



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Fire Department and Building Division

**Prepared by: Robert Sinnott, Deputy Fire Chief
Don Jeppson, Chief Building
Official**

City Manager Approval:  _____

TOPIC: APPEALS DISPUTING 48-HOUR ABATEMENT ORDERS

SUBJECT: APPEALS OF 48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY

RECOMMENDATION:

Staff recommends the City Council:

- 1) Appoint the Mayor and City Council as the building board of appeals, and thereby convene hearings in a dual capacity as the building board of appeals, and as the hearing body for appeals of the fire code.
- 2) Adopt the Resolution denying the appeal filed by Brian Nelson.
- 3) Adopt the Resolution denying the appeal filed by Bruce Gaylord.

EXECUTIVE SUMMARY:

The City Council, acting as the board of appeals under the City’s fire and building codes, is requested to hold hearings for two appeals of the October 24, 2023, *48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property* (“Notice”; Attachment 1), issued by the City’s Deputy Fire Chief and Chief Building Official. The appeals were filed by two individuals living in the Mahon Creek Path encampment, Brian Nelson and Bruce Gaylord (“appellants”). Each appellant was living in a tent raised (or partially raised) on wood pallets. Each appellant was noticed to remove the wood pallets used as foundation underneath their tent within the 48-hour deadline. Based on the Fire Chief’s determination that the wood pallets underneath tents constitute an imminent fire hazard, the Fire Chief (and Deputy Fire Chief, acting under direction of the Fire Chief) and Chief Building Official exercised their authority under applicable codes to deem the wood pallets an unsafe condition and to order their immediate removal. The Notice identified the conditions violating the San Rafael Municipal Code (“SRMC”) and the various codes adopted thereby, and provided notice of the applicable code sections, the actions required to comply with the Notice, the consequences for failing to comply, how to obtain assistance with complying, and the individual rights to appeal.

In the appeal hearings, the City Council will consider the evidence related to the hazardous conditions in the Notice of violations. Upon review, staff believes that the City Council should find sufficient evidence in the records showing the existence of the noticed violations. Staff further believes that no evidence provided by the appellants will refute this. Therefore, staff recommends that upon completion

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

of each hearing, the City Council deny the appeal because the decisions made by the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. The appellants have also raised claims under the Americans with Disabilities Act (“ADA”) and/or other legal arguments that are not within the scope of the appeals and which the Council should not take under consideration.

BACKGROUND:

Appointment of Mayor and City Council as Board of Appeals

These hearings are to appeal noticed violations of the fire and building codes. For fire code appeals, under SRMC § 4.08.140, “[w]henver the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council.” For building code appeals, under SRMC chapter 12.113 “a board of appeals [is] to consider an order, decision or determination made by the building official for the purpose of correcting an error, omission or oversight relative to the application and interpretation of the code. ... Nothing in this section shall prevent the mayor or city council from appointing the mayor and city council as the board of appeals.”

As the first order of action, staff requests that the City Council appoint the Mayor and City Council as the building board of appeals, and thereby convene hearings in a dual capacity as the building board of appeals, and as the hearing body for appeals of the fire code.

Fire Chief’s Determination of Imminent Fire Hazards

On October 24, 2023, Fire Chief Darin White, Deputy Fire Chief Robert Sinnott, and Chief Building Official Don Jeppson performed an inspection of homeless encampments in the vicinity of Lindaro Street, Mahon Creek Path, Andersen Blvd., and Francisco Blvd. West for fire and building hazards. Sergeant Robert Cleland of the San Rafael Police Department and members of the City’s Housing and Homelessness Programs, Assistant Director Christopher Hess and Analyst Mel Burnette accompanied them. Attachment 2 contains filings and written testimony in the case of *Boyd, et al. v. City of San Rafael, et al.* from Deputy Chief Sinnott, Chief Building Official Jeppson, Sergeant Cleland, and Assistant Director Hess, concerning the inspection and documented fire and building hazards.

Prior to that inspection, in the *Boyd* case, Chief White conducted a survey of the encampment and submitted written testimony in the form of an August 22, 2023, declaration and gave oral testimony at an October 2, 2023, Preliminary Injunction hearing, regarding the fire hazards present at the Mahon Creek Path encampment. Excerpts of Chief White’s testimony are also included in Attachment 2. Appellant Nelson and the Homeless Union of San Rafael, of which all persons camping at the Mahon Creek Path are members, are named plaintiffs in the *Boyd* litigation.

Based on Chief White’s experience with encampments, there was concern in particular with structure(s) and/or equipment consisting of, in whole or in part, wood, wood pallets, loose wood, planks, or other similar construction materials within the encampments. The inspection was conducted by performing a visual survey of the exterior of each structure and camping area. Based on site-specific assessments at the encampments, the Fire Chief determined numerous camping areas contained wood and other highly-flammable materials deemed to be unsafe and to present an imminent hazard to life, health, safety, and welfare because they are highly flammable presenting a risk to occupants and surrounding areas. Further, as determined by the Chief Building Official Jeppson, such structures also are at risk

from sudden collapse which causes further threat to occupants or those in the immediate vicinity. The Fire Chief also considered the numerous ignition sources (legal and illegal) he observed within the encampments, including cigarette butts, flammable cannisters containing propane, charcoal grills, and illegal wiring and tie-ins to electrical poles for powering generators. He also considered the conditions at and around the encampments including dry vegetation and nearby businesses, including a roofing company next to the Mahon Creek Path encampment which stores flammable material and a propane tank along the fence line. He also considered the fact that there were prior fires that occurred at the City's encampments. Chief White determined that in encampment conditions where persons are living in unpermitted structures in close proximity to one another, and there exists such numerous ignition sources and flammable materials, there is a heightened risk of rapid fire spread among the encampment.

In the case of wood pallets underneath tents (which are the subject of these appeals), in the *Boyd* litigation, Chief White testified as follows: "I think the very nature of a wood pallet itself, usually, is not fresh wood. It is usually some aged, dried wood. The fact that there's air and space in between the different planks that allows for air circulation. So if a pallet were to be ignited and catch fire, it's likely that it's going to catch fire pretty easily, compared to, say, a solid piece of wood, yes". (Attachment 2, Transcript of Proceedings, Preliminary Injunction Hearing, October 2, 2023, at 80.) Deputy Chief Sinnott further testified in the *Boyd* litigation as follows: "In particular as it relates to pallets, it is my determination based on my training and experience that they are fire hazards in this instance because the pallets themselves are combustible as they consist of dried wood, additional combustible material can accumulate in the spaces between the pallet boards, and the structure of the pallets provides for air spaces that increase their combustibility (in much the way that a campfire stacked with air gaps burns faster and hotter than a collapsed pile of wood). Such combustible material and the air space can combine to accelerate fire spread, including when a flammable tent and the personal belongs typically stored inside is also located on top of the pallet." (Attachment 2, Doc. 108-1, at 3.)

The areas inspected on October 24, 2023 were determined to contain high priority, imminent fire threats. In terms of prioritizing the issues to address, the Officials identified and located the most egregious safety concerns for abatement. At that point in time, the Officials determined that the noticed structures and flammable equipment were the highest priority issues to address.

48-Hour Abatement Notices

During the inspection on October 24, 2023, Deputy Fire Chief Sinnott (acting under direction of the Fire Chief) and Chief Building Official Jeppson posted a *48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property* ("Notice") (Attachment 1) on each structure and/or equipment that was observed to consist of wood, wood pallets, or other similar materials. Twenty (20) Notices were issued to various campsites throughout the encampments, providing notice to abate hazardous, combustible materials: 3 were for stockpiled wood pallets and 17 were for structures, 3 of which were tents or sleeping bags on top of wood pallets. Appellants Brian Nelson and Bruce Gaylord received 2 of the 3 Notices for removal of wood pallets underneath tents. The Notice identified the conditions violating the San Rafael Municipal Code ("SRMC") and the various codes adopted thereby, and provided notice of the applicable code sections, the actions required to comply with the Notice, the consequences for failing to comply, how to obtain assistance with complying, and the individual rights to appeal. The Notice ordered removal of the structures and wood pallets from public property within the 48-hour deadline.

On October 27, 2023, City staff supported individuals who received the Notice with removal of the structures and pallets and provided replacement tents and tarps. During that engagement, staff told persons with pallets underneath their tents that non-flammable materials, such as plastic pallets, could

be substituted for wood pallets to keep their tents off the ground. To date, almost all the wood structures and wood pallets receiving the Notice have been abated from the encampments.

Filing of Appeals

Brian Nelson and Bruce Gaylord, occupants of the Mahon Creek Path encampment, filed separate appeals of the Notice.

Appellant Nelson was noticed for “wood pallet foundation”. A copy of Nelson’s Notice and a photo of his tent raised on pallets are included in Attachment 3. The day after the Notice was posted, appellant Nelson told Sergeant Robert Cleland with the Police Department that, except for 2 wood pallets, the foundation underneath his tent was plastic, and expressed no concern about removing the two wood pallets and replacing them with plastic. Sergeant Cleland offered to bring Nelson some replacement plastic parts that had been lying nearby, but Nelson said he would get them himself. (Attachment 2, Doc. 108-3.) Nelson filed a request to appeal on October 30, 2023. The City responded on November 8, 2023, noting that around the same time of the appeal, Nelson sought a Temporary Restraining Order in *Boyd* seeking to enjoin the City from abating the same hazards and that the Court subsequently denied the TRO. The response also reminded Nelson that the City offered assistance with removing the pallets but that Nelson stated he did not need assistance. On November 15, 2023, the City received an email stating that the “appeal is not rescinded.” (Attachment 5.)

Appellant Gaylord was noticed for “wood pallets used to build foundation for tent”. To staff’s knowledge, appellant Gaylord has not complied with the Notice and continues to use wood pallets underneath his tent. A copy of Gaylord’s Notice and a photo of his tent raised on pallets are included in Attachment 4. Gaylord filed a request to appeal which raised various ADA-related claims on October 31, 2023. In a November 14, 2023, letter concerning Gaylord’s ADA-related claims, the City confirmed that the Notice was limited to flammable, wooden materials, and that they could replace the wooden pallets with pallets made of plastic or other non-flammable materials. The City further reminded Gaylord that the City would assist with removal of the wooden pallets from their structure. Thereafter, Gaylord confirmed on November 27, 2023 their intent to move forward with the appeal. (Attachment 6.)

Upon receipt of confirmation that the appellants intended to proceed with their appeals, the City Clerk issued a December 6, 2023, Notice of Appeal Hearing scheduled for December 20, 2023, together with a Statement of Rights and Procedures to each of the appellants. (Attachments 5 (Brian Nelson) and 6 (Bruce Gaylord)).

Scope and Conduct of the Appeal Hearing - Fire and Building Code Violations

The scope of the appeal hearings is limited to issues raised in the written appeals that pertain to the decisions or determinations of the Fire Chief and Chief Building Official as they relate to the existence of hazards under the code provisions cited below. The City Council serves as the board of appeals pursuant to SRMC sections 4.08.140 (Fire Code appeals) and 12.113 (Building Code appeals).

Fire Code Violations

Fire Code violations were posted in the Notice that both appellants received. The Fire Chief has the authority to “order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees.” SRMC § 4.08.040(C). In this case, the Fire Chief noticed the following fire codes:

California Fire Code section 114 for “Unsafe structures or equipment”

114.1 General. If during the inspection of a premises, a structure, or any building system, in whole or in part, constitutes a clear and inimical threat to human life, safety or health, the fire code official shall issue such notice or orders to remove or remedy the conditions as shall be deemed necessary in accordance with this section, and shall refer the building to the building official for any repairs, alterations, remodeling, removing or demolition required.

114.1.1 Unsafe conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress, inadequate light and ventilation, or that constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the fire code official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

114.2 Evacuation. The fire code official or the fire department official in charge of an incident shall be authorized to order the immediate evacuation of any occupied structure deemed unsafe where such structure has hazardous conditions that pose an imminent danger to structure occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the fire code official or the fire department official in charge of the incident.

114.6 Restoration or abatement. The structure or equipment determined to be unsafe by the fire code official is permitted to be restored to a safe condition. The owner, the owner’s authorized agent, operator or occupant of a structure, premises or equipment deemed unsafe by the fire code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.1.5 and the California Existing Building Code.

114.7 Summary abatement. Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code.

Building Code Violations

Building Code violations were posted in the Notice that both appellants received. Under SRMC § 12.116.010 (Unsafe Structures and equipment), “structures or existing equipment that become unsafe because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition” and, as deemed necessary by the building official, taken down or made safe. In this case, the Chief Building Official noticed the following building codes:

California Building Code § 116 Unsafe structures and equipment.

116.1 Unsafe Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the

public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

116.5 Restoration or Abatement. Where the structure or equipment determined to be unsafe by the building official is restored to a safe condition, the owner, the owner's authorized agent, operator or occupant of a structure, premises or equipment deemed unsafe by the building official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions and change of occupancy shall comply with the requirements of the International Existing Building Code.

Other Code Citations

The Notice that appellants received also cited related sections of the municipal code requiring permits for structures and buildings: SRMC § 12.105.010 (Building permit required); SRMC § 19.20.080(R) (Prohibited activities); SRMC § 11.04.030.010(A) (Encroachment permit required). These are generally-applicable laws that, among other things, prohibit all persons from erecting unpermitted structures and buildings on public property.

Conduct of the Appeal Hearings

As the board of appeals, the City Council must re-examine the decisions of the Fire Chief and Chief Building Official (herein referred to as "Officials") to determine whether such decisions were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. Here, the City's issuance of the Notices to each appellant establishes by a preponderance of the evidence that the violations existed. As such, the burden is now on the appellants to show that the decisions were not supported, were not reasonable, were arbitrary, or were not within the intent and purpose of the applicable codes. Please note, however, in making a decision, the City Council has no authority relative to the interpretation of the administrative provisions of the codes or to waive requirements of the codes.

All written evidence submitted by the appellants is included in Attachments 5 (Brian Nelson), 6 (Bruce Gaylord), and 7 (joint submission). The appellants have appointed Robbie Powelson and Megan Brizzola, RN, to testify at their hearings.

Each appellant is entitled to an appeal hearing and has been noticed that presentation of their appeal will proceed as follows:

- a. Appellant's statement (7 minutes)
- b. Fire Chief and Chief Building Officials' statement (7 minutes)
- c. Public comment (up to 2 minutes each)
- d. Appellant rebuttal (3 minutes)
- e. Fire Chief and Chief Building Officials' rebuttal (3 minutes)

After all testimony is submitted and heard at the hearing, the City Council must consider all of the evidence presented, deliberate, and either make a decision or continue the matter in order for additional information to be presented. The City Council's decision is final.

Outside the Scope of Appeal – ADA and Other Legal Arguments

In their written appeals, the appellants have raised claims based on the Americans with Disabilities Act (“ADA”) and/or other legal arguments that do not invoke the referenced codes. These claims are outside the scope of these appeal hearings so the Council should not take these claims under consideration at the hearings. The City has responded or is in the process of separately responding to any ADA-related claims raised by the appellant(s).

ANALYSIS:

The following is a list of appeal points submitted by each of the appellants followed by staff response. The appeal points have been numbered for reference purposes.

Appeal Points Submitted by Brian Nelson

The appeal letter submitted by Brian Nelson is included in Attachment 5. Nelson raises the following issues:

1) The notice of appealability is insufficient on the notice, because it does not give a stay on appeal. Therefore even while this appeal is pending, it appears the city can flip over my campsite at anytime. That is not genuine appealability, and this appeal should not preclude the Ex- Parte motion for TRO currently before Judge Chen in Boyd v City of San Rafafael [sic].

Staff Response:

These are legal arguments that are not within the scope of review under this appeal. The scope of this appeal hearing is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards noticed under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

2) The [notice] should [be] rescinded because wooden palettes [sic] underneath a tent are not a fire hazard. They are not near an ignition source at all. I don't smoke cigarettes. There are no open flames in my tent and I don't burn candles – only battery operated lights. The national park service camps use wooden foundations for tents to stay above the ground. Judge Chen even ordered the City of Sausalito to provide unhoused people with wooden foundations for their tents in Sausalito/Marin Homeless Union et al v City of Sausalito.

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes.

Appellant Nelson is not a fire professional and has no credentials to assess fire hazards. It is not relevant what the National Park Service or Sausalito may have deemed appropriate at sanctioned campgrounds or other sites with different conditions and functions.

Based on site-specific assessments at the San Rafael encampments, the City's Fire Chief determined the wood pallets to be unsafe and to present an imminent hazard to life, health, safety, and welfare at the encampments because they are highly flammable presenting a risk to occupants and surrounding areas. The Fire Chief made this determination based on his knowledge of the Fire Code, as well as years of experience, which includes responding to numerous fires at encampments. The Fire Chief also considered the numerous ignition sources

(legal and illegal) he observed within the encampments, including cigarette butts, flammable cannisters containing propane, charcoal grills, and illegal wiring and tie-ins to electrical poles for powering generators. He also considered the surrounding conditions at the encampments including dry vegetation and nearby businesses, including a roofing company next to the Mahon Creek Path encampment which stores flammable material and a propane tank along the fence line. Although, as Mr. Nelson points out, he does not smoke cigarettes and only uses certain materials, his camping area is surrounded by others and other ignition sources. While his actions may mitigate some concern, substantial hazards still exist. In encampment conditions where persons are living in unpermitted structures in close proximity to one another, there is a heightened risk of rapid fire spread among the encampment. Further, structures in the encampment are at risk from sudden collapse which causes additional threats.

In particular, as it relates to pallets used as platforms underneath tents, the Fire Chief determined that they constitute fire hazards because the pallets themselves are combustible as they consist of dried wood, additional combustible material can accumulate in the spaces between the pallet boards, and the structure of the pallets provides for air spaces that increase their combustibility (in much the way that a campfire stacked with air gaps burns faster and hotter than a collapsed pile of wood). Such combustible material and the air space can combine to accelerate fire spread, including when a flammable tent and the personal belongs typically stored inside is also located on top of the pallet.

3) Conversely, wooden palette [sic] foundation is essential to my life. It keep[s] ground water from soaking the bottom of my tent. It keeps my belongings dry and prevents mold. It stops frictional heat transference between my body and the ground because the ground acts as a heat sink without the air buffer provided by the palettes [sic].

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. The Officials deemed the wood pallets underneath tents as unsafe structures that need to be immediately abated because they are “made, in whole or in part, of wood and/or other construction materials that are highly flammable.” Nothing in the Notice precludes appellant from raising his tent above the ground using alternative non-flammable materials, and appellant has already been told this.

4) The extension of this notice is that anything that is flammable; i.e. literally everything such as tarps, clothes, plastic cups, cooking oil, napkins, toilet paper, cardboard, mosquito bug spray, tennis balls for my dog, stuffed animals for my dog, or even my dog himself should all be removed because they are all flammable. Would the city like me to shave my dog to reduce fire dangers in my camp? If so can you provide a doggy sweater that has be imbued with fire retardant. Will only hairless dogs be allowed to camp moving forward?

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. Appellant was noticed for “wood pallet foundation”. None of the items appellant lists were noticed for removal.

5) SRMC 4.08.040(C) is misapplied because our dwellings have been here for a long time and are not imminent threats to public health. My dwelling is 10x more likely to get soaked with water right now. Palettes make it safer from rain, and give me peace of mind from flooding.

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. Appellant was noticed for “wood pallet foundation”. The length of time that appellant’s tent was raised with pallets prior to the Fire Chief’s assessment has no bearing on the Officials’ determinations. Nothing in the Notice precludes appellant from raising his tent above the ground using alternative non-flammable materials, and the appellant has already been told this.

6) SRMC 12.116.010 is in applicable [sic], because our dwellings are substantially safer than tents, protect us from upcoming rains and wind because they cannot easily be blown over.

Staff Response:

This allegation raises issues for which appellant was not noticed and does not apply to appellant’s situation. Appellant was living in a tent raised on pallets at the time of notice. He was noticed for “wood pallet foundation”.

To the extent appellant suggests that SRMC § 12.116.010 is inapplicable to the notice of his wood pallets, the decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. Under SRMC § 12.116.010 (Unsafe Structures and equipment), “structures or existing equipment that become unsafe because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition” and, as deemed necessary by the Building Official, taken down or made safe. In this case, based on the Fire Chief’s determination that the wood pallets underneath tents constitute an imminent fire hazard or are otherwise dangerous to human life or public welfare (see response to number 2), the Chief Building Official exercised his authority under the code to deem the wood pallets an unsafe condition and to order their removal.

7) SRMC 12.05.010 and SRMC 11.04.030.010(a) are in applicable because there is no permitting process for homeless camps in San Rafael.

Staff Response:

SRMC § 12.105.010 prohibits persons from, among other things, constructing buildings or structures on City parks without obtaining required permits under the code. SRMC § 11.04.030.010(A) prohibits persons from, among other things, encroaching on public property without an encroachment permit. These code provisions are generally applicable. Appellant did not receive a notice to remove his “homeless camp”. Appellant’s Notice to remove the wood pallets expressly stated: “This is not a notice to clear or vacate the area.”

8) SRMC 19.20.080(R) is in applicable because we are all involuntarily homeless. SRMC 19.20.080(C) is the proper statute that bans camping, and SRMC 19.20.080(C) has a clause that allows involuntarily homeless people to camp on public property.

Staff Response:

SRMC § 19.20.080(R) prohibits persons from, among other things, constructing buildings or structures on City parks without obtaining required permits under the code. It has no bearing on whether an involuntarily homeless person is camping on public property and does not invoke the City’s camping regulation under SRMC 19.20.080(C) (which has since been replaced by

Chapter 19.50). Appellant's Notice to remove the wood pallets expressly stated: "This is not a notice to clear or vacate the area."

Appeal Points Submitted by Bruce Gaylord

The appeal letters submitted by Bruce Gaylord are included in Attachment 6. Gaylord raises the following issues:

9) *[ADA-related claims have been redacted from the record for privacy.]. The pallets keep me warm and dry. I need the palettes [sic] to keep by belonging[s] off[f] the ground and dry during the rain. It also allows me to stay warm, and when I get up from bed the palettes [sic] give me the necessary seat for me to put on my boots.*

Staff Response:

The City is in the process of separately responding to appellant's ADA-related claims. The scope of this appeal hearing is limited to issues raised that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated. Nothing in the Notice precludes appellant from raising his tent above the ground using alternative non-flammable materials, and the appellant has already been told this.

Appeal Points Jointly Submitted by Both Appellants

On December 13, 2023, both appellants submitted a joint submission with "supplemental evidence", including a declaration from Megan Brizzola, RN. (Attachment 7.) The appellants raise the following issues:

10) *City's Own Laws Demands That Tents On The Mahon Creek Path Should Have Raised Foundations Because It Is Located In A Flood Zone. (See Attachment 4 for detail.)*

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. The Officials deemed the wood pallets underneath tents as unsafe structures that need to be immediately abated because they are "made, in whole or in part, of wood and/or other construction materials that are highly flammable." Nothing in the Notice precludes appellants from raising their tents above the ground using alternative non-flammable materials, and appellants have already been told this.

11) *Sleeping On Barren Ground At Night Is Inherently Is Inherently Dangerous. 50% of Heat Loss Is Caused By Physical Contact With The Ground While Sleeping. Sleeping On An Elevated Palette [sic] Reduces Heat Loss 50 to 100 More Than Sleeping on Soil. This Fact Is Upheld Authoritatively By The United Nations Minimum Standards For Campsites. (See Attachment 4 for detail.)*

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. The Officials deemed the wood pallets underneath tents as unsafe structures that need to be immediately abated because they are "made, in whole or in part, of wood and/or other construction materials that are highly flammable." Nothing in the Notice precludes appellants from raising their tents above the ground using alternative non-flammable materials, and appellants have already been told this.

12) Increased Risk of Death and Injury By Hypothermia Will Result From Deprivation of Pallettes. (See Attachment 4 for detail.)

Staff Response:

The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. The Officials deemed the wood pallets underneath tents as unsafe structures that need to be immediately abated because they are “made, in whole or in part, of wood and/or other construction materials that are highly flammable.” Nothing in the Notice precludes appellants from raising their tents above the ground using alternative non-flammable materials, and appellants have already been told this.

13) Denial of Appeal Would Violate Eighth Amendment of The US Constitution and Article I § 17 of California State Constitution. (See Attachment 4 for detail.)

Staff Response:

These are legal arguments that are not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

14) Denial of Appeal Would Violate The Fourteenth Amendment Substantive Due Process and State Created Danger Doctrine and Article I § 1 California State Constitution. (See Attachment 4 for detail.)

Staff Response:

These are legal arguments that are not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

15) Denial of Appeal Would Violate The Fourteenth Amendment State Substantive Due Process. (See Attachment 4 for detail.)

Staff Response:

These are legal arguments that are not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

16) Denial of Appeal Would Violate The Fifth Amendment. (See Attachment 4 for detail.)

Staff Response:

These are legal arguments that are not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

17) Denial Of Appeal Would Also Violate Fourteenth Amendment Procedural Due Process, Void For Vagueness and Equal Protection of The Law Because Chapters 4.08 and 12.113 of the San Rafael Municipal Code are Vague and Inapplicable To Our Situation. (See Attachment 4 for detail.)

