

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTA CRUZ HOMELESS UNION, et al.,

Plaintiffs,

v.

MARTIN BERNAL, et al.,

Defendants.

Case No. 20-cv-09425-SVK

**ORDER MODIFYING PRELIMINARY
INJUNCTION**

Re: Dkt. Nos. 44, 45, 46

On January 20, 2021, the Court issued a preliminary injunction, restraining the City of Santa Cruz ("Defendant" or "City") from enacting a temporary closure of San Lorenzo Park, which currently contains a large encampment of unsheltered individuals. Dkt. 27. On March 12, 2021, Defendant submitted a status report requesting that the Court dissolve its preliminary injunction. Dkt. 37. Alternatively, Defendants proposed that the preliminary injunction be modified to allow for the use of the Benchlands portion of San Lorenzo Park for up to 122 individually marked campsites, with all other areas not demarcated as campsites kept clear from encampments. *Id.* at 9. The Court directed the Parties to meet and confer as to this proposal (Dkt. 39), and on March 17, 2021, the Court held a hearing where the City's proposal was discussed in more detail. Dkt. 42. The Court then permitted the Parties to submit evidence as to: (1) whether the Benchlands was likely to flood after April 1, 2021, and (2) the status of the County of Santa Cruz's ("County") efforts to vaccinate unsheltered individuals within the City, and especially those unsheltered individuals residing at San Lorenzo Park. Dkt. 42. The Parties met and conferred and submitted supplemental status reports. Dkts. 44-46. On March 30, 2021, the Court held a further hearing regarding modifying the Court's preliminary injunction to allow the City to relocate a significant portion of the unsheltered individuals to the Benchlands and not allow

homeless encampments in San Lorenzo Park. Dkt. 47.

Having reviewed all the evidence and the arguments presented, the Court hereby
ORDERS as follows:

- (1) The City may choose to relocate campers to the Benchlands, as set out in more detail below.
- (2) If the City chooses to relocate campers to the Benchlands, the City shall:
 - a. mark and establish 122 temporary campsites in the Benchlands area of San Lorenzo Park. An approved encampment map is attached to this order as **Exhibit A**. The City may make reasonable modifications to this encampment map, so long as those modifications do not materially decrease the total number of persons that can be accommodated at the Benchlands.
 - b. make reasonable efforts to offer a Benchlands camping permit to all persons who are currently encamped at San Lorenzo Park and/or the Benchlands, until either (i) an offer has been made to each San Lorenzo Park / Benchlands encampment occupant, or (ii) all 122 temporary campsites are filled.
 - c. allow those individuals who have a permit to reside in the Benchlands to reside at their designated campsite until either the Parties agree to terms of settlement of this litigation or this preliminary injunction is dissolved, whichever occurs first.
- (3) If the City chooses to require campers to relocate to the Benchlands, the City may:
 - a. require those who are currently encamped in the Benchlands to relocate for the purposes of allowing the City to set up the demarcated encampment and/or mark the temporary campsites at the Benchlands. Those persons displaced by this provision will be allowed to relocate temporarily to San Lorenzo Park.
 - b. create a permit process. If the City chooses to create a permit process, those who are given a permit to camp in the Benchlands must relocate to the Benchlands within 48-hours of the effective date of said permit. If the City chooses to create a permit process, persons who commit crimes or repeatedly fail to abide by the Code of Conduct (attached as **Exhibit B**) may have their camping permit revoked.

Persons whose camping permit is revoked must, for at least 60 days from permit revocation, stay away from San Lorenzo Park, the Benchlands, and surrounding areas, including footbridges near the park (e.g. Branciforte Creek), and the Soquel St. Bridge.

- c. require that areas that are not marked as temporary campsites (including the upper park and surrounding areas, footbridges near the park (e.g. Branciforte Creek), areas unreasonably close to the San Lorenzo River levee, and areas near the Soquel St. Bridge) be kept clear from encampments, personal property, and other obstructions. To accomplish this, the creation or maintenance of an encampment in areas not marked as campsites is hereby deemed to be a public nuisance, and the City may enforce Penal Code 372 [prohibiting public nuisances] and SCMC 13.03.011 [park hours] in any location in or around San Lorenzo Park that is not a marked campsite.
- d. implement a Code of Conduct for the encampment, attached as **Exhibit B** (as modified by the Court). Persons who unreasonably fail to abide by the Code of Conduct will be required to stay away from the Benchlands encampment and surrounding areas, including the upper park and surrounding areas, footbridges near the park (e.g. Branciforte Creek), areas unreasonably close to the San Lorenzo River levee, and areas near the Soquel St. Bridge).
- e. enlist help from a third party (such as a non-profit or the County) to help to manage the encampment.

(4) Regardless of whether or not the City chooses to relocate individuals to the Benchlands, for the duration of the injunction period, the City shall be permitted to:

- a. Enforce Santa Cruz Municipal Code section 13.08.100 in San Lorenzo Park and the Benchlands which is attached to this order as **Exhibit C**. This Municipal Code section provides the City with a mechanism to require repeat offenders at City parks to vacate parks for specified, escalating time periods.
- b. Pursuant to Penal Code section 372, conduct reasonable enforcement action and

1 remove individual encampments that constitute a public nuisance, such as
2 encampments that host bike chop shops, encampments that are not maintained in a
3 reasonably tidy fashion, encampments that present an unreasonable fire risk (such
4 as encampments with propane tanks), and/or encampments that are unreasonably
5 large (i.e, encampments that take up a footprint that is larger than 12 feet x12 feet
6 per person).

7 c. Conduct law enforcement action (including, but not limited to issuing infraction
8 and/or misdemeanor citations and making arrests) under generally applicable laws,
9 including Penal Code section 602, which is attached to this order as **Exhibit E**, as
10 well as prohibitions against littering, glass in parks, alcohol in parks, vehicles in
11 parks, fires, and disorderly conduct.

12 (5) Except as modified herein, the preliminary injunction issued on January 20, 2021 remains
13 in full force and effect until either the Parties agree to terms of settlement of this litigation
14 or the preliminary injunction is dissolved by this Court, whichever occurs first.

15 (6) The Court sets this matter for a further status conference on **April 27, 2021 at 9:30 a.m.**
16 The Parties are ordered to file status reports by **April 20, 2021**. All other dates previously
17 set in this matter are vacated.

18 **SO ORDERED.**

19 Dated: April 1, 2021

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22 SUSAN VAN KEULEN
23 United States Magistrate Judge
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EXHIBIT A

Benchlands

City of Santa Cruz

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6' Spacing

0 75 150 Feet

12'x12' Tent (122)



Aerial - Pictometry Summer 2020

San
Lorenzo
River

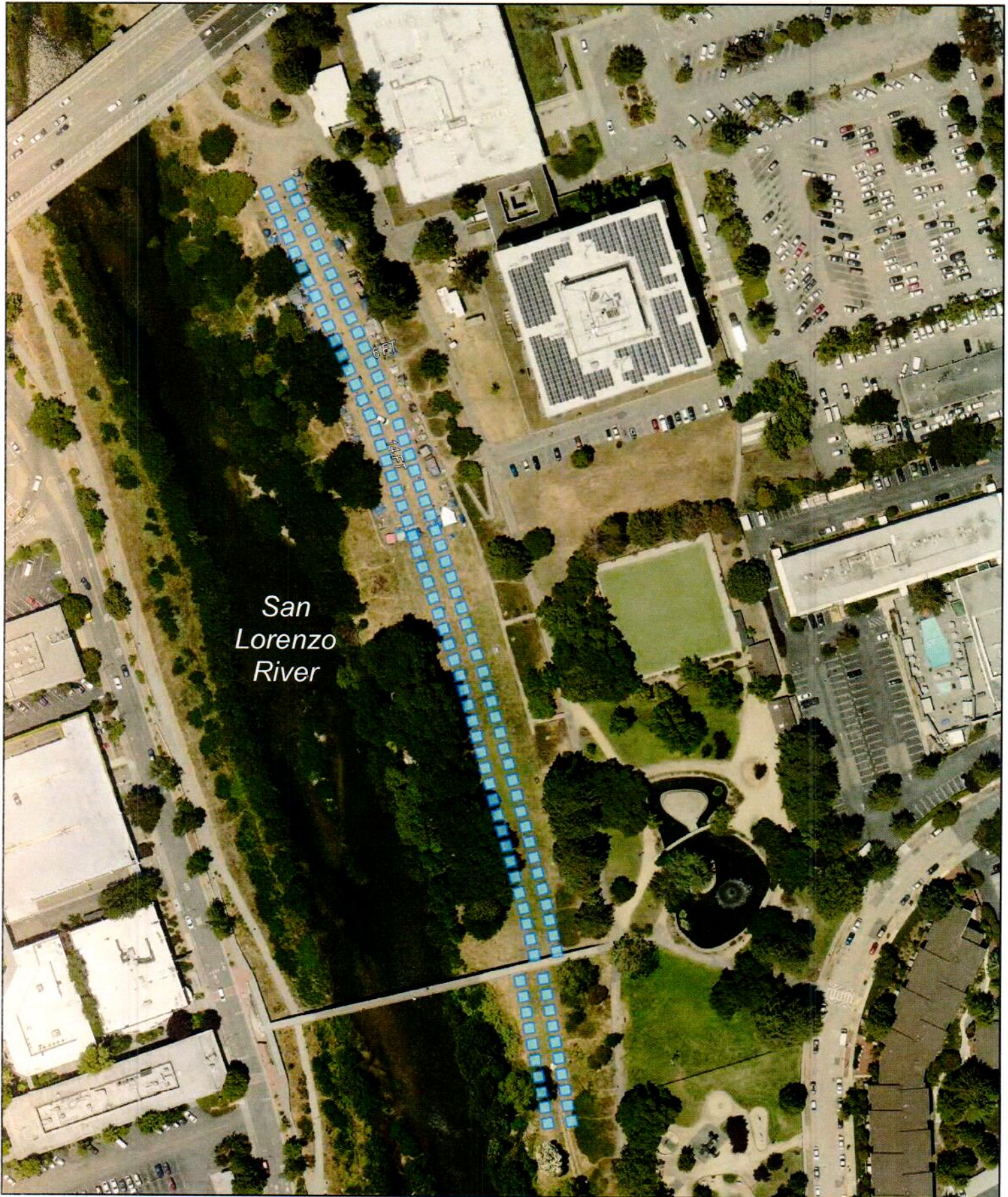


EXHIBIT B

Encampment Code of Conduct as Modified by the Court 4/1/21

1. COVID protocols must be followed:
 - a. Tents must be at least 6 feet apart
 - b. Outside of tents, masks must be worn
 - c. Campers must maintain 6 feet physical distance from others who are not a part of their household
 - d. Campers must utilize provided hygiene units, and *campers are strictly prohibited from urinating or defecating in the park*
2. All campers must adhere to Park rules and regulations, including:
 - a. No use of alcohol and drugs or drug paraphernalia
 - b. No smoking, pursuant to SCMC 6.04.060 which is attached as **Exhibit D**; smoking is only permitted in designated campsites
 - c. No open fires
 - d. No littering (all refuse must be put in provided receptacles, and portable toilets cannot be used are trash cans)
 - e. No weapons, fireworks, or incendiary devices
 - f. *Campers must respect park quiet hours from 10 pm to 8 am*
 - g. Park pathways must be clear at all times
 - h. No motor vehicles in the park
 - i. No propane tanks in the park.
3. The following behaviors are not allowed:
 - a. Violence or threats of violence
 - b. Aggressive behavior, including the racial slurs, inappropriate sexual comments, the offensive/aggressive use of profanity, or the use of any profanity around children
 - c. Stealing
 - d. Vandalism, misuse, or destruction of property (including fencing, lawn bowling pitch, electrical boxes, etc.)
 - e. Damaging the trees or any park plantings/landscaping
 - f. Jeopardizing the safety of any other camp occupants or staff members
 - g. No disorderly conduct on park property, per SCMC 13.08.090.
4. Generally, campers' possessions must remain inside their tent, including:
 - a. No belongings are allowed in pathways or open spaces
 - b. Only one (1) bicycle per camper is allowed
 - c. No bike parts are allowed outside of camper's tent, and the presence of chop shops is strictly prohibited
 - d. Encampments are at all times to be maintained in a reasonably tidy fashion, and the accumulation of needles, trash, debris, animal/human waste is strictly prohibited.

EXHIBIT C

SCMC 13.08.100 ORDER TO VACATE ANY PROPERTY MAINTAINED BY THE PARKS AND RECREATION DEPARTMENT.

(a) Any person who receives a citation or is arrested on city park or beach property or any property maintained by the parks and recreation department for a violation of the Santa Cruz Municipal Code or state law may be ordered by the citing/arresting city officer at the time of the citation/arrest to vacate that park or beach property and not to re-enter said property again for the period of time specified below. Any such order shall apply to both the park or beach property at which the citation/arrest occurs and to any other park or beach property at which such an order was issued within the previous year. Any person who violates such an order from a city officer shall be guilty of a misdemeanor.

- (1) First offense: twenty-four hours from the time of the citing/arresting officer's order.
- (2) Second offense within one week of the first offense: one week from the date of the citing/arresting officer's order in response to the second offense.
- (3) Third offense within thirty days of the second offense: thirty days from the date of the citing/arresting officer's order in response to the third offense.
- (4) Fourth offense within six months of the third offense: six months from the date of the citing/arresting officer's order in response to the fourth offense.
- (5) Fifth offense within one year of the fourth offense: one year from the date of the citing/arresting officer's order in response to the fifth offense.

(b) Any person who receives an order to vacate pursuant to this section and who desires to appeal that order shall, within ten days of the order, file a written notice of appeal with the city manager. The city manager or the city manager's designee shall hear the appeal within two business days from the date the written appeal is received by the city manager's office. The appeal shall list the appellant's contact information including a phone number, if any.

The appellant shall be notified of the date, time and location of the appeal hearing and may personally appear, may be represented by counsel, may call witnesses and may hear and examine the city officer who issued the order. Alternatively, the appellant may set forth the basis for the appeal and the arguments in support of the appeal in the written appeal notice and waive the appeal hearing. The appeal hearing shall not be governed by the rules of evidence.

If the city manager or city manager's designee determines by a preponderance of the evidence that the appellant did not engage in the conduct for which the order to vacate was issued, the order to vacate shall be immediately withdrawn and of no further force or effect.

The city manager or city manager's designee shall issue a decision on the appeal no later than twenty-four hours after the appeal hearing has been completed or the appeal notice waiving the hearing has been submitted. The decision of the city manager or city manager's designee shall be final.

(Ord. 2015-01 § 1, 2015: Ord. 2013-08 § 2, 2013).

Also available at

<https://www.codepublishing.com/CA/SantaCruz/html/SantaCruz13/SantaCruz1308.html#:~:text=13.08.-,100%20ORDER%20TO%20VACATE%20ANY%20PROPERTY,THE%20PARKS%20AND%20RECREATION%20DEPARTMENT> .

EXHIBIT D

Santa Cruz Municipal Code section 6.04.060, available at:

<https://www.codepublishing.com/CA/SantaCruz/html/SantaCruz06/SantaCruz0604.html#6.04.060/>

6.04.060 PROHIBITION OF SMOKING IN PUBLIC PLACES.

- (1) Smoking shall be prohibited in all enclosed public places within the city of Santa Cruz, including, but not limited to, the following specifically delineated enclosed public places, and shall also be prohibited in the following specifically delineated outdoor public places:

(a) Elevators;

(b) Taxicabs and other public transit vehicles subject to regulation by the city, and ticket, boarding, and waiting areas of public transit depots, bus stops and taxi stands;

(c) Restrooms;

...

(r) Child care facilities, as defined in the California Health and Safety Code, and private residences where used as day care homes;

(s) The Municipal Wharf, parks, beaches, recreational trails including all their adjacent landscape and bench areas, and all other outdoor recreation areas unless all or a portion of any such facility is designated by a parks and recreation department posting as an area where smoking is permitted;

(t) Video arcades, bingo parlors, cardrooms, game rooms, poolhalls, dancehalls, amusement centers and bowling alleys;

...

- (2) Notwithstanding any other provision of this chapter, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility, including its outdoor areas, to be a nonsmoking establishment or facility.

(Ord. 2013-13 § 1, 2013; Ord. 2009-23 § 3, 2009; Ord. 98-08 § 2, 1998; Ord. 94-32 § 2 (part), 1994).

EXHIBIT E

Cal. Penal Code 602.

Except as provided in subdivisions (u), (v), and (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

...

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.

...

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

...

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall inform the law enforcement agency to which the request was made when the assistance is no longer desired,

before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession. However, this subdivision does not apply to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code) or by the federal National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants, as defined in Section 34213.5 of the Health and Safety Code, constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

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(Amended by Stats. 2015, Ch. 303, Sec. 389. (AB 731) Effective January 1, 2016.)