

## MEMORANDUM

**To:** Santa Monica Pulse  
**Fr:** Elizabeth Mitchell, Esq.  
**Date:** April 19, 2022<sup>1</sup>  
**Re:** **Homelessness in Santa Monica**  
*An Opportunity for the City to Lead by Example*

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### Introduction

By any measure, homelessness—in Santa Monica and across the region—has never been worse. While several factors have increased the number of people experiencing homelessness over the last decade, the response from local policymakers has been encumbered by opposition from residents, a lack of state and federal resources, and a legal minefield that has led to paralysis in many jurisdictions. But the continued deterioration of the situation on our streets and sidewalks, and the impact that it is having on the unhoused and housed alike, has brought this situation to a point where the status quo is indefensible. The question is: what do we do now?

We were retained by Santa Monica Pulse in a limited capacity to lay out a variety of legal and policy options available to the City of Santa Monica to inform decision-making and address the needs of both the unhoused and housed communities in a humane and sustainable manner.

### I. How we got here: California's Pathway to Crisis

From its beginning, California has struggled to provide for those with mental illness and other acute needs. The first “state insane asylum” was open in 1853. By the 1960s, new approaches to treating mental illness were leading to a shift from large, state-run facilities to a community-based approach that relied on pharmaceuticals and outpatient services to treat patients. In 2011, confronted with a prison overcrowding crisis and a record budget deficit, Governor Jerry Brown championed what he called the “boldest move in criminal justice in decades,” a realignment of the criminal justice system which resulted in additional burdens

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<sup>1</sup> This memorandum was originally drafted October 15, 2021, but updated to reflect ongoing change of circumstances in Santa Monica.

being shifted to local governments and the release of thousands of prisoners.<sup>2</sup> Within a few years, realignment was straining local resources, leading to the release of low-level offenders from jails onto the streets with nowhere to go.<sup>3</sup>

While the goals of realignment—namely saving money by reducing prison populations while no longer criminalizing mental illness—were righteous, the reality is that people were shifted from one inadequate government system (criminal justice) to an even more inadequate and incomplete system (homelessness and mental health) without the tools or resources to succeed. This accelerated the downward spiral of California's homelessness crisis and spread it into every corner of the state. And it was in this context that the Boise decision was rendered and that the COVID-19 pandemic unfolded, which combined to overwhelm and paralyze policymakers throughout California as they attempted to address a homeless crisis unlike anything seen before in terms of its scale and complexity.<sup>4</sup>

## II. Legal landscape: Addressing homelessness under Boise

Since the Ninth Circuit's ruling in *Martin v. City of Boise*, 920 F.3d 584 (2019), local governments throughout the west coast have been paralyzed by the legal uncertainty that the case has created. On a high level, the court tied enforcement of anti-camping ordinances to a requirement to provide adequate shelter. Yet the opinion itself contained inconsistent language on the actual requirement. One section of the opinion suggested a city-wide numbers game: “[S]o 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” sleeping in public areas. *Id.* at 617. Yet immediately thereafter, the court clarified:

[O]ur 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

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<sup>2</sup> Paige St. John, *Gov. Jerry Brown's prison reforms haven't lived up to his billing*, LOS ANGELES TIMES (June 21, 2014, 7:30 PM), <https://www.latimes.com/local/politics/la-me-ff-pol-brown-prisons-20140622-story.html>.

<sup>3</sup> Gillian Flaccus, *Homeless parolees weigh on California counties*, AP NEWS (July 4, 2014), <https://apnews.com/article/5f84742e807b42bea320bcc6842c29ef>.

<sup>4</sup> For an extended review of homelessness in California see APPENDIX A.

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.

*Id.* at 617 n.8.

Cities and Counties have since been left to guess whether the Ninth Circuit’s order requires the same number of shelter beds be available as the number of homeless individuals in a jurisdiction (in Santa Monica’s case, 907), or a singular offer of shelter to an individual prior to legal regulation. Since 2019, most district courts have interpreted *Boise* narrowly, but this specific issue has not been addressed by the appellate courts.<sup>5</sup> At least one judge for the Central District, Judge David O. Carter, has approved less-than-100%.<sup>6</sup> While we wait for the courts to provide additional legal clarity, the current ambiguity gives jurisdictions an opportunity to be thoughtful and creative in developing legal frameworks to address homelessness and maintain public spaces for all.

### III. Political landscape: homelessness is the issue of 2022

#### a. California

Homelessness was the top issue in public opinion polls for the first time in California prior to the pandemic and is once again top-of-mind. Voters are venturing out of their homes and returning to parts of their community that they have not seen in months, finding they have been transformed by encampments and despair.

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<sup>5</sup> See, e.g. *Young v. City of Los Angeles*, Case No. 20-cv-00709, 2020 WL 616363 (C.D. Cal. Feb. 10, 2020); *Le Van Hung v. Schaaf*, Case No. 19-cv-01436, 2019 WL 1779584 (N.D. Cal. Apr. 23, 2019).

<sup>6</sup> In *Orange County Catholic Worker vs. Orange County*, Case No. 18-cv-00155 (“OC Catholic Worker”), Judge Carter has approved and heavily supported the goal of 60% of a jurisdiction’s homeless count as the appropriate number of interim shelter beds to aim for (with the remaining 40% largely self-resolving, migrating, or inappropriate for interim shelter due to severe mental health or drug dependency issues). The 60% number has consistently been identified as the right target in a number of cities in Orange County and south Los Angeles.

Voters are fed up. Frustration about homelessness cuts across all demographics, including income, party affiliation, and race.<sup>7</sup>

This frustration permeates the political class as well. Labor unions are frustrated by the impact of homelessness on their members' working conditions and quality of life outside of work. Minority groups point to the overrepresentation of people of color amongst the homeless population and disproportionate number of encampments tolerated in their communities. Business leaders are concerned that COVID recovery will be inhibited by unwelcoming conditions in downtowns and main streets. Even many service providers recognize the inadequacies of our current approach but are afraid to speak up because they do not see an alternative to the status quo and are afraid of retribution by the local governments that fund them. 2022 is a big election year at both the state and local levels. Voters no longer want explanations, they want action.

Elected officials throughout California are recognizing this reality and beginning to respond accordingly. Mayor Darrell Steinberg of Sacramento, the former president of the State Senate and a longtime advocate for the mentally ill and the unhoused, has been pushing for a comprehensive approach to homelessness that includes a variety of immediate housing options combined with the regulation of public spaces ("Right to Shelter and Obligation to Use it").<sup>8</sup> In the City of Los Angeles over just the past few months, the City Council recently adopted a modified anti-camping ordinance, set ambitious goals for new housing, and developed a comprehensive outreach strategy for the homeless. Even more telling is how the candidates for Mayor are positioning themselves on this issue, with each of them making clear that the status quo is unacceptable and untenable.

#### **b. Santa Monica**

These same shifts in the disposition of voters and public officials are underway in the City of Santa Monica, as the pendulum swings from an era of

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<sup>7</sup> Benjamin Oreskes, *et al.*, *95% of voters say homelessness is L.A.'s biggest problem, Times poll finds. 'You can't escape it'*, LOS ANGELES TIMES (Nov. 14, 2019, 6:41 AM), <https://www.latimes.com/california/story/2019-11-14/homeless-housing-poll-opinion>.