Staff Response:

The allegation that the codes are vague is a legal argument that is not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. This allegation does not pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

The allegation that Chapters 4.08 and 12.116 (mis-cited as 12.113) are inapplicable to appellants' situation is within the scope of review under this appeal. The decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes.

Under SRMC § 4.08.040(C), the Fire Chief has the authority to "order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees." In this case, based on the Fire Chief's determination that the wood pallets underneath tents constitute an imminent fire hazard (see response to number 2), the Deputy Fire Chief exercised his authority under the code to deem the wood pallets an unsafe condition and to order their removal.

Under SRMC § 12.116.010 (Unsafe Structures and equipment), "structures or existing equipment that become unsafe because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition" and, as deemed necessary by the Building Official, taken down or made safe. In this case, based on the Fire Chief's determination that the wood pallets underneath tents constitute an imminent fire hazard or are otherwise dangerous to human life or public welfare (see response to number 2), the Chief Building Official exercised his authority under the code to deem the wood pallets an unsafe condition and to order their removal.

18) Denial of Appeal And Seizure of The Palettes Would Be Negligent. (See Attachment 4 for detail.)

Staff Response:

These are legal arguments that are not within the scope of review under the appeals. The scope of the appeal hearings is limited to issues that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes. None of these allegations pertain to the determinations of the Officials to deem the wood pallets underneath tents as unsafe structures that need to be immediately abated.

19) *Prayer for Relief and Request for Stay of Enforcement Until January 8th, 2024. (See Attachment 4 for detail.)*

Staff Response:

This prayer for relief is not within the scope of review under the appeals. The scope of the appeals is for the City Council to re-examine the decisions of the Officials to determine whether such decisions are supported by substantial evidence, are reasonable, are not arbitrary, and are within the intent and purpose of the codes. The City Council has no authority relative to the interpretation of the administrative provisions of the codes or to waive requirements of the codes.

Conclusion

For the forgoing reasons, the City Council should deny the appeals. Regarding issues raised by the appellants that pertain to the decisions or determinations of the Officials as they relate to the existence of hazards under the referenced codes, the decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the codes. Appellants' claims related to the ADA and other legal arguments that are not within the scope of the appeals should not be taken under consideration.

COMMUNITY ENGAGEMENT:

Not applicable.

FISCAL IMPACT:

Not applicable.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the Resolutions denying the appeals.
2. Adopt the Resolutions denying the appeals, with modifications.
3. Direct staff to prepare Resolutions upholding the appeals and return to City Council for approval.

RECOMMENDED ACTION:

Staff recommends the City Council:

- 1) Appoint the Mayor and City Council as the building board of appeals, and thereby convene hearings in a dual capacity as the building board of appeals, and as the hearing body for appeals of the fire code.
- 2) Adopt the Resolution denying the appeal filed by Brian Nelson.
- 3) Adopt the Resolution denying the appeal filed by Bruce Gaylord.

ATTACHMENTS:

1. *48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property*
2. Excerpts of Testimony and Filings in the case of *Boyd et al. v. City of San Rafael, et al.*
3. Brian Nelson Notice and Photo of Tent
4. Bruce Gaylord Notice and Photo of Tent
5. Brian Nelson Appeal Requests and Responses
6. Bruce Gaylord Appeal Requests and Responses

7. Joint Brian Nelson and Bruce Gaylord Supplemental Evidence
8. Staff Recommended Resolution Denying Appeal (Brian Nelson)
9. Staff Recommended Resolution Denying Appeal (Bruce Gaylord)

48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY

PUBLIC PROPERTY LOCATION: MAHON PATH, LINDARO STREET, ANDERSEN DRIVE, FRANCISCO BOULEVARD

DATE POSTED: _____

ABATEMENT DEADLINE: _____ AT _____ AM/PM

POSTED BY: _____

CONTACT INFORMATION: SAN RAFAEL POLICE DEPARTMENT
415-485-3000

The City of San Rafael ("City") has determined that the structure(s) and/or equipment posted with this notice in the encampment located at or near the Public Property Location identified above is in violation of the law.

Conditions violating the code: The City Fire Chief and Chief Building Official have determined that the structure(s) and/or equipment noticed on the next page -- that consist of, in whole or in part, wood, wood pallets, loose wood, planks, or other similar construction materials, including cardboard used as construction material -- and are constructed, erected, stored, or stockpiled at the Public Property Location, are unsafe and present an imminent hazard to life, health, safety, and welfare, and must be removed.

Order to abate: All occupant(s) of the structure(s) noticed are hereby ordered to remove the noticed structure(s) from public property. All owner(s)/responsible person(s) for the noticed equipment are hereby ordered to remove the equipment from public property.

CITY TO REMOVE STRUCTURE(S) AND/OR EQUIPMENT AT ABATEMENT

DEADLINE: If the noticed structure(s) and/or equipment are not removed by the above ABATEMENT DEADLINE, the City will remove them at that time or as soon thereafter as possible.

NOTICED STRUCTURE(S) AND/OR EQUIPMENT:

<p>Unsafe structure. This structure on public property presents an imminent fire hazard. It is made, in whole or in part, of wood and/or other construction materials that are highly flammable. The structure was erected without required permits and lacks adequate egress, light, and ventilation, and is otherwise dangerous to human life and public welfare. It cannot be made safe and must be removed.</p> <p>The City has provided (or will provide) a replacement tent for temporary shelter. This is not a notice to clear or vacate the area.</p> <p>Note: The City’s provision of a tent shall not serve as authorization or permission to any person to camp or encroach on public property.</p>	<p>DESCRIPTION:</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>Unsafe equipment. This equipment is improperly and illegally stored and/or stockpiled on public property and presents an imminent fire hazard. It is made, in whole or in part, of wood and/or other construction materials that are highly flammable.</p>	<p>DESCRIPTION:</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

This notice is based on the condition of the posted structure and/or equipment and the provisions of the San Rafael Municipal Code (SRMC) and California Fire and Building Codes, including the following:

SRMC § 4.08.040(C) Administration and enforcement of the Fire Code. The fire chief shall have the authority to order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees.

California Fire Code Section § 114 Unsafe structures or equipment.

114.1 General. If during the inspection of a premises, a structure, or any building system, in whole or in part, constitutes a clear and inimical threat to human life, safety or health, the fire code official shall issue such notice or orders to remove or remedy the conditions as shall be deemed necessary in accordance with this section, and shall refer the building to the building official for any repairs, alterations, remodeling, removing or demolition required.

114.1.1 Unsafe conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress, inadequate light and ventilation, or that constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the fire code official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

114.2 Evacuation. The fire code official or the fire department official in charge of an incident shall be authorized to order the immediate evacuation of any occupied structure deemed unsafe where such structure has hazardous conditions that pose an imminent danger to structure occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the fire code official or the fire department official in charge of the incident.

114.6 Restoration or abatement. The structure or equipment determined to be unsafe by the fire code official is permitted to be restored to a safe condition. The owner, the owner's authorized agent, operator or occupant of a structure, premises or equipment deemed unsafe by the fire code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.1.5 and the California Existing Building Code.

114.7 Summary abatement. Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code.

SRMC § 12.116.010 Unsafe Structures and equipment. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

California Building Code § 116 Unsafe structures and equipment.

116.1 Unsafe Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

116.5 Restoration or Abatement. Where the structure or equipment determined to be unsafe by the building official is restored to a safe condition, the owner, the owner's authorized agent, operator or occupant of a structure, premises or equipment deemed unsafe by the building official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions and change of occupancy shall comply with the requirements of the International Existing Building Code.

SRMC § 12.105.010 Building permit required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

SRMC § 19.20.080(R) Prohibited activities. No person shall construct or erect any building, edifice, artwork or structure of any kind, permanent or temporary, or construct any public service utility, including but not limited to, any overhead wires, into, upon, through, under or across any park or building, without obtaining any and all permits required by this Code or other applicable regulations.

SRMC § 11.04.030.010(A) Encroachment permit required. It is unlawful for any person, utility or special district to encroach or to make or to cause to be made any encroachment without first having obtained the required encroachment permit or license from the director as prescribed in this chapter. The requirements herein for an encroachment permit or license shall be in addition to any other permit that may be required under this code for the work proposed.

Appeals. Appeals of determination of code violations. If you claim that the provisions of the code do not apply or that the true intent and meaning of the code section above have been misconstrued or wrongly interpreted, you may appeal from the decision of the fire chief or the building official to the city council within ten (10) days from the date of the decision.

To appeal, complete a written request for hearing and submit it to the City Clerk at city.clerk@cityofsanrafael.org or at City Hall, 1400 Fifth Avenue, Room 209, San Rafael, California 94901, within ten (10) days from the date of this notice.

ASSISTANCE AND GUIDELINES FOR REMOVAL OF STRUCTURES AND EQUIPMENT

The City has noticed the removal of unsafe structure(s) or equipment on public property. **For unsafe structures, the City has provided (or will provide) a replacement tent for shelter.** Temporary storage facilities are available for storage of personal belongings to assist individuals with their transition from an unsafe structure into a tent.

Please contact the San Rafael Police Department and ask for the “SAFE Team” at 415.485.3000 for assistance. The City will assist with removal and disposal of the structure(s) or to arrange pickup and temporary storage of personal property.

GUIDELINES FOR REMOVAL AND STORAGE OF PROPERTY

WARNING: The City will remove the structure(s) and equipment that have been noticed at this location after 48 hours. The City has provided (or will provide) any person who has been occupying a structure that has been noticed for removal with a replacement tent. The City may be able to assist with temporary storage of personal property that does not fit within the tent, as detailed below.

If the structure or equipment remains after 48 hours and the City arrives for abatement, the City will remove the structure or equipment. For personal property left in the area to be cleared, City staff will determine what is personal property to be temporarily stored and what will be disposed of immediately. Note that if the City is required to remove property, not all property will be collected for storage. The following will be discarded:

- Items that appear to have been abandoned or lack signs of ownership;
- Items that present an immediate health or safety risk, including, but not limited to
 - Toxic sharps, needles, scissors, knives
 - Chemicals, bleach, paints, oils
 - Items (including bedding and clothing) soiled by infectious materials, human waste, body fluids, mold, or mildew
 - Items infested by rodents or insects
- Perishable items or perishable food
- Illegal items or contraband
- Trash, garbage and/or debris
- Used and unused construction materials that cannot be safely stored by the City or for which the City does not have sufficient storage facilities
- Shopping carts will not be stored in their entirety. Shopping carts will, when possible, be returned to identified stores and/or the stores will be notified to retrieve them.

If personal belongings are mixed with needles, human waste, bodily fluids, or other health risks, City staff and police will not sort through or attempt to remove the health and safety risks, but will immediately dispose of all such mixed belongings.

INSTRUCTIONS FOR RETRIEVAL OF STORED PROPERTY

If personal property is collected and stored by the City, it may be retrieved within 90 days of collection at **1375 Fifth Avenue, San Rafael, CA 94901**. There is no fee. No personal identification is required. **Property that is not claimed within 90 days will be disposed of permanently.** To retrieve personal property, satisfactory proof of ownership must be provided by (1) describing the location of the property when it was collected, (2) the date and time it was collected, and/or (3) a description of the specific items that were collected. Presentation of this Notice may assist in retrieving property. Persons will not be permitted to search through stored property to determine what is or is not someone's property. Please contact the San Rafael Police Department at 415.485.3000 for more information and/or to arrange pickup and storage of personal belongings.

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11 ALILOVICH, CHRIS HESS, DAVID SPILLER,
KATE COLIN, ELIE HILL, MARIBETH
12 BUSHEY, RACHEL KERTZ, and APRIL
MILLER (erroneously sued as "Amy Miller")
13

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 SHALEETA BOYD, et al.,
17 Plaintiffs,
18
19 v.
20 CITY OF SAN RAFAEL, et al.
21 Defendants.

Case No. 23-cv-04085-EMC

**DECLARATION OF DARIN WHITE IN
SUPPORT OF OPPOSITION TO
PRELIMINARY INJUNCTION**

Judge: Edward M. Chen

1 I, Darin White, declare as follows:

2 1. I am the Fire Chief of the San Rafael and Marinwood Fire Departments. I have held
3 this position since April 2020. I oversee the Operational, Administrative, Fiscal, Fire Prevention,
4 and Emergency Management Staff of the San Rafael Fire Department. I have over 30 years'
5 experience in Fire Services. Prior to joining San Rafael, I worked for the City of Oakland Fire
6 Department beginning in 1998 and served as the City of Oakland Fire Chief from January of 2017
7 until April 2020. I have personal knowledge of the facts stated in this declaration, and, if called as
8 a witness in this matter, I could and would testify competently thereto under oath.

9 2. On August 21, 2023, I performed a site assessment of the homeless encampments
10 at the Mahon Creek Path and Andersen Boulevard in San Rafael to identify fire risks and other
11 site-related hazards. During this assessment, I witnessed numerous conditions, including
12 biohazards, flammable hazards, and ignition hazards, that pose significant threats to the safety and
13 wellbeing of the unhoused and to the public who pass through or near these areas as pedestrians,
14 bicyclists, and automobile drivers. The proximity of these hazards also pose a threat to facilities,
15 equipment, and operations of nearby businesses. Attached as **Exhibit 16** are true and correct
16 copies of photographs I took at the encampments during my inspection on August 21, 2023. The
17 photos illustrate some of the conditions, size, and scope of the hazards which include:

- 18 a. Multiple used syringes;
- 19 b. Numerous cigarette butts (discarded within several feet of drying
20 vegetation);
- 21 c. Flammable canisters containing propane and other materials that are very
22 easy to ignite;
- 23 d. Charcoal grills and other cooking appliances in close proximity to tents and
24 vegetation;
- 25 e. Generators powered through the illegal and dangerous access to the nearby
26 City of San Rafael light poles, below ground wiring, and other rigged power contraptions that
27 involve junction boxes, automobile batteries, and extension cords. These electrical hazards pose
28 both electrocution and ignition risks to those who walk near or reside in the encampments.

1 f. Some of the tents and structures are situated within several feet of the
2 bicycle path, foot path and roadways posing a significant risk for anyone who has an altered
3 mental status and those who may operate automobiles in the vicinity.

4 g. There are other biohazard risks on both the walkways and dirt which
5 include feces, open containers with spoiled food, and fluids which likely draw the attention of
6 vermin, insects, and other animals.

7 3. On July 14, 2023, at approximately 6:16 AM, the San Rafael Fire Department
8 responded to a report of a fire in the area of the Mahon Creek Path in the 700 block of Lincoln
9 Avenue. San Rafael firefighters and police officers arrived and located a homeless tent in the
10 encampment fully engulfed in flames. The firefighters promptly extinguished the fire before the
11 fire spread to adjacent tents and vegetation. It was determined that the cause of the fire was an
12 individual living at the encampment who set her tent on fire.

13 4. From my experience during my tenure as Fire Chief at the City of Oakland, I have
14 observed and have knowledge of entire homeless encampments being demolished by rapid spread
15 of fire where tents were co-located in close proximity to one another. These fires were caused by
16 open flame, intentional fires set, or other ignition sources within the encampments. Tents and
17 other makeshift structures in homeless encampments are especially prone to fire ignition and rapid
18 spread. In one incident in Oakland, a fire was ignited by occupants of an encampment who tapped
19 into a power source, over 30 tents were burned completely, and one occupants of the encampment
20 was overcome with smoke and perished in the fire.


21 5. One of the ways to mitigate fire hazards at encampments is to reduce the number of
22 campsites near each other and reduce the size of each campsite. When multiple campsites are
23 gathered in close proximity, the encampment occupants and the public are at greater risk of
24 catastrophic fire due to multiple ignition hazards and flammable materials.

25 6. The City has prohibited camping in City of San Rafael's Open Space and
26 Boyd Park, due to the catastrophic risk of wildfires in these areas. The City has also
27 prohibited camping in the City's parking garages due to nuisance conditions and activities,
28 including fires and gushing water from tampered-with fire suppression equipment. These

1 prohibitions due to fire-related risk are necessary to protect public health, safety and welfare.

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

4 Executed this 22nd day of August, 2023, at San Rafael, California.

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7 Darin White
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Exhibit 16
Photographs from August 21, 2023
Site Inspection of Encampment

Exhibit 16 – August 21, 2023 Site Assessment Photographs, Chief Darin White, San Rafael Police Department







PROOF OF SERVICE

**Boyd
Case No. 23-cv-04085-EMC**

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18300 Von Karman Avenue, Suite 650, Irvine, CA 92612-1032.

On August 22, 2023, I served true copies of the following document(s) described as

- 1. CITY OF SAN RAFAEL’S OPPOSITION TO PRELIMINARY INJUNCTION
- 2. DECLARATION OF RYAN MONTES
- 3. DECLARATION OF CARL HUBER
- 4. DECLARATION OF GENEVIEVE COYLE
- 5. DECLARATION OF LYNN MURPHY
- 6. DECLARATION OF DARIN WHITE
- 7. DECLARATION OF CHRISTOPHER HESS

on the interested parties in this action as follows:

Residents of Camp Integrity
PO BOX 2217
San Rafael, CA 94912-2217

Pro Se

Email: CampInegritySanRafael@yahoo.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Burke, Williams & Sorensen, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

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

Executed on August 22, 2023, at Irvine, California.


Bernadette C. Antle

W | V | B | R

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14 ALILOVICH, CHRIS HESS, DAVID
15 SPILLER, KATE COLIN, ELI HILL,
16 MARIBETH BUSHEY, RACHEL KERTZ, and
17 APRIL MILLER (erroneously sued as “Amy
18 Miller”)

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

20 SHALEETA BOYD, et al.
21 Plaintiffs,
22
23 v.
24 CITY OF SAN RAFAEL, et al.
25 Defendants.
26

Case No. 23-cv-04085-EMC
**DEFENDANTS’ OPPOSITION TO
NELSON MOTION FOR TEMPORARY
RESTRAINING ORDER**

Hon. Edward M. Chen

1 **I. INTRODUCTION**

2 Plaintiff Brian Nelson’s motion for temporary restraining order is not directed at claims
3 in this case and is, frankly, outright deceptive.

4 As part of its efforts to abate fire hazards at the growing encampments, the City posted
5 wood structures, including a few pallets under tents, for abatement. That effort has been very
6 successful. On Friday, October 27, 2023 the City was able to abate almost all dangerous wood
7 structures and piles of flammable material with the cooperation of most affected unsheltered
8 campers. *At the same time, the City distributed 11 tents, 10 sleeping pads, 14 tarps, and 1*
9 *blanket.*

10 No one’s tent was flipped. No one was arrested. Indeed, the day after the notice was
11 posted on Mr. Nelson’s tent—the day before he filed his TRO—Mr. Nelson was seen working
12 on removing wood from beneath his tent by San Rafael Police Sergeant Robert Cleland. Mr.
13 Nelson explained that most of the foundation was plastic, which was not being abated, and
14 expressed no concern *whatsoever* about removing 2 wood portions and replacing them with
15 plastic. *This interaction was captured by body camera video and is being provided to the Court.*
16 The suggestion that anyone threatened to flip Mr. Nelson’s tent over or to arrest him is simply a
17 lie.

18 It is not clear what is really going on here, or who is encouraging Mr. Nelson—who was
19 wholly cooperative on October 25—to bring this motion. Wooden pallets below tents are a fire
20 hazard as determined by competent fire and building officials, not Mr. Nelson’s own guess.
21 And—as his own experience demonstrates—the same benefits of raising the tent can be achieved
22 without using combustible material. Nor does removing the wood beneath his tent, to the extent
23 he did not already do that, require “flipping” his tent. The only people who have even suggested
24 that are Mr. Nelson and whomever is helping him draft his papers. This instant motion—which is
25 not even tied to any of the claims in this case—is wholly without merit and should be denied.

26 **II. FACTUAL BACKGROUND**

27 As the Court is aware from the evidence presented on the preliminary injunction motion,
28 there were a substantial number of structures in some of the existing encampments that were

1 built with wood pallets and constituted a significant fire hazard. As defendants had informed the
2 Court they intended to do (ECF 94), on October 24, 2023, officials from the City's Fire
3 Department and Building Department, including Chief Building Officer Don Jeppson,¹ inspected
4 all of the campsites on Mahon Creek Path, Andersen, West Francisco, and Lindaro. Declaration
5 of Chief Building Official Don Jeppson; Declaration of Deputy Fire Marshall Robert Sinnott;
6 Declaration of Sergeant Robert Cleland; Declaration of Chris Hess. Twenty abatement notices
7 were issued regarding hazardous, combustible materials. 17 were for structures, 3 of which were
8 tents or sleeping bags on top of wood pallets. Sinnott Decl. ¶¶ 2-3; Jeppson Decl. ¶¶ 2-4; Cleland
9 Decl. ¶¶ 3-4. As Chief White also testified at the October 2nd hearing, wood pallets below tents
10 present significant fire dangers both because they are combustible and because their design and
11 the increased air flow promotes combustion. Sinnott Decl. ¶¶ 3-4.

12 One of the tents noticed was that of Brian Nelson. Cleland Decl. ¶ 5; Jeppson Decl. ¶¶ 5-
13 7. The day after notice was provided, police Sergeant Robert Cleland saw Mr. Nelson working
14 on the underside of his tent. He asked if Mr. Nelson was removing the wood. Cleland Decl. ¶ 6.
15 Mr. Nelson explained that almost all of the foundation was plastic, with only two wood pieces
16 that he was removing. Sergeant Cleland offered to bring Mr. Nelson some replacement plastic
17 parts that had been lying nearby, but Mr. Nelson said he would get them himself. *Id.* & Cleland
18 Decl. Ex. A. Mr. Nelson did not express any concern whatsoever about being asked to remove
19 the wood under his tent. *Id.* A video captured by police body camera of this encounter is
20 provided to the Court as Exhibit A to the Cleland declaration, and can also be downloaded at
21 <https://bwslaw.sharefile.com/d-se9b90560256f4bb28af93d39e3311483>.² The City is not
22 presently sure whether Mr. Nelson removed the two wood parts as he said he was doing.

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25
26 ¹ Mr. Nelson argues Mr. Jeppson's involvement was somehow improper because he is also
27 the City's ADA Coordinator. That makes no sense; this abatement noticing falls squarely within
28 Mr. Jeppson's duties as Chief Building Official.

² This link will expire on November 30, 2023.

1 Mr. Nelson did not make any request for reasonable accommodations in connection with
2 this notice. The request he references was his generic request for housing and electricity as some
3 type of accommodation (in connection with what public program or benefit he does not say)
4 when he filed this case. Just this morning, Mr. Nelson filed an administrative appeal challenging
5 the notice, which page 4 of the notice clearly allows him to do. ECF No. 101-2 p. 4.

6 No one threatened to flip over Mr. Nelson's tent, in the rain or otherwise. Jeppson Decl. ¶
7 8; Sinnott Decl. ¶ 6; Cleland Decl. ¶ 7 & Ex. A. No one threatened to arrest Mr. Nelson. *Id.* All
8 of the exaggerated claims in Mr. Nelson's motion about being threatened are wholly false. To the
9 extent Mr. Nelson has not already abated the wood under his tent, he admitted on October 25th
10 that he can easily do so. Cleland Decl. Ex. A.

11 On October 26th, City officials began to abate the noticed problems. The City's abatement
12 efforts—both the ones that have been completed and the ones that remain—do not involve
13 displacing a single camper. Hess Decl. ¶¶ 4-8.

14 At West Francisco, the City removed all four wooden structures and several piles of other
15 flammable material with the total cooperation of the residents. Hess Decl. ¶ 6. ***The City***
16 ***distributed four tents, eight tarps, and seven sleeping pads during this effort. Id.***

17 At Andersen Drive, the City abated most of the noticed structures, six in total, as well as
18 piles of flammable material. Hess Decl. ¶ 7. Two structures were undisturbed as the City has not
19 been able to contact the residents to facilitate abatement. A third was left intact temporarily due
20 to a request for the reasonable accommodation of a short delay made by a disabled camper who
21 is scheduled to be placed in housing in the next week or so. *Id.* ***The City distributed six tents,***
22 ***two sleeping pads, and six tarps on Andersen Drive. Id.***

23 At Mahon Path, one structure that was noticed for abatement was voluntarily removed by
24 the resident on October 26th. That resident was already scheduled to be, and now is, placed in
25 housing. Hess Decl. ¶ 5. No other structures or pallets were disturbed on Mahon Path due to
26 Nelson's objection and a pending accommodation request from another camper. One additional
27 person was asked about abating her hazard, but she did not want to agree until she spoke with
28 Robbie Powelson. *Id.*

1 In connection with these extremely successful abatement efforts, *nine garbage trucks of*
 2 *material were removed from the encampments.* Hess Decl. ¶ 8.

3 **III. ARGUMENT**

4 **A. MR. NELSON’S MOTION IS NOT BASED ON ANY CLAIM HE HAS MADE IN THIS**
 5 **CASE**

6 “Preliminary injunctive relief, whether in the form of a temporary restraining order or a
 7 preliminary injunction, is an ‘extraordinary and drastic remedy’ that is never awarded as of
 8 right.” *Stebbins v. Polano*, No. 21-cv-04184-JSW, 2021 U.S. Dist. LEXIS 203958, at *2-3 (N.D.
 9 Cal. Sep. 8, 2021) (quoting *Munaf v. Geren*, 553 U.S. 674, 689-690 (2008)). “A plaintiff seeking
 10 a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely
 11 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
 12 his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20
 13 (2008). “Likelihood of success on the merits ‘is the most important’ *Winter* factor; if a movant
 14 fails to meet this ‘threshold inquiry,’ the court need not consider the other factors . . . in the
 15 absence of ‘serious questions going to the merits.’” *Disney Enters. v. VidAngel, Inc.*, 869 F.3d
 16 848, 856 (9th Cir. 2017) (citations omitted).

