

MEMORANDUM



DATE: June 28, 2021
TO: Chief Matthew McCaffrey, via the Chain of Command
FROM: Sergeant Alan Bates, Novato Response Team
SUBJECT: Enforcement of City Ordinances 7-11 & 14-20

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Chief of Police

Purpose of This Document

The purpose of this document is to give context and guidance to staff as we begin to enforce the City Ordinances related to a restriction on daytime camping as well as a prohibition on camping close to critical infrastructure and in certain other locations.

In 2017, the Novato Police Department (NPD) Novato Response Team (NRT) became the lead on unhoused outreach for the City of Novato. This included taking the lead on outreach efforts to those experiencing homelessness, designating the team as the point of contact to our community as well as responding to complaints of homeless encampments. Novato Police Department Policy 464.2 designates the NRT Sergeant as the Homeless Liaison Officer.

The NRT responds to all calls for service involving the unhoused community. These calls for service include, but are not limited to, crime reports and informational conversations with community members about homelessness, encampments, and associated legal considerations. In response to an increase in community interest and questions surrounding homelessness, the NRT assisted the City of Novato with updating the city's website to reflect statistical data and outreach efforts (<https://www.novato.org/community/homeless-outreach-in-novato>).

Housing First

The County of Marin uses the Housing First approach to address homelessness. Housing First is the idea that the solution to homelessness is a home. The "Housing First" model prioritizes housing individuals first and then connects them with services. Assistance with employment, healthcare and substance abuse treatment is more effectively addressed when the individual is stabilized under this concept.

The NRT along with community and government partners collaborate in an effort to provide outreach to all unhoused individuals throughout the City of Novato. With the "Housing First" model in mind, initial efforts are intended to provide unhoused individuals with access to social services. The NRT, its partners, and the unhoused individual collaborate to create an individualized housing and/or services plan, and then execute said plan. The NRT and its partners typically conduct outreach separately but

will conduct outreach together in special circumstances or when it benefits the unhoused individual.

Encampments

The NRT receives information from a variety of sources about where encampments are located within the City. These sources include, but are not limited to, calls and emails from community members and referrals from our community partners. The NRT also locates encampments proactively. When the NRT receives information of a new encampment, NRT Officers will respond to the encampment and attempt to contact the occupant(s). The NRT confirms whether the encampment is occupied or abandoned. If the encampment is confirmed abandoned, cleanup efforts are then organized and completed.

Once encampment occupant(s) are identified, the NRT will conduct outreach and coordinate services for the specific individual(s). The NRT then coordinates with its social services partners to work towards an avenue(s) to housing. If the individual is accepting of services, the NRT and/or social services partners provide consistent outreach until housing goals are met. If the individual is service-resistant, outreach efforts by the NRT and partnering social services continue until successful or other action plans are implemented.

Transitional Housing vs. Emergency Shelter

The County of Marin offers *minimal* options for temporary and emergency shelter. When an unhoused individual is assessed for shelter, the following must occur. This process is not an immediate or guaranteed offer to housing.

VISPDAT Assessment: Vulnerability Index – Service Prioritization Decision Assistance Tool. Community partners (social services) conducts this assessment with cooperative unhoused individuals to assess their vulnerability as unhoused. This assessment considers police contacts, victimization, medical issues, how long the individual has been unhoused, prior trauma, and more. The unhoused individual is responsible for providing truthful answers. After the assessment is completed, a score is provided (0 being the lowest and 17 being the highest). The score one earns from the assessment determines their eligibility for housing. Individuals with a score of 10 or higher are placed into a queue for Permanent Supportive Housing. Individuals with a score between 5 and 9 are placed into a queue for Rapid Re-Housing. Individuals with scores between 0 and 4 are referred to mainstream services. A VI-SPDAT revision may be completed for individuals who have experienced circumstances which could change their assessment score. All individuals who complete a VI-SPDAT will be entered into Marin County's coordinated entry system for applicable services. Law enforcement is not permitted to participate in these assessments. The NRT is provided with VI-SPDAT scores in specific circumstances, such as if the unhoused individual has signed a Release of Information.

Housing Intake Referral: Homeward Bound operates the Kerner Shelter (the County's only open temporary shelter) which accepts unhoused individuals via a referral system.

Social service partners of the Kerner Shelter must submit referrals to the Kerner Shelter on behalf of an unhoused individual for possible shelter entry. The Kerner Shelter reviews and accepts or declines referrals on Mondays and Tuesdays. Unlike the system at Mill Street (previous emergency shelter in Marin County), same day entries and walk-in entries are not accepted at the Kerner Shelter. This entry policy was changed due to Covid 19 protocols and safety measures.

Acceptance by the Shelter: An individual referred to the Kerner Shelter on Monday or Tuesday is notified by Tuesday at the latest if they are accepted into the shelter. If accepted, the unhoused individual is provided with an intake appointment for either Wednesday or Thursday of the same week. The intake appointment includes a specific date and time when the individual must arrive to the shelter. Unhoused individuals are provided with transportation by either the NRT, PIVOT, or Care Team III. Based on a case-by-case basis, unhoused individual(s) are given the opportunity to store their personal belongings with the Novato Police Department for up to a period of 90 days.

Intake into the Shelter: Upon arrival to the Kerner Shelter, the accepted individual is assessed medically for Covid 19 symptoms. Their property is searched by private security on site for safety reasons. The individuals living at the Kerner Shelter may leave the shelter and return at specific times, but not past 10:00pm. The NRT does not maintain contact with individuals living at the Kerner Shelter.

In 2018 the county's primary emergency shelter, Mill Street, was demolished in preparation for expansion. In January of 2021, Marin County opened the Kerner Shelter.

Resources and Community Partnerships

The NRT collaborates with social services and representatives of other organizations that render assistance to the unhoused community. The following is a list of agencies that the NRT works in partnership with to serve the unhoused community in Novato.

PIVOT – Appointed by the Multicultural Center of Marin, this civilian recovery coach is dedicated to keeping those with behavioral health issues from entering the criminal justice system. The NRT works with the PIVOT recovery coach to determine which individuals need/qualify for assistance, where those individuals can be found, and what kinds of assistance can be provided to them. The NRT and the PIVOT recovery coach collaborate on individualized plans for unhoused members of the community, with the goal of providing them with services and housing opportunities.

Multicultural Center of Marin - Works with diverse immigrant and underserved communities of Marin County in advancing their social, cultural, and economic well-being. The NRT works with the Multicultural Center of Marin via their liaison (PIVOT recovery coach).

Department of Public Works – Component of the City of Novato dedicated to infrastructure maintenance. The Department of Public Works assists the NRT with encampment and park cleanups.

CARE – Community Action Marin's field unit dedicated to outreach. The CARE outreach

team works in partnership with the PIVOT recovery coach to determine which individuals need assistance, where those individuals can be found, and what kinds of assistance can be provided to them. The NRT and CARE collaborate on individualized plans for unhoused members of the community, with the goal of providing them with services and housing opportunities.

Downtown Streets Team – Dedicated to helping through work programs. The NRT refers unhoused individuals to the Downtown Streets Team for employment opportunities and other applicable services.

Marin County Re-Entry – Team dedicated to reducing homelessness following release from jail. The NRT notifies the Re-Entry Team of arrestees who may benefit from mental health/substance abuse treatment following jail release.

Odyssey – (HHS) program that supports adults who struggle with severe mental health symptoms and, as a result, are unhoused. The NRT refers eligible unhoused individuals to Odyssey and assist Odyssey with locating/contacting individuals.

Buckelew – Provides housing and counseling to those with behavior health issues. The NRT works with outreach partners to refer eligible unhoused individuals to Buckelew programs.

North Marin Community Services – Assisting those who are vulnerable with person-centered services including rental assistance. The NRT works with outreach partners to refer eligible unhoused individuals to NMCS programs.

Marin Health and Human Services (HHS) – Marin County's largest department focused primarily on housing and behavioral health services. The NRT partners with many HHS outreach workers/case managers to provide services to the unhoused community.

Department of Fish and Wildlife – Dedicated to the management of plant and animal life. The NRT utilizes the Department of Fish and Wildlife as a resource when investigating crimes involving fish, wildlife, and waterways.

Marin Flood Control District – Dedicated to reducing the risk of flooding for the protection of life and property. The NRT collaborates with this organization to organize and execute encampment cleanup efforts in, near, or along waterways.

Resource Conservation District – Aims to enhance Marin's natural resources. Assists the NRT with wildlife protection and habitat restoration considerations near waterways.

Marin County Library – Provides access and assistance with learning opportunities.

Salvation Army – Faith-based organization dedicated to assisting with human needs. The NRT refers willing and eligible individuals to Salvation Army housing, employment, and recovery programs.

Homeward Bound -Nonprofit organization that provides housing and other services to Marin residents.

Marin Housing Authority – Manages public housing in Marin County. Provides case management to unhoused individuals who have or are about to receive a housing voucher. These case managers assist unhoused individuals (voucher holders) with locating housing and completing required rental paperwork.

Whole Person Care – Marin County organization aimed at providing Medi-Cal patients with a coordinated system of care.

Ritter Center – Non-profit organization dedicated to preventing homelessness and improving health. Ritter also provides case management through their organization. NRT refers individuals in need of identification cards to the Ritter Center, who can provide them with identification card vouchers.

St. Vincent de Paul – Non-profit which provides Marin residents with housing, medical and nutrition services. If an unhoused individual wants to relocate with identifiable family or friends out of the area, the NRT refers them to St Vincent de Paul. This organization will then provide transportation via bus or airplane ticket after vetting the family or friend who will receive the unhoused individual.

Additionally the City Council authorized the direct hire of two additional case managers at a cost of \$240,000 to the City, to provide outreach and services to the unhoused, while helping them towards the ultimate goal of housing. The City of Novato continues to fund and provide locations for a mobile shower program for the unhoused.

Martin v. Boise Considerations

In 2009, six currently and formerly unhoused Boise, Idaho residents, alleged that laws prohibiting them from sleeping outdoors within city limits amounted to cruel and unusual punishment and violated their rights under the Eighth Amendment. The local court ultimately ruled in favor of the plaintiffs, but the City of Boise appealed.

It would be another nine years of litigation until the case finally received a ruling in the Federal 9th Circuit Court of Appeals. Once again, the court found for the plaintiffs, not the city. The Ninth Circuit held in *Robert Martin et al. v. City of Boise* (2019) 920 F.3d 584 that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” The Ninth Circuit provided the following caveat in footnote 8 of *Martin*:

“Our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the

Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes.”

In other words, *Martin* generally prohibits imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals, but allows cities to impose reasonable regulations on those acts. This includes prohibiting camping when individuals have access to adequate temporary shelter, or adopting geographically limited restrictions justified by public health or safety concerns.

Finally, in the wake of this ruling, there is a serious question about the intersection of sleep and informal shelter. Are encampments – which essentially become permanent structures, a place for gathering during waking hours, and a location for storage and other personal belongings – tantamount to sleep?

Clean Up of Encampments

The City of Novato Department of Public Works (DPW) assists with trash removal on a weekly basis and encampment clean-up of abandoned property. The team does ongoing encampment clean up at the request of the NRT and in response to community complaints.

The Novato Police Department Homeless Persons Policy #464 provides direction to patrol officers on encampment cleanups and considerations when recovering or storing property:

“Officers should not conduct or assist in clean-up operations of belongings that reasonably appear to be the property of unhoused persons without the prior authorization of a supervisor or the department Homeless Liaison Officer. When practicable, requests by the public for clean-up of a homeless encampment should be referred to the Homeless Liaison Officer.

Officers who encounter unattended encampments, bedding or other personal property in public areas that reasonably appears to belong to a homeless person should not remove or destroy such property and should inform the department Homeless Liaison Officer if such property appears to involve a trespass, blight to the community or is the subject of a complaint. It will be the responsibility of the Homeless Liaison Officer to address the matter in a timely fashion.”

The NRT Officers (Homeless Liaison Officers) coordinate cleanups of encampment areas in partnership with the Department of Public Works, or their authorized contractor. Typically, these cleanups are conducted at abandoned encampments. If the NRT locates a suspected abandoned encampment, they investigate the situation to determine if the encampment is abandoned. If the NRT concludes the encampment is abandoned and the previous encampment occupant is not known, the NRT marks the encampment with a clearly posted and dated abandoned encampment notice, providing a possible owner of the property with 72 hours of notice to contact the NRT. If no identifiable owner contacts the NRT after at least 72 hours, the cleanup is conducted. The NRT is notified by the Department of Public Works or the approved contractor if any

items of value are located. Any items of value located are stored in accordance with Novato Police Department Policy. If the NRT receives credible information about an individual who abandons an encampment, the property may be recovered by the NRT. Property of value is stored and any soiled, damaged, or hazardous property is discarded.

Occupied encampments are often in need of cleanups for a number of reasons, including due to excessive garbage, maintenance, or improvement projects in the area. In the event individuals of an occupied encampment need to vacate for the cleanup, the NRT ensures the encampment occupant(s) are notified via clearly posted signs (and personal notification if possible). The signs are posted at the cleanup location at least 72 hours before the cleanup. The occupant(s) are instructed to vacate the area and collect any personal property which the occupant(s) do not wish to be discarded. The NRT is notified by the Department of Public Works or the approved contractor if any items of value are located. Any items of value located are stored in accordance with Novato Police Department Policy.

City of Novato Related Municipal Codes

Prior to the Martin ruling the California Penal Code and Novato Municipal Code prohibited camping in public places. Following the ruling, in 2019, the City of Novato amended the Novato Municipal Code Section 14-20 to limit enforcement of those that have no alternatives.

In June of 2021, the Novato City Council passed Novato Municipal Code Section 7-11 regarding protection of critical infrastructure, wildfire risk areas, and youth-serving facilities, Section 7-12 regarding the Streambed Protection Zone and amended Section 14-20 regarding camping on public property during the day. In short, these provisions prohibit camping, occupying camp facilities, or using camp paraphernalia, and storing personal property, including camp paraphernalia and camp facilities, in the following circumstances:

1. On or within 50 feet of critical infrastructure, or the entrance to or exit from critical infrastructure. Critical infrastructure is defined to include:
 - a. Government buildings, including City Hall, schools, fire stations, police stations, jails, courthouses, and libraries.
 - b. Electric, sewer, wastewater and water utility facilities, including generation stations, transformers and substations.
 - c. Health facilities, as that term is defined in Health & Safety Code section 1250.
 - d. Train stations and train tracks.
 - e. Water sources and levees.
 - f. Bridges and roads designated by the City as Citywide evacuation

routes.

2. Wildfire risk area.
3. On or within 50 feet of youth-serving facilities, including child day care facilities, preschool, public or private primary or secondary school, and City playgrounds.
4. Within the Stream Protection Zone, as defined by Novato Municipal Code Chapter 19.35, which includes the stream bed, the stream banks, all riparian vegetation and an upland buffer zone at least 50 feet wide on both sides of the stream.
5. In any location in City jurisdiction between the hours of 7 a.m. and 9 p.m.

Per the ordinances adopted by the City Council, these new restrictions on camping are only effective at the early of the following:

- The Centers for Disease Control and Prevention amends or revokes its Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Official to no longer recommend local agencies allow individuals living unsheltered or in encampments to remain where they are.
- COVID-19 vaccinations are accessible for individuals experiencing homelessness, at least 90 percent of County residents 16 year and older have been fully vaccinated, as defined by the California Division of Occupational Safety and Health, and the County meets the State of California requirements for the Yellow (Minimal) Tier in place as of May 25, 2021.

https://library.municode.com/ca/novato/codes/code_of_ordinances

Current Novato Encampment Conditions

During the pandemic, unhoused individuals gathered to shelter in place at local public spaces such as City parks and open spaces. As the lockdowns continued over several months, the County of Marin followed CDC recommendations to install hand washing stations, trash bins and portable bathrooms near encampments of ten or more to help slow the spread of Covid 19. Encampments grew larger and the number of unhoused individuals in public areas increased. An unintended consequence of these larger encampments was more trash, hazardous and human waste in public areas and in waterways. This caused damage and had a negative effect on the environment in these areas.

Covid 19 Tier Information

No Tier: All Shelter in Place Orders related to homeless encampments were lifted by the State of California and the County of Marin on June 15, 2021.

Vaccinations: Since May of 2021, the County of Marin has continued to encourage vaccinations to its residents. There has been a vaccination site locate at the Novato

Library, which is adjacent to one of Novato's largest encampments, occupied by approximately 25 unhoused individuals. Despite the efforts to encourage vaccinations, only approximately 20% of the residents of this encampment have been vaccinated.

City of Novato and County staff continue to encourage the residents of this encampment to get the Covid-19 vaccination.

For more information: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/COVID-19-Vaccination-for-People-Experiencing-Homelessness.pdf>

CDC Guidelines: As of June 1, 2021
<https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>



Conclusion

Before any attempt at enforcing the City Ordinances prohibiting Day Camping or Camping within 50' of a Critical Infrastructure or the Stream Protection Zone, every effort should be made via outreach to those unhoused individuals to find them housing and make them aware of services available to them. We should coordinate with our government and Community Based Organizations (CBO) partners to facilitate the voluntary abandonment of any campsite prior to any type of enforcement action, unless exigent circumstances require a more immediate response.