



Northern  
California

## NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

April 8, 2019

### VIA Email

Hon. Martine Watkins, Mayor ([mwatkins@cityofsantacruz.com](mailto:mwatkins@cityofsantacruz.com))  
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Hon. Donna Meyers, Councilmember ([dmeyers@cityofsantacruz.com](mailto:dmeyers@cityofsantacruz.com))  
City of Santa Cruz  
809 Center Street  
Santa Cruz, CA 95060

Re: Planned Closure of Ross Camp

Dear Mayor Watkins and Members of the City Council:

We write on behalf of the American Civil Liberties Union of Northern California ("ACLU") and the National Law Center on Homelessness & Poverty ("Law Center") to express our substantial concerns about what appears to be an imminent plan to close the Ross camp (also known as the Gateway Encampment) along River Street at the corner of Highway 1, and to criminalize the living behaviors of the people who are currently living there. According to the "Open Letter to the Santa Cruz Community" posted by City Manager Martin Bernal on the City's website on March 25, 2019, the City is anticipating the planned closure of the encampment to "take a week," with "final close out on April 17th or 18th." In addition, we have become aware that at its April 9, 2019 meeting, the City Council is scheduled to consider one or more resolutions concerning the closure of the Ross camp, including a "motion to confirm the April 17, 2019 closure of the Ross camp," listed as Agenda Item 15.2. From this it is apparent that the attempted closure could begin as early as Wednesday, April 10, if not sooner. Such a closure would inflict catastrophic, unnecessary and unlawful harm on the residents of the Ross camp, and we urge the City to reconsider this plan.

### The *Martin v. Boise* decision

As City Manager Bernal has acknowledged, the decision of the U.S. Court of Appeals for the Ninth Circuit in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), *as amended on denial of rehearing*, ---F.3d---, 2019 WL 1434046 (Apr. 1, 2019), establishes that the City "can't simply close down the encampment" but has to "identify alternatives for those sleeping [there]" before attempting to do so. The ruling of the court in *Martin* was quite clear:

American Civil Liberties Union Foundation of Northern California

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So long as there is a greater number of homeless individuals **in a jurisdiction** than the number of available beds in shelters, the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public. That is, as long as there is no option of **sleeping indoors**, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise that they had a choice in the matter.

902 F.3d at 1048 (brackets, internal quotation marks, and citations omitted; emphasis added). The basis of this holding is the Eighth Amendment: “As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the Eighth Amendment — sleeping, eating and other innocent conduct.” *Id.* (internal brackets, quotation marks, and citation omitted).

Under the rule established in *Martin*, we believe that at the present time, a court would likely enjoin any attempt by the City to close the Ross camp through the threat of criminal prosecution. The most cursory review of the current state of affairs makes plain why an injunction to prevent Eighth Amendment violations would issue.

**The City does not have sufficient available indoor beds to accommodate the Ross camp residents**

First, it is indisputable that there are more individuals experiencing homelessness within the City of Santa Cruz than there are available indoor beds. According to the most recent “point in time” count for which data is available, in 2017 there were over 1,200 unhoused persons within the City and just under 2,250 unhoused persons within the County, and it is likely that the numbers have increased since then. (Also, as the *Martin* court observed, “it is widely recognized that a one-night point in time count will undercount the homeless population....” 902 F.3d at 1036.) Yet at present, it appears that there are fewer than 300 shelter beds in the County as a whole, and fewer in the City. Many of these beds are at shelters with some type of restriction, for example only for families or only for people with a mental illness. Moreover, these shelters are all at or near capacity. Even if all of these could be counted as truly “available” within the meaning of *Martin* (which they plainly cannot), that would mean that the City has beds available for at most 20% of its unhoused population.

From City Manager Bernard’s March 25, 2019 Open Letter, it appears that the City believes that it would be entitled to close down the Ross camp as soon as it has identified a number of new indoor beds equal to the number of residents of the Ross camp. *Martin*, however, states that there must be a sufficient number of indoor beds *throughout the City* to accommodate *all unhoused persons in the City* before closure could take place.

We seriously doubt City Manager Bernard’s “best estimate” that there are “100 or fewer people sleeping [at the Ross camp] at night.” We note that the April 1 Agenda Report of Vice Mayor Cummings and Councilmember Brown estimates the nighttime population of the camp as 100-150 residents. We and our colleagues have visited the Ross camp frequently and have concluded that the actual nighttime population is closer to the 200 persons that City Manager Bernard

acknowledges inhabit the camp by day. We request that you share with us who made the “100 or fewer people” estimate, when, and on what basis.

We understand that at present there is only one proposed alternative site for the Ross camp residents to relocate, which is not currently ready for occupation, and even if it were to become available, would not be sufficient. The “temporary managed homeless camp at 1220 River Street” shows no signs that any work is being done to prepare it for occupancy. The City Manager’s April 2, 2019 Letter makes clear that at present the City has no other alternative sites for safe sleeping and that there are no other public areas currently under consideration.

In addition to having insufficient space for the Ross camp residents, 1220 River Street would not constitute an “option of sleeping indoors” such that its spaces constitute “available shelter beds” under *Martin*. We are aware of no authority that would allow the City to force people to relocate from an existing, cohesive community where they find support and protection from the anti-homeless vigilantism of some city residents, to a parking lot that would not even accommodate all of the Ross camp residents. Indeed, by scattering those residents whom the City cannot accommodate at existing safe-shelter locations to other isolated, unprotected outdoor spaces throughout the City, Santa Cruz would subject the members of this community to the risk of serious harm by depriving them of the protection they currently have as a community, presenting substantive due process concerns as well.

#### **1220 River Street does not constitute available indoor shelter**

Even if 1220 River Street opened tomorrow, it would not permit the City to legally close the Ross camp under *Martin*. 1220 River Street is planned as a so-called “bus in/bus out” site in which people would not even be free to come and go on foot as they please. People experiencing homelessness, like everyone else, are entitled to freedom of movement and need places where they can sit, lie or sleep at any time of the day or night; if the only places available to them are truly available only during nighttime hours, then for the rest of the 24-hour day they “do not have a single place where they can lawfully be,” within the words of the *Martin* court. 902 F.3d at 1048. Any attempt to criminalize sitting, lying or sleeping on public property during daylight hours—and we have little doubt that such attempts would be made—would, under such circumstances, be unconstitutional.

#### **The proposed “Standard Operating Procedures” for encampment removal are vague and potentially problematic**

We have reviewed the City Attorney’s proposed “Standard Operating Procedure” for removal of encampments (“SOP Memo”), which we have been submitted for consideration by the City Council as Item 15.4 on the April 9 Council meeting agenda. We would appreciate more information on the timing of the steps the SOP Memo recommends in connection with “observation and identification” (Procedure No. 2) and “Notice and Outreach” (Procedure No. 3), as following these steps would appear to be inconsistent with the commencement of efforts to close the Ross camp as early as April 10.

In addition, while we appreciate the City Attorney's acknowledgement that certain procedures must be followed "in order to protect the constitutional rights of persons in those encampments [that are proposed for removal]," the SOP memo contains a number of problematic provisions. A full analysis of the SOP Memo is beyond the scope of this letter, but these provisions include:

- Counting as "available" shelter spaces those spaces that impose barriers or requirements that the *Martin* court found made such spaces not realistically available;
- Authorizing the Santa Cruz Police Department to issue citations to and/or arrest individuals who refuse to leave an encampment for violations of the Penal Code or Municipal Code; and
- Singling out such individuals for arrest for outstanding warrants or probation or parole violations.

In particular, we are concerned about any plan to criminalize the living behaviors of residents of the Ross camp, either directly or indirectly. Due to the lack of available shelter beds, *Martin* bars the City from carrying out such a plan.

## Conclusions

In short, it appears to us that the measures envisioned by the City are nowhere near ready to be implemented, and even if they were to be implemented in full, they would be insufficient and unlawful. In the meantime, residents of the Ross camp are being needlessly traumatized by the threat that they will be unlawfully uprooted within a matter of days.

Any steps to close the Ross camp under these circumstances would only further entrench the anti-homeless posture the City has assumed in recent years. Examples of how the City has stigmatized and criminalized the status of being unsheltered include putting up fencing around city property to keep people from sleeping there, closing down parks at night, terminating meal offerings at a city shelter for anyone other than the small number of people able to obtain shelter beds there, removing benches from bus stops, and pursuing other measures intended to make it impossible to exist as an unsheltered person in the City.

We understand that during the April 9, 2019 Council meeting, there will be discussion of an alternative proposal to develop an interim site management plan for the Ross camp and not to close the Camp until there is "sufficient campground or non-campground emergency shelter beds . . . available." Without knowing the details of an interim site management plan, as shown above we believe it is constitutionally imperative that the City not close down the Ross camp at this time, and we would support a plan to provide ongoing services for the safety and protection of the Ross camp residents, in lieu of evicting them without any indoor shelter alternatives. However, we will continue to oppose any plan that relies on "campgrounds" as the only provision of shelter if and when the Camp is ultimately shut down.

We are willing to enter into meaningful dialogue with the City and to work with you and other interested persons to address these issues. At the same time, due to the timeline under which

they City is threatening to close the Ross camp, we must insist that you inform us no later than 10:00 a.m. on Wednesday, April 10, 2019, of the City's plans with respect to closing the camp. If we have not heard from you by then, or if your response is that the City is determined to proceed with closing the camp, we reserve the right to take any and all appropriate action.

We look forward to your prompt response.

Sincerely,

A handwritten signature in cursive script, appearing to read "William S. Freeman".

William S. Freeman, ACLU Senior Counsel  
Jamie Crook, ACLU Senior Staff Attorney  
Tristia Bauman, Law Center Senior Attorney

Cc: Anthony P. Condotti, City Attorney ([acondotti@abc-law.com](mailto:acondotti@abc-law.com))  
Martin Bernal, City Manager ([mbernal@cityofsantacruz.com](mailto:mbernal@cityofsantacruz.com))