17 “While the district court ‘has broad equitable power to remedy legal violations’ through
 18 injunctive relief, . . . it ‘does not have the authority to issue an injunction based on claims not
 19 pled in the complaint. . . .’” *Cottonwood Env’tl. Law Ctr. v. Gianforte*, No. 20-36125, 2022 U.S.
 20 App. LEXIS 5485, at *3-4 (9th Cir. Mar. 2, 2022) (citations omitted). Granting relief “based on
 21 claims that Plaintiffs did not allege, supported by novel legal theories that Plaintiffs did not
 22 argue” is an abuse of discretion. *LA All. for Human Rights v. County of Los Angeles*, 14 F.4th
 23 947, 957 (9th Cir. 2021).

24 Mr. Nelson’s motion is not tied to any claim alleged in the First Amended Complaint in
 25 this case. *It is based on new City action that just happened, and which does not seek to*
 26 *displace him or to penalize his public camping.* For this reason alone, it is wholly without merit.
 27 The fact that Mr. Nelson has a pending lawsuit does not permit him to bring motions for
 28 injunctive relief whenever he wants to stop the City from doing something.

1
2
3 **B. THERE IS NO FACTUAL BASIS FOR MR. NELSON’S CLAIM THAT HE NEEDS**
4 **RELIEF FROM THE COURT**

5 There is ultimately no reason for the Court to delve into Mr. Nelson’s new legal theories
6 because there is also no factual basis for his claims. No one has threatened to flip his tent over or
7 arrest him. Jeppson Decl. ¶ 8; Sinnott Decl. ¶ 6; Cleland Decl. ¶ 7 & Ex. A. That is just
8 inflammatory language that he (or someone telling him what to say) is using to create problems.
9 As Mr. Nelson himself told Sergeant Cleland *on video*, only two parts of the platform under his
10 tent are made of wood, and he was already working on removing them and replacing them with
11 plastic. Cleland Decl. ¶ 6 & Ex. A. Most other people who received noticed to abate have
12 properly cooperated and been provided tents, pads, and tarps. Hess Decl. ¶¶ 4-8.

13 Nor does it matter that Mr. Nelson does not understand why having wood structures
14 under a tent is dangerous. It does not matter whether this Court allowed similar structure *on a*
15 *tennis court* in Sausalito. San Rafael’s fire and building officials are fully qualified to assess this
16 risk and legally empowered to act on it. Plaintiffs’ lawsuit does not somehow transform this
17 Court into a supervisory body for the City’s Fire Department and Building Department, much
18 less make the plaintiffs or their “advisors” the arbiters of what does, or does not, create a safety
19 hazard.

20 Mr. Nelson cannot show any facts showing any risk that he *actually* faces or any harm
21 that complying with the City’s abatement order would cause him. His desire not to comply is not
22 a constitutional injury, much less one that outweighs the City’s clear interest in fire safety and
23 the uniform enforcement of its laws.

24 **C. NELSON’S UN-PLED LEGAL THEORIES ARE SPECIOUS**

25 Mr. Nelson presents a series of new legal arguments about why “destroying his camp”
26 would violate his rights. We briefly discuss these, but again point out that (1) none of these
27 claims are actually made in this case and (2) no one has threatened to do what Mr. Nelson
28 claims. Thus this whole motion is improper.

1 *Contempt:* Mr. Nelson claims that the City (or Mr. Jeppson, who is not a party to this
2 case) is somehow in contempt of this Court’s preliminary injunction because Mr. Nelson thinks
3 there is no fire hazard. He insists that “Flipping over a campsite in the rain, with only 48 hours
4 notice, constitutes eviction.” But, again, no one did that, and no one threatened to do that. Mr.
5 Nelson also claims that the City somehow violated the prior TRO issued by this Court. As
6 explained in the City’s status conference statement, the deadline for a TRO has expired and the
7 TRO cannot run concurrently with the preliminary injunction, but was replaced by it (even if
8 some of its terms were incorporated and continued). And, in any event, nothing the City has done
9 violates any of the Court’s orders.

10 *Penalizing for Lack of Permits:* The City is not requiring removal of the tents as an
11 unpermitted structure. The City is requiring removal of unsafe, unpermitted structures made of
12 ***wood, almost all of which have now been removed without displacing a single camper.***
13 Nothing in the Court’s prior orders prohibits that.

14 *Substantive Due Process:* Mr. Nelson argues that he cannot be punished absent personal
15 guilt. ***No one has punished Mr. Nelson,*** and, if he ever were to be punished for continued
16 refusal to abate an unauthorized, dangerous condition, that would be based on his personal guilt.
17 Due process is not a game where plaintiffs read through statutes and try to misconstrue words in
18 order to string arguments together about what the City might hypothetically do, while ignoring
19 what is actually happening. No one has “criminalized” Mr. Nelson “when there is no prior
20 notice.” The City has just asked him to abate some wood under his tent, the same as it asked
21 every other camper with a similar condition.

22 *Unlawful seizure:* Again, Mr. Nelson claims that someone will “flip over his campsite to
23 remove wooden pallets.” As discussed above, that hasn’t happened, has not been threatened, and
24 does not need to happen to remove the wood under his tent by his own admission. Mr. Nelson
25 can keep writing “he wants to flip my campsite over” but that does not make it true.

26 *State created danger:* Mr. Nelson claims that making him put his tent on the ground with
27 nothing under it is a “state created danger” because it might get wet. First, again, no one is doing
28 that. Second, this amply illustrates the massive overuse of this doctrine discussed in the City’s

1 prior briefing. The risk that Mr. Nelson’s tent may get wet does not come close to meeting the
2 high standard for a state created danger, even if it were occurring which it is not.

3 *ADA claim:* Mr. Nelson claims that the City has “refused” to engage in his prior request
4 for “reasonable accommodations.” Of course, he does not describe that request, explain how it
5 seeks a reasonable accommodation in connection with a City program, or tie that in any way to
6 the question of whether he needs to abate the combustible wood parts of the structure under his
7 tent.

8 Days before filing this lawsuit, Brian Nelson (like the other plaintiffs) filed a form they
9 drafted, entitled “Request for Reasonable Accommodation City of San Rafael.” (Complaint Ex.
10 F.) The form states:

11 “I have a disability: My relevant disabilities are: PTSD, Diabetes,
12 Sleep Apnea, Alcohol and Drug Addition.” “The accommodation I am
13 requesting is: ‘Single resident housing or a safe place with shade,
14 water, and electricity.’” “How this accommodation is related to my
15 disability: I need power for my sleep apnea machine. I am diagnosed
16 with severe sleep apnea. PTSD around grounds of unfamiliar people. .
17 . . I am highly afraid of my belongings being stolen when I am away
18 from my camp. For this reason, I need others I can trust by my
19 campsite. I need to be able to make meals that are conducive to my
20 diabetes. Also electricity for my CPAP (sleep apnea) machine.”

21 (Complaint Ex. F.) He also submitted a second form again asking generically for “Permanent
22 Housing.” (*Id.*)

23 Mr. Nelson’s requests—made before this lawsuit—were not tied to any City program or
24 policy from which he wants an accommodation. The ADA does not create some generic
25 requirement for a City to provide services to anyone who wants help from the government and
26 claims generically that what he wants is a “reasonable accommodation.” The ADA’s
27 requirements are tied to “meaningful access to the benefits of public services.” *A.G. v. Paradise*
28 *Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1204 (9th Cir. 2016). Mr. Nelson’s

1 accommodation requests—with the possible exception of the request to camp with more people
2 than the challenged ordinance allows—have nothing to do with meaningful access to the benefits
3 of any public service. Instead, Mr. Nelson was asking for the government to provide him with
4 better living conditions than he has found for himself. Absent some connection to disability
5 discrimination or meaningful access to a public service, Mr. Nelson cannot establish an ADA
6 claim by simply claiming he is disabled and then asking for things that will make his life better.

7 More importantly, as to the instant motion, Mr. Nelson’s request that he be given
8 permanent housing, or electricity and a “safe” place with “others [he] can trust” has absolutely
9 nothing to do with the City’s instruction to abate the wood under his tent.

10 *Taking*: Finally, Mr. Nelson claims that removing hazardous wood from his campsite is a
11 taking. Like plaintiffs’ “bill of attainder” claim, this appears to be plucked from a general
12 description of possible claims with no legal research whatsoever. Removing hazardous material
13 or structures from public land is not a taking; indeed, it would not even be a taking on private
14 land. “Courts have consistently held that a State need not provide compensation when it
15 diminishes or destroys the value of property by stopping illegal activity or abating a public
16 nuisance.” *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 492 n.22 (1987).
17 That is, frankly, the only rule that would make sense. People cannot construct unpermitted,
18 dangerous structures on public land and then claim that having the structure removed is a taking
19 that requires compensation from the state.

20 **IV. CONCLUSION**

21 There is no basis whatsoever for Mr. Nelson’s motion. He is not being harassed and no
22 one has threatened to flip his tent or remove him from the camp. To the contrary, it is Mr. Nelson
23 who is harassing the City with his exaggerated and meritless claims, wasting the Court’s time
24 and the City’s limited resources. It is unclear why he is doing that; as shown on video, he was
25 entirely cooperative the previous day and indicated no difficulty at all with the minor abatement
26 the City ordered. Numerous other people, many of whom had whole structures removed and
27 replaced with tents, were happy to help make the encampments safer. The Court should deny Mr.
28

1 Nelson’s motion. If Mr. Nelson intends to resist the City’s abatement efforts, he can pursue his
2 administrative appeal under applicable City law.

3 DATED: October 30, 2023

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

4
5 By /s Michael von Loewenfeldt
MICHAEL VON LOEWENFELDT

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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16
17 SHALEETA BOYD, et al.,
18
19 Plaintiffs,
20 v.
21 CITY OF SAN RAFAEL, et al.
22 Defendants.

Case No. 23-cv-04085-EMC

**DECLARATION OF ROBERT SINNOTT
IN SUPPORT OF OPPOSITION TO
BRIAN NELSON TEMPORARY
RESTRAINING ORDER**

Judge: Edward M. Chen

1 I, Robert Sinnott, declare:

2 1. I am, and at all times relevant to this matter have been, an employee of the City of
3 San Rafael (City) and my title is Deputy Fire Marshal for the San Rafael Fire Department. I have
4 43 years of full time professional experience in the fire service. I have been directly involved in
5 building and fire code enforcement for approximately 40 years. I have held the certification of
6 certified building inspector from the International Conference of Building Officials; I also hold
7 certificates in State Fire Marshal fire prevention courses. I hold an A.S. degree in fire science, a
8 B.S. degree in fire administration, a master's degree in public administration and I hold the
9 credential of Executive Fire Officer from the National Fire Academy. I have personal knowledge
10 of the facts stated in this declaration, and if called as a witness, could and would testify
11 competently thereto.

12 2. On October 24, 2023, at approximately 3 p.m., we conducted inspections for fire
13 hazards at and near the encampments at the Mahon Creek Path. We also inspected encampments
14 in areas along Lindaro Street, Anderson Avenue, and West Francisco Boulevard. I conducted this
15 visit along with Chief Building Official Don Jeppson , who was also inspecting for hazards
16 associated with the construction of non-permitted structures. We were also accompanied by Fire
17 Chief Darin White, Assistant Director of Community Development on Housing and Homelessness
18 Programs, Christopher Hess, as well as Mel Burnette also from the Housing and Homelessness
19 Program, and members of the San Rafael Police Department.

20 3. During our inspections we walked the areas of the encampments and issued notices
21 to those camping areas where we found significant building and fire hazards. I am informed and
22 believe we issued 20 notices regarding hazards. These notices were generally to address structures
23 made from wood, various construction materials, pallets, cardboard in addition to other equipment
24 that we found were inimical and imminent fire hazards or threats to safety. We issued 17 notices
25 on structures determined to be a hazard, and 3 notices regarding equipment determined to be a
26 hazard. Such structures and equipment receiving these notices contained wood, pallets, other
27 forms of wooden construction materials and/or cardboard, which were hazardous because such

1 materials are flammable presenting a risk to occupants and surrounding areas and also are at risk
2 from sudden collapse which causes further threat to occupants or those in the immediate vicinity.

3 4. In particular as it relates to pallets, it is my determination based on my training and
4 experience that they are fire hazards in this instance because the pallets themselves are
5 combustible as they consist of dried wood, additional combustible material can accumulate in the
6 spaces between the pallet boards, and the structure of the pallets provides for air spaces that
7 increase their combustibility (in much the way that a campfire stacked with air gaps burns faster
8 and hotter than a collapsed pile of wood). Such combustible material and the air space can
9 combine to accelerate fire spread, including when a flammable tent and the personal belongs
10 typically stored inside is also located on top of the pallet.

11 5. In general, the area inspected contained various high priority fire threats. In terms
12 of prioritizing issues to address, the City's enforcement plan included identifying and locating the
13 most egregious safety concerns and getting those abated. At this point in time, the City determined
14 that these structures and flammable equipment are the highest priority issues to address. The City
15 anticipates that it will continue to review and address additional safety concerns.

16 6. At no time did I, or anyone in my presence, tell any camper that they would be
17 evicted from the area. Nor did I, or anyone in my presence, tell any camper with wood pallets
18 under their tent that their campsite would be flipped over in order to remove the underlying pallets
19 or that they would be arrested.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 28, 2023, at San Rafael, California.

By: 

Robert Sinnott,
Deputy Fire Marshall
City of San Rafael

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
16

17 SHALEETA BOYD, et al.,
18 Plaintiffs,
19 v.
20 CITY OF SAN RAFAEL, et al.
21 Defendants.
22

Case No. 23-cv-04085-EMC

**DECLARATION OF DON JEPPSON IN
SUPPORT OF OPPOSITION TO BRIAN
NELSON TEMPORARY RESTRAINING
ORDER**

Judge: Edward M. Chen

1 I, Don C. Jeppson, declare as follows:

2 1. I am at all times relevant to this matter have been an employee of the City of San
3 Rafael (“City”) and am currently the Chief Building Official. I have personal knowledge of the
4 facts stated in this declaration, and, if called as a witness in this matter, I could and would testify
5 competently thereto under oath.

6 2. On October 24, 2023, at approximately 3 p.m., I conducted inspections for building
7 hazards at and near the encampments at the Mahon Creek Path. We also inspected encampments
8 in areas along Lindaro Street, Anderson Avenue, and West Francisco Boulevard. I conducted
9 these visits along with members of the City of San Rafael Fire Department, who were also
10 inspecting for hazards. We were also accompanied by members of the Housing and Homelessness
11 Programs, Christopher Hess and Mel Burnette. In addition, members of the San Rafael Police
12 Department were also present.

13 3. Our goals during this aspect of the enforcement was to identify and commence the
14 abatement process for addressing the most serious hazards we may find. We were aware that many
15 of the structures and equipment in the encampment area were made of wood, including pallets and
16 other loose pieces of wood, and other combustible material, like cardboard. Using wood pallets
17 can create fire hazards which amount to a building hazard.

18 4. During the inspections I walked the areas of the encampments, and issued notices
19 to those camping areas where we found significant building hazards. In total I am informed and
20 believe that the City issued 20 notices regarding hazards. Three of the notices were issued
21 regarding equipment, which was piles of pallets stored near camping areas. I am informed and
22 believe 17 of the notices were issued to structures made up of wood pallets and similar material.
23 Of those 17 structures, I am informed and believe three (3) were due to tents and sleeping areas
24 being placed on top of a pallet, which creates a fire hazard.

25 5. I visited Brian Nelson’s tent after Sergeant Cleland notified me he saw wood
26 pallets sticking out from underneath his tent. It appeared to me that one of the tent has plastic and
27 metal platform and one end has wood pallets. I determined that due to the tent being placed on top

1 of such wood pallets, which appears to form a part of a foundation for his camping area, the wood
2 pallets created a structural hazard based on the fact that such structural elements are a fire hazard.

3 6. The wood did not appear to be a part of the structure of the tent. The tent structure
4 is light enough that it would appear the wood pallets could be removed and a non-combustible
5 platform inserted without much efforts.

6 7. As a result I issued a Notice to Remove the Hazards at Mr. Nelson's camping area,
7 which as described on the notice, was for removal of the pallet foundation within 48 hours. Note
8 that the notice does not mark for removal other material, such as plastic, metal, or other non-
9 combustible materials.

10 8. At no time did I, or anyone in my presence, tell any camper that they would be
11 evicted from the area. Nor did I, or anyone in my presence, tell any camper with wood pallets
12 under their tent that their campsite would be flipped over in order to remove the underlying pallets
13 or that they would be arrested.

14
15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct, and that this declaration was executed on October 28, 2023, at San
17 Rafael, California.

18
19
20 By: 
21 Don C. Jeppson
22 Chief Building Official
23 City of San Rafael
24
25
26
27

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 SHALEETA BOYD, et al.,
18 Plaintiffs,
19 v.
20 CITY OF SAN RAFAEL, et al.
21 Defendants.
22

Case No. 23-cv-04085-EMC

**DECLARATION OF SERGEANT
ROBERT CLELAND IN SUPPORT OF
OPPOSITION TO BRIAN NELSON
TEMPORARY RESTRAINING ORDER**

Judge: Edward M. Chen

1 I, Sergeant Robert Cleland, declare:

2 1. I am, and at all times relevant to this matter have been, an employee of the City of
3 San Rafael (City) and am currently a Sergeant in the San Rafael Police Department. I have
4 personal knowledge of the facts stated in this declaration, and if called as a witness, could and
5 would testify competently thereto.

6 2. As part of my duties I have been assigned to the San Rafael Police Department's
7 team working with the unhoused community. Part of that assignment requires that I assist other
8 departments provide notices.

9 3. On October 24, 2023, around 3 pm, I assisted as a civil standby as the Deputy Fire
10 Marshall and Building Official completed inspections and issued notices regarding hazards at and
11 near the encampments at the Mahon Creek Path. We also inspected encampments in areas along
12 Lindaro Street, Anderson Avenue, and West Francisco Boulevard. In addition, members of the
13 Housing and Homelessness Programs, Christopher Hess and Mel Burnette were also present.

14 4. During the inspections of the encampment area, I witnessed and assisted in issuing
15 tags of 17 structures and 3 piles of equipment. Of the 17 structures that received notices, 3 of them
16 were provided a notice because a tent was placed on top of a wood pallet.

17 5. One of the camping areas which was provided a notice due to a pallet foundation
18 was the campsite of Brian Nelson. I assisted with providing this notice.

19 6. When I was at Mr. Nelson's camping area I did see that Mr. Nelson had wood
20 pallets sticking out from the back of his tent. I called over Chief Building Official Don Jeppson,
21 who then inspected and ultimately issued the Notice regarding removal of the hazard, which I
22 provided to Mr. Nelson. I explained to Mr. Nelson that the City was not making him leave, but
23 that the wood pallets had been deemed a safety issue. I asked for his compliance, as we otherwise
24 would not touch his site.


25 7. I returned to the Mahon Path area the following day on October 25, 2023, to assist
26 the Department of Public Works in addressing electrical issues. During that visit I was near Mr.
27 Nelson's camping area and could see that he was working on the area underneath his tent. He

28 4882-1286-2603 v2

1 stated that he had only “2” pallets under the tent and the rest were metal or hard plastic. A true and
2 correct copy of my Body Worn Camera identified as Exhibit A, can be accessed via the following
3 link: <https://bwslaw.sharefile.com/d-se9b90560256f4bb28af93d39e3311483>.

4 8. I did not tell Mr. Nelson, or anyone else, that the City intended to “flip over” their
5 tents to remove underlying wood pallets, or that the cited person would be arrested. No one said
6 any words to that effect to any camper within my hearing.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct, and that this declaration was executed on October 30, 2023, at San
9 Rafael, California.

10
11
12 By: 
13 _____
14 Sergeant Robert Cleland
15 City of San Rafael Police Department
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MILLER (erroneously sued as “Amy Miller”)
14

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
17

18 SHALEETA BOYD, et al.,
19 Plaintiffs,
20 v.
21 CITY OF SAN RAFAEL, et al.
22 Defendants.
23

Case No. 23-cv-04085-EMC

NOTICE OF MANUAL FILING:

**EXHIBIT A – SERGEANT ROBERT
CLELAND VIDEO OF MAHON PATH
ENCAMPMENT AND INTERACTION
WITH PLAINTIFF BRIAN NELSON ON
OCTOBER 24, 2023**

Judge: Edward M. Chen

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TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Northern District Local Rule 5-1(c), Defendants are manually filing the following exhibit in support of their Briefing in Opposition to Plaintiff Brian Nelson’s Temporary Restraining Order:

- (1) **VIDEO – Exhibit A to the Declaration of Robert Cleland**
21.23 MB file, entitled “Exhibit A – Cleland Declaration – BWC with Nelson re pallet 10.25.23”

This filing is in physical form only, being submitted on a thumb drive, and is being maintained in the case file in the Clerk’s office.

If you are a participant on this case, you will receive a copy of the thumb drive. For information on retrieving this filing directly from the court, please see the court’s main web site, at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

This record can also be accessed for download at the following link, which is set to expire on November 29, 2023, 2023:

<https://bwslaw.sharefile.com/d-se9b90560256f4bb28af93d39e3311483>

This filing was not efiled for the following reason(s):

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Conformance with the Judicial Conference Privacy Policy (General Order 53).

Other (description): _____

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Respectfully submitted,

DATED: October 30, 2023

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

By /s/ Michael von Loewenfeldt

MICHAEL VON LOEWENFELDT

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
16

17 SHALEETA BOYD, et al.,
18 Plaintiffs,
19 v.
20 CITY OF SAN RAFAEL, et al.
21 Defendants.
22

Case No. 23-cv-04085-EMC

**DECLARATION OF CHRISTOPHER
HESS IN SUPPORT OF OPPOSITION TO
BRIAN NELSON TEMPORARY
RESTRAINING ORDER**

Judge: Edward M. Chen

1 I, Christopher Hess, declare as follows:

2 1. I am the Assistant Director of Community Development for the City of San Rafael.
3 As part of my duties, I oversee the Housing and Homelessness Division within the Community
4 Development Department. I have personal knowledge of the facts stated in this declaration, and if
5 called as a witness, could and would testify competently thereto.

6 2. On October 24, 2023, at approximately 3 p.m., I participated in the City's
7 inspections for building hazards at and near the encampments at the Mahon Creek Path. Inspectors
8 also inspected encampments in areas along Lindaro Street, Anderson Avenue, and West Francisco
9 Boulevard. I participated in part to help coordinate providing tents to people whose camping areas
10 contained hazards, as we were offering replacement tents to those individuals. I also am a Spanish
11 speaker and some of the people camping speak primarily Spanish. I participated along with
12 members of the City of San Rafael Fire Department, Building Division, Police Department, and
13 Mel Burnette, who works with me in the Housing and Homelessness Programs.

14 3. I am informed and believe that as a result of the inspections the city issued 20
15 Notices regarding various hazards which would be required to be abated within 48 hours of
16 issuance of the notices.

17 4. On Friday October 27, which was approximately 70 hours after any notices to
18 remove hazards had been issued, I along with a team from the City arrived to assist with
19 addressing any remaining hazards. Also present were members of the San Rafael Police
20 Department and Public Works division.

21 5. At the encampment area at Mahon Path, one structure had been already removed on
22 October 26, 2023, voluntarily by a person who has been housed. Two tents with platforms were
23 not abated based on the pending TRO proceedings and a request for accommodation from another
24 camper that the City is evaluating. We outreached a third noticed structure on pallets, but the
25 individual did not want to remove the pallets until she talked to Robbie Powelson. We gave out
26 one tent, one blanket, and one sleeping pad.

27


28 4876-4776-4107 v1

1 6. At the encampment area at West Francisco Boulevard, we removed 100% of the
2 wooden structures or 4 in total. Additionally, all of the noted piles of flammable materials were
3 removed. This group was helpful and cooperative throughout the process. We distributed 4 tents,
4 8 tarps, and 7 sleeping pads.

5 7. At the encampment area at Andersen Drive, we abated six of the noticed structures.
6 Additionally, we removed all noted piles of flammable materials. Some structures did not require
7 demolition but just the removal of a few wooden components, and that was successful. We left
8 three structures temporarily intact. For two, the City has not yet been able to contact the residents
9 to facilitate abatement. A third was for a disabled camper scheduled to receive housing next week
10 who was given additional time as a reasonable accommodation. The City plans to remove that
11 structure once the person is housed. These campers were also helpful and cooperative throughout
12 the process. We distributed 6 tents, 2 sleeping pads, and 6 tarps.

13 8. In total on the day, 9 garbage trucks of material were removed by DPW.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct, and that this declaration was executed on October 30, 2023, at San
16 Rafael, California.

17
18
19 By: 
20 Christopher Hess
21 City of San Rafael

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

SHALEETA BOYD, unhoused mother)
living at Camp Integrity, et)
al.,)

Plaintiffs,)

VS.)

NO. C 23-cv-04085-EMC

CITY OF SAN RAFAEL, et al.,)

Defendants.)

San Francisco, California
Monday, October 2, 2023

TRANSCRIPT OF PROCEEDINGS

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Reported By: Ruth Levine Ekhaus, RMR, RDR, FCRR
Official Reporter, CSR No. 12219

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 23 **GENEVIEVE M. COYLE, ATTORNEY AT LAW**

24 Also present: Robbie Powelson

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I N D E X

Monday, October 2, 2023 - Volume

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WHITE - DIRECT / VON LOEWENFELDT

1 to try to speak slowly and as clearly as possible so the
2 attorney can hear you.

3 **MR. PRINCE:** Thank you.

4 **THE WITNESS:** Does it help if I move the microphone a
5 little bit away?

6 **THE COURT:** Is that better?

7 **MR. PRINCE:** That, actually, was a little bit better.

8 **THE COURT:** Okay. Maybe that was the problem.

9 **BY MR. VON LOEWENFELDT:**

10 **Q.** So, Chief, can you just describe for the Court your career
11 at Oakland?

12 **A.** Yes. I started at the Oakland Airport, Port of Oakland,
13 as an airport firefighter; left there as a battalion chief, and
14 joined the City of Oakland Fire Department, in 1998, as a
15 structural firefighter. And I progressed through the ranks
16 from firefighter to engineer to lieutenant to captain,
17 battalion chief, safety officer, battalion chief over special
18 ops, deputy chief of operations and, then, eventually, fire
19 chief.

20 **Q.** And while you were the fire chief in Oakland, did you deal
21 with the homeless encampments there?

22 **A.** Yes, I did.

23 **Q.** Were there any fires at the homeless encampments in
24 Oakland when you worked there?

25 **A.** Yes, there were.

WHITE - DIRECT / VON LOEWENFELDT

1 Q. How frequently was there a fire at one of the homeless
2 encampments?

3 A. We had encampment fires pretty much daily at some points.

4 Q. What were the causes of fire that you saw at the Oakland
5 encampments?

6 A. We had a variety of causes. Some were intentional set due
7 to conflict. Some pertained to direct flame impingement. Some
8 were radiant from heat. Some were illegal electrical wiring
9 that caused ignition. And so there were a variety of reasons
10 for those fires.

11 Q. When you say "direct flame impingement," is the use of
12 camping stoves and other open-flame cooking devices a problem
13 in homeless encampments?

14 MR. PRINCE: Well, I'm going to object that it's
15 compound. He listed several different types of camp -- of
16 cooking equipment. And I think it would make separate
17 questions. They're not all the same type of equipment.

18 THE COURT: You can clarify that on cross. I'll
19 overrule the objection.

20 MR. PRINCE: Okay.

21 THE WITNESS: Okay. Can you repeat the question so I
22 make sure I'm answering the question?

23 BY MR. VON LOEWENFELDT:

24 Q. Sure. I'm asking whether open-flame cooking equipment,
25 like a camping stove, creates a particular danger in a homeless

1 encampment.

2 **A.** It does if that camping device is proximal to tents and
3 other things that are flammable; yes, it does.

4 **Q.** What's the worst fire that was suffered at a homeless
5 encampment while you were the fire chief in Oakland?

6 **A.** There are a few that come to mind, but I think the worst
7 that I can recall occurred on San Leandro Boulevard -- or it
8 may have been East 12th -- and 19th Street, where roughly about
9 30 to 40 tents were destroyed in an encampment fire and one
10 individual perished.

11 **Q.** Okay. Now, are tents flammable?

12 **A.** Yes.

13 **Q.** And how would you rate the flammability of the kind of
14 material that a modern tent is made out of?

15 **A.** They're very flammable, considering they're made of nylon,
16 canvas, polyester, and other materials that are very flammable.

17 **Q.** Are you familiar with modern tents that have a
18 self-sustaining structure of flexible poles, and then there's a
19 top on top of that?

20 **A.** Yes, I'm familiar with those.

21 **Q.** What can happen to that type of structure or tent if it
22 catches on fire? Can it fly up in the air like a balloon?

23 **A.** That tent can go pretty quickly, in a matter of seconds.
24 But it also -- depending on the winds that day, it can also,
25 certainly, take flight, yes.

WHITE - DIRECT / VON LOEWENFELDT

1 Q. And if a tent like that is on fire and flies into the
2 nearby tents, what's going to happen?

3 A. It's going to probably ignite the other tents nearby.

4 Q. Cardboard is flammable; right?

5 A. Yes, it is.

6 Q. What about plywood; that's flammable?

7 A. Yes, it.

8 Q. Are you familiar with wood pallets?

9 A. I am.

10 Q. Is there anything about the structure of a wood pallet
11 that makes it more flammable than a flat piece of wood?

12 A. I think the very nature of a wood pallet itself, usually,
13 is not fresh wood. It is usually some aged, dried wood. The
14 fact that there's air and space in between the different planks
15 that allows for air circulation. So if a pallet were to be
16 ignited and catch fire, it's likely that it's going to catch
17 fire pretty easily compared to, say, a solid piece of wood,
18 yes.

19 Q. Okay. And are you familiar with the type of propane
20 canisters, small cannisters that are used for camping stoves?

21 A. The small and large, yes, sir.

22 Q. What happens to those cannisters if there's a fire nearby?

23 A. Well, those cannisters can get heated up, and depending on
24 how much product is inside, you have the potential for an
25 explosive reaction from those cannisters.

WHITE - DIRECT / VON LOEWENFELDT

1 Q. And if that cannister explodes is there shrapnel created?

2 A. Yes, there is.

3 Q. Is that a danger to both camp residents and first
4 responders?

5 A. It very much so is.

6 Q. Okay. What about plastic or metal gasolines cans, do
7 those create a fire risk if they're near a fire?

8 A. They do.

9 Q. And does the liquid gas actually have to touch a flame in
10 order for there to be a fire?

11 A. No, it does not. The vapors from those containers can
12 create issues and actually create fire and explosive reactions,
13 yes.

14 Q. What about smoking cigarettes; is that an ignition source
15 that causes a problem in homeless encampments?

16 A. Yes, they are.

17 Q. And is vegetation a problem?

18 A. Yes, it is, dry vegetation in particular.

19 Q. You mentioned improper electrical wiring. How does that
20 pose a fire risk?

21 A. Well, just the nature of some of the wiring itself, it can
22 be frayed; it can be exposed. It's not legally done. It's not
23 grounded. It's not done in a manner, generally, that any
24 licensed electrician or someone with substantial training and
25 experience would be able to utilize properly. And, so

WHITE - DIRECT / VON LOEWENFELDT

1 depending on how that is configured, it certainly can become a
2 hazard to anyone walking by or anyone that's proximal to it.

3 Q. Are you familiar with the fact that surge protectors or
4 multiple outlets are rated for -- some indoor, some outdoor
5 use?

6 A. Yes. I'm not very familiar with the outdoor use so much,
7 but certainly indoor, yes.

8 Q. Is there a danger in using indoor multipoint outlets
9 outside?

10 A. Yes. If it's not rated for outdoor use, I would avoid
11 doing so.

12 Q. And what can happen if you use indoor outlets outside?

13 A. Well, I'm assuming there's a risk with shock, condensation
14 getting inside the circuitry, creating a malfunction, and
15 possibly, ignition as well.

16 Q. Okay. What about chains of extension cords where people
17 plug one extension cord into another into another to run power
18 over a distance; is that fire safe?

19 A. Not at all.

20 Q. Why is that?

21 A. Those extension cords or the power strips are not rated to
22 be used in succession. They're used to actually power into
23 or -- excuse me -- be inserted into a wall outlet and then run
24 power from that particular device, but not to use as a
25 continuous extension moving beyond long distances, not at all.

WHITE - DIRECT / VON LOEWENFELDT

1 Q. Are those the type of safety risks that you'd like to
2 abate as the fire chief?

3 A. Yes, indeed.

4 Q. Okay. Let me try to show you some pictures. We're going
5 to see if this is going to work.

6 MR. VON LOEWENFELDT: Your Honor, I'm going to show
7 the witness part of the supplemental declaration of Chris Hess,
8 which is ECF 72-4. If I can --

9 THE COURT: Use screen share, then, on Zoom.

10 MR. VON LOEWENFELDT: I'm going to try. I am going to
11 do my best.

12 Okay. Let me just make sure I'm on the right one.

13 This is from Exhibit 28, Your Honor, which is in the
14 record.

15 Q. I want to show you the first three pictures here. These
16 were submitted by defendants, pictures of the camp.

17 Do you see the picture there on the screen?

18 A. I do.

19 Q. Okay. And then the next two are of the same area in
20 different angles.

21 What are the fire risks -- and let me know if you want to
22 go backwards -- that you see in these pictures?

23 A. Well, starting with the first photograph --

24 MR. AARDALEN: Objection, Your Honor. That's not Camp
25 Integrity.

WHITE - DIRECT / VON LOEWENFELDT

1 **THE COURT:** Well, is this a different --

2 **MR. VON LOEWENFELDT:** Your Honor, the ordinance is not
3 specific to Camp Integrity.

4 **THE COURT:** This is just illustrative, is what you're
5 saying.

6 **MR. VON LOEWENFELDT:** This is right around the corner.
7 We believe it's the same general area. But this ordinance is
8 not about Camp Integrity. This ordinance is about encampments.

9 **THE COURT:** Well, you can show it. I will take into
10 account that it is not this particular camp. But if you want
11 to make a general point about the danger of pallets and stuff
12 like that, you can go ahead and use it.

13 **BY MR. VON LOEWENFELDT:**

14 **Q.** Okay.

15 **A.** Looking at this particular structure, or series of
16 structures, I see potential for rapid fire spread. I see what
17 looks like pallets combined with plywood. I see overhanging
18 tree branches, some which look somewhat dry. Obviously, the
19 materials that -- are from a tent and/or some other
20 overhaul/canvas-type coverings.

21 I don't know if I can zoom in a little bit closer, I could
22 probably see a little bit more.

23 It also looks like a rear structure that may be red, and
24 I'm not certain if that's a wooden structure as well, perhaps a
25 fence or some other construct, but I can't really tell much.

WHITE - DIRECT / VON LOEWENFELDT

1 It looks like a pallet that's black to the front, right of
2 the photo, but my screen is overlaid on the part of the photo,
3 so I'm not sure what else is beyond that.

4 **Q.** Okay. Are these the type of fire dangers that you saw in
5 Oakland at the camps?

6 **A.** Yes, indeed.

7 **Q.** Are you familiar, generally, with Mahon Creek area?

8 **A.** I am.

9 **Q.** Are these of type of fire dangers you see at Mahon Creek?

10 **A.** I've been through that area and I've seen similar, yes.

11 **Q.** Let me show you ECF 27.

12 **MR. VON LOEWENFELDT:** Your Honor, this is Exhibit 13.

13 **Q.** And I want to direct your attention to the bottom
14 photograph on this screen. And I'm going to attempt to enlarge
15 it. Let me see if I can get it to work.

16 All right.

17 Are you with me there?

18 **A.** Yes.

19 **Q.** Do you see that structure there that's made with what
20 looks like plywood and cardboard?

21 **A.** Yes, I do.

22 **Q.** What type of safety danger do you see with that type of
23 structure?

24 **A.** It doesn't look to be very stable at all. It looks
25 flammable, obviously. And it's got other flammable products

WHITE - DIRECT / VON LOEWENFELDT

1 right nearby, a bunch of cardboard, loose cardboard. It
2 appears to be bicycle inner tubes or tires.

3 And I see in the back, rear of the frame, it looks like
4 it's located right proximal to a roadway. So this is right on
5 the shoulder of the sidewalk between the curb and the
6 sidewalk -- is what I can tell.

7 **Q.** Do you see a way for an occupant of that structure to exit
8 towards the path?

9 **A.** I do not.

10 **Q.** And is it safe for people to exit towards an active
11 roadway?

12 **A.** Not at all. Not safe for the individuals or the
13 individuals who would be driving or riding their bicycle.

14 **MR. AARDALEN:** Excuse me, Your Honor. For the record,
15 that is also not Camp Integrity.

16 **THE COURT:** Okay. So noted.

17 **BY MR. VON LOEWENFELDT:**

18 **Q.** And, then, looking at the next photo, do you see there are
19 tents lined up right next to each other along this path?

20 **A.** Yes.

21 **Q.** What's going to happen, if one of those tents catches on
22 fire, to the other tents?

23 **A.** Fire is going to communicate pretty quickly, laterally,
24 left or right, probably into that tree, looks like, maybe, a
25 palm tree there.

WHITE - DIRECT / VON LOEWENFELDT

1 Q. In your opinion, based on your experience as the fire
2 chief and your years of --

3 MR. AARDALEN: Your Honor, that's -- for the record,
4 that's not Camp Integrity as well.

5 THE COURT: All right. So noted.

6 BY MR. VON LOEWENFELDT:

7 Q. -- fire training, how far apart should tents or structures
8 like this be, or just a camping tent be, from each other, so
9 that if one catches on fire the other one is not likely to
10 catch on fire?

11 A. Let me ask you to ask the question one more time. I want
12 to make sure I'm understanding it correctly. Because I'm
13 thinking of camping settings versus homeless encampments, and
14 so I want to make sure I'm answering question.

15 Q. Right. I'm asking a question about, in the context of a
16 homeless encampment, where people are living and cooking in
17 proximity to their tent -- right? -- not out at China Camp
18 State Park or something.

19 A. Got it.

20 Q. How close together or -- I'm sorry.

21 How far apart should tents be before you're starting to
22 get worried about fire spreading from one tent to the next?

23 A. Due to radiant heat, due to the fact that if one tent gets
24 going and it can actually lift and communicate to other tents
25 nearby, I don't think anything less than a hundred feet or so

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1 would really make sense, only from the standpoint of there's a
2 lot of risk to other tents within an encampment area if one
3 catches fire.

4 So that would be my concern, is just radiant heat, direct
5 flame impingement or somehow or other the ember or portions of
6 the other tent catching on to some other adjacent tents.

7 **Q.** And in your experience with encampments, where two tents
8 are closer than that to each other, do the occupants tend to
9 put furniture and other possessions in the space between the
10 tents?

11 **A.** If the tents aren't butted up right next to other, there's
12 usually a bunch of other debris or other belongings that are
13 kind of stacked and co-located right around the tents
14 whether -- not so much directly in front, but usually to the
15 sides and rear.

16 **Q.** Okay. And when you have all those belongings between
17 tents, can fire spread from tent to belonging to belonging,
18 et cetera, et cetera, down to the next tent?

19 **A.** Absolutely. If those items are flammable items, they can.

20 **Q.** Let me show you the last picture on this page.

21 Do you see what appears to be a generator?

22 **A.** Yes.

23 **Q.** Is it safe, from a fire perspective, to use a generator
24 that close to a tent?

25 **A.** It is not.

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1 Q. Why is that?

2 A. The radiant heat from the generator by itself is a
3 concern.

4 MR. AARDALEN: Your Honor, for the record, this whole
5 testimony has nothing to do with Camp Integrity.

6 THE COURT: All right. I'll take that into account.

7 So there's somewhat minimal probative value to this
8 particular encampment, though I understand the point. If you
9 had something -- some pictures of this camp, that would be more
10 probative; but that's your call.

11 MR. VON LOEWENFELDT: Well, Your Honor, to be clear,
12 we're defending the ordinance, which is not directed at this
13 camp, but --

14 THE COURT: I understand. But the plaintiffs in this
15 case are the ones seeking injunctive relief, not other camps,
16 so --

17 MR. VON LOEWENFELDT: I think that's an important
18 point, Your Honor, that I'll bring up again later.

19 Q. Let me just ask you about the gasoline that I see here.

20 Is it proper to store gasoline close to a working
21 generator?

22 A. Not at all.

23 Q. Okay. And let me also try to do something else there.

24 (Court reporter interruption.)

25 THE COURT: Why don't we go ahead and take a break for

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1 the court reporter. Thank you.

2 We'll take a ten-minute break.

3 **THE CLERK:** Court is in recess.

4 (Recess taken at 3:39 p.m.)

5 (Proceedings resumed at 3:54 p.m.)

6 **THE CLERK:** Please remain seated and come to order.

7 Court is back in session.

8 **THE COURT:** All right. Why don't we have Chief White
9 resume the stand.

10 **MR. VON LOEWENFELDT:** Is there any way to not show the
11 little boxes with people's heads which blocks part of the --

12 **THE COURT:** You can change the view to shrink that
13 down.

14 **MR. VON LOEWENFELDT:** I think that's on your end,
15 actually. I'm not --

16 **THE COURT:** That's on this end. I don't know if the
17 chief has that ability, but is it by each screen.

18 **MR. VON LOEWENFELDT:** I think you can drop the whole
19 view box off. It's just going to block -- it's just going to
20 block the whole right side of the video -- or change the view
21 to speaker.

22 **MR. AARDALEN:** Excuse me, Your Honor. Brian Nelson is
23 trying to log back in.

24 **THE COURT:** All right. Well -- can you change that,
25 Vicky?

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1 **THE CLERK:** I'm looking right now, Your Honor.

2 **THE COURT:** What controls these screens? Is that you
3 controlling them?

4 **THE CLERK:** Not -- the share screen I don't control
5 it.

6 **THE COURT:** Maybe you can.

7 **MR. VON LOEWENFELDT:** Your Honor, it's not on my
8 screen.

9 **THE CLERK:** It's because we have Zoom on, that's why.

10 **THE COURT:** Normally, the viewer can hit that view box
11 and shrink it down.

12 **MR. VON LOEWENFELDT:** The tiny little line up there on
13 the top of the box should make it go away.

14 **THE COURT:** What Vicky is seeing? No hers is
15 different.

16 (Pause in proceedings.)

17 **THE COURT:** Okay. We had somebody who was trying to
18 get back on. Do you see anybody in the waiting room?

19 **THE CLERK:** I promoted him as a panelist, but he
20 hasn't come back in yet.

21 **THE COURT:** All right. We need to proceed.

22 So go ahead. We'll try to get him in as soon he logs in.

23 **MR. VON LOEWENFELDT:** All right.

24 So, Your Honor, I have on the screen Exhibit 29, which is
25 already in evidence, starting at time stamp one minute,

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1 15 seconds.

2 Q. Chief White, do you see the movie that hasn't started
3 playing yet?

4 A. Yes, I do.

5 Q. Is that, quote-unquote, Camp Integrity on the Mahon Creek
6 Path?

7 A. Yes, it appears to be.

8 Q. Okay. So I'm going to play this, and I'd like you to look
9 at it and stop when there's a fire risk or something else you
10 would like to identify for the Court. Okay?

11 A. Okay.

12 (Video played but not reported.)

13 **THE WITNESS:** Can you stop right here?

14 Just to the right, immediately, the debris, the cardboard,
15 everything that's butted up next to that tent is a concern. It
16 looks like there's a lawnmower or maybe even some sort of wire
17 or pole underneath the lawnmower. I can't tell for sure, what
18 that is but...

19 Q. And from your experience being at Camp Integrity --

20 **MR. AARDALEN:** Objection, Your Honor. That campsite
21 doesn't exist anymore.

22 **MR. VON LOEWENFELDT:** It was here a week ago, Your
23 Honor. Two weeks, when we filed this.

24 **THE COURT:** Okay. Objection overruled.

25 **MR. VON LOEWENFELDT:** Let's move forward.

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1 (Video played but not reported.)

2 **BY MR. VON LOEWENFELDT:**

3 **Q.** Do you see the tent --

4 **A.** Pause right there.

5 **Q.** Okay.

6 **A.** Are you able to back up just a little? I'm sorry.

7 **Q.** Sure. Do you see the tents underneath vegetation?

8 **A.** Yes, I noticed that.

9 And I'm also looking at what appears to be some sort of
10 pole and line next to it. I'm not really clear on what that
11 is. Maybe that's something that's helping the tent stay
12 upright. But, again, just more debris on the ground that -- in
13 and of itself, I don't see a lot of risk. But there's a lot of
14 debris accumulated, so if something were to happen, it,
15 obviously, would catch those things as well. But the
16 vegetation immediately to the rear and to the left is
17 definitely a concern.

18 (Video played but not reported.)

19 **THE WITNESS:** Did the frame skip?

20 **BY MR. VON LOEWENFELDT:**

21 **Q.** No.

22 How about the pallet coming out of that tent and the
23 proximity of those tents?

24 **A.** Yeah. Again, the pallet, the debris, the close proximity
25 to the overhanging vegetation there, and the close proximity to

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1 one another, the tents seem to be co-located within several
2 feet of each other, or just -- in some cases, just a few feet.

3 (Video played but not reported.)

4 **THE WITNESS:** Same concern.

5 **BY MR. VON LOEWENFELDT:**

6 **Q.** Based on your experience with homeless encampments, what
7 is this area here that we now see on the right of the screen,
8 outside the tent?

9 **A.** Maybe, perhaps, a cooking location or some other storage
10 or maybe even an access point. It's just hard to tell from
11 this vantage point.

12 **Q.** Okay. And then, as we're approaching here, do you see
13 there's a fence, back behind these tents?

14 **A.** Yes.

15 **Q.** And does that type of fencing create -- and, actually,
16 there's a tent right here up against the fence. Do you see
17 that?

18 **A.** Yeah.

19 And can I ask you to go back for a moment, though?

20 **Q.** Yes.

21 Far enough?

22 **A.** No. Still all the way back to where the light pole was on
23 the right.

24 Right there.

25 **Q.** Okay.

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1 BY MR. VON LOEWENFELDT:

2 Q. Do you see there's a tent right up against that fence?

3 A. Yes.

4 Q. Are those fences flammable?

5 A. I'm sorry. The fence is what?

6 Q. Well, fence is chain link and something else; right?

7 A. Yes.

8 Q. Is the "something else" flammable?

9 A. Yes, it is.

10 Q. Is that safe to put -- to use the fence as the back edge
11 of the tent?

12 A. No, I would not recommend it.

13 Q. Okay. All right.

14 A. Okay.

15 Q. What about this --

16 A. Yeah. If you can just back up slightly, that's a
17 significant accumulation of debris, all of which looks like it
18 may even prevent someone from escaping the tent or entering the
19 tent, if necessary, quickly.

20 Q. Okay.

21 A. I'm not sure, but in the front is that a gas can, the red
22 device next to the green trash can?

23 MR. VON LOEWENFELDT: And I'm going to note for the
24 record, Your Honor, we're at time stamp 2.29 -- or two minutes
25 29 seconds into this video. I probably should have noted that

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1 before.

2 Q. And let me move you forward to another large collection of
3 tents.

4 (Video played but not reported.)

5 **BY MR. VON LOEWENFELDT:**

6 Q. And I'm going to stop it at 2 minutes, 42 seconds.

7 Do you see this large collection of tents and other
8 structures here?

9 A. Yes, I do.

10 Q. Is that similar to the pictures I was showing to you a
11 minute ago that there was an objection they weren't Camp
12 Integrity?

13 A. That's similar, very similar, yes.

14 Q. And do you have the same fire risk concerns about these
15 structures we see here?

16 A. Absolutely. They have the same dynamics, with the
17 vegetation, with being co-located to one another, from the
18 materials that are there, to the accumulation of debris and the
19 fact there's a fence line right behind it as well.

20 Q. Okay. And, Chief White, based on the Court's injunction,
21 have you been able to abate any of the fire hazards that
22 currently exist at the homeless encampments in San Rafael?

23 A. No, we've, to my knowledge, done no abatement on the fire
24 hazards. We have walked and toured the area and identified
25 areas of concern, but based on the current guidance, we are not

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1 required -- are not enabled to do so at this point.

2 Q. And are there a significant number of conditions at the
3 camps that you would want to abate immediately?

4 A. I've seen multiple locations that have conditions I'd like
5 to change, yes, sir.

6 Q. Okay. Thank you.

7 MR. VON LOEWENFELDT: No further questions at this
8 time, Your Honor.

9 THE COURT: All right. Any questions? Cross?

10 MR. PRINCE: Yeah. I have some cross-examine -- some
11 cross-examination, Your Honor.

12 Can you hear me okay?

13 THE COURT: Yup.

14 CROSS-EXAMINATION

15 BY MR. PRINCE:

16 Q. To begin with, Chief White, you would agree with me, would
17 you not, that the kind of -- some of risks especially attendant
18 of fire that you described, that could happen at a camp that
19 had significant density or a number of -- a significant number
20 of tents within the camp, those same hazards could also exist
21 at a camp which was more isolated, say, just a couple of tents
22 next to each other, with no other encampments within --
23 200 feet away; isn't that true? Same hazards; correct?

24 A. I'd like to understand the question or concern.

25 You're saying, if there's a small number of tents

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1 co-located, that that would be the same concern that could
2 happen with tents that are a great distance away from each
3 other; is that correct?

4 **Q.** I'm saying, if someone is in a tent -- and you said the
5 tent is flammable and you talked about the risk of fire coming
6 into contact with a flammable tent, that could happen whether a
7 tent is part of a more densely-populated encampment or just a
8 tent by itself, maybe 200 feet away from another camp; isn't
9 that true?

10 **A.** Yes, that's accurate.

11 **Q.** Okay. And then, I also wanted to ask you, with regard to
12 the Oakland fire, I think you described the fire that -- on
13 19th Street, that was, the one the big encampment that's under
14 Interstate 880, if I remember. That was a pretty significant
15 fire.

16 Is that the one you were describing in your testimony?

17 **A.** No, sir. That's a different issue or a different incident
18 altogether. The one I'm referring to is -- it was actually
19 underneath the BART overpass and right off of the side of the
20 road there; and as you come off the overpass, I believe, on
21 23rd Avenue, it was in that location there. It may have been
22 since fenced off.

23 **Q.** Okay. All right. Thank you.

24 So let me ask you -- so you -- you it's true, is it not,
25 that you sometimes consult or have consultations or

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1 collaborations with other cities within Marin County? Is that
2 a fair statement?

3 **A.** Consult and collaboration? I don't think I'd describe my
4 responsibilities as "consulting," but I am collaborative with
5 the other five chiefs and the other agencies within the county;
6 that is correct.

7 **Q.** Okay. And that would include the City of Novato; is that
8 right?

9 **A.** I can confer and collaborate with the City of Novato, with
10 Central Marin fire agencies, Marin County Fire Department, a
11 variety of agencies that are all fire services agencies, yes,
12 sir.

13 **Q.** Okay. And so, with regard to the City of Novato, are you
14 aware that there's a sanctioned encampment within Lee Gerner
15 Park that has approximately 17 spaces where there are tents,
16 they are spaced maybe about five, six feet from each other, the
17 entire encampment is surrounded by a five-foot fence, there are
18 fire extinguishers, and the fire department and the City of
19 Novato collaborated in actually constructing this camp after a
20 less-structured camp was the subject of litigation?

21 Are you aware that -- they call it Camp Compassion. Are
22 you aware of that camp, sir?

23 **A.** I only know in passing of one of camp -- encampments that
24 are RV-related, and some frustration that may have been
25 experienced there. But I don't have any other details about

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1 specific encampments within the City of Novato, unfortunately,
2 sir.

3 **Q.** Okay. So when I tell you that -- as I just described Camp
4 Compassion, having the -- having been inspected by the City,
5 actually, that the city utilities department was part of the
6 actual construction of the camp, and the tents, fire
7 extinguishers, and the inspections by the fire department, you
8 have no reason to dispute that that is the case with regard to
9 that particular encampment in Novato, do you?

10 **A.** Well, I can't speak to the conditions with that camp. I
11 haven't seen it. I'm not familiar with the encampment as I
12 state and I haven't had conversations with the fire officials
13 there to know more about its success, its challenges, or
14 anything in particular about details about the camp. So I
15 couldn't really speak with personal knowledge --

16 **Q.** Okay. Thank you.

17 And are you aware, also, sir, that within Marin County
18 with that -- there's in the City of Sausalito are you aware,
19 sir, that for a period of almost, perhaps in excess of
20 two years, that there was an encampment, a significantly large
21 encampment, first, in Marinship Park in Sausalito, and then
22 that that camp was moved to a tennis court, where they had
23 approximately 50 homeless persons living in tents that had been
24 provided by the City of Sausalito, sitting on pallets?

25 Are you aware that such an encampment existed for

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1 approximately two years in the City of Sausalito within Marin
2 County?

3 **A.** No, sir. Again, I don't have any details about those
4 other agencies and how they handled the encampment challenges
5 they faced. I'm only familiar with those -- with the agency
6 that I'm with now, as well as the previous agency I worked
7 with.

8 **Q.** Are you aware, sir, that in the City of Santa Cruz,
9 California, that there was an encampment which began in San
10 Lorenzo -- I'm sorry Ross Camp, they call it the Ross Camp
11 encampment, which was behind the large Ross department store,
12 where the fire department, for six months, conducted regular
13 visits and regular meetings with the camp council, and
14 conducted regular inspections, had created an access path that
15 would take emergency response vehicles, that there was regular
16 inspections to abate individual situations such as, you know,
17 open containers, you know, wire and cords that were not
18 supposed to be there?

19 Are you aware that that camp existed for approximately
20 six months, and there was never a single fire in that camp?
21 Are you aware of that, sir?

22 **A.** I am not.

23 **Q.** Okay. And are you also aware, sir, that in -- that camp
24 was moved from San Lorenzo Park into an area within the park,
25 but further away from the original campsite, in what they call

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1 the Benchlands, that the City of Santa Cruz established a
2 charging station for cell phones that was -- that was legally
3 wired and properly wired, so that people in the camp that --
4 had cell phone access.

5 And are you also aware, sir, that similar inspections were
6 conducted by the Santa Cruz Fire Department over a period of
7 almost a year and a half while that camp was in existence. Do
8 you have any awareness of that situation, sir?

9 **A.** No, sir. As I stated, I'm not aware of any encampment
10 policies or activities outside of the two organizations and
11 communities that I work for and live in.

12 **Q.** Okay. And could I ask you this? I watched the video that
13 was displayed, and I wanted to ask you a few questions about
14 the different -- excuse me -- about the different stops that
15 were made. And here we go.

16 So in the first stop -- I won't -- we don't need to put
17 that video up, I don't think, to refresh your recollection --
18 but do you recall the first stop you indicate you saw debris
19 and a lawn mower; correct?

20 **A.** That's correct.

21 **Q.** Is that correct, sir?

22 Okay. That's the kind of thing where you could -- I'm
23 going to put aside for the moment your testimony that the
24 current injunction is affirmatively preventing you from abating
25 such a -- what you might call a hazard. Let's put that aside

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1 and say, it would be possible, would it not, sir, to have that
2 debris removed and cleaned up, and perhaps that lawnmower
3 secured in a safer location without actually removing those
4 individuals that were encamped in that location, would you not
5 agree, sir?

6 **A.** Are you asking if the individuals themselves would be the
7 responsible parties for clearing that area, or are you asking
8 if the community, or the City itself, I'm not clear on who
9 you're asking would be responsible for cleaning the site.

10 **Q.** I'm not asking you, sir, about who is responsible. I'm
11 asking whether it would be possible for the debris, the lawn
12 mower, which you characterized as a hazard, those hazards, as
13 you characterized them, could be abated without removing the
14 individuals who were located at that encampment. You would
15 agree with that, wouldn't you, sir?

16 **A.** Yes, and no, sir. If I can explain, I would say that,
17 yes, it could be, but maybe momentarily --

18 **Q.** You said, yes, and no. I'm -- let's just -- I want to get
19 a clear answer --

20 **THE COURT:** Let him -- Mr. Prince.

21 **MR. PRINCE:** -- removed a bag without having to remove
22 the individuals at that location; isn't that true?

23 **THE COURT:** Okay. Let him answer the question.

24 **MR. PRINCE:** Okay.

25 **THE WITNESS:** So as I indicated, in premise, yes, you

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1 could do so. In my experience, one item is replaced by
2 multiple other items. And so while you may have temporary
3 clearance, that's only a temporary condition, only to result
4 and back into either similar or worse conditions eventually,
5 without the cooperation of the unhoused in that location.

6 **BY MR. PRINCE:**

7 **Q.** Okay. Let's assume you had the cooperation of the
8 unhoused. Let's assume you had an agreement whereby there was
9 certain reasonable rules and restrictions, and an awareness and
10 an individualized approach to making inspections and abating
11 these concerns as you saw them. Let's assume, for the sake of
12 argument, that there would be that kind of collaboration and
13 cooperation, then it would be entirely possible, would you not
14 agree, sir, that the debris -- lawn mower, other debris, other
15 items that would constitute a risk of fire, could be abated
16 without removing the individuals; correct?

17 **A.** In that particular situation, with debris removal, yes,
18 sir. But there are other conditions that I don't know if we
19 could address effectively.

20 **Q.** I understand.

21 With regard to the overhanging trees and other vegetation,
22 you would agree, sir, that the utility companies, PG&E, some of
23 the other utility companies, they regularly go through --
24 they're faced with this problem as well, and so there's
25 regular -- I mean, that's the situation. It's fairly

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1 widespread and that's why there's trimming of trees and
2 abatement of grassy areas that are dry vegetation. All these
3 things are regular functions in just about every residential
4 neighborhood in any city in California; wouldn't you agree,
5 sir?

6 **A.** I would agree that we have vegetation management efforts
7 that we hold our community responsible for yes, sir.

8 **Q.** And, again, that -- that trees could be trimmed and
9 vegetation could be managed, and the dry grass could be removed
10 and that does not necessarily entail removing the individuals
11 who might be located where the dry grass and the overhanging --
12 and the vegetation exist. Is that -- would you not agree?

13 **A.** That's possible, yes, it is.

14 **Q.** Okay. And now also, sir, would you agree that, if there's
15 a centralized, one -- a single location, perhaps, where there's
16 a single, centralized, common cooking facility, or a cooking
17 kitchen, as it were, which could service a number of people in
18 a certain particular encampment, that you could have -- that
19 there would be a better ability to control any risks that might
20 arise from that, rather than having camps 200 feet apart from
21 each other, where a person might have some kind of stove or
22 some kind of cooking that could pose a risk of fire?

23 Would you agree, sir, that by having a centralized
24 location where cooking is happening, as opposed to a scattered
25 number of tents in a camp, small encampments further away from

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1 each other, where a similar hazard could arise, don't you think
2 that -- would you agree, a more common approach, a shared
3 circumstance would be easier to maintain, safer, and more
4 easily inspected?

5 Would you not agree?

6 **A.** I'll say this: Individuals make determinations about what
7 they want to cook, what they want to eat and when. And I don't
8 know that your solution is really going to apply to each and
9 every individual. But, yes, on the surface from what you say,
10 one centralized location would certainly make sense.

11 Where that location would be, I couldn't speak to. And
12 how individuals would go about getting fed and return to their
13 locations, I can't speak to that. So there's a lot of
14 supposition in what you're offering.

15 **Q.** Well, I don't think I'm engaging in supposition, sir.

16 What I'm trying to say is that -- I think, you answered
17 the question, that it seems to be a more -- a manageable
18 circumstance to have a central location, rather than a
19 scattered number of -- you know, distanced tents, where the
20 similar hazard might present itself.

21 And let me also ask you again about that fence, stop
22 number five on the video, you talked about a tent that was put
23 up against a fence.

24 Do you recall that, seeing that part of the video?

25 **A.** I do.

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1 Q. Okay. And you said you wouldn't do that and so -- are you
2 telling us that that is -- you have, I expect, many years and
3 the cumulative experience you have as a firefighter, are you
4 saying that that's -- that that is a standalone code violation,
5 fire code violation of some kind, that a tent being situated
6 adjacent to a fence or abutting a fence?

7 A. I'll say that I'm aware that there have been complaints
8 from the community about homeless encampments encroaching on
9 their property and their fence line. I'll say that from an
10 exiting and entrance standpoint, you just shut off one of your
11 egress standpoints. And I'll say also, from a concern from the
12 fact that that flammable tent is located next to two more
13 flammable items, being the fencing and/or the vegetation, I
14 don't think that's a prime location yes, sir.

15 Q. I think my question was little bit different.

16 What I asked was: As you sit here, can you tell us
17 whether there's a specific code section, fire code section or
18 municipal code section, which prohibits the location of a tent
19 against a fence? Can you just cite to one?

20 A. No, I cannot.

21 Q. Okay. And are you aware, sir, that there are tents
22 provided by the City of Sausalito, at one point, in -- on a
23 tennis court that stood on pallets that were also located
24 adjacent, and in some cases, abutting fences in the tennis
25 court, in the City of Sausalito?

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1 Do you have awareness of that?

2 **A.** I do not.

3 **Q.** And are you aware, sir, with regard to the encampments I
4 just described in Novato, Sausalito, and Santa Cruz, are you
5 aware, sir, that there was never -- during the entire course of
6 the existence of those camps any significant fire that posed
7 any risk -- any significant risk of being spread or posing a
8 danger to the tents that were also located within the
9 encampment?

10 Are you aware of that, sir?

11 **A.** As I stated before, I'm not aware of anything outside the
12 jurisdictions that I work and live in. So, no, sir, I'm not
13 aware.

14 **Q.** Okay.

15 **MR. VON LOEWENFELDT:** Your Honor, I apologize. Just
16 so I'm clear on the time, my understanding was this cut into
17 his time, not mine. We were very limited in our questions.

18 **MR. PRINCE:** I'm not understanding, Counsel.

19 **THE COURT:** We have a time limit here --

20 **MR. PRINCE:** Okay.

21 **THE COURT:** -- Mr. Prince, and I'd like you to try to
22 wrap it up if you can.

23 **MR. PRINCE:** Okay. I'll wrap it up.

24 **Q.** Let me ask you this, sir -- and I'll just share with you
25 that my son is a firefighter --

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1 **MR. VON LOEWENFELDT:** Your Honor, I apologize. That's
2 not a question.

3 **MR. PRINCE:** -- California --

4 **THE COURT:** I'm going to sustain the objection -- hold
5 on.

6 **MR. PRINCE:** So I have a lot of respect for
7 firefighters --

8 **THE COURT:** Mr. Prince, hold on.

9 **MR. PRINCE:** Firefighters are first responders and --

10 **THE COURT:** Mr. Prince, hold on.

11 **BY MR. PRINCE:**

12 **Q.** -- my questions are not only about the safety of the
13 homeless, and the community but of the firefighters themselves.

14 So my final question is to you, sir: Do you think it
15 might make sense to take a look at and learn a little bit from
16 your fellow fire department fire chiefs within Marin County to
17 see how some of these camps have been constructed and have
18 avoided the very hazards that you've described, and yet, in
19 some cases they've had as few as -- the smallest tent
20 encampment we have is 20 sites, and as large as 50 to 60
21 residents -- maybe 30, 40, 50 tents at some of the larger
22 sites, such as Sausalito, and 300 tents, approximately -- 300
23 residents, and maybe about 175 tents in Santa Cruz.

24 Do you think it might be worthwhile, as we go forward in
25 this matter, to, maybe, consult and see what kind of experience

WHITE - CROSS / PRINCE

1 has been accumulated in those successful, larger encampments
2 with regard to fire safety?

3 **MR. VON LOEWENFELDT:** Your Honor, objection.
4 Argumentative. And also to the entire colloquy, of course,
5 counsel's questions are not --

6 **THE COURT:** I'm going to sustain the objection.
7 I think we know the answer to that.

8 **MR. PRINCE:** All right. Okay. Thank you.

9 **THE COURT:** All right. I've got a couple of follow-up
10 questions for the chief.

11 Is it possible to be fire safe if you have two tents,
12 maybe three tents, within a 200-square-foot footprint?

13 **THE WITNESS:** Yes, Your Honor. I believe it could be
14 possible to be fire safe if those tents didn't have a lot of
15 debris. If those tents were using the tents and the area
16 responsibly, they did not have any ignition sources, they did
17 not use open flame, they did not have radiant heat from other
18 devices, un-permitted devices such as generators or other
19 contraptions that emit heat, I think there's the potential for
20 a safe operation.

21 But I got to tell you, I've seen fires in individual
22 tents, I've seen fires in small clusters, and I've seen them in
23 large clusters. And so, it's really incumbent on those
24 individuals that are within that tent, or that tent area, to do
25 everything in their power and be very vigilant on an ongoing

WHITE - CROSS / PRINCE

1 basis, and I just haven't seen that in my experience.

2 **THE COURT:** But, theoretically, I guess, that's the
3 question -- because the ordinance, as you know, does allow for
4 multiple occupants if it's within 200 square-feet. But when
5 you start -- when you made some comment about they should be a
6 hundred feet apart, it becomes impossible to do that.

7 **THE WITNESS:** I'm looking at it from the lens of
8 co-locating from a distance that I believe is safe based on
9 radiant heat, based on the conditions I've seen in the
10 encampments.

11 **THE COURT:** And speaking of radiant heat, if there's
12 not a centralized cooking area that there is in some of these
13 encampments, and people have to heat something, what -- let's
14 say, you have two tents or three tents, what would be a safe
15 configuration to allow for some cooking, but far enough away --

16 **THE WITNESS:** I think that really depends on the site
17 itself. I couldn't speak to just a blanket, safe location
18 without seeing the identified site and location. So every
19 site, from what I've seen, is fairly different, even though
20 some of the encampments are located, you know, on the sidewalk
21 or under overpasses. I think those are some things that also
22 have to be in some consideration, is there vegetation nearby.

23 But it's the mental state, sometimes, of the encampment
24 occupants as well, and whether or not those individuals fully
25 recognize and/or are being completely responsible so they don't

WHITE - CROSS / PRINCE

1 place themselves at risk or others at risk with some of the
2 behaviors. Just simple things like cigarette butts, somebody
3 flicking a cigarette butt carelessly, can cause a tent right
4 next to it to ignite.

5 And so these are some of the dynamics. I don't know that
6 there's a one-size-fits-all. I think, the approach is to try
7 to do everything we can to reduce risk for the individuals in
8 the encampment, and for those businesses and residences and
9 individuals, themselves, who may be proximal to those
10 encampments.

11 **THE COURT:** Well, I guess what I'm getting at -- and I
12 hear what you're saying is -- but there seems to be some
13 tension between the idea of having an encampment, if there's
14 more than one camper within a certain square footage -- in this
15 case 200 square-feet, which is 15 by 14 or something -- and how
16 you can get enough space for a cooking -- because people have
17 to eat, I assume --

18 **THE WITNESS:** Yes.

19 **THE COURT:** -- cook somewhere, and yet, have multiple
20 tents. I don't know if there's enough spacing, in your view,
21 to keep within a safety margin.

22 **THE WITNESS:** You know, as Mr. Prince indicated,
23 ideally a centralized location where cooking is done and food
24 is actually distributed to individuals, that would make sense,
25 because it controls the risk; there's maybe extinguishers that

WHITE - CROSS / PRINCE

1 can be in the area. But the actual operation of something like
2 that on the ongoing basis, around the clock, day in and day
3 out, is a big challenge, much like the security of an
4 encampment would be as well.

5 **THE COURT:** Let me ask you, if you found yourself in a
6 situation, being unhoused and you needed some source of power
7 for at least your phone -- because people need to communicate
8 and stuff.

9 **THE WITNESS:** Mm-hmm.

10 **THE COURT:** What are the alternatives? I mean,
11 obviously, not tapping into a lamppost.

12 **THE WITNESS:** Right.

13 **THE COURT:** Not having a generator next to your tent.
14 Can you think of a safe way to -- source of power for
15 somebody who's --

16 **THE WITNESS:** You know, there may be limited times
17 during the day where there are -- I see agencies that provide
18 cell phone services for individuals that can come and qualify
19 for phones, and maybe those are locations where you can
20 actually do charging. It may require people to travel a little
21 ways. There is also the portable solar banks that you can use
22 to charge your phone. And, obviously, the judicious use of the
23 phone itself can extend the amount of time an individual has a
24 fully charged phone.

25 So I think the solar banks that can be charged and used

WHITE - CROSS / PRINCE

1 even when you don't have access to a direct plug, that's a
2 secondary means of ensuring you've got a backup way of powering
3 the phone until you can get back to another location to charge
4 that solar bank and/or charge the phone directly itself.

5 So there are -- I think there are some options. You have
6 to be very deliberate about it, though.

7 **THE COURT:** Okay. My last question is: We've seen
8 all the photos of the various fire hazards -- just to kind of
9 explore what Mr. Prince started to explore.

10 Are -- can you -- have you thought about or planned or
11 thought about what you could do, if not bound by an injunction,
12 to eliminate the fire hazards while not evicting the people?

13 I mean, understanding there's some proximity there, but
14 there's a lot of stuff; there's pallets, there's generators,
15 there's gas cans, there's flammable things that are -- you
16 know, trees.

17 You know, are there -- is there a list of things you think
18 you could do to mitigate that fire hazard, short of
19 restructuring the whole camp?

20 **THE WITNESS:** You know, this has been an ongoing
21 challenge that I've seen other communities, like the one I came
22 from before, you know, tackle. And it's not an easy situation
23 because there's not continuous monitoring available or
24 possible. And I think, even a singular tent, you'll start to
25 see the accumulation of debris.

WHITE - CROSS / BOYD

1 candles, smoking a cigarette, propane with barbecues, could the
2 same thing happen in somebody's home?

3 **A.** I think some of those things can happen in the home. But,
4 obviously, there are different circumstances in a structure,
5 where you have smoke detectors, you have carbon monoxide
6 detectors, you have the ability to secure items and put them
7 away, close the containers tightly and store them in proper
8 locations. So I don't know that you would see the same exact
9 type of situation.

10 But we do know that emergencies happens in someone's own
11 residential home; so I can acknowledge that, yes, that's very
12 possible.

13 But I'll give you one example: Firefighters who respond
14 to a fire involving a propane tank very seldom respond to a
15 fire involving propane tanks in the home. But we have those in
16 encampments. We have those in recreational vehicles. And
17 those particular fires involve significant risk to the
18 individuals in the encampment or in the trailer, and first
19 responders as well. I've seen individuals injured and nearly
20 killed behind their response to those types of responses.

21 **Q.** And how often do you see these fires happen in people's
22 homes? Is it like a daily basis or --

23 **A.** In my previous community, yes, daily, multiple fires
24 daily.

25 **Q.** Okay.

WHITE - CROSS / AARDALEN

1 bit since I've been in San Rafael as well.

2 Q. Did you take those pictures of the paths?

3 A. Did I take those pictures?

4 Q. And the testimony that we saw today?

5 A. No, I took some of my own photographs, but I don't believe
6 those were the pictures I took.

7 Q. Okay. So did you say that you work in San Rafael, you are
8 a San Rafael fire chief?

9 A. Yes, I am, sir.

10 MR. AARDALEN: Okay. I have no more questions.

11 THE COURT: All right. Thank you.

12 All right. Chief, you may step down. You're excused.

13 Next witness.

14 (Witness excused.)

15 MR. VON LOEWENFELDT: We call Lynn Murphy, Your Honor.

16 (Lynn Murphy steps forward to be sworn.)

17 THE CLERK: Please raise your right hand.

18 LYNN MURPHY,

19 called as a witness for the Defendants, having been duly sworn,
20 testified as follows:

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Please have a seat. Please
23 speak clearly into the microphone.

24 State your first and last name and spell it for the
25 record.

PROCEEDINGS

1 people's either disability or particular vulnerability so
 2 they're not exposed to a concrete danger. And kind of a due
 3 process concern about chaos if we don't organize this in some
 4 way.

5 So those are some of the issues that we'll talk about
 6 tomorrow. Okay?

7 So we'll see you on Zoom tomorrow at 9:00.

8 **MR. VON LOEWENFELDT:** Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 **THE CLERK:** This hearing is concluded.


11 (Proceedings adjourned at 5:29 p.m.)

12 ---000---

13 **CERTIFICATE OF REPORTER**

14 I certify that the foregoing is a correct transcript
 15 from the record of proceedings in the above-entitled matter.

16
 17 **DATE:** Tuesday, October 17, 2023

18
 19
 20 
 21

22 Ruth Levine Ekhaus, RMR, RDR, FCRR, CSR No. 12219
 23 Official Reporter, U.S. District Court
 24
 25

48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY

PUBLIC PROPERTY LOCATION: MAHON PATH, LINDARO STREET, ANDERSEN DRIVE, FRANCISCO BOULEVARD

DATE POSTED: 10/24/23

ABATEMENT DEADLINE: 10/26/23 AT 4 AM PM

POSTED BY: D. Jepson

CONTACT INFORMATION: SAN RAFAEL POLICE DEPARTMENT
415-485-3000

The City of San Rafael ("City") has determined that the structure(s) and/or equipment posted with this notice in the encampment located at or near the Public Property Location identified above is in violation of the law.

Conditions violating the code: The City Fire Chief and Chief Building Official have determined that the structure(s) and/or equipment noticed on the next page -- that consist of, in whole or in part, wood, wood pallets, loose wood, planks, or other similar construction materials, including cardboard used as construction material -- and are constructed, erected, stored, or stockpiled at the Public Property Location, are unsafe and present an imminent hazard to life, health, safety, and welfare, and must be removed.

Order to abate: All occupant(s) of the structure(s) noticed are hereby ordered to remove the noticed structure(s) from public property. All owner(s)/responsible person(s) for the noticed equipment are hereby ordered to remove the equipment from public property.

CITY TO REMOVE STRUCTURE(S) AND/OR EQUIPMENT AT ABATEMENT DEADLINE: If the noticed structure(s) and/or equipment are not removed by the above ABATEMENT DEADLINE, the City will remove them at that time or as soon thereafter as possible.

NOTICED STRUCTURE(S) AND/OR EQUIPMENT:

Unsafe structure. This structure on public property presents an imminent fire hazard. It is made, in whole or in part, of wood and/or other construction materials that are highly flammable. The structure was erected without required permits and lacks adequate egress, light, and ventilation, and is otherwise dangerous to human life and public welfare. **It cannot be made safe and must be removed.**

The City has provided (or will provide) a replacement tent for temporary shelter. This is not a notice to clear or vacate the area.

Note: The City's provision of a tent shall not serve as authorization or permission to any person to camp or encroach on public property.

DESCRIPTION:
WOOD PALLET
FOUNDATION

Unsafe equipment. This equipment is improperly and illegally stored and/or stockpiled on public property and presents an imminent fire hazard. It is made, in whole or in part, of wood and/or other construction materials that are highly flammable.

DESCRIPTION:

This notice is based on the condition of the posted structure and/or equipment and the provisions of the San Rafael Municipal Code (SRMC) and California Fire and Building Codes, including the following:

SRMC § 4.08.040(C) Administration and enforcement of the Fire Code. The fire chief shall have the authority to order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees.

California Fire Code Section § 114 Unsafe structures or equipment.

114.1 General. If during the inspection of a premises, a structure, or any building system, in whole or in part, constitutes a clear and inimical threat to human life, safety or health, the fire code official shall issue such notice or orders to remove or remedy the conditions as shall be deemed necessary in accordance with this section, and shall refer the building to the building official for any repairs, alterations, remodeling, removing or demolition required.

114.1.1 Unsafe conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress, inadequate light and ventilation, or that constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the fire code official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

114.2 Evacuation. The fire code official or the fire department official in charge of an incident shall be authorized to order the immediate evacuation of any occupied structure deemed unsafe where such structure has hazardous conditions that pose an imminent danger to structure occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the fire code official or the fire department official in charge of the incident.

114.6 Restoration or abatement. The structure or equipment determined to be unsafe by the fire code official is permitted to be restored to a safe condition. The owner, the owner's authorized agent, operator or occupant of a structure, premises or equipment deemed unsafe by the fire code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.1.5 and the California Existing Building Code.

114.7 Summary abatement. Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code.

SRMC § 12.116.010 Unsafe Structures and equipment. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

California Building Code § 116 Unsafe structures and equipment.

116.1 Unsafe Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

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SRMC § 12.105.010 Building permit required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

SRMC § 19.20.080(R) Prohibited activities. No person shall construct or erect any building, edifice, artwork or structure of any kind, permanent or temporary, or construct any public service utility, including but not limited to, any overhead wires, into, upon, through, under or across any park or building, without obtaining any and all permits required by this Code or other applicable regulations.

SRMC § 11.04.030.010(A) Encroachment permit required. It is unlawful for any person, utility or special district to encroach or to make or to cause to be made any encroachment without first having obtained the required encroachment permit or license from the director as prescribed in this chapter. The requirements herein for an encroachment permit or license shall be in addition to any other permit that may be required under this code for the work proposed.

Appeals. Appeals of determination of code violations. If you claim that the provisions of the code do not apply or that the true intent and meaning of the code section above have been misconstrued or wrongly interpreted, you may appeal from the decision of the fire chief or the building official to the city council within ten (10) days from the date of the decision.

To appeal, complete a written request for hearing and submit it to the City Clerk at city.clerk@cityofsanrafael.org or at City Hall, 1400 Fifth Avenue, Room 209, San Rafael, California 94901, within ten (10) days from the date of this notice.

ASSISTANCE AND GUIDELINES FOR REMOVAL OF STRUCTURES AND EQUIPMENT

The City has noticed the removal of unsafe structure(s) or equipment on public property. **For unsafe structures, the City has provided (or will provide) a replacement tent for shelter.** Temporary storage facilities are available for storage of personal belongings to assist individuals with their transition from an unsafe structure into a tent.

Please contact the San Rafael Police Department and ask for the “SAFE Team” at 415.485.3000 for assistance. The City will assist with removal and disposal of the structure(s) or to arrange pickup and temporary storage of personal property.

GUIDELINES FOR REMOVAL AND STORAGE OF PROPERTY

WARNING: The City will remove the structure(s) and equipment that have been noticed at this location after 48 hours. The City has provided (or will provide) any person who has been occupying a structure that has been noticed for removal with a replacement tent. The City may be able to assist with temporary storage of personal property that does not fit within the tent, as detailed below.

If the structure or equipment remains after 48 hours and the City arrives for abatement, the City will remove the structure or equipment. For personal property left in the area to be cleared, City staff will determine what is personal property to be temporarily stored and what will be disposed of immediately. Note that if the City is required to remove property, not all property will be collected for storage. The following will be discarded:

- Items that appear to have been abandoned or lack signs of ownership;
- Items that present an immediate health or safety risk, including, but not limited to
 - Toxic sharps, needles, scissors, knives
 - Chemicals, bleach, paints, oils
 - Items (including bedding and clothing) soiled by infectious materials, human waste, body fluids, mold, or mildew
 - Items infested by rodents or insects
- Perishable items or perishable food
- Illegal items or contraband
- Trash, garbage and/or debris
- Used and unused construction materials that cannot be safely stored by the City or for which the City does not have sufficient storage facilities
- Shopping carts will not be stored in their entirety. Shopping carts will, when possible, be returned to identified stores and/or the stores will be notified to retrieve them.

If personal belongings are mixed with needles, human waste, bodily fluids, or other health risks, City staff and police will not sort through or attempt to remove the health and safety risks, but will immediately dispose of all such mixed belongings.

INSTRUCTIONS FOR RETRIEVAL OF STORED PROPERTY

If personal property is collected and stored by the City, it may be retrieved within 90 days of collection at **1375 Fifth Avenue, San Rafael, CA 94901**. There is no fee. No personal identification is required. **Property that is not claimed within 90 days will be disposed of permanently.** To retrieve personal property, satisfactory proof of ownership must be provided by (1) describing the location of the property when it was collected, (2) the date and time it was collected, and/or (3) a description of the specific items that were collected. Presentation of this Notice may assist in retrieving property. Persons will not be permitted to search through stored property to determine what is or is not someone's property. Please contact the San Rafael Police Department at 415.485.3000 for more information and/or to arrange pickup and storage of personal belongings.



48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY

PUBLIC PROPERTY LOCATION: MAHON PATH, LINDARO STREET, ANDERSEN DRIVE, FRANCISCO BOULEVARD

DATE POSTED: 10/24/23

ABATEMENT DEADLINE: 10/26/23 AT 4:00 AM/PM

POSTED BY: SMITH

CONTACT INFORMATION: SAN RAFAEL POLICE DEPARTMENT
415-485-3000

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DESCRIPTION:

wood pallets
used to build
foundations
tent
ES/MSK

DESCRIPTION:

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To appeal, complete a written request for hearing and submit it to the City Clerk at city.clerk@cityofsanrafael.org or at City Hall, 1400 Fifth Avenue, Room 209, San Rafael, California 94901, within ten (10) days from the date of this notice.

ASSISTANCE AND GUIDELINES FOR REMOVAL OF STRUCTURES AND EQUIPMENT

The City has noticed the removal of unsafe structure(s) or equipment on public property. **For unsafe structures, the City has provided (or will provide) a replacement tent for shelter.** Temporary storage facilities are available for storage of personal belongings to assist individuals with their transition from an unsafe structure into a tent.

Please contact the San Rafael Police Department and ask for the "SAFE Team" at 415.485.3000 for assistance. The City will assist with removal and disposal of the structure(s) or to arrange pickup and temporary storage of personal property.

GUIDELINES FOR REMOVAL AND STORAGE OF PROPERTY

WARNING: The City will remove the structure(s) and equipment that have been noticed at this location after 48 hours. The City has provided (or will provide) any person who has been occupying a structure that has been noticed for removal with a replacement tent. The City may be able to assist with temporary storage of personal property that does not fit within the tent, as detailed below.

If the structure or equipment remains after 48 hours and the City arrives for abatement, the City will remove the structure or equipment. For personal property left in the area to be cleared, City staff will determine what is personal property to be temporarily stored and what will be disposed of immediately. Note that if the City is required to remove property, not all property will be collected for storage. The following will be discarded:

- Items that appear to have been abandoned or lack signs of ownership;
- Items that present an immediate health or safety risk, including, but not limited to
 - Toxic sharps, needles, scissors, knives
 - Chemicals, bleach, paints, oils
 - Items (including bedding and clothing) soiled by infectious materials, human waste, body fluids, mold, or mildew
 - Items infested by rodents or insects
- Perishable items or perishable food
- Illegal items or contraband
- Trash, garbage and/or debris
- Used and unused construction materials that cannot be safely stored by the City or for which the City does not have sufficient storage facilities
- Shopping carts will not be stored in their entirety. Shopping carts will, when possible, be returned to identified stores and/or the stores will be notified to retrieve them.

If personal belongings are mixed with needles, human waste, bodily fluids, or other health risks, City staff and police will not sort through or attempt to remove the health and safety risks, but will immediately dispose of all such mixed belongings.

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INSTRUCTIONS FOR RETRIEVAL OF STORED PROPERTY

If personal property is collected and stored by the City, it may be retrieved within 90 days of collection at **1375 Fifth Avenue, San Rafael, CA 94901**. There is no fee. No personal identification is required. **Property that is not claimed within 90 days will be disposed of permanently.** To retrieve personal property, satisfactory proof of ownership must be provided by (1) describing the location of the property when it was collected, (2) the date and time it was collected, and/or (3) a description of the specific items that were collected. Presentation of this Notice may assist in retrieving property. Persons will not be permitted to search through stored property to determine what is or is not someone's property. Please contact the San Rafael Police Department at 415.485.3000 for more information and/or to arrange pickup and storage of personal belongings.

[Faint, mirrored text from the reverse side of the page is visible through the paper.]



From: Camp Integrity <campintegritysanrafael@yahoo.com>

Sent: Monday, October 30, 2023 11:13 AM

To: Don Jeppson <Don.Jeppson@cityofsanrafael.org>; ADA Coordinator <Ada.coordinator@cityofsanrafael.org>; Chris Hess <Chris.Hess@cityofsanrafael.org>; mvl@wvbrlaw.com <mvl@wvbrlaw.com>

Cc: Anthony Prince <princelawoffices@yahoo.com>

Subject: Appeal: October 24th Notice To Abate Wooden Pallette Foundation at My Campsite at Camp Integrity

This is Brian Nelson. See attached appeal regarding the abatement notice on my Campsite.

Brian Nelson
Camp Integrity
CampIntegritySanRafael@yahoo.com

To:

Chris Hess
Chris.Hess@cityofsanrafael.org
City of San Rafael, City Clerk
1400 Fifth street, Room 209

Don Jeppson, Department of Public Works
Don.Jeppson@cityofsanrafael.org
Ada.coordinator@cityofsanrafael.org
City of San Rafael, City Clerk
1400 Fifth street, Room 209

CC

Michael Von Loewenfeldt
Counsel For Defendants
<mvl@wvbrlaw.com>

VIA ELECTRONIC MAIL

October 30th, 2023

RE: Appeal Disputing 48-Hour Abatement Order To Take Down My Dwelling Dwellings on October 24th 2023 and Request for Stay On Appeal

I am filing this appeal regarding the 48-Hour Notice to Abate posted by Don Jeppson on my camp on October 24th.

The notice of appealability is insufficient on the notice, because it does not give a stay on appeal. Therefore even while this appeal is pending, it appears the city can flip over my campsite at anytime. That is not genuine appealability, and this appeal should not preclude the *Ex- Parte* motion for TRO currently before Judge Chen in *Boyd v City of San Rafafael*.

The should rescinded because wooden palettes underneath a tent are not a fire hazard. They are not near an ignition source at all. I don't smoke cigarettes. There are no open flames in my tent and I don't burn candles – only battery operated lights. The national park service camps use wooden foundations for tents to stay above the ground. Judge Chen even ordered the City of

Sausalito to provide unhoused people with wooden foundations for their tents in *Sausalito/Marin Homeless Union et al v City of Sausalito*.

Conversely, wooden palette foundation is essential to my life. It keep ground water from soaking the bottom of my tent. It keeps my belongings dry and prevents mold. It stops frictional heat transference between my body and the ground because the ground acts as a heat sink without the air buffer provided by the palettes.

The extension of this notice is that anything that is flammable; i.e. literally everything such as tarps, clothes, plastic cups, cooking oil, napkins, toilet paper, cardboard, mosquito bug spray, tennis balls for my dog, stuffed animals for my dog, or even my dog himself should all be removed because they are all flammable.

Would the city like me to shave my dog to reduce fire dangers in my camp? If so can you provide a doggy sweater that has be imbued with fire retardant. Will only hairless dogs be allowed to camp moving forward?

Besides that the codes applied to our dwellings are erroneous and a legal shotgun.

SRMC 4.08.040(C) is misapplied because our dwellings have been here for a long time and are not imminent threats to public health. My dwelling is 10x more likely to get soaked with water right now. Palettes make it safer from rain, and give me peace of mind from flooding.

SRMC 12.116.010 is in applicable, because our dwellings are substantially safer then tents, protect us from upcoming rains and wind because they cannot easily be blown over.

SRMC 12.05.010 and SRMC 11.04.030.010(a) are in applicable because there is no permitting process for homeless camps in San Rafael.

SRMC 19.20.080(R) is in applicable because we are all involuntarily homeless. SRMC 19.20.080(C) is the proper statute that bans camping, and SRMC 19.20.080(C) has a clause that allows involuntarily homeless people to camp on public property.

Please rescind the notice ASAP.

Respectfully submitted

/s/ Brian Nelson
October 30th 2023

Brenna Nurmi

From: Brenna Nurmi
Sent: Wednesday, November 8, 2023 1:22 PM
To: CampIntegritySanRafael@yahoo.com
Subject: City of San Rafael - Response to Brian Nelson Request for Appeal - Hearing notice
Attachments: Brian Nelson Request for Appeal - Hearing notice (002) (002).docx

Good Afternoon Mr. Nelson,

Please see attached letter from the City of San Rafael – Response to Brian Nelson Request for Appeal – Hearing Notice.

Thank you,

Brenna Nurmi, CMC, CPMC | City of San Rafael
DEPUTY CITY CLERK II
1400 Fifth Avenue, Room 209
San Rafael, CA 94901
Office: [415.485.3066](tel:415.485.3066)



SAN RAFAEL
THE CITY WITH A MISSION

Please note: City Hall and most departments/facilities will be closed from December 25th through January 1st. We will resume all services on Tuesday, January 2, 2024



November 8, 2023

Via Email

Brian Nelson
c/o CampIntegritySanRafael@yahoo.com

RE: REQUEST FOR APPEAL OF 48 HOUR NOTICE TO ABATE HAZARD

Dear Mr. Nelson:

The City of San Rafael ("City") timely received your "Appeal Disputing 48-Hour Abatement Order" on October 30, 2023. In your request for appeal you assert you are seeking to appeal the determination that the wooden pallets underneath your tent are a hazard. You also assert that various codes cited were erroneous. At around the same time you also sought a Temporary Restraining Order in *Boyd v. City of San Rafael*, seeking to enjoin the City from abating the same hazards. The Court subsequently denied your request and reiterated that the City may seek to enforce its codes while remaining in compliance with the limited preliminary injunction. Although the City has offered assistance, you have stated you do not need the City's assistance complying.

Given the court's ruling and your apparent decision to comply, the City would like to inquire whether you still intend to proceed with your appeal. **Please confirm by November 13, 2023, if you would like to proceed with your appeal, or if you would like to withdraw it.**

Please contact me at city.clerk@cityofsanrafael.org or (415) 485-3066 regarding the above or if you have any questions.

Sincerely,

Lindsay Lara
City Clerk

From: Camp Integrity <campintegritysanrafael@yahoo.com>

Sent: Wednesday, November 15, 2023 11:46 AM

To: Brenna Nurmi <Brenna.Nurmi@cityofsanrafael.org>

Subject: Re: City of San Rafael - Response to Brian Nelson Request for Appeal - Hearing notice

Appeal is not rescinded. Please provide dates for hearing.

On Wednesday, November 8, 2023 at 01:21:42 PM PST, Brenna Nurmi <brenna.nurmi@cityofsanrafael.org> wrote:

Good Afternoon Mr. Nelson,

Please see attached letter from the City of San Rafael – Response to Brian Nelson Request for Appeal – Hearing Notice.

Thank you,

Brenna Nurmi, CMC, CPMC | City of San Rafael

DEPUTY CITY CLERK II

1400 Fifth Avenue, Room 209

San Rafael, CA 94901

Office: [415.485.3066](tel:415.485.3066)



SAN RAFAEL
THE CITY WITH A MISSION



NOTICE OF APPEAL HEARING

December 6, 2023

Via Email

Brian Nelson
c/o CampIntegritySanRafael@yahoo.com

RE: NOTICE OF HEARING – APPEAL DISPUTING 48-HOUR ABATEMENT ORDER

Dear Mr. Nelson:

The City of San Rafael (“City”) received your November 15, 2023 email confirming your intention to proceed with an appeal of the Fire Chief and Chief Building Official’s October 24, 2023, 48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property. A hearing before the City Council, which serves as the fire and building code board of appeals, has been scheduled for the following date and time:

Date: Wednesday, December 20, 2023
Time: 5:00 p.m.
Location: City Hall Council Chambers, 1400 Fifth Avenue, San Rafael, CA

The City is waiving applicable fees for filing the appeal as you would be eligible for a waiver based on your living situation.

You may participate in the hearing live in person or via Zoom. The Zoom meeting link will be provided to you in advance of the hearing.

Enclosed for your review is a copy of the City Council Appeal Hearing – Statement of Rights and Procedures. If you have any questions, please contact the City Clerk’s Office at 415-485-3066 or city.clerk@cityofsanrafael.org.

Sincerely,



City Council Appeal Hearing -Statement of Rights and Procedures

The following shall apply with respect to the appeal hearing conducted by the city council (as the board of appeals) that is scheduled under Chapters 4.08 and 12.113 of the San Rafael Municipal Code.

1. Any material from the appellant that is intended to be presented to the city council must be submitted to the city clerk at least seven (7) calendar days prior to the hearing to include it in the agenda packet.
 - a. Any material submitted after that time shall be filed with the city clerk and will be subject to public disclosure under the Ralph M. Brown Act meeting rules at Government Code section 54950 et. seq.
2. All testimony shall be given under oath.
3. Appellant may be represented by an attorney or other designated representative at the hearing.
4. Presentation of the appeal shall proceed as follows:
 - a. Appellant's statement (7 minutes)
 - b. Fire Chief and Chief Building Officials' statement (7 minutes)
 - c. Public comment (up to 2 minutes each)
 - d. Appellant rebuttal (3 minutes)
 - e. Fire Chief and Chief Building Officials' rebuttal (3 minutes)
5. Scope and authority.
 - a. Fire code appeals, SRMC section 4.08.140. Whenever the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council.
 - b. Building code appeals, SRMC section 12.113. The board of appeals considers an order, decision or determination made by the building official for the purpose of correcting an error, omission or oversight relative to the application and interpretation of the code. Nothing shall prevent the mayor or city council from appointing the mayor and city council as the board of appeals.
 - c. The scope of the appeal shall be limited to issues raised in the written appeal that pertain to the decisions or determinations of the fire chief under the fire code and chief building official under the building code.
 - d. The burden of proof is on the appellant.
 - e. The city council shall have no authority relative to the interpretation of the administrative provisions of the codes nor will the council be empowered to waive requirements of the codes. Concerning the other provisions of the

codes, the council shall not consider any matter de novo, but shall simply re-examine the decisions of the fire chief and chief building official to determine whether such decisions are supported by substantial evidence, are reasonable, are not arbitrary, and are within the intent and purpose of the codes.

6. Decision

- a. After all of the testimony is submitted, the city council shall consider the evidence, deliberate, and either make a decision or continue the matter in order for additional information to be presented. The city council shall make a decision based upon all the evidence presented.
- b. The city clerk will give written notice of the decision to the appellant, which decision shall be final.

From: Camp Integrity <campintegritysanrafael@yahoo.com>

Date: Tuesday, October 31, 2023 at 11:09 AM

To: Michael von Loewenfeldt <mvl@wvbrlaw.com>, ada.coordinator@cityofsanrafael.org
<ada.coordinator@cityofsanrafael.org>, Chris Hess <chris.hess@cityofsanrafael.org>, Don
Jeppson <don.jeppson@cityofsanrafael.org>

Subject: Electronic Transmission: Bruce Gaylord's Appeal Of Notice to Abate Wooden Pallettes
Underneath Tent

See attached

OCTOBER 30th 2023

I BRUCE GAYLORD, Hereby APPEAL
THE OCTOBER 24th "48 HOUR
NOTICE TO VACATE" PLACED
ON MY DWELLING, AND

[REDACTED]

THE ~~THE~~ PALLETES ALSO KEEP MY THINGS
DRY, KEEPS ME WARM.

[REDACTED]

/s/BRUCE GAYLORD

TO BE TRANSMITTED BY ELECTRONIC
MAIL VIA CAMP INTEGRITY @ RAFAEL@YAHOO.COM

Bruce Gaylord
10/30/23



November 14, 2023

Via Email

Bruce Gaylord
c/o robbiepowelson@gmail.com
chaplain@streetchaplancy.org
campintegritysanrafael@yahoo.com

RE: [REDACTED]

Dear Mr. Gaylord,

[REDACTED]

Thereafter, on October 31, 2023, the City received an “appeal” of a “48-Hour Notice to Vacate,” from an email address of campintegritysanrafael@yahoo.com, in which you requested [REDACTED] in that request, you assert [REDACTED] and that the pallets keep your things dry and warm.¹

[REDACTED]

¹ In this October 31, 2023 correspondence, you seek [REDACTED] but do not assert any basis for appeal of the City’s Notice. Therefore, the City considers your correspondence as a [REDACTED] and not an appeal of the Notice.

Bruce Gaylord
November 14, 2023
Page 2

To be clear, the City’s Notice is not a “Notice to Vacate”. The Notice expressly states: *“This is not a notice to clear or vacate the area.”* The City has no plan or intention of “flipping over” your campsite. Nor does the City seek to “take any adverse actions against” you. The only requirement of the Notice is to remove the wooden pallets from your structure.

Furthermore, the City already offered you (and all other persons who received the Notice) with assistance to remove the wooden pallets from your structure. The Assistance and Guidelines for Removal of Structures and Equipment, posted with the Notice on October 24, 2023, states clearly:

“Please contact the San Rafael Police Department and ask for the ‘SAFE Team’ at 415.485.3000 for assistance. The City will assist with removal and disposal of the structure(s) or to arrange pickup and temporary storage of personal property.”

Lastly, the City’s Notice is limited to flammable, wooden materials. You may replace the wooden pallets with pallets made of plastic or other non-flammable materials.

The City has no record of receiving any phone call from you for assistance.² Please email or call me at the number below by Monday, November 20, 2023, to arrange for assistance and the City will make reasonable arrangements to assist you to comply with the Notice. If you do not contact the City for assistance by that date, we will assume that you do not require assistance. The City will conduct a re-inspection of your structure to ensure that the wooden pallets have been removed as noticed.

[Redacted]

[Redacted]

² Indeed, rather than call for assistance which the City offered to you, you admitted to a San Rafael Police Department officer that, on October 26, 2023, you went to City Hall and dumped three gallons and three liters of urine in the hallway in front of the Mayor’s Office because you were apparently angry about receiving the Notice to remove your pallets. The Mayor has since obtained a workplace violence restraining order against you due to this incident.

Bruce Gaylord
November 14, 2023
Page 3

If you have any questions [REDACTED] please contact me at
(415) 485-3357 or Don.jeppson@cityofsanrafael.org.

Sincerely,

/s/ Don Jeppson

DON JEPPSON
ADA Coordinator

Enclosures:

- (1) [REDACTED]
- (2) Appeal of 48-Hour Notice to Vacate
- (3) 48-hour Notice of Removal of Hazardous Structures and Equipment and photo of your structure
- (4) [REDACTED]

Bruce Gaylord
<CampIntegritySanRafael@Yahoo.com>

To: Don Jeppson, ADA Coordinator to San Rafael
<Ada.coordinator@cityofsanrafael.org>
<don.jeppson@cityofsanrafael.org>

November 27th 2023

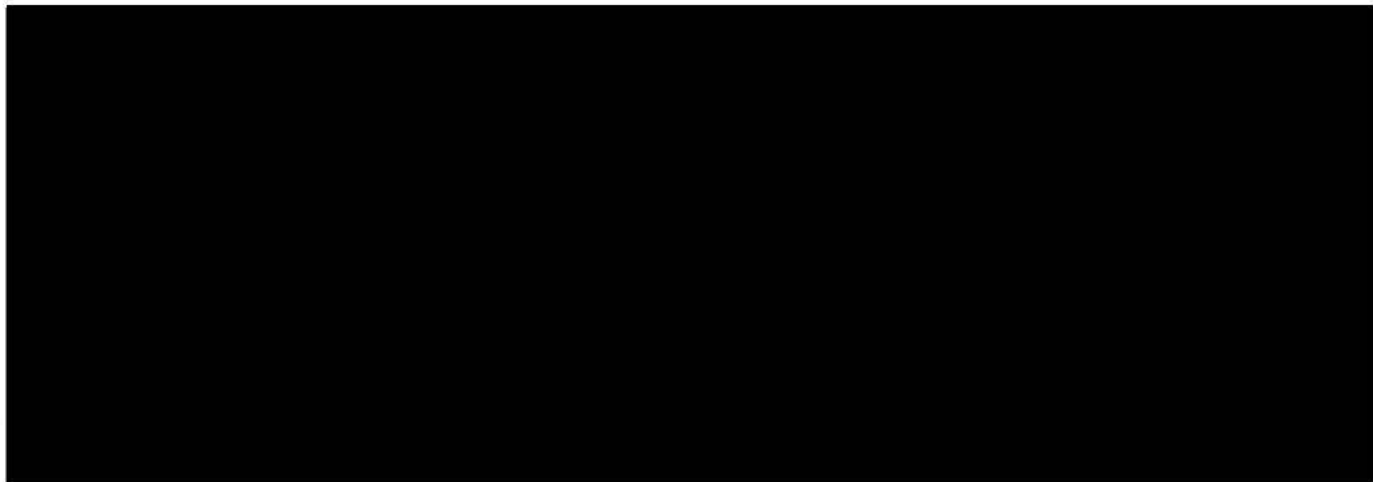
**Appeal [REDACTED] Constructive Denial of My
Abatement Appeal To The 48 Hour Notice To Abate an Unauthorized Structure**


On [REDACTED] October
31st I sent an appeal for a 48 abatement notice placed on my tent.

The City of San Rafael Has Failed to Respond To My Appeal To Abatement Notice

Don Jepson claims at Footnote 1 "In this October 31, 2023 correspondence, you seek [REDACTED]
[REDACTED] but do not assert any basis for appeal of the City's Notice. Therefore, the City
considers your correspondence as a [REDACTED]
and not an appeal of the Notice." . That is false. My request is both an appeal to the notice, and
[REDACTED] I still demand a appeal and a hearing on the abatement
notice.

I need the palettes to keep my belonging of the ground and dry during the rain. It also allows
me to stay warm, and when I get up from bed the palettes give me the necessary seat for me to
put on my boots.





FRCP Rule 65 Notice

You are hereby noticed that if the City intends to take my palettes, I will seek immediate *Ex-Parte* relief or for a preliminary injunction in US District Court.

Bruce Gaylord

11-27-23

/s/ Bruce Gaylord



City Council Appeal Hearing -Statement of Rights and Procedures

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1. Any material from the appellant that is intended to be presented to the city council must be submitted to the city clerk at least seven (7) calendar days prior to the hearing to include it in the agenda packet.
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2. All testimony shall be given under oath.
3. Appellant may be represented by an attorney or other designated representative at the hearing.
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 - a. Appellant's statement (7 minutes)
 - b. Fire Chief and Chief Building Officials' statement (7 minutes)
 - c. Public comment (up to 2 minutes each)
 - d. Appellant rebuttal (3 minutes)
 - e. Fire Chief and Chief Building Officials' rebuttal (3 minutes)
5. Scope and authority.
 - a. Fire code appeals, SRMC section 4.08.140. Whenever the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council.
 - b. Building code appeals, SRMC section 12.113. The board of appeals considers an order, decision or determination made by the building official for the purpose of correcting an error, omission or oversight relative to the application and interpretation of the code. Nothing shall prevent the mayor or city council from appointing the mayor and city council as the board of appeals.
 - c. The scope of the appeal shall be limited to issues raised in the written appeal that pertain to the decisions or determinations of the fire chief under the fire code and chief building official under the building code.
 - d. The burden of proof is on the appellant.
 - e. The city council shall have no authority relative to the interpretation of the administrative provisions of the codes nor will the council be empowered to waive requirements of the codes. Concerning the other provisions of the

codes, the council shall not consider any matter de novo, but shall simply re-examine the decisions of the fire chief and chief building official to determine whether such decisions are supported by substantial evidence, are reasonable, are not arbitrary, and are within the intent and purpose of the codes.

6. Decision

- a. After all of the testimony is submitted, the city council shall consider the evidence, deliberate, and either make a decision or continue the matter in order for additional information to be presented. The city council shall make a decision based upon all the evidence presented.
- b. The city clerk will give written notice of the decision to the appellant, which decision shall be final.



NOTICE OF APPEAL HEARING

December 6, 2023

Via Email

Bruce Gaylord
c/o CampIntegritySanRafael@yahoo.com
chaplin@streetchaplaincy.org
robbiepowelson@gmail.com

RE: NOTICE OF HEARING – APPEAL DISPUTING 48-HOUR ABATEMENT ORDER

Dear Mr. Gaylord:

The City of San Rafael (“City”) received your November 27, 2023 letter confirming your intention to proceed with an appeal of the Fire Chief and Chief Building Official’s October 24, 2023, 48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property. A hearing before the City Council, which serves as the fire and building code board of appeals, has been scheduled for the following date and time:

Date: Wednesday, December 20, 2023
Time: 5:00 p.m.
Location: City Hall Council Chambers, 1400 Fifth Avenue, San Rafael, CA

The City is waiving applicable fees for filing the appeal as you would be eligible for a waiver based on your living situation.

You may participate in the hearing live in person or via Zoom. The Zoom meeting link will be provided to you in advance of the hearing. **If you choose to attend in person, per the terms of your restraining order, you must contact the City Clerk’s Office at least 24 hours in advance of the hearing in order to request a Police Officer escort to the hearing.**

Enclosed for your review is a copy of the City Council Appeal Hearing – Statement of Rights and Procedures. If you have any questions, please contact the City Clerk’s Office at 415-485-3066 or city.clerk@cityofsanrafael.org.

Sincerely,

Appellant Brian Nelson

Camp Integrity, 773 Lincoln Ave
<CampIntegritySanRafael@yahoo.com>
San Rafael CA
415-879-0766

Appellant: Bruce Gaylord

Camp Integrity, 773 Lincoln Ave
<CampIntegritySanRafael@yahoo.com>
San Rafael CA
415-532-4612

To: City of San Rafael
Lindsay Lara, City Clerk
1400 Fifth Avenue
San Rafael CA 94901
lindsay.lara@cityofsanrafael.org

City Attorney, Rob Epstein
1400 Fifth Avenue
San Rafael CA 94901
Rob.epstein@cityofsanrafael.org

[San Rafael City Council](#)
1400 Fifth Avenue
San Rafael CA 94901
<Kate.Colin@cityofsanrafael.org>
maika@cityofsanrafael.org,
eli.hill@cityofsanrafael.org,
maribeth.bushey@cityofsanrafael.org,
rachel.kertz@cityofsanrafael.org,

December 12th, 2023

VIA ELECTRONIC MAIL

Supplemental Evidence “RE: NOTICE OF HEARING – APPEAL DISPUTING 48-HOUR ABATEMENT ORDER” For The Hearings of Bruce Gaylord and Brian Nelson On December 20th, 2023.

December 12th, 2023

Dear City Officials,

Both of us, Brian Nelson and Bruce Gaylord, have a hearing regarding the palettes underneath our tents at Camp Integrity on December 20th at 5:00pm.

Because many of the same issues present themselves in both of our appeals, we are supplementing the record jointly with this document with its exhibits to be considered for both of our appeal hearings on December 20th.

Also we would like to appoint Robbie Powelson and Megan Brizzola, RN. to testify at our hearings with us.

This document and attached exhibits should be put in the record for both of our appeals.

The authorities that are referenced with hyperlinks are hereby incorporated as exhibits that should be incorporated into the record. If you have difficulty accessing the hyperlinks, please let us know and we can send you a PDF copy.

Sincerely,
Brian Nelson
Bruce Gaylord

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Evidentiary Authorities

1. “Minimum Standards in Shelter, Settlement and Non-Food Items” (2019) *United Nation Charter on Minimum Standards For Humanitarian Responses*. Accessible at:
https://sheltercluster.s3.eu-central-1.amazonaws.com/public/docs/8.minimum-standards-in-shelter_settlement-and-non-food-items.pdf
2. “Emergency shelter standard” (2019) *United Nations High Commission of Refugees*. Accessible at: <https://emergency.unhcr.org/emergency-assistance/shelter-camp-and-settlement/shelter/emergency-shelter-standard#:~:text=Shelters%20must%20provide%20protection%20from,materials%20are%20best%2C%20if%20available>.
3. MarinMap Site Parcel Report Property ID: 013-021-39. Accessible at:
<https://www.marinmap.org/Geocortex/Essentials/MMREST/REST/TempFiles/Parcel%20Detail.pdf?guid=2383c147-973e-42f7-908a-394c9e4d7e90&contentType=application%2Fpdf>
4. Soil Temperatures San Rafael (2023) <https://www.greencastonline.com/tools/soil-temperature>
5. PROPERTY TABLES AND CHARTS (2010) Wright State University.
<https://cecs.wright.edu/people/faculty/sthomas/htappendix01.pdf>
6. Testing Sleeping Bags According to EN 13537:2002: Details That Make the Difference:
<https://www.tandfonline.com/doi/pdf/10.1080/10803548.2010.11076840>
7. Hypothermia Continuing Education. (2022) *Center for Disease Control*.
<https://www.ncbi.nlm.nih.gov/books/NBK545239/>
8. Cold Stress – Cold Related Illnesses (2018) *Center for Disease Control*
<https://www.cdc.gov/niosh/topics/coldstress/coldrelatedillnesses.html#Chilblains>
9. Cold Injuries : The Chill Within (2004) *Med J Armed Forces India*. 2004 Apr; 60(2): 165–171. Published online 2011 Jul 21. Published online 2011 Jul 21. doi: 10.1016/S0377-1237(04)80111-4 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4923033/>

10. Declaration of Megan Brizzola, RN. [Attached]

Appeal In A Nutshell

Camp Integrity (e.g. Mahon Creek Path) has been designated by the City as a place for us to camp pursuant to the Courts order in *Boyd et al v City of San Rafael et al* 3:23-cv-04085-EMC(RMI). The City had a choice as to where they wanted people to camp, and chose to put the location here pursuant to that order.

This appeal is based on two main arguments. First, Camp Integrity is located in a flood zone and the City's own ordinances require that residences in flood zones must sit on elevated foundations. Second, that sleeping on a palette is inherently safer than sleeping on the ground and pervasive threats of illness, injury, and death caused by being homeless and forced to live in a tent with no plumbing, heating, or electricity.

City's Own Laws Demands That Tents On The Mahon Creek Path Should Have Raised Foundations Because It Is Located In A Flood Zone.

We are located on parcel 013-021-39, owned by the City of San Rafael¹. The camp is in a flood zone, rated "AE".

Our tents are manufactured, and they are our homes. SRMC 18.50.040 sets out the standards for manufactured homes. SRMC 18.50.040 (C) holds that:

¹ Marin Site Map Parcel Report. *Marin Maps*.
<https://www.marinmap.org/Geocortex/Essentials/MMREST/REST/TempFiles/Parcel%20Detail.pdf?guid=2383c147-973e-42f7-908a-394c9e4d7e90&contentType=application%2Fpdf>

“All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, AE, V1-30, V, and VE on the community's Flood Insurance Rate Map that are not subject to the provisions of Section 18.50.040 A will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1.Lowest floor of the manufactured home is at or above the base flood elevation, or

2.Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches (36") in height above grade.

Because our camps are located in a flood zone AE, our use of pallettes to elevate our tents are in substantial compliance with San Rafael’s building code. The City of San Rafael acknowledges through its laws the pervasive danger of flooding for people living in zones AE. We are in danger of flooding, and there for the raised pallettes should be encouraged by the City – not repudiated.

Sleeping On Barren Ground At Night Is Inherently Is Inherently Dangerous. 50% of Heat Loss Is Caused By Physical Contact With The Ground While Sleeping. Sleeping On An Elevated Palette Reduces Heat Loss 50 to 100 More Than Sleeping on Soil. This Fact Is Upheld Authoritatively By The United Nations Minimum Standards For Campsites.

The City acknowledges the dangers of flooding – but even without the flood zone raised flooring under shelters are essential survival mechanism for people living outside. Wooden pallettes are the most accessible, freely accessible material for completing this vital purpose.

“when sleeping on cold cement or ground, a large percentage of body temperature is lost through conductive heating with the ground or mattress. Therefore, in order to stay warm at night sleeping on a raised bed significantly increases heat retention of the body by reducing the rate of conductive loss of body heat. This is also why mattresses use springs and insulative materials to reduce heat conductivity and insulate the person’s body from the ground. “ Dec Brizzola, RN. ¶6

When displaced people are living in camps, the United Nations High Commission on Refugees “UNHCR” states that “The roof should be sloped for rainwater drainage with large overhangs, except in locations vulnerable to high winds. The shelter construction material should be lightweight with a low thermal capacity, such as timber. Use **raised floors** to prevent water entering the covered living area” ². “Surface-water drainage should be provided around the shelter and **raised floors** should be used to minimize the risk of water due to rain or snow melt from entering the covered area. The loss of body heat through the floor should be minimized by ensuring that the floor is insulated and through the use of insulated sleeping mats, mattresses or **raised beds**. *Id.* Also the United Nations recommends wood structures in these campsites.(Add Citation)

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1. ² “Emergency shelter standard” (2019) *United Nations High Commission of Refugees*. Page 261 Accessible at: <https://emergency.unhcr.org/emergency-assistance/shelter-camp-and-settlement/shelter/emergency-shelter-standard#:~:text=Shelters%20must%20provide%20protection%20from,materials%20are%20best%2C%20if%20available>.

The United Nations also states that “It is extremely important to protect the human body from heat loss. Particularly during sleep, it is important to be able to keep warm by retaining body heat with blankets, sleeping bags, clothing and shoes.”³

“The other reasons raised beds are required in our facilities is because sleeping on the ground can cause musculoskeletal injuries to compromised or even healthy individuals, especially the elderly and people recovering from injuries. This is because the ground is hard, has no “give” and does not conform to one’s body shape. The physical resistance the body experiences while sleeping on the ground can result in musculoskeletal injury as there is constant stress to bones and joints.” Dec Brizzola, RN. ¶7

UNHCR is logical. Raised floor keeps people dry because water draining under the tent or percolating up from saturated soil cannot climb in the living area.. This prevents mildew, mold, and heat loss from wet flooring and blanketing. The body loses heat from wet clothes and blankets is around double those. Without elevated flooring, items easily become wet – causing mold, mildew, and the illnesses that are associated with them.

2. ³ “Minimum Standards in Shelter, Settlement and Non-Food Items” (2019) *United Nation Charter on Minimum Standards For Humanitarian Responses*. Accessible at:
https://sheltercluster.s3.eu-central-1.amazonaws.com/public/docs/8.minimum-standards-in-shelter_settlement-and-non-food-items.pdf

The City of San Rafael knows this. San Rafael Municipal Code for mobile homes *requires* mobile homes have foundations (See SRMC 14.16.240).

Pallettes Prevent Conductive Heat Transference. Pallettes Position The Body On A Platform That Is Body Temperature, As Opposed To Sleeping On The Ground Which Can Be As Cold as 53 Degrees Fahrenheit.

Secondly raised flooring, reduces the body's heat loss by preventing conductive heating loss between the body and the earth. The human body maintains a normal core temperature is (96.8 °F)). The average soil temperature in San Rafael during December 53 Degrees Fahrenheit⁴ (a difference of 43.8 degrees). Sleeping on the soil as we are at Camp Integrity, is essentially to sleep on a cold slab that acts as heat sink for the body.

“Based on my training and experience, at a minimum all residents must be able to have raised pallettes or some structure that lifts them off the ground when sleeping on the floor or on the street. Sleep on the ground impedes healing and can inflict further injury to vulnerable individuals, especially those who already have musculoskeletal issues such as arthritis. The ground exposes individuals to insects, bacteria and viruses and fungi which can result in illness, injury, and death.” Dec Brizzola ¶9

⁴ <https://www.greencastonline.com/tools/soil-temperature>

This fact is empirical. one only needs to look at the thermal conductivity of these materials. Thermal conductivity is the rate a material transfers heat using watt per meter-kelvin ($W/(m \cdot K)$). A watt per meter per K ($W \cdot m^{-1} \cdot K^{-1}$) is a derived SI unit of thermal conductivity. $1 W \cdot m^{-1} \cdot K^{-1}$ shows that in a material one joule of energy per one second (that is one watt) moves through the distance of one meter due to a temperature difference of one kelvin. The associate unit of energy to the watt is the joule, with symbol J. One watt is equal to one joule per second. $1W = 1 J/s$.

The thickness of the palette wood is only 12-22 mm so the heat lost to the wood palette is “negligible” (see Testing Sleeping Bags According to EN 13537:2002: Details That Make the Difference, Page 208). Therefore, we compare the heat conductive properties of air versus the soil using Wright State Universities tables regarding heat conductivity⁵:

Soil

Specific Heat = 1900 (wet= 2200)⁶

Air (at 50 degrees Farenheit e.g 10 degrees celcius)

Thermal Conductivity = 0.02439⁷

-
1. ⁵ PROPERTY TABLES AND CHARTS (2010) Wright State University.
<https://cecs.wright.edu/people/faculty/sthomas/htappendix01.pdf>

⁶ id

⁷ Id page 884

This means based on the heat conductivity tables alone, that sleeping on the ground requires conducts 50 to 100 times more heat than sleeping on the ground – because sleeping on a hollow palletes means the largest insulative material by volume is air.

By logical extension, the body must expending 50 to 100 times the amount caloric to maintain body temperature. Wet soil, which is the current state of the all soil in the City because of the rain is 100 times more heat conductive than air. Dry soil is 50 more times conductive. This is not insignificant. Watts per meter kelvin can also be measured by biological equivalent we are all familiar with: calories.

This finding is supported by Mrs. Brizzola, RN. “Similarly the loss of the palletes is dangerous because it will cause loss of body heat. The palletes significantly reduce conductive heat loss by providing an air buffer between the body and ground. The air conducts less heat than the ground and therefore acts as insulation against heat loss. If you lose body heat and you are sleeping outside you can easily suffer cold related injury, and even death.” Dec Brizzola, RN. ¶12

[Increased Risk of Death and Injury By Hypothermia Will Result From Deprivation of Palletes](#)

Hypothermia deaths are common cause of injury and death among unhoused people, even in places in California. In 2021, fourteen people experiencing homelessness died of hypothermia in

Los Angeles⁸. At least 8 unhoused people died in Sacramento in 2022 due to hypothermia⁹. Even without snow, hypothermia is a serious threat.

Mrs. Brizzola, RN. “If you lose body heat and you are sleeping outside you can easily suffer cold related injury, and even death. This is also especially dangerous for people with other underlying medical conditions, or who use alcohol. Underlying health conditions can reduce the amount heat the body heats, and drinking will further cause the body to also lose heat, resulting in hypothermia and circulation problems. Circulation problems can lead to cardiac problems as well as a plethora of other medical issues.” Dec Brizzola RN., ¶12-13

“Persistent exposure to the cold can cause perniois, trenchfoot, and other health complications. These health issues can become very serious, especially for people without accessible and effective health care. These complications can lead to infection, sepsis, and organ failure which can cause irreparable injury or death.” Dec Brizzola RN., ¶17

Hypothermia is not hard to get – it occurs when the bodys core temperature falls about three degrees to 95 degrees fahrenheit¹⁰. “Subacute hypothermia often occurs from exposure to cool weather (below 10 C (50 F)) outdoors, in combination with wind chill, wet or inadequate clothing, fatigue, and/or inadequate nutrition.” *Id.*

⁸ *At least 14 unhoused people froze to death in LA last year, records reveal (2021) The Guardian.*

<https://www.theguardian.com/us-news/2022/oct/04/hypothermia-deaths-of-unhoused-in-los-angeles-rise-sharply>

⁹ *A record eight homeless people froze to death in Sacramento last year, report shows. (2022) The Sac Bee*

<https://www.sacbee.com/news/local/article265389416.html>

¹⁰ *Current Trends Hypothermia – United States (2001) Center for Disease Control.*

<https://www.cdc.gov/mmwr/preview/mmwrhtml/00001231.htm>

If the City of San Rafael is ordering us to sleep on the ground (already at 53 degrees Fahrenheit). We are homeless and economically destitute and living outside, meaning that it is likely that issues relating to wet or inadequate clothing, fatigue, inadequate nutrition and involuntary exposure to wind chill for indefinite periods of time means its likely that we will in fact experience subacute hypothermia. This could be pushed into more urgent issues with a frost or other likely weather issue this winter.

Moderate hypothermia causes “hunger, nausea, fatigue, shivering, and pale-dry skin..., increased blood pressure, tachycardia, and tachypnea, a decline in cognitive abilities, memory, and judgment, with some experiencing ataxia and dysarthria, and “cold diuresis” due to peripheral vasoconstriction leading to increased diuresis and volume depletion¹¹

This increases the likelihood of cold injuries, such as trench foot. Trench foot is caused by prolonged immersion of the feet in cool, wet conditions. This can occur at temperatures as high as 60°F if the feet are constantly immersed in cold wet conditions “Skin tissue begins to die because of lack of oxygen and nutrients and due to buildup of toxic products. The skin is initially reddened with numbness, tingling pain, and itching, then becomes pale and mottled and finally dark purple, grey or blue. The affected tissue generally dies and sloughs off. In severe cases trench foot can involve the toes, heels, or the entire foot. If circulation is impaired for over 6 hours there will be permanent damage to tissue. If circulation is impaired for over 24 hours the victim may lose the entire foot. Trench foot causes permanent damage to the circulatory system making the person more prone to cold related injuries in that area. A similar phenomenon can

¹¹ Hypothermia Continuing Education. (2022) *Center for Disease Control*.
<https://www.ncbi.nlm.nih.gov/books/NBK545239/>

occur when hands are kept wet for long periods of time. The damage to the circulatory system manifests as Raynaud's phenomenon.”¹²

Chillblains (perniosis) are also another injury that can result from being consistently cold but non-freezing temperatures. “Chilblains are caused by the repeated exposure of skin to temperatures just above freezing to as high as 60 degrees F. The cold exposure causes damage to the capillary beds (groups of small blood vessels) in the skin. This damage is permanent and the redness and itching will return with additional exposure. The redness and itching typically occurs on cheeks, ears, fingers, and toes.”

(<https://www.cdc.gov/niosh/topics/coldstress/coldrelatedillnesses.html#Chilblains>) This can result in swelling, blistering, and ulceration that can cause open sores and wounds that can easily be infected while living outside.

Indeed, its quite possible that just sleeping one night in cold wet conditions could expose us to trench foot. If we were on the wet ground at 53 degrees for over six hours. Not to mention that we are out here almost 24/7 for the indefinite future – these dangers are real.

Denial of Appeal Would Violate Eighth Amendment of The US Constitution and Article I § 17 of California State Constitution

The Eighth Amendment states that, “[e]xcessive bail shall not be required, nor excessive fines

¹² Cold Injuries : The Chill Within (2004) Published online 2011 Jul 21. doi: 10.1016/S0377-1237(04)80111-4 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4923033/>

imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The latter clause has been interpreted as including substantive limits upon what conduct may be criminalized. *Martin*, 920 F.3d at 615. Specifically, the state may not criminally punish an “involuntary act or condition if it is the unavoidable consequence of one’s status or being.” *Id.* at

616. The *Martin* court explained that “[h]uman beings are biologically compelled to rest,” and doing so in public is unavoidable if a person is unhoused and has nowhere else to go. *Id.* at 617. Accordingly, an ordinance would be unconstitutional “insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them.” *Id.* at 604. In *Grants Pass*, the Ninth Circuit affirmed the holding of *Martin*, and clarified that the protection applied to individuals that are involuntarily unhoused. 72 F.4th at 896. *Grants Pass* establishes that cities cannot enforce anticamping ordinances to the extent that they prohibit “the most rudimentary precautions” a homeless person might take against the elements, i.e., bedding or tents. 72 F.4th at 891. (quoting *Boyd et al v City of San Rafael et al* 3:23-cv-04085-EMC(RMI) Dkt. No 98)

In the appeal at hand, raised flooring provided by palettes is as an intrinsic part of “bedding” as was contemplated in *Johnson v Grants Pass*. Sleeping on a palette reduces loss of heat to the ground 50 to 100 times more effectively than sleeping on the ground (See *supra*). The lack of conductive heating loss prevents the human body from being cold – preventing common cold related illness and death that can result from perniois, immersion foot syndrome, and hypothermia. Palettes also prevents water and soil from contaminating the permeable membrane

of the bottom part of the tent to prevent mold and mildew from developing that is otherwise impossible.

Although we have a civil appellate process here, the Eighth Amendment still applies. “Martin applied to civil citations where, as here, the civil and criminal punishments were closely intertwined.” *Quoting from Johnson v Grants Pass*. If the City denies the appeal, criminal sanctions will be place on appellees to enforce the City’s decision (See SRMC 4.08.040(B), SRMC 12.116.010, and enforcement codes SRMC 1.40, SRMC 1.40.040). The City is not offering any alternative shelter or even amelioration of the foreseeable dangers it exposing us to. Therefore a denial of the appeal will result in the City running afoul the Eighth Amendment as a policy and practice – which would also incur liability under *Monell v. Department of Soc. Svcs.* :: 436 U.S. 658 (1978).

Denial of Appeal Would Violate The Fourteenth Amendment Substantive Due Process and State Created Danger Doctrine and Article I § 1 California State Constitution

The Ninth Circuit recognizes a substantive due process violation under the Fourteenth Amendment where a state actor “affirmatively place[s] an individual in danger by acting with deliberate indifference to [a] known or obvious danger in subjecting the plaintiff to it.” Kennedy v. City of Ridgefield, 439 F.3d 1055, 1062 (9th Cir. 2006). Deliberate indifference exists where the defendant “disregard[s] a known or obvious consequence of [its] action.” Patel v. Kent Sch. Dist., 648 F.3d 965, 974 (9th Cir. 2011). (quoting Boyd et al v City of San Rafael et al 3:23-cv-04085-EMC(RMI) Dkt. No 98).

Taking away the palettes is a foreseeable danger. 50% of the body temperature while sleeping is lost to conductive heat transference from sleeping on the ground (supra). Sleeping on a palette reduces loss of heat to the ground 50 to 100 times more effectively than sleeping on the ground (supra). The lack of conductive heating loss prevents the human body from being cold – preventing common cold related illness and death that can result from pernio, immersion foot syndrome, and hypothermia(supra). Palettes also prevents water and soil from contaminating the permeable membrane of the bottom part of the tent to prevent mold and mildew and associated problems from developing that is otherwise impossible – which is why the United Nations mandates campsites have raised beds in all humanitarian responses.

Deliberate indifference exists here, because the City makes no representation that it will provide commensurate, durable alternatives to sleeping on the palettes. The City makes no representation of providing accessible indoor accommodations. We are currently in the dead of winter where frost and cold are pervasive. Therefore, denying this appeal and enforcing this would constitute a state created danger.

Denial of Appeal Would Violate The Fourteenth Amendment State Substantive Due Process

“Substantive due process ‘forbids the government from depriving a person of life, liberty, or property in such a way that “shocks the conscience” or “interferes with the rights implicit in the concept of ordered liberty.”’” *Corales v. Bennett*, 567 F.3d 554, 568 (9th Cir. 2009) (quoting *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998)); *United States v. Salerno*, 481 U.S. 739, 746

(1987); *see also* *Brittain v. Hansen*, 451 F.3d 982, 990-91 (9th Cir. 2006). “Substantive due process is ordinarily reserved for those rights that are ‘fundamental.’” *Id.* at 990 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721-22 (1997)).

Denial of Appeal Would Violate The Fifth Amendment

“A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick v. Township of Scott, Pa.*, 139 S. Ct. 2162, 2167 (2019). “The government commits a physical taking when . . . the government physically takes possession of property without acquiring title to it.” *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021) (citing *United States v. Pewee Coal Co.*, 341 U.S. 114, 115-17 (1951) (plurality)). This “sort[] of physical appropriation constitute[s] the ‘clearest sort of taking,’ and we assess [it] using a simple, per se rule: The government must pay for what it takes.” *Id.* (first quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001), then citing *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Plan. Agency*, 535 U.S. 302, 322 (2002)).

The City will be taking our necessary protection from the cold, water, and mold without any just compensation or alternative replacements – and would violate the Fifth Amendment.

Denial Of Appeal Would Also Violate Fourteenth Amendment Procedural Due Process, Void For Vagueness and Equal Protection of The Law Because Chapters 4.08 and 12.113 of the San Rafael Municipal Code are Vague and Inapplicable To Our Situation

All across the City of San Rafael, businesses on a regular basis discard palletes openly. Across the city are wooden structures, wooden fences in proximity to homes. In Gerstle Park, the city has a public barbeque pit that residents light large fires in that sits within feet of trees and wooden benches.

In this case, we have a few wooden palletes underneath our tents. Our tents do not have ignition sources nearby, nor a barbeque pit. The ground is wet from winter rain. Yet, for some reason, the City has applied Chapters 4.08 and 12.113 of the San Rafael Municipal Code against these modest foundations.

Chapter 4.08 is inapplicable because no where in that code section does it prohibits wooden palletes underneath tents. It does not proscribe that wood, even loose wood in business or park benches or fences, to be fire hire hazards.

4.08 proscribes the Fire Marshall "To provide for permits as prescribed herein". We as people experiencing homelessness cannot obtain permits for any of our living environments. If the city does have a permit process, then it should present it.

For the same reason SRMC 12.113 is in applicable. Wooden pallets underneath tents are not buildings. There is no permit process for a wooden palette, and the building code proscribes for the rules of permits when constructing buildings. We again do not have an opportunity to

apply for permits. There is no provision in the building code for palettes underneath tents. Hence, again there is no applicable law.

This brings up an issue of due process and equal protection. The City allows wooden palettes to be thrown about on private property by businesses, and has wooden benches near fire pits and trees. But here, we are being singled out for enforcement that is different than the general public and does not serve a rational purpose.

Furthermore, putting us under the provisions of the Fire Code and Building Code brings up due process issues – because we cannot get permits for pallet foundations because the city has no permitting process for them.

Denial of Appeal And Seizure of The Palettes Would Be Negligent

Finally, the City of San Rafael has created a program at the Mahon Creek Path through the order in *Boyd v City of San Rafael*. The City has had significant influence, and has decided that people will be living at the Mahon Creek Path under certain conditions. The city has promulgated rules and services at the site which we rely on. We give the city valuable consideration by following the rules, maintaining clean campsites.

As such the City has a duty of care not to promulgate rules in a negligent manner that deprives of us health, safety, and our constitutional rights. Depriving us of palettes without providing an alternative, breaches that duty of care by putting us at a greater risk of harm.

Prayer for Relief and Request for Stay of Enforcement Until January 8th, 2024

We request the City rescind the notices and end its policy and practice of abating the palettes people have underneath their tents.

If this appeal is denied, appellees intend to seek a writ of mandate and temporary restraining order under CCP 1094.5 and 42 USC § 1983. To avoid having to file a lawsuit in the middle of the holidays, appellees request that if the appeal is denied that enforcement will be stayed until the next case management conference in *Boyd et al v City of San Rafael et al* 3:23-cv-04085-EMC(RMI) scheduled for January 8th.

Verification

/s/ Bruce Gaylord 12/12/2023

/s/ Brian Nelson 12/12/2023

1 Bruce Gaylord
PO Box 2217
2 San Rafael CA, 94912-2217
<CampIntegritySanRafael@yahoo.com>
3

4 Brian Nelson
PO Box 2217
5 San Rafael CA, 94912-2217
CampIntegritySanRafael@yahoo.com
6

7 CITY OF SAN RAFAEL
8 ABATEMENT APPEAL HEARING
9

10 **RE: NOTICE OF HEARING – APPEAL**
11 **DISPUTING 48-HOUR ABATEMENT ORDER” For** DECLARATION OF MEGAN BRIZZOLA, RN. IN
12 **The Hearings of Bruce Gaylord and Brian Nelson On** SUPPORT OF APPEAL
13 **December 20th, 2023.**

14 I Meg Brizzola do declare,

- 15 1. I have full knowledge of what is in this declaration and if called to testify could and
16 would do so competently.
17
18 2. I am a Registered Nurse (RN) with the State of California. I have been a nurse 44 years
19 and received my Associate of Science in Nursing from the University of the State of New
20 York in 1985. I have been practicing nurse ever since.
21
22 3. I am currently employed as a psychiatric nurse at a long term care facility for psychiatric
23 patients in Marin County after retiring from the City and County of San Francisco in
24 2020 after working there for over forty years. In my role as treatment nurse my primary
25 focus is maintaining a “medical baseline” for patients. Medical baselines are medically
26 ascribed standards of providing patients with the necessary medication, food, water,
27 warmth, bedding, and other provisions to maintain physical and psychiatric health,
28

1 facilitate healing and promote recovery from illness while attempting to prevent further
2 exacerbation of symptoms or relapse. These standards are required for the general
3 homeostasis of any and all human beings. All health care facilities are heavily regulated
4 by the state in recognition of the crucial role that these measures play not only in healing
5 but in the dignity of individuals and families.
6

- 7 4. In our facilities we maintain a medical baseline for the living environment where
8 all patients have raised beds that are lifted above the floor. They are provided
9 with mattresses. This is a minimum standard. In fact, having a patient sleep on the floor
10 would be considered cruel and unusual and would result in the facility facing civil and
11 criminal sanctions.
12
- 13 5. The reason that hospitals and other medical/psychiatric facilities put patients on beds that
14 are elevated above the ground include several factors.
15
- 16 6. For one, when sleeping on cold cement or ground, a large percentage of body
17 temperature is lost through conductive heating with the ground or mattress. Therefore, in
18 order to stay warm at night sleeping on a raised bed significantly increases heat retention
19 of the body by reducing the rate of conductive loss of body heat. This is also why
20 mattresses use springs and insulative materials to reduce heat conductivity and insulate
21 the person's body from the ground.
22
- 23 7. The other reasons raised beds are required in our facilities is because sleeping on the
24 ground can cause musculoskeletal injuries to compromised or even healthy individuals,
25 especially the elderly and people recovering from injuries. This is because the ground is
26 hard, has no "give" and does not conform to one's body shape. The
27
28

1 physical resistance the body experiences while sleeping on the ground can result
2 in musculoskeletal injury as there is constant stress to bones and joints.

3 8. I have been to Camp Integrity many times. I am familiar with the built environment. I
4 have observed tents that are elevated on palettes.

5
6 9. Based on my training and experience, at a minimum all residents must be able to have
7 raised palettes or some structure that lifts them off the ground when sleeping on the floor
8 or on the street. Sleep on the ground impedes healing and can inflict further injury to
9 vulnerable individuals, especially those who already have musculoskeletal issues such as
10 arthritis. The ground exposes individuals to insects, bacteria and viruses and fungi which
11 can result in illness, injury, and death.

12
13 10. People living outdoors in these conditions cost us all money in the frequent use of
14 emergency rooms. Many do not have health insurance. Many do not even have MediCal
15 and cannot utilize preventive measures or lifestyle changes to facilitate healing and
16 healthy living.

17
18 11. My understanding is that Brian Nelson is recovering from major stabs wounds. My
19 understanding is also that Bruce Gaylord is a medical vulnerable senior confined
20 to a electric scooter, and that his legs were both recently broken. Both of these people
21 will experience musculoskeletal injury if their palettes are taken away and they are forced
22 sleep on the ground.

23
24 12. Similarly the loss of the palettes is dangerous because it will cause loss of body heat.

25 The palettes significantly reduce conductive heat loss by providing an air buffer between
26 the body and ground. The air conducts less heat than the ground and therefore acts as
27

1 insulation against heat loss. If you lose body heat and you are sleeping outside you can
2 easily suffer cold related injury, and even death.

3 13. This is also especially dangerous for people with other underlying medical conditions, or
4 who use alcohol. Underlying health conditions can reduce the amount heat the body
5 heats, and drinking will further cause the body to also lose heat, resulting in hypothermia
6 and circulation problems. Circulation problems can lead to cardiac problems as well as a
7 plethora of other medical issues.
8

9 14. My understanding is that Brian Nelson struggles from alcoholism, and Bruce Gaylord is a
10 medically vulnerable senior. It is very likely that if they lose their palettes that would
11 cause them to lose excessive body heat and could result in death on especially cold nights
12 as we are currently experiencing. And this is only the beginning of winter.
13

14 15. In our facilities we always ensure adequate heat. If the body is persistently exposed to
15 cold as low as 60 degrees Fahrenheit can cause chronic vascular problems that are caused
16 by the blood vessel dilation. Blood vessel dilation causes the blood vessels to construct in
17 order to increase body temperature for the cold. This constriction becomes chronic
18 resulting in a possible loss of oxygen and poor circulation.
19

20 16. Based on my training and experience, I know poor circulation caused by cold exposure
21 can contribute to heart attacks and strokes.
22

23 17. Persistent exposure to the cold can cause perniois, trenchfoot, and other health
24 complications. These health issues can become very serious, especially for people
25 without accessible and effective health care. These complications can lead to
26 infection, sepsis, and organ failure which can cause irreparable injury or death.
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1 18. In conclusion, it is my professional opinion that if the City of San Rafael deprives people
2 from sleeping on palettes and the protections that provides them, it is likely cause serious
3 physical and psychological distress, injury, and possible death.

4
5 19. The removal of palettes cannot be justified by any argument I've heard thus far. It is
6 cruel, and unfortunately not as unusual as it should be when municipalities take a
7 punitive approach to the unhoused, the message being "If you're uncomfortable and/or
8 sick, you shouldn't be homeless".

9 I declare the foregoing under penalty of perjury under the laws of the United States and State
10 of California.

11 /s/ Megan Brizzolara

12 December 12th, 2023
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RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL OF THE 48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY FILED BY BRIAN NELSON

WHEREAS, on October 24, 2023, the City of San Rafael's ("City's") Fire Chief, Deputy Fire Chief, and Chief Building Official conducted an inspection of various campsites established on public property in encampments in the vicinity of Lindaro Street, Mahon Creek Path, Andersen Blvd., and Francisco Blvd. West for fire and building hazards; and

WHEREAS, based on site-specific assessments at the encampments, the Fire Chief deemed numerous structures and equipment at campsites in the encampments to be unsafe and to present an imminent hazard to life, health, safety, and welfare because they contain wood, wood pallets, loose wood, planks, or other similar construction materials that are highly flammable presenting an imminent risk to occupants and surrounding areas; and

WHEREAS, during the inspection on October 24, 2023, the Deputy Fire Chief (acting under direction of the Fire Chief) and Chief Building Official inspected, issued, and posted a *48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property* ("Notice") on each structure and/or equipment that was observed to consist of wood, wood pallets, or other similar materials; and

WHEREAS, the Notice identified the conditions violating the San Rafael Municipal Code ("SRMC") and the various codes adopted thereby, provided notice of the applicable code sections, the actions required to comply with the Notice, the consequences for failing to comply, how to obtain assistance with complying, and of individual rights to appeal; and

WHEREAS, twenty (20) Notices were posted on various campsites throughout the encampments, providing notice to abate hazardous, combustible materials: 3 were for stockpiled wood pallets and 17 were for campsites containing structures made of, or partially made of wood pallets or other combustible materials, and 3 of which were tents or sleeping bags on top of wood pallets; and

WHEREAS, the Notice ordered removal of the structures and/or equipment from public property within the 48-hour deadline; and

WHEREAS, Brian Nelson ("Appellant") lives in a campsite in the encampment at the Mahon Creek Path; and

WHEREAS, during the October 24, 2023, inspection, Appellant Nelson's tent was observed to have at least two (2) wood pallets used to raise the foundation of the tent off the ground; and

WHEREAS, the City's Fire Chief deemed or determined the wood pallets used as a foundation for the tent to be unsafe and to present an imminent hazard to life, health, safety, and welfare at Appellant's campsite because, in part, they consist of dried wood, combustible material can accumulate in the spaces between the pallet boards, and the structure of the pallets provides for air spaces that increase their combustibility; and

WHEREAS, on October 24, 2023, the Chief Building Official posted a Notice on Appellant Nelson's tent ordering the removal (abatement) of the "wood pallet foundation" within 48 hours of the Notice; and

WHEREAS, as cited in the Notice, under SRMC § 4.08.040(C), the Fire Chief has the authority to “order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees;” and

WHEREAS, as cited in the Notice, California Fire Code § 114-114.1 (“Unsafe structures or equipment”), authorizes the fire code official to issue notice or orders to remove or remedy conditions that, “in whole or in part, constitutes a clear and inimical threat to human life, safety or health;” and

WHEREAS, as cited in the Notice, California Fire Code § 114.1.1 (“Unsafe conditions”) further provides that structures or existing equipment that “constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition,” and “[u]nsafe structures taken down and removed or made safe, as the fire code official deems necessary;” and

WHEREAS, as cited in the Notice, under SRMC § 12.116.010 (“Unsafe Structures and equipment”), “structures or existing equipment that ... constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition” and, as deemed necessary by the building official, taken down or made safe; and

WHEREAS, as cited in the Notice, California Building Code § 116 (“Unsafe structures and equipment”) provides that structures or existing equipment that “constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition,” and “[u]nsafe structures shall be taken down and removed or made safe, as the building code official deems necessary;” and

WHEREAS, on October 30, 2023, Appellant Nelson filed with the City a request to appeal the Notice posted on his tent and subsequently confirmed on November 15, 2023, his intent to move forward with the appeal; and

WHEREAS, for fire code appeals, under SRMC § 4.08.140, “[w]henver the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council;” and

WHEREAS, for building code appeals, under SRMC chapter 12.113 “a board of appeals [is] to consider an order, decision or determination made by the building official for the purpose of correcting an error, omission or oversight relative to the application and interpretation of the code. ... Nothing in this section shall prevent the mayor or city council from appointing the mayor and city council as the board of appeals;” and

WHEREAS, the City Clerk issued to the Appellant a December 6, 2023, Notice of Appeal Hearing with the City Council scheduled for December 20, 2023, together with a Statement of Rights and Procedures; and

WHEREAS, on December 20, 2023, the City of San Rafael City Council, pursuant to SRMC § 12.113.030, voted to appoint the Mayor and City Council as the board of appeals, and thereby convened a hearing in a dual capacity as the building board of appeals, and as the hearing body for appeals of the fire code; and

WHEREAS, on December 20, 2023, acting in their dual capacity as the appellate body under the fire code and building code, held a duly-noticed public hearing to review and consider the appeal, accepting all oral and written public testimony and the staff report by the Deputy Fire Chief and Chief Building Official and closed said hearing on that date; and

WHEREAS, the scope of this appeal is limited to issues raised in the written appeal that pertains to the decisions or determinations of the Fire Chief and Chief Building Official as they relate to the existence of hazards under the code provisions cited in the Notice at the campsite of Appellant; and

WHEREAS, the Appellant has raised in their written appeal claims based on the Americans with Disabilities Act (“ADA”) and/or other legal arguments that do not invoke the referenced codes and are outside the scope of the appeal; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based is the City Clerk; and

WHEREAS, the City Council finds and determines that the appeal cannot be supported as Appellant has failed to establish that the decisions contained in the Notice that violations of applicable codes existed at Appellant’s campsite were not supported by substantial evidence, were not reasonable, were arbitrary, or were outside the intent and purposes of the applicable codes.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of San Rafael hereby finds that the above recitals are true and correct, and incorporated herein by this reference; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael, hereby denies the appeal filed by Appellant Brian Nelson regarding issues raised by Appellant that pertain to the decisions or determinations of the Fire Chief and Chief Building Official as they relate to the existence of hazards under the referenced codes, as described in the staff report accompanying the appeal, because the decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the referenced codes; and

BE IT FURTHER RESOLVED, that the City Council did not take under consideration claims raised by Appellant related to the Americans with Disabilities Act (“ADA”) or other legal arguments, as described in the staff report accompanying the appeal, because they are not within the scope of the appeal.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a special meeting of the City Council of said City held on Wednesday, the 20th day of December 2023, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL OF THE 48-HOUR NOTICE OF REMOVAL OF UNSAFE STRUCTURE OR EQUIPMENT ON PUBLIC PROPERTY FILED BY BRUCE GAYLORD

WHEREAS, on October 24, 2023, the City of San Rafael's ("City's") Fire Chief, Deputy Fire Chief, and Chief Building Official conducted an inspection of various campsites established on public property in encampments in the vicinity of Lindaro Street, Mahon Creek Path, Andersen Blvd., and Francisco Blvd. West for fire and building hazards; and

WHEREAS, based on site-specific assessments at the encampments, the Fire Chief deemed numerous structures and equipment at campsites in the encampments to be unsafe and to present an imminent hazard to life, health, safety, and welfare because they contain wood, wood pallets, loose wood, planks, or other similar construction materials that are highly flammable presenting an imminent risk to occupants and surrounding areas; and

WHEREAS, during the inspection on October 24, 2023, the Deputy Fire Chief (acting under direction of the Fire Chief) and Chief Building Official inspected, issued, and posted a *48-Hour Notice of Removal of Unsafe Structure or Equipment on Public Property* ("Notice") on each structure and/or equipment that was observed to consist of wood, wood pallets, or other similar materials; and

WHEREAS, the Notice identified the conditions violating the San Rafael Municipal Code ("SRMC") and the various codes adopted thereby, provided notice of the applicable code sections, the actions required to comply with the Notice, the consequences for failing to comply, how to obtain assistance with complying, and of individual rights to appeal; and

WHEREAS, twenty (20) Notices were posted on various campsites throughout the encampments, providing notice to abate hazardous, combustible materials: 3 were for stockpiled wood pallets and 17 were for campsites containing structures made of, or partially made of wood pallets or other combustible materials, and 3 of which were tents or sleeping bags on top of wood pallets; and

WHEREAS, the Notice ordered removal of the structures and/or equipment from public property within the 48-hour deadline; and

WHEREAS, Bruce Gaylord ("Appellant") lives in a campsite in the encampment at the Mahon Creek Path; and

WHEREAS, during the October 24, 2023, inspection, Appellant Gaylord's tent was observed to have wood pallets used to raise the foundation of the tent off the ground; and

WHEREAS, the City's Fire Chief deemed or determined the wood pallets used as a foundation for the tent to be unsafe and to present an imminent hazard to life, health, safety, and welfare at Appellant's campsite because, in part, they consist of dried wood, combustible material can accumulate in the spaces between the pallet boards, and the structure of the pallets provides for air spaces that increase their combustibility; and

WHEREAS, on October 24, 2023, the Deputy Fire Chief posted a Notice on Appellant Gaylord's tent ordering the removal (abatement) of the "wood pallet foundation" within 48 hours of the Notice; and

WHEREAS, as cited in the Notice, under SRMC § 4.08.040(C), the Fire Chief has the authority to “order the immediate abatement of any hazard, located within or on public or private property and any public thoroughfare or railroad, when deemed by the fire chief to be an imminent hazard to the life, health, safety and the well-being of the public, firefighters and other city employees;” and

WHEREAS, as cited in the Notice, California Fire Code § 114-114.1 (“Unsafe structures or equipment”), authorizes the fire code official to issue notice or orders to remove or remedy conditions that, “in whole or in part, constitutes a clear and inimical threat to human life, safety or health;” and

WHEREAS, as cited in the Notice, California Fire Code § 114.1.1 (“Unsafe conditions”) further provides that structures or existing equipment that “constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition,” and “[u]nsafe structures taken down and removed or made safe, as the fire code official deems necessary;” and

WHEREAS, as cited in the Notice, under SRMC § 12.116.010 (“Unsafe Structures and equipment”), “structures or existing equipment that ... constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition” and, as deemed necessary by the building official, taken down or made safe; and

WHEREAS, as cited in the Notice, California Building Code § 116 (“Unsafe structures and equipment”) provides that structures or existing equipment that “constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition,” and “[u]nsafe structures shall be taken down and removed or made safe, as the building code official deems necessary;” and

WHEREAS, on October 31, 2023, Appellant Gaylord filed with the City an appeal request containing claims related to the Americans with Disabilities Act (“ADA”) in connection with the Notice posted on his tent and subsequently confirmed on November 27, 2023, his intent to move forward with the appeal of the Notice; and

WHEREAS, for fire code appeals, under SRMC § 4.08.140, “[w]henver the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council;” and

WHEREAS, for building code appeals, under SRMC chapter 12.113 “a board of appeals [is] to consider an order, decision or determination made by the building official for the purpose of correcting an error, omission or oversight relative to the application and interpretation of the code. ... Nothing in this section shall prevent the mayor or city council from appointing the mayor and city council as the board of appeals;” and

WHEREAS, the City Clerk issued to the Appellant a December 6, 2023, Notice of Appeal Hearing with the City Council scheduled for December 20, 2023, together with a Statement of Rights and Procedures; and

WHEREAS, on December 20, 2023, the City of San Rafael City Council, pursuant to SRMC § 12.113.030, voted to appoint the Mayor and City Council as the board of appeals, and thereby convened a hearing in a dual capacity as the building board of appeals, and as the hearing body for appeals of the fire code; and

WHEREAS, on December 20, 2023, acting in their dual capacity as the appellate body under the fire code and building code, held a duly-noticed public hearing to review and consider the appeal, accepting all oral and written public testimony and the staff report by the Deputy Fire Chief and Chief Building Official and closed said hearing on that date; and

WHEREAS, the scope of this appeal is limited to issues raised in the written appeal that pertains to the decisions or determinations of the Fire Chief and Chief Building Official as they relate to the existence of hazards under the code provisions cited in the Notice at the campsite of Appellant; and

WHEREAS, the Appellant has raised in their written appeal claims based on the Americans with Disabilities Act (“ADA”) and/or other legal arguments that do not invoke the referenced codes and are outside the scope of the appeal; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based is the City Clerk; and

WHEREAS, the City Council finds and determines that the appeal cannot be supported as Appellant has failed to establish that the decisions contained in the Notice that violations of applicable codes existed at Appellant’s campsite were not supported by substantial evidence, were not reasonable, were arbitrary, or were outside the intent and purposes of the applicable codes.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of San Rafael hereby finds that the above recitals are true and correct, and incorporated herein by this reference; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael, hereby denies the appeal filed by Appellant Bruce Gaylord regarding issues raised by Appellant that pertain to the decisions or determinations of the Fire Chief and Chief Building Official as they relate to the existence of hazards under the referenced codes, as described in the staff report accompanying the appeal, because the decisions of the Fire Chief and Chief Building Official were supported by substantial evidence, were reasonable, were not arbitrary, and were within the intent and purpose of the referenced codes; and

BE IT FURTHER RESOLVED, that the City Council did not take under consideration claims raised by Appellant related to the Americans with Disabilities Act (“ADA”) or other legal arguments, as described in the staff report accompanying the appeal, because they are not within the scope of the appeal.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a special meeting of the City Council of said City held on Wednesday, the 20th day of December 2023, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk