs also assert claims under the Fourteenth Amendment
 28 void-for-vagueness doctrine, the First Amendment, violation of the Fourteenth Amendment's
 equal protection clause, and an impermissible Bill of Attainder, under U.S. Const. Art. 1 § 9 cl. 3.
 Given that Plaintiffs have shown serious questions as to certain of their claims, the Court declines
 to address the balance of Plaintiffs' claims at this juncture.

1 degree of safety and health to some of the City’s most vulnerable citizens. In short, the public
2 interest favors a narrowly tailored preliminary injunction.

3 **V. CONCLUSION**

4 Because the Court finds that there is a likelihood of irreparable harm, the balance of
5 hardships tip sharply in Plaintiffs favor, Plaintiffs raise serious questions on the merits of
6 Plaintiffs’ Fourteenth Amendment, Due Process, and ADA claims, and the public interest is
7 served by a narrowly tailored preliminary injunction, a preliminary injunction may properly be
8 issued here.

9 Although an injunction is warranted, the Court is careful to issue injunctive relief only as
10 broad as is necessary to remedy the harm posed to Plaintiffs. *See City & Cnty. of San Francisco v.*
11 *Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018) (injunctive relief should be “narrowly tailored to
12 remedy the specific harm shown”). Accordingly, the Court is prepared to lift the blanket
13 injunction and permit the City to enforce the Ordinance in large part but with some narrow
14 limitations and conditions necessary to prevent irreparable harm and to minimize hardship to both
15 parties. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 999–1000 (9th Cir. 2017) (“[The] infinite
16 variety of situations in which [a] court of equity may be called upon for interlocutory injunctive
17 relief requires that court have considerable discretion in fashioning such relief.”); *Cobine v. City of*
18 *Eureka*, 2016 WL 1730084, at *8 (N.D. Cal. May 2, 2016) (allowing enforcement of anti-camping
19 ordinance so long as conditions were met by the city including storage of belongings of unhoused
20 persons and providing emergency shelter); *Sausalito/Marin Cnty. Chapter of California Homeless*
21 *Union v. City of Sausalito*, 2021 WL 5889370, at *4 (N.D. Cal. Dec. 13, 2021) (allowing
22 relocation of encampment by the city provided conditions abating danger, including provision of
23 wooden platforms, afforded).

24 For the reasons stated above, based on the current record, the Court finds that the City
25 may, during the pendency of the litigation or until further ordered, enforce SMC Section 19.50
26 with the following modifications and conditions. For individual Plaintiffs in this action that have
27 established standing and members of the San Rafael Homeless Union that reside at the Mahon
28 Creek Path encampment, the City must:

- 1 • Allow 400 square feet campsites (instead of 200 square feet) housing up to four people.
- 2 • Campsites may be separated by 100 feet (rather than a 200-foot) buffer.
- 3 • To the extent Plaintiffs identified above do not have tents and bedding that can fit
- 4 within the space compliant with the Ordinance, the City must provide replacements.
- 5 • The City must provide assistance to campers who need to move to a designated space.
- 6 • The City must designate the permissible campsites which complies with the Ordinance
- 7 as modified by this preliminary injunction on street level maps. The map shall identify
- 8 each allowable campsite by size and number of allowed occupants. The City shall also
- 9 visibly designate at each site, the boundaries of each permissible campsite so that
- 10 campers will have clear notice in order to comply with the Ordinance.
- 11 • The City must establish some kind of allocation and registration process so that there is
- 12 an orderly process by which campers can find permitted campsites.
- 13 • The City shall not evict or prosecute any Plaintiff who has submitted a request for
- 14 reasonable accommodation based on disability unless and until it completes an
- 15 interactive process (including administrative appeals) with that Plaintiff to address the
- 16 need for reasonable accommodation.

17 Before the current injunction is lifted and the narrower preliminary injunction herein goes
18 into effect permitting the City to enforce the Ordinance with limitations, the City shall file for the
19 Court’s review the revised map and a description of the process by which campsites may be
20 allocated or claimed.

21 To be clear, this preliminary injunction does not prevent the City from currently enforcing
22 its conventional fire and safety codes which are generally applicable so long as Plaintiffs are not
23 displaced. And because this action is brought as an as-applied challenge on behalf of a limited
24 group of persons, this preliminary injunction applies only to residents of the Mahon Creek Path
25 encampment who have standing either as individually named plaintiffs herein or via the San
26 Rafael Homeless Union.

27 //

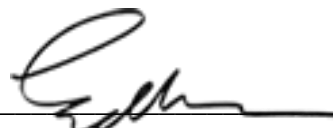
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The Courts sets a remote status conference for November 1, 2023 at 4:00 p.m.

IT IS SO ORDERED.

Dated: October 19, 2023



EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

Exhibit C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHALEETA BOYD, et al.,
Plaintiffs,
v.
CITY OF SAN RAFAEL, et al.,
Defendants.

Case No. 23-cv-04085-EMC (EMC)

**ORDER CLARIFYING SCOPE OF
PRELIMINARY INJUNCTION**

Docket Nos. 98, 100

United States District Court
Northern District of California

This Order clarifies aspects of this Court’s preliminary injunction issued on October 19, 2023 (Docket No. 98).

The temporary restraining order issued on August 16, 2023 (Docket No. 19) and extended and modified on September 7, 2023 (Docket No. 67) is no longer in effect. The October 19 preliminary injunction order (Docket No. 98) converted that temporary restraining order into a preliminary injunction. The terms of the TRO as applied to the residents at the Mahon Creek Path who have standing to seek injunctive relief remain in effect as part of the preliminary injunction, but as indicated in the October 19 Order, the preliminary injunction will be narrowed and modified once the preconditions identified in the Order are met.

To make it clear, the preliminary injunction, including preconditions imposed upon enforcement of the Ordinance at issue, extends only to residents at the Mahon Creek Path who have standing either as individually named Plaintiffs or via membership in the San Rafael Homeless Union. The preliminary injunction does not prevent SMC §§ 19.50 and 19.20.080(C) from being enforced against other persons or in other locations not part of this lawsuit. Further, Defendants are not affirmatively ordered to undertake the preconditions stated in the preliminary injunction order. Rather, those conditions and limitations set forth in the Order only apply in the

1 event Defendants endeavor to enforce SMC §§ 19.50 and 19.20.080(C) against the
2 aforementioned Plaintiffs in this action. The injunction is thus prohibitory and not mandatory in
3 nature. *Cf. LA All. for Hum. Rts. v. Cnty. of Los Angeles*, 14 F.4th 947, 952, 956 (9th Cir. 2021)
4 (applying mandatory injunction standard to injunction ordering “the escrow of \$1 billion to
5 address the homelessness crisis, offers of shelter or housing to all unhoused individual in Skid
6 Row within 180 days, and numerous audits and reports”).

7 Defendants are not enjoined from enforcing its general fire and safety codes, including
8 against Plaintiffs in this action residing at the Mahon Creek Path. However, insofar as it relates to
9 those individuals, the general fire and safety codes may not be used to displace Plaintiffs unless
10 the conditions identified in the preliminary injunction are met. The general fire and safety codes
11 may not be otherwise used to circumvent the Court’s injunction. To be clear, Plaintiffs are not
12 immunized from arrest or violation of other laws unrelated to camping absent demonstration that
13 such action taken by the City is an attempt to circumvent the preliminary injunction.

14 As further clarification, the 400 square foot adjustment for camps of up to four persons
15 applies only to Plaintiffs who wish to camp with others and not to those who maintain wholly
16 individual campsites. It reflects an allowance of 100 square feet per camper.

17 The Court notes that insofar as Defendants offer individual Plaintiffs suitable housing,
18 those Plaintiffs may lose entitlement to protection from the preliminary injunction. The offer of
19 suitable housing may constitute a sufficient effort to mitigate state-created danger and/or a
20 reasonable accommodation under the Americans with Disabilities Act and would shift the balance
21 of hardships amongst the parties. The offer may also render the individual voluntarily homeless,
22 making a claim under the Eighth Amendment inapplicable. To the extent that Defendants make
23 any such offers for the provision of suitable housing, Defendants may seek a modification of the
24 preliminary injunction as to any resident to whom such an offer is made.

25 Defendants identify Plaintiff Courtney Huff specifically as a Plaintiff that lacks entitlement
26 to the Court’s preliminary injunction because she resides in an apartment from time to time. To
27 this end, Ms. Huff testified at oral argument that she has an apartment. However, Ms. Huff
28 attested that she resides at the Mahon Creek Path encampment periodically because she has been

1 sexually assaulted in her apartment and has suffered from domestic violence. Docket No. 1, Ex. J,
 2 Huff Decl. ¶ 6. Ms. Huff is afraid to stay at her apartment sometimes because her ex has
 3 threatened to murder her in her home; she fears being attacked again. *Id.* ¶ 7. Further, Ms. Huff
 4 attests that she has been subjected to human trafficking and she continues to fear the group that
 5 trafficked her. *Id.* ¶ 8. These issues are exacerbated by the fact that Ms. Huff is not allowed to
 6 change the locks on her apartment, or she will face eviction. *Id.* ¶ 9. Thus, she fears residing at
 7 her home. *Id.* ¶¶ 6–9. To this end, Ms. Huff sometimes resides at the Mahon Creek Path to be
 8 afforded protection by sleeping in a group of people she trusts. *Id.* ¶¶ 10–11.

9 The City has questioned the veracity of Ms. Huff’s fear, stating that she has gone to the
 10 camp where her former abuser resides. *See* Docket No. 27, Murphy Decl. ¶ 24(e). This is not
 11 sufficient to negate Ms. Huff’s attestation in this posture. It is not clear the circumstances under
 12 which Ms. Huff went to her former partner’s campsite and the City does not account for Ms.
 13 Huff’s fears regarding human trafficking. Accordingly, the Court cannot say, based on this record,
 14 that Ms. Huff is residing at the Mahon Creek Path voluntarily. Rather, Ms. Huff appears to rely
 15 on camping therein to protect herself from revictimization. Accordingly, based on the current
 16 record, Ms. Huff still has standing to obtain relief under the preliminary injunction.

17 Regarding membership in the San Rafael Homeless Union, the Court orders the Union to
 18 provide a list of Union members that resided at the Mahon Creek Path as of the date the
 19 preliminary injunction was ordered to Defendants. This exchange of information must occur
 20 within one week of the November 1, 2023, hearing. The parties shall meet and confer to consider
 21 an appropriate mechanism to share the requisite information, *e.g.*, by way of Protective Order to
 22 ensure Union members are afforded privacy as needed. The point is that only those persons who
 23 resided at the Mahon Creek Path as of the date of the preliminary injunction may claim protection
 24 thereunder, and the City has an obvious interest in knowing who those persons are.

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1 To the extent that disputes arise as to compliance or enforcement under this Court's
2 injunction, and absent an emergency, the parties shall confer before Judge Illman to seek
3 resolution of any such dispute prior to filing a motion before this Court. The Court further
4 encourages parties to consider a global settlement through negotiations and discussion before
5 Judge Illman.

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7 **IT IS SO ORDERED.**

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9 Dated: November 2, 2023

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12 EDWARD M. CHEN
13 United States District Judge
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United States District Court
Northern District of California

Exhibit D

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Attorneys for Defendants
CITY OF SAN RAFAEL, CRISTINE
ALILOVICH, CHRIS HESS, DAVID
SPILLER, KATE COLIN, ELI HILL,
MARIBETH BUSHEY, RACHEL KERTZ, and
APRIL MILLER (erroneously sued as “Amy
Miller”)

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SHALEETA BOYD, et al.

Plaintiffs,

v.

CITY OF SAN RAFAEL, et al.

Defendants.

Case No. 23-cv-04085-EMC

**DEFENDANTS’ NOTICE OF
PROCEDURES PER PRELIMINARY
INJUNCTION**

Hon. Edward M. Chen

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1 TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD. Please take
2 notice of the following.

3 This Court’s Preliminary Injunction entered October 19, 2023 (ECF 98) states “Before the
4 current injunction is lifted and the narrower preliminary injunction herein goes into effect permitting
5 the City to enforce the Ordinance with limitations, the City shall file for the Court’s review the
6 revised map and a description of the process by which campsites may be allocated or claimed.” (ECF
7 98 p. 40:17-20.) The City provides herewith these *Procedures for Allocation and Registration of*
8 *Camping Areas* (“Procedures”). These Procedures have been prepared and submitted to the
9 Court pursuant to the Court’s order. The City is not hereby granting any property rights in its
10 public property to any person. The City respectfully requests that the Court review and approve
11 this filing as complying with the Court’s order as soon as possible so that the City can enforce its
12 ordinance as otherwise allowed by the October 19, 2023 order.

13 **A. Persons Subject to the Injunction**

14 On November 8, 2023, counsel for the Homeless Union of San Rafael (“Union”)
15 submitted to the City a list of 46 persons by first name and last initial, including the named
16 plaintiffs, who they allege were camping at the Mahon Creek Path as of October 19, 2023 and
17 would be subject to the injunction. The City is in the process of conferring with the Union
18 concerning that list, as it believes several people on it have obtained housing and/or are not
19 living on the Mahon Creek Path.

20 **B. Prohibition of Camping on Lindaro Street**

21 Since filing of this lawsuit, some of the named plaintiffs and/or residents of Mahon Creek
22 Path have moved their campsites across Andersen Boulevard and established a new “annexed”
23 encampment on Lindaro Street. No camping spaces are mapped on Lindaro Street. The City
24 intends to prohibit all camping on Lindaro Street due to potential contamination and water
25 quality impacts on the unprotected creek immediately behind the existing campsites. All persons
26 camping on Lindaro Street will be required to relocate and will be permitted to select a mapped
27 space as discussed in the next section, including persons who are not otherwise protected by the
28 Court’s injunction.

1 **B. Fifty-six (56) Mapped Camping Spaces**

2 The City provides herewith as **Exhibit A** street level maps of Mahon Creek Path and the
3 surrounding area showing 14 campsites. Each of the campsites is 400 square feet, comprised of
4 four 100 square-foot spaces, separated by a 100-foot buffer. Fifty-six (56) total camping spaces
5 are identified, which would accommodate all persons subject to the injunction and/or presently
6 camping on Lindaro. All of the campsites are set back from the path and the adjacent property to
7 the rear. The spaces have been numbered 1 to 56 for identification. Spaces 1-8 and 29-32 are
8 presently unoccupied.

9 Campers who have mobility-related disabilities that require the use of equipment such as
10 wheelchairs, scooters, or walkers will be allowed to encroach by no more than five feet beyond
11 the designated campsite for the purpose of locating that equipment when not in use. No other
12 property will be permitted outside of the campsite boundaries if it is not reasonably required for
13 mobility purposes.

14 **D. Registration of Camping Spaces**

15 The City will allow current Mahon Creek Path residents protected by the injunction
16 and/or currently camping on Lindaro to register themselves for one of the numbered camping
17 spaces, and shall maintain records of who has claimed each space, pursuant to the following
18 procedures.

19 Due to the imminent prohibition on camping on Lindaro, residents of Lindaro will be
20 given priority in selecting presently unoccupied camping spaces. Residents of Lindaro will be
21 provided with five days in which to select a presently unoccupied space on Exhibit A. The City
22 will provide a form for this purpose.

23 Based on the Union’s representation that all persons protected by the injunction are
24 members of that organization, and recognizing that reallocating spaces for all residents, including
25 areas which are presently occupied by more people than allowed under the injunction, will take
26 more time, the City will provide the Union with ten days to designate which remaining spaces on
27 Exhibit A each of the protected persons will select. The Union may work with its members to
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1 self-select their camping spaces based on individual needs and preferences, and how they want to
2 group together. The City will provide a form for this purpose.

3 Each of the 14 campsites will be available for registration by groups of 3 to 4
4 persons. Groups of one or two persons will not be permitted.

5 If the Union does not provide a compliant list of persons and spaces by the due date, or
6 provides a partial list of persons and spaces, City staff or third-party providers will attempt to
7 meet with each person not listed to assist with their selection of an unclaimed space.

8 In the event more than one person selects the same space, that space will be registered to
9 the person who first notified the City of their selection.

10 If any person protected by the injunction refuses to select a space, or elects to camp either
11 by themselves or with only one other person, the City will seek permission from the Court to
12 remove that person from the protection of the injunction, and require their relocation from the
13 Mahon Creek Path. Such persons may camp on other public property in the City, provided that
14 they comply with SRMC section 19.50 and other existing law.

15 Once occupied, the City will physically mark the boundaries of each campsite as directed
16 by the Court. If four persons are occupying a campsite, a 400 square foot area will be marked. If
17 three persons are occupying a campsite, a 300 square foot area will be marked. The City will not
18 mark internal space boundaries as campers may have different arrangements for their groups of
19 three or four.

20 Records showing the registration of spaces will be maintained by the City's Assistant
21 Director of Community Development, or their designee. In the event that a registered camper
22 decides to exchange camp spaces during the pendency of the preliminary injunction, they must
23 advise the City's Assistant Director of Community Development before doing so. If a camper
24 obtains housing or otherwise for any reason stops camping at the registered space, that space will
25 remain vacant unless another person protected by the injunction registers for the space and
26 moves to the space. Upon a vacancy, if a campsite is occupied by one or two registered persons,
27 those persons may remain in the campsite, provided that each do not occupy a space larger than
28 100 square foot each.

1 The City respectfully requests that the Court confirm that the information provided above
2 and the attached map comply with the conditions set in the preliminary injunction for modified
3 enforcement of SMC 19.50 with respect to the persons covered by the injunction.
4

5 DATED: November 22, 2023

**WAGSTAFFE, VON LOEWENFELDT,
BUSCH & RADWICK LLP**

7 By /s Michael von Loewenfeldt
MICHAEL VON LOEWENFELDT

8
9 Attorneys for Defendants
10 CITY OF SAN RAFAEL, CRISTINE ALILOVICH,
11 CHRIS HESS, DAVID SPILLER, KATE COLIN,
12 ELI HILL, MARIBETH BUSHEY, RACHEL
13 KERTZ, and APRIL MILLER (erroneously sued as
14 “Amy Miller”)
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EXHIBIT A

Overall Map – Including Sites on Andersen Drive, Mahon Creek Path, and Francisco Blvd W



Currently Vacant Campsite



Occupied or Occupancy Unknown

Campsites on Andersen Drive



Campsites on Mahon Creek Path between Andersen and Lincoln



Campsites on Mahon Creek Path between Lincoln and Francisco Blvd W



Campsites on Francisco Blvd W



W | V | B | R

PROOF OF SERVICE

I, Garfield Pallister, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Wagstaffe, von Loewenfeldt, Bush & Radwick LLP, 100 Pine Street, Suite 2250, San Francisco, CA 94111.

On, November 22, 2023 I served the following document(s):

- **DEFENDANTS’ NOTICE OF PROCEDURES PER PRELIMINARY INJUNCTION**

on the parties listed below as follows:

Anker Aardalen P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Floyd Barrow P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Shaleeta Boyd P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff
Christie Marie Cook P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Camp Integrity P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Jeff Grove P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff
Donald Hensley P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Courtney Huff P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Amalia Mendoza P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff
Eddy Metz P.O. BOX 2217 San Rafael, CA 94912-2217 Pro Se Plaintiff	Brian Nelson P.O. BOX 2217 San Rafael, CA 94912-2217 Email: campintegritysanrafael@yahoo.com Pro Se Plaintiff	

- By first class mail** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

on the parties listed below as follows:

Brian Nelson
P.O. BOX 2217
San Rafael, CA 94912-2217
Email: campintegritysanrafael@yahoo.com
Pro Se Plaintiff

- By electronic mail:** I caused a courtesy copy of the documents to be sent to the person[s] at the e-mail addresses listed on the service list. I did not receive, within a reasonable time after the transmission, an electronic message or other indication that the transmission was unsuccessful.

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By Federal Express or overnight courier.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on November 22, 2023, at San Francisco, California.



GARFIELD PALLISTER

W | V | B | R










Administrative Order Mahon Path Camping Prohibition 12.4.23


Final Audit Report

2023-12-07

Created:	2023-12-06
By:	Laraine Gittens (laraine.gittens@cityofsanrafael.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAu7RBAu74p4qP0gMkSuAyVVFtKlZVNged

"Administrative Order Mahon Path Camping Prohibition 12.4.23" History


-  Document created by Laraine Gittens (laraine.gittens@cityofsanrafael.org)
2023-12-06 - 7:59:12 PM GMT- IP address: 199.88.113.8
-  Document emailed to Genevieve Coyle (genevieve.coyle@cityofsanrafael.org) for approval
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-  Signer cristine.alilovich@cityofsanrafael.org entered name at signing as Cristine Alilovich
2023-12-06 - 11:44:03 PM GMT- IP address: 174.249.147.232
-  Document e-signed by Cristine Alilovich (cristine.alilovich@cityofsanrafael.org)
Signature Date: 2023-12-06 - 11:44:05 PM GMT - Time Source: server- IP address: 174.249.147.232
-  Document emailed to Brenna Nurmi (brenna.nurmi@cityofsanrafael.org) for signature
2023-12-06 - 11:44:07 PM GMT

 Laraine Gittens (laraine.gittens@cityofsanrafael.org) replaced signer Brenna Nurmi (brenna.nurmi@cityofsanrafael.org) with Lindsay Lara (lindsay.lara@cityofsanrafael.org)


2023-12-07 - 1:02:50 AM GMT- IP address: 199.88.113.8

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2023-12-07 - 1:03:27 AM GMT- IP address: 40.94.28.224

 Document e-signed by Lindsay Lara (lindsay.lara@cityofsanrafael.org)

Signature Date: 2023-12-07 - 4:00:08 AM GMT - Time Source: server- IP address: 67.169.52.201

 Agreement completed.

2023-12-07 - 4:00:08 AM GMT