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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

RAMONA MAYON,

Petitioner,

vs.

CITY AND COUNTY OF SAN
FRANCISCO,

Respondent.

Case No. CGC-20-588010

**CITY AND COUNTY OF SAN FRANCISCO'S
OPPOSITION TO PETITIONER'S MOTION
FOR A TEMPORARY RESTRAINING ORDER**

Hearing Date: December 2, 2020
Hearing Judge: Hon. Ethan P. Schulman
Time: 1:30 p.m.
Place: Dept. 302

Action Filed: November 25, 2020

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Respondent City and County of San Francisco files this opposition to Petitioner’s Application for a Temporary Restraining Order.

INTRODUCTION

Petitioner seeks a temporary restraining order that would: (1) Prohibit the City from “dismantling homeless encampments until the pandemic subsides” and/or while the Shelter-in-Place Order remains in place; and (2) require the City to explain why it “refuse(s) to give sanitation supplies” that the City “[itself] insist[s] should be supplied.” (Petn. p. 5.) The application should be denied for several reasons.

First, Petitioner has not established any threat of immediate and irreparable injury. The encampment resolution of which she complains has already occurred, and even putting that aside, Petitioner does not establish that she suffered any injury from it. Petitioner states that she lives in her vehicle (Petn. at 3), and as the Petition itself acknowledges (*ibid.*), no vehicles were required to relocate as part of the encampment resolution. So far as the City is aware—and Petitioner does not allege otherwise—she remains where she was. Petitioner was not required to surrender any property. Moreover, even with respect to other encampments, any resolution is dependent on the availability of adequate shelter alternatives, and at present the City does not anticipate that enough additional shelter will become available at any time within the next month to permit any large resolution.

Second, there is no legal basis to restrain the City from dismantling any and all homeless encampments in any event, which can cause public health and public safety issues and block sidewalks and entrances to buildings. Contrary to Petitioner’s claims, neither the CDC nor the City’s Department of Public Health (“DPH”) has issued guidance that categorically recommends against relocating people experiencing homelessness (which guidance is not binding in any event). The Health Officer’s SIP Orders affirmatively urge government agencies to find alternative shelter for people experiencing homelessness, and in a federal case concerning the Tenderloin, the City stipulated to an injunction that *requires* it to remove tents from the sidewalks and offer alternative shelter. During the pandemic, the City has established Safe Sleeping Villages, procured Shelter-in-Place (“SIP”) hotel rooms, and set up congregate shelters that comply with social-distancing requirements, in which people can receive more services from the City. During the encampment resolution at issue

1 in the Petition, every person was offered City services and an alternative place to stay, and the City
2 does not resolve an encampment unless and until it can offer residents adequate alternative shelter.

3 Third, the City does not refuse to provide sanitation supplies or services; it does provide them,
4 including to the encampment at issue in the Petition. But there is no legal basis for the Court to order
5 the City to do so in any event.

6 **FACTS**

7 The Petition concerns the resolution of an encampment located at Great Highway and Balboa
8 Avenue, which took place on November 18, 2020. There has been an encampment at that location
9 since approximately May 2020, although until the beginning of November it was relatively small, with
10 around six tents housing ten people. (Follin Decl. ¶ 2.) Sergeant Maja Follin, who supervises the San
11 Francisco Park Rangers' homeless outreach program, visited the encampment regularly and on
12 different occasions distributed masks, gloves, trash bags, and hand sanitizer to its residents; she also
13 purchased a trash-picker and gave it to one of the residents. (*Id.* ¶¶ 1, 4.) The City determined that a
14 porta-potty could not safely be placed at the encampment itself because there was no location where it
15 could be delivered and serviced by trucks without blocking the sidewalk, which has street parking
16 alongside it. However, during the day there is a "pit stop" trailer stationed in the Ocean Beach Parking
17 Lot, approximately a ten-minute walk from the encampment. Depending on the particular trailer, a pit
18 stop offers toilets, showers, needle exchange facilities, and pet washing stations. However, most
19 residents of the encampment did not appear to take advantage of the pit stop and were relieving
20 themselves in the adjacent park area. (*Id.* ¶ 5.)

21 In early November, the encampment grew in size, and with that growth, park rangers observed
22 or received reports of drug dealing, a significant number of apparently stolen bicycles that were
23 indicative of a "chop shop," and on one occasion, two teenaged girls, who appeared to be minors,
24 filming pornography. (*Id.* ¶ 6.) During that period the City received increasing complaints of criminal
25 activity associated with the encampment from other residents of the neighborhood. (*Id.*)

26 In the two days prior to the encampment resolution, individuals from the Housing Outreach
27 Team ("HOT") and DPH visited the encampment and told the residents of the resolution planned for
28 November 18th. (Kositsky Decl. ¶ 5.) On the day of the encampment resolution, City workers offered

1 every resident alternative shelter in either a Safe Sleeping Village or in a congregate shelter, along
2 with transportation to the alternate location. (Kositsky Decl. ¶ 6; Follin Decl. ¶ 7.) Safe Sleeping
3 Villages are tent communities that the City established during the pandemic; they are staffed around
4 the clock, and provide bathrooms, showers, food, water, and other services. (Kositsky Decl. ¶ 7.)
5 Tents are required to comply with social-distancing rules. (*Id.*) Congregate shelters comply with
6 governmental social-distancing standards. (*Id.*) One person at the encampment initially agreed to
7 accept City services, though she left before the transport van arrived. (Follin Decl. ¶ 7.)

8 Only individuals residing in tents on the sidewalk were required to move; none of the vehicles
9 were towed and no one was instructed that they would have to move them. (Kositsky Decl. ¶ 6; Follin
10 Decl. ¶ 9.) No one was arrested or cited. (Follin Decl. ¶ 9.) Residents of the encampment were
11 advised that the Recreation and Parks Department would store any property with the exception of (1)
12 tents, bedding, and clothing (because of the risk of spreading bed bugs to other stored property); (2)
13 hazardous materials (such as gas canisters); and (3) stolen bicycles. (Follin Decl. ¶ 8.) No one was
14 required to surrender any property; encampment residents were told to take with them anything they
15 wanted and to leave behind anything they did not want. (*Id.*) Property is stored for at least 90 days,
16 and usually for six months. (*Id.*)

17 During the pandemic, the City has provided a variety of services to homeless encampments,
18 including distribution of masks, gloves, hand sanitizer, trash bags, food, and potable water, and in
19 many locations, the City placed portable toilets, hand-washing stations, and “pit stop” trailers with
20 showers. (Kositsky Decl. ¶ 2.) Encampments in the City have ranged from a handful of tents to up to
21 fifty tents in one location. (*Id.*) In many encampments, tents blocked sidewalks and people failed to
22 comply with social-distancing guidelines. (*Id.*) There were sanitation issues notwithstanding the
23 availability of portable toilets, and there was evidence of drug dealing and other criminal activity.
24 (*Id.*) After months of effort, most encampments have been resolved through offers of shelter, with
25 over a thousand people moved into alternative shelter sites. (*Id.*) While many people accept offers of
26 shelter from the City, some do not, and if people in encampments were permitted to remain where they
27 are, public health and public safety issues associated with the encampment would likely persist. (*Id.*)
28

1 To the best of the City’s knowledge, there are currently fewer than five encampments of ten or
2 more tents remaining in San Francisco, and all of them have reasonable access to portable toilets,
3 hand-washing stations, potable water, and regular trash pickups (garbage bags are distributed to
4 residents). (Kositsky Decl. ¶ 3.) Moreover, the City does not resolve encampments during the
5 pandemic unless it has adequate alternative shelter sites available; currently the City does not
6 anticipate that enough additional shelter will become available within the next thirty days to permit
7 any large encampment resolutions, and none are currently scheduled. (Kositsky Decl. ¶ 4.)

8 ARGUMENT

9 The availability of interim injunctive relief depends on two interrelated factors.

10 First, the applicant must demonstrate a “threat of immediate and irreparable injury” that would
11 justify injunctive relief. (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d
12 131, 138.) For a TRO, the showing for required harm is even more pointed than the showing required
13 for a preliminary injunction: The requisite immediate and irreparable injury harm must occur in the
14 time frame that it would take for a hearing on a noticed motion. The statute requires a showing “that
15 great or irreparable injury will result to the applicant before the matter can be heard on notice.”
16 (C.C.P., § 527(c)(1).)

17 Second, an applicant may not obtain interim injunctive relief unless it establishes a reasonable
18 probability that it ultimately will prevail on the merits. (*Cohen v. Board of Supervisors* (1985) 40
19 Cal.3d 277, 286.)

20 Even if the applicant satisfies its threshold burden of establishing immediate and irreparable
21 injury, a court must balance that injury against the injury the defendant and the public would suffer if
22 injunctive relief were issued. (*Socialist Workers etc. Com. v. Brown* (1975) 53 Cal.App.3d 879, 888-
23 889.) And where an applicant seeks to enjoin action by government, the applicant faces an even
24 greater burden to demonstrate that its claim of harm outweighs the harm to the public interest.
25 “[W]here governmental action is involved, courts should not intervene unless the need for equitable
26 relief is clear, not remote or speculative.” (*City of Vernon v. Central Basis Municipal Water Dist.*
27 (1999) 69 Cal.App.4th 508, 517.)
28

Petitioner cannot satisfy any of the standards that would entitle her to the extraordinary remedy she seeks.

I. PETITIONER FAILS TO SHOW ANY THREAT OF IMMEDIATE AND IRREPARABLE INJURY

Petitioner has not alleged, let alone established, that she would suffer any immediate and irreparable harm if the Court does not issue the requested TRO, as required by Section 527(c)(1) of the Civil Procedure Code. The subject of her Petition is an encampment resolution that already occurred on November 18, 2020, and she does not contend that she faces the threat of any imminent injury. Indeed, even as to the resolution that already occurred, Petitioner was not required to move—she remains where she was—and she was not required to surrender any property. There is no showing that she will be forced to move from any encampment at any point in the future.

Apart from the fact that Petitioner herself cannot establish any injury or particularized interest in the relief she seeks, she cannot establish that *anyone* would suffer any cognizable injury in the absence of a TRO. As the Petition concedes, the City offered every resident of the encampment alternative shelter. Moreover, the City did not prohibit anyone from erecting a tent anywhere on public property; those who refused offers of shelter were required to move because the encampment was creating sanitation and public safety issues. As discussed in the next section, there is no right to pitch tents wherever one chooses on public property and to remain there indefinitely—particularly while the government is offering alternative shelter. And in any event, the City does not currently anticipate that any large encampment resolutions will occur in the next thirty days. (Kositsky Decl. ¶ 4.)

Petitioner contends that a TRO is warranted because “there will be both immediate danger (due to COVID-19 spreading rapidly as winter approaches) and irreparable harm (due to vulnerability without housing).” (Nov. 20, 2020 Mayon Decl.) Neither contention is correct. First, since the alternative shelter options offered by the City provide sanitation services and accommodate social-distancing rules and protocols, Petitioner has not shown that failure to issue a TRO will increase the spread of COVID-19. The services the City delivers at the alternative shelter sites may provide a safer environment than exists at encampments where people may ignore social distancing protocols and may

1 not use toilets or other sanitation facilities even though they are available. (See Follin Decl. ¶ 5;
2 Kositsky Decl. ¶ 2.) Moreover, before an encampment resolution, DPH assesses residents for
3 COVID-19 symptoms and other health issues. (See Kositsky Decl. ¶ 5.) Second, Petitioner does not
4 identify the harm to people without housing, but in an encampment resolution the City is *offering*
5 *shelter* to people, and those who refuse it may move their tent to another location.

6 **II. PETITIONER CANNOT ESTABLISH A REASONABLE PROBABILITY THAT SHE**
7 **WILL PREVAIL ON THE MERITS**

8 **A. Petitioner Fails to Establish Any Legal Basis to Prohibit the City From**
9 **Dismantling Any Encampments When It Is Offering Alternative Shelter**

10 The premise of Petitioner’s request for an order preventing the City from dismantling any
11 encampments during the pandemic is that to do so would contravene guidance from public health
12 authorities. But the premise is mistaken. First, Health Officer Order No. C19-07d, dated May 17,
13 2020, states that “Homeless individuals continue to be exempt from the shelter in place requirement,
14 *but government agencies continue to be urged to take steps needed to provide shelter for those*
15 *individuals.*” (Goldman Decl. Ex. A, at p. 3, emphasis added.)¹ On the same day, DPH issued its
16 “Interim Guidance for Safe Sleeping for Unsheltered Persons Experiencing Homelessness to Reduce
17 the Risk of COVID-19.” (Goldman Decl. Ex. C.) It states: “Per CDC guidance, *if individual housing*
18 *options are not available*, allow people who are living unsheltered or in encampments to remain where
19 they are.” (*Id.* at p. 1, emphasis added.) It adds: “*If there is no overcrowding, community safety or*
20 *sanitation issues*, the recommendation is to not ask people to leave the area where they have been
21 staying in one encampment and move to another encampment.” (*Id.*, emphasis added.) The CDC
22 guidance is the same: “*If individual housing options are not available*, allow people who are living
23 unsheltered or in encampments to remain where they are.” (Goldman Decl. Ex. D, at p. 5, emphasis
24 added.) The CDC’s guidance also encourages the creation of additional temporary housing with

25 ¹ The most recent version of the Health Officer’s Order “[c]ontinues to urge government
26 agencies to provide shelter and sanitation facilities for individuals experiencing homelessness.”
27 (Goldman Decl. Ex. B, at p. 5; see also *id.* at p. 12 [“Individuals experiencing homelessness are
28 exempt from this Section, but are strongly urged to obtain shelter. Government agencies and other
entities operating shelters and other facilities that house or provide meals or other necessities of life for
individuals experiencing homelessness are strongly urged to, as soon as possible, make such shelter
available, and must take appropriate steps to help ensure compliance with Social Distancing
Requirements, including adequate provision of hand sanitizer.”].)

1 appropriate services, supplies, and staffing. (*Id.* at p. 2.) Putting aside that neither the cited CDC
2 guidance nor DPH recommendations are legally binding on the City—and do not create a right to
3 remain anywhere one chooses on public property—by their own terms they do not apply where, as
4 here, the government is offering alternative shelter options and where encampments are creating
5 community safety or sanitation issues.

6 So far as the City is aware, no court has ever held that a local government that is offering
7 alternative shelter must allow any person who has pitched a tent on public property to remain where
8 they are, and there is no legal basis for such an order. Indeed, in holding that “the Eighth Amendment
9 prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property
10 for homeless individuals who cannot obtain shelter,” the Ninth Circuit made clear that “we in no way
11 dictate to the City that it must ... allow anyone who wishes to sit, lie, or sleep on the streets ... at any
12 time and at any place.” (*Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, 616; see also, e.g., *Allen*
13 *v. City of Sacramento* (2015) 234 Cal.App.4th 41, 57-60 [anti-camping ordinance was not
14 criminalization of homelessness].) Courts have repeatedly held that there is no right to occupy a
15 particular piece of public property when there are other places available—to say nothing of when the
16 City is affirmatively offering alternative shelter. (See, e.g., *Frank v. City of St. Louis* (E.D. Mo. 2020)
17 458 F.Supp.3d 1090, 1093-1094 [plaintiff not likely to prevail in challenge to ban on tent
18 encampments in specified areas where other locations were available]; *Aitken v. City of Aberdeen*
19 (W.D. Wash. 2019) 393 F.Supp.3d 1075, 1082 [“*Martin* does not prohibit cities from evicting
20 homeless individuals from particular public places”]; *Miralle v. City of Oakland* (N.D. Cal., Nov. 28,
21 2018, No. 18-CV-06823-HSG) 2018 WL 6199929, at *2 [“*Martin* does not establish a constitutional
22 right to occupy public property indefinitely at Plaintiffs’ option”].)

23 As discussed above, there were public health and public safety issues associated with the
24 encampment. All residents were offered alternative shelter; no one was arrested or cited; and no one
25 was required to surrender any property. Beyond public health and safety issues, encampments can
26 create hazards by failing to accommodate social distancing protocols, and can violate federal and state
27 disability laws by blocking sidewalks and entrances to buildings. These problems have resulted in
28 multiple lawsuits against the City, one of which was resolved with a stipulated injunction that required

1 the City to reduce the tent count in the Tenderloin by offering alternative shelter in SIP hotel rooms or
2 Safe Sleeping Villages, and, if necessary, enforcement action to prevent re-encampment. (Goldman
3 Decl. Ex. E.) The TRO Petitioner seeks would hamstring the City’s ability to protect public safety and
4 public health, to enforce disability laws, and to comply with the federal court’s injunction. There is no
5 legal basis for the relief sought, which would impermissibly interfere with the City’s policy
6 judgments. (See, e.g., *Allen, supra*, 234 Cal.App.4th at p. 47 [“as we consider the City’s camping
7 ordinance, we may not opine on the wisdom of the policies embodied in such legislation”]; *People v.*
8 *Kellogg* (2004) 119 Cal.App.4th 593, 605 [“we are not in a position to serve as policy maker to
9 evaluate societal deficiencies and amelioration strategies”]; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th
10 1069, 1092 fn. 12 [“arguments ... regarding the apparently intractable problem of homelessness and
11 the impact of the Santa Ana ordinance on various groups of homeless persons (e.g., teenagers, families
12 with children, and the mentally ill) should be addressed to the Legislature and the Orange County
13 Board of Supervisors, not the judiciary.”].)²

14 **B. Petitioner Fails to Establish That the City Is Required to Provide Particular**
15 **Sanitation Services to Unspecified Encampments**

16 While Petitioner refers to recommendations in CDC and DPH guidance, there is no legal
17 requirement that the City provide specified sanitation services to any and all encampments, which
18 alone suffices to require denial of the TRO. And in any event, sanitation services were available to the
19 encampment at issue here (Follin Decl. ¶¶ 4-5), even though its small size—consisting of
20 approximately ten persons for most of the time (Follin Decl. ¶ 3)—was below the threshold for the
21 guidance on which Petitioner relies. (See Goldman Decl. Ex. C, at p. 2; Goldman Decl. Ex. D, at p. 5
22 [referring to encampments in excess of ten persons].) Moreover, all remaining encampments of ten or

23 ² The City notes that Petitioner expressly states that she is not asking the Court to issue a TRO
24 requiring the City to provide particular notice prior to any encampment resolution; she states that she
25 is instead preparing an administrative claim with respect to that issue. (Petn. p. 4.) In fact, City
26 personnel did provide advance notice to residents (Kositsky Decl. ¶ 5), although Petitioner complains
27 that it was not the written notice required by S.F. Police Code § 169 (also known as Proposition Q).
28 But while Proposition Q created a new, non-criminal prohibition against camping on City sidewalks
that the City may enforce by providing the requisite notice, it had no effect on other legal bases for
enforcement action, such as public nuisance laws (e.g., Cal. Pen. Code, § 372; S.F. Health Code, §§
581, 596) or laws against obstruction of sidewalks (e.g., Cal. Pen. Code, § 647c; S.F. Police Code, §§
22-24). The City is not required to comply with the notice provisions of Proposition Q when
enforcing laws other than Proposition Q, and the encampment resolution at issue here was not an
enforcement action under Proposition Q. (Kositsky Decl. ¶ 8.)

1 more tents in San Francisco have reasonable access to portable toilets, hand-washing stations, potable
2 water, and regular trash pickups. (Kositsky Decl. ¶ 3.) Petitioner has identified no facts or law that
3 would entitle her to the extraordinary remedy she seeks.

4 **III. THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER IS NOT IN THE**
5 **PUBLIC INTEREST**

6 “Where, as here, the plaintiff seeks to enjoin public officers and agencies in the performance of
7 their duties the public interest must be considered.” (*Tahoe Keys Property Owners’ Assn. v. State*
8 *Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1472-1473.) As discussed above, there are
9 a variety of circumstances in which the City must dismantle an encampment—for example, to protect
10 public safety, to address sanitation and other public health issues, or to ensure that sidewalks are
11 passable by persons with disabilities. In some places, sidewalks are so narrow that social distancing is
12 impossible and any tents will obstruct passage. An order that prevents the City from requiring the
13 dismantling of any encampment, notwithstanding the availability of alternative shelter sites with
14 robust support services and social-distancing protocols, would substantially undermine the City’s
15 ability to protect public health and safety, as well as to enforce the law. It is not in the public interest.

16 **CONCLUSION**

17 Without even the benefit of full briefing, Petitioner seeks a TRO that would usurp the City’s
18 responsibility for homelessness policy and replace it with a Court order. The requested relief has no
19 basis in the law nor in the facts of this case. The application should be denied.

20 Dated: December 1, 2020

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