<sup>8</sup> Darrell Steinberg, *Op-Ed: Building more permanent housing alone won't solve homelessness in California*, LOS ANGELES TIMES (July 17, 2019, 3:15 AM), <https://www.latimes.com/opinion/story/2019-07-16/op-ed-building-more-permanent-housing-alone-wont-solve-homelessness-in-california>.

permissive progressivism to an emphasis on public safety and accessible public spaces, largely but not wholly due to the civic and economic recovery of the city. The City of Santa Monica has long been associated with an eclectic mix of progressive politics and west coast wealth, exemplified by prominent locals like Bobby Shriver, Jane Fonda, and Tom Hayden. The permissive tendencies of the 1960s that shaped so much of the city's culture have helped to create the environment that enabled homelessness to take root in the community.<sup>9</sup>

Throughout the last several decades, homelessness has been a persistent issue for city. Newspaper articles from the 1990s read like they were written today.<sup>10</sup> For years, having people living on the streets was treated as an acceptable part of the cultural fabric of Santa Monica. Like other communities in Southern California, the adverse effects of COVID-19 and the CDC's directive to leave encampments in place without alternative safe accommodations has led to a dramatic increase in the number of homeless persons in Santa Monica and the negative impacts to both the unhoused and the housed. The city has been deeply impacted by COVID with the impacts to local businesses reflected in boarded up store fronts, declining city tax revenue, and a growing budget deficit.

These circumstances have led to some significant changes in the City of Santa Monica over the last two years. In April 2020, the City Manager, Rick Cole resigned after 5 years at the city, signaling at the time that city leaders were not ready to make the difficult decisions that were in front of them in terms of budget restructuring. Prior to Cole's resignation, Santa Monica launched an online platform – Santa Monica Connect – aimed at reducing the amount of friction in the process of housing the homeless that seems to be producing results.<sup>11</sup> Following Cole's departure, the City's Fire Chief retired, the City Attorney left, and the Police Chief was fired. This turnover of city officials has coincided with a turnover on the

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<sup>9</sup> Nancy Hill-Holtzman, *The Battle for Santa Monica's Parks: Homeless: Critics say a proposed ordinance to prohibit camping in the city fails to come to grips with the issue.*, LOS ANGELES TIMES (Jan. 18, 1992, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1992-01-18-me-174-story.html>.

<sup>10</sup> Hill-Holtzman, *supra* note 8, <https://www.latimes.com/archives/la-xpm-1992-01-18-me-174-story.html>.

<sup>11</sup> City of Santa Monica, *City Council Prioritizes Strategies to Address Homelessness*, Community Services Department (Feb. 24, 2021, 9:02 AM), <https://www.santamonica.gov/press/2021/02/24/city-council-prioritizes-strategies-to-address-homelessness>.

City Council. In November 2020, three new members were elected on a platform focused on shaking up City Hall and bringing new voices to the council.<sup>12</sup> Since then, two more members were appointed to fulfill the terms of seats that were vacated, and the City has a new Police Chief, Fire Chief, and City Manager. The ascendancy of the new councilmembers combined with the changes in city officials has added a new layer of complexity to Santa Monica's challenges.

Last year's council session on homeless in February highlighted these dynamics. The city's current approach was described by interim City Manager Lane Dilg as "marked by a careful balance between providing compassionate services and housing options while enforcing applicable laws to address anti-social behaviors through consistent engagement by first responders and restorative justice alternatives as appropriate."<sup>13</sup> Yet the anecdotal evidence shows inconsistent engagement and a lack of services and housing options. Still, many City staff and civic leaders remained committed to existing programs, confident that they will get the job done as resources become available. At the same time, the newly elected councilmembers called for bolder, more creative action to address the crisis. And a number of interim city leaders have made strong recommendations for city action, but without any long term skin in the game.<sup>14</sup> Ultimately, after six hours of discussions, the council affirmed much of its existing approach to homelessness, including its four-pillar approach to addressing homelessness: **Prevent** housed Santa Monicans from becoming homeless; **address** the behavioral health needs of vulnerable residents; **advocate** for regional capacity to address homelessness; and **maintain** access to safe, fun, and healthy open spaces.<sup>15</sup>

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<sup>12</sup> Faith E. Pinho, *Santa Monica politics upended by pandemic, George Floyd protests and economic woes*, LOS ANGELES TIMES (Dec. 20, 2020, 6:00 AM), <https://www.latimes.com/california/story/2020-12-20/new-guard-santa-monica-city-council>.

<sup>13</sup> Jack Simon, *Council Struggles to Curb Homelessness*, CULVER CITY OBSERVER (Mar. 4, 2021), <https://www.culvercityobserver.com/story/2021/03/04/news/council-struggles-to-curb-homelessness/9850.html>.

<sup>14</sup> Simon, *supra* note 14, <https://www.culvercityobserver.com/story/2021/03/04/news/council-struggles-to-curb-homelessness/9850.html>.

<sup>15</sup> City of Santa Monica, *supra* note 12, <https://www.santamonica.gov/press/2021/02/24/city-council-prioritizes-strategies-to-address-homelessness>.

The spring of 2021 saw an influx of dollars from the federal government and an influx of politics from Los Angeles. The city stepped up and put \$6.6 million in federal funds towards addressing homelessness, with \$6.35 million to support affordable housing and \$250,000 to fund non-congregate shelters and behavioral health efforts.<sup>16</sup> However, it was the growing feud between Los Angeles County Sheriff Alex Villanueva and Los Angeles City Councilmember Mike Bonin that started to steal attention away from the underlying crises on the Boardwalk. Starting in the spring and over the course of the summer, both men promoted alternative plans to clean up the encampments on Venice Beach, near Santa Monica. The Sheriff was highly critical of the deteriorating situation on the beach and boardwalk, calling out local politicians for their inaction in the face of an increasingly dangerous situation for both the unhoused and the housed. Councilmember Bonin, who is up for reelection in 2022 but is already the target of recall efforts in his district, resisted the Sheriff's plans while insisting that he had a plan of his own that "leads with housing, and not with handcuffs."<sup>17</sup> Despite their difference, by late summer their efforts produced results: hundreds have people who had been living on the beach were placed in housing and the area was able to be cleaned and made more accessible to the public.<sup>18</sup>

While the cleanup of these encampments was a significant development, the future remains unclear. City officials have recently reported inconsistent enforcement strategies even when laws are enforced. Inconsistent information and enforcement leave both housed and unhoused community members confused and frustrated with the City of Santa Monica's sometimes-permissive, sometimes-rigid policies. Furthermore, the beaches remain a particular concern, with a lack of

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<sup>16</sup> Sam Catanzaro, *Santa Monica City Council Allocates \$29.3 Million in Stimulus Funds*, SANTA MONICA MIRROR (Oct. 15, 2021), <https://smmirror.com/2021/04/santa-monica-city-council-allocates-29-3-million-in-stimulus-funds/>.

<sup>17</sup> Clara Harter, *Bonin and Villanueva double down on independent Boardwalk interventions*, SANTA MONICA DAILY NEWS (June 24, 2021, 6:01 AM), <https://www.smdp.com/bonin-and-villanueva-double-down-on-independent-boardwalk-interventions/206122>.

<sup>18</sup> Benjamin Oreskes, *et al.*, *How L.A. cleared most Venice Beach homeless camps and sheltered many unhoused people*, LOS ANGELES TIMES (Aug. 2, 2021, 5:00 AM), <https://www.latimes.com/homeless-housing/story/2021-08-02/venice-beach-homeless-encampment-finding-shelter>.

resources and enforcement making that area particularly dangerous to the unhoused and vulnerable tourists and residents after dark. The spotlight is now on Santa Monica, with Sheriff Villanueva recently calling aspects of the City's plans "about the dumbest idea short of invading Iraq."<sup>19</sup> The question for leaders in Santa Monica is how to advance the fragile progress that has been made in the face of legal, political, and financial uncertainty.

#### **IV. Recommendations: Options for the City of Santa Monica**

The roots of Santa Monica's homelessness crisis can be traced to decades of mismanagement and neglect at the federal, state, and local levels. Today's homelessness crisis does not have a singular cause, rather it is the result of the compounding effects of multiple policy failures and structural deficiencies in our social safety nets. The failings of our public health, mental health, foster care, veteran, and criminal justice systems have led to the outcomes that we see in our parks, sidewalks, beaches, and riverbeds today.

Given the evolving political and legal landscape in California as well as the unique circumstances in the City of Santa Monica, there is an incredible opportunity for Santa Monica to demonstrate leadership while addressing the needs of the entire community. As it demonstrated in 1979, this community is not afraid to do something radical when the status quo isn't working. This will require city leaders to come together to develop and implement a comprehensive strategy during a dynamic time in the city. With five new members, the City Council is an impressive group of people with no track record of working together and with another contentious set of local elections ahead in 2022. The new city manager, David White, must learn the city and the region during a time of crisis. The new City Attorney and Chief of Police have not been announced, but both of those roles will be crucial in developing the city's homelessness policies and enforcing them day to day. The recommendations below must be received with this context in mind.

Each of the options below is multifaceted and not necessarily mutually exclusive. They all share a common goal: regulating public spaces for the benefit of both the unhoused and the housed while providing access to comprehensive services and beds for those in need to break the cycle of homelessness.

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<sup>19</sup> Clara Harter, *Sheriff Villanueva lambasts Santa Monica's approach to Downtown homelessness*, SANTA MONICA DAILY NEWS (Sept. 29, 2021, 6:00 AM), <https://www.smdp.com/sheriff-villanueva-lambasts-santa-monicas-approach-to-downtown-homelessness/208930>.



### *Audits*

- The authors have not had access to City personnel or information during the crafting of this recommendation letter, and the assignment was limited. To get a better understanding of the city’s homelessness response, it is recommended that an audit take place to determine the efficacy of current systems in place, including the Ambassadors, Homeless Multidisciplinary Street Teams, C3 outreach teams, legal assistance funds, Santa Monica Police Department’s HLP program, and its mental health and substance use disorder support both by the City and the County. With full cooperation, this process could be completed in ninety (90) days.
  - Increased data collection is crucial, particularly regarding the *outcomes* of existing interventions (and not simply the existence of interventions or the amount of money being spent). Data collection should include the number of persons experiencing homelessness, the offers and types of assistance that have been made, the acceptance and/or declination of those offers, and the success of those offers once accepted (e.g. how long an individual stays in a shelter bed and where the individual goes upon exiting). Additional data should reflect activities and costs incurred by the Santa Monica to address the impacts of unsheltered homelessness on both the housed and unhoused.
- Existing data already raises questions – Of particular concern is the statistic that Santa Monica hosts 253 interim shelter beds, but only serves 111 people, which is an occupancy rate of less than 50%.<sup>20</sup> Yet simultaneously conversations with service providers have been surprised by this number and have consistently reported a lack of available shelter beds. There should be a deep dive into the available beds and services for homeless individuals.

### *Legislation and Regulation*

- Enforce existing ordinances – This approach would entail minimal changes to the city code but would instead focus on a more robust enforcement of existing laws. There are legal and political shortcomings to

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<sup>20</sup> Santa Monica City Council, *what we are doing. We’re making strides to address homelessness – and we’re doing it together*, PRESS RELEASE (Feb. 23, 2021), <https://www.weare.santamonica.gov/addressing-homelessness>

- this approach because the existing ordinances for the most part do not regulate behavior, but only address property (camp materials, accumulation of items, etc.). It also has the appearance of punishing those who take rudimentary measures to protect themselves and does not create a comprehensive humanitarian approach to getting people inside. Politically this approach provides minimal opportunity for the council to demonstrate leadership and for the community to engage in a process. It also relies on the interim Police Chief to consistently enforce these laws. However, if the City Council does not have the votes to pass new ordinances, it could direct City personnel to undertake a more comprehensive approach that includes enforcement of existing ordinances on a more consistent basis, along with offers of shelter and treatment.
- Enact package of new ordinances – The city could enact new ordinances to implement comprehensive solutions to homelessness that includes immediate housing options, access to services, reduction of encampments, and regulation of public spaces. The legislative route would enable the city council to show leadership and shape the final ordinance. One example of new ordinances that could be enacted would be those adopted by the city of Boise, after the *Martin v. Boise* case was remanded to the district court.<sup>21</sup> Several Southern California cities (including Huntington Beach) have updated their homelessness policies to align with this settlement overseen by Judge David Carter in Orange County. While this does not provide the same legal protections as the settlement itself, it provides a solid policy foundation and legal defense if challenged. The Council would be smart to enact a set of emergency measures that can have an immediate impact while formulating additional ordinances that will lead to lasting changes.

Along with a new set of ordinances, the Council could direct City staff or outside consultants to create a comprehensive plan to address homelessness which should include at minimum a) identification of target number of interim shelter beds to achieve,<sup>22</sup> b) 24/7 outreach, including

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<sup>21</sup> See APPENDIX C

<sup>22</sup> As noted in footnote 4, *supra*, 60% of the most recent point-in-time count has been found to be judicially acceptable in the case of *OC Catholic Worker*. In Santa Monica, the most recent point-in-time count reflected 907 homeless individuals

mental health and public health professionals, c) increased treatment and service plan, including expanding OEM team, d) consistent enforcement strategy which starts block-by-block and back-fills areas already covered (this must be accompanied with clear notice and plenty of time to comply), including police and Ambassador presence at nighttime when most crises occur. Ideally the outreach workers involved have lived experience or can connect individuals to a peer mentor that can assist in the transition. This comprehensive approach should have the political benefit of providing stakeholders of all perspectives a reason to support the package because it would be balanced without being punitive.

*Litigation and judicial intervention*

- City as defendant – While no city wants to be sued, a lawsuit does present the opportunity to negotiate and implement a settlement with the court/plaintiff acting as a third-party accountability structure. Several cities in Orange County and at least two in Los Angeles County (Bellflower and Whittier) voluntarily entered into settlements with plaintiffs in the *OC Catholic Worker* case, which both enabled and compelled the city to pursue ambitious and comprehensive solutions to homelessness. The LA Alliance for Human Rights, seeking to replicate the success seen by other cities, recently announced a groundbreaking settlement with the City of Los Angeles.<sup>23</sup> The suit against the County for necessary services and treatment continues.
- City as plaintiff – As a small coastal city surrounded by Los Angeles and near other cities, the trajectory of Santa Monica’s homelessness crisis is dependent on the actions or inactions of surrounding jurisdictions. City

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within the city limits, which would require a target of 545 beds. Such beds could include a combination of emergency, interim, substance use disorder, permanent supportive housing, and rapid rehousing vouchers, among other interventions. Other municipalities adopting this same model, including Bellflower and Whittier, have required individuals utilizing said beds to have a “nexus” to the City, but such requirement has never been legally challenged.

<sup>23</sup> Benjamin Oreskes, *L.A. will shelter more homeless people to end major lawsuit. But how many?* LOS ANGELES TIMES (Apr, 2022, 4:19 PM), <https://www.latimes.com/homeless-housing/story/2022-04-01/los-angeles-homeless-lawsuit-settlement-judge-carter>.

leadership has already acknowledged the regional nature of this crisis: “Housing is a human right and it is unconscionable that Los Angeles County has as many people living without housing as the population of one of its smaller cities,” said Mayor Sue Himmelrich. “But we are determined to confront this human tragedy with effective and innovative solutions. The City Council is committed to ensuring safe public spaces and housing for all.”<sup>24</sup> A lawsuit against the County of Los Angeles could be joined by other cities who have suffered similar harm from the county's lack of outreach, mental health services, and immediate housing options. If the City was unwilling or unable to sue the County of Los Angeles for its failures, the City could take the lesser step of joining a coalition of other cities to publicly confront the County for its nonperformance and neglect.

*Ballot Measure and Voter engagement*

- Run citywide measure – A citywide ballot measure could make it to the ballot in 2022 either by gathering signatures or through council action. This process gives the author a significant amount of control over the substance of the measure. In this situation the language would need to be nuanced enough to have the desired effect upon implementation while still standing up to judicial scrutiny. The ballot initiative could replicate the comprehensive strategy outlined above. One group recently filed Councilmember Buscaino in Los Angeles has proposed a ballot measure to address homelessness comprehensively; elected officials and interest groups in other cities are contemplating a similar course. An advantage of a ballot measure is that it allows the proponents to engage directly with voters, making a case for comprehensive solution to a receptive audience. This would put the proponent of the ballot measure in a strong position to shape the broader political discourse during next year's elections in Santa Monica.

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<sup>24</sup> Simon, *supra* note 14, <https://www.culvercityobserver.com/story/2021/03/04/news/council-struggles-to-curb-homelessness/9850.html>.

- Initiate and support countywide measure – Because much of LA's homelessness crisis is caused by the ineffectiveness of Los Angeles County in administering services, and many other cities share the frustration of Santa Monica, it makes sense to explore a countywide ballot measure that would compel county officials to more robustly address the homelessness crisis. This includes provisions around making shelters available, increasing General Relief, increasing mental health and substance use disorder bed capacity, increasing availability of mental health and substance use disorder treatment, and providing 24/7 outreach to those living on the streets. This approach is advantageous because it confronts some of the policy and programmatic failings that have created this crisis and politically it makes the county the villain. The cost and logistical challenges of qualifying a countywide measure would be greater than citywide, and supporters would likely face opposition from the Board of Supervisors and County staff, but supporters would be bringing the fight to the right place and potentially forcing the state to get involved in the conversation.

## V. Conclusion

The City of Santa Monica has a unique, eclectic, and engaging political culture and climate. It also seems to be experiencing a shift in its politics, with the decline of SMRR and influential new voices at the table. These factors combine to create a unique window to advance meaningful change in the city and to reaffirm Santa Monica's reputation as a civic leader and innovator. Homelessness has been a persistent challenge for decades but is now creeping towards a point of no return. Santa Monica can lead by replicating and enhancing strategies already being deployed in parts of Los Angeles and Orange County which combine intensive outreach, significantly more shelter, and robust access to services for the unhoused with a reclaiming of public spaces to reduce crime and improve the quality of life for all members of the community. Residents saw this summer how quickly this process can occur. To see these recent actions translate into sustainable policies will require a deeper dive into the legal and political nuances of the city and the identification of messengers who are credible but above or outside of the current political fray in the city and therefore have a chance to make the case for change on its merits. But few cities are better positioned to lead by creating a citywide model to address homelessness than the City of Santa Monica.

Thank you for the opportunity to present this limited research and associated recommendations on various pathways forward for the City of Santa Monica. If you have any questions or concerns, please do not hesitate to contact me

Very Truly Yours,

Elizabeth A. Mitchell<sup>25</sup>  
SPERTUS, LANDES & UMHOFFER, LLP

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<sup>25</sup> With significant assistance from Daniel Conway, Conway Strategies.

## APPENDIX A

### Background on mental health and homeless policy in California

California's history of dealing with mental illness mirrors the nation's in its arc of moving from care in institutional settings to more community-based efforts.<sup>26</sup> Before the dust had even settled on the Gold Rush, California's policymakers recognized the need for mental health services through the establishment of the Stockton State Insane Asylum in 1853. The need for care and treatment was so great that in 1875 California opened the Napa State Asylum. Over the coming decades, approaches to treatment evolved and varied greatly, at times going through experimental phases seeking new treatments for age-old ailments. Beginning in the 1960s the state began to pull back from providing mental health services and started to shift the burden onto local governments and outpatient clinics. High costs and bad publicity made policymakers and public officials inclined to find a new approach to treating mental health, emphasizing deinstitutionalization, the use of pharmaceutical therapies, and outpatient treatment communities. As the population of state mental health facilities declined in the 1960s and 70s, many of those in need of care were forced to find treatment in their community, where resources could vary greatly. Anticipated federal funding never materialized, leaving states and counties to create systems of care and funding formulas. California state hospitals now serve mainly patients committed through civil and, mostly, criminal court action, according to the Department of Health Care Service's 2017 annual report, with about 91 percent of the 13,000 patients treated by Department of State Hospitals were being held relating to criminal cases. The melding of California's mental health and criminal justice systems has proven to be the detriment of both.

Over time, county jails became the primary provider of mental health services in many communities, with Los Angeles County jail becoming the largest psychiatric care facility in the country.<sup>27</sup> This approach is both costly and

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<sup>26</sup> Sarah Moore, *A brief history of mental health care in California*, ABC10.COM (Updated Apr. 17, 2018, 4:04 PM), <https://www.abc10.com/article/news/local/california/a-brief-history-of-mental-health-care-in-california/103-537434252>.

<sup>27</sup> Eric Westervelt, Liz Baker, *America's Mental Health Crisis Hidden Behind Bars*, NPR MORNING EDITION (Feb. 25, 2020, 5:01 AM), <https://www.npr.org/2020/02/25/805469776/americas-mental-health-crisis-hidden-behind-bars>.

inhumane: the only way for many to receive the help they desperately needed was to get arrested. The lack of proactive and preemptive mental health care continues to this day.

By the time Jerry Brown was sworn in 2011, overcrowding has pushed our criminal justice system to the brink leading the US Supreme Court upheld an order requiring the state to release 30,000 inmates to reduce prison overcrowding.<sup>28</sup> The ruling, combined with a multibillion-dollar state budget deficit, gave Governor Brown an opportunity to pursue a broader set of criminal justice reforms known as “realignment” which included AB 109 and Propositions 47 and 57.<sup>29</sup> The cumulative effect of realignment included changing a number of drug possession and many property crimes to misdemeanors instead of felonies, and shifting the burden of rehabilitation and treatment services from state prisons to county jails and probation offices.<sup>30</sup> While “realignment” succeeded in reducing prison costs and implementing the court order, it has had a number of unintended consequences including a notice increase in the number of unsheltered homeless and a decrease in the sense of safety many people felt in their communities.<sup>31</sup>

Our parks, sidewalks, beaches, and riverbeds have now become the community clinics of the modern times, as service providers and volunteers bring food, water, sleeping bags, medicine, and other provisions to those who have been left to live and die in plain sight. This is not how homelessness is solved or ended, it is how it is managed and (sometimes) mitigated. This approach has failed both the unhoused and the housed, creating the desire and opportunity for an approach that

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<sup>28</sup> Adam Liptak, *Justices, 5-4, Tell California to Cut Prisoner Population*, THE NEW YORK TIMES (May 23, 2011), <https://www.nytimes.com/2011/05/24/us/24scotus.html>.

<sup>29</sup> Marisa Lagos, *What Will Jerry Brown’s Departure Mean for Criminal Justice in California?*, KQED THE CALIFORNIA REPORT (May 22, 2018), <https://www.kqed.org/news/11669703/what-will-jerry-browns-departure-mean-for-criminal-justice-in-california>.

<sup>30</sup> Marisa Lagos, *Five Years Later, Many See Criminal Justice Realignment as Success*, KQED THE CALIFORNIA REPORT (Sept. 29, 2016), <https://www.kqed.org/news/11108031/five-years-later-many-see-criminal-justice-realignment-as-success>.

<sup>31</sup> Flaccus, *supra* note 2, <https://apnews.com/article/5f84742e807b42bea320bcc6842c29ef>.



addresses the needs of both. This is the path that Santa Monica must pursue moving forward.

APPENDIX B  
Current City of Santa Monica Code

**Section 4.08.095 Prohibition against camping in public places**

(a) No person shall camp in a prohibited public place.

(b) For the purpose of this Section:

“Camp” means to erect, maintain or occupy a camp facility for the purpose of living accommodations.

“Camp facility” means one or more of the following: tents, huts, other temporary physical shelters, cots, beds, sleeping bags, hammocks, or bedrolls.

“Prohibited public place” means any of the following: the public parks listed in Section 4.08.091, public beaches, the Santa Monica Municipal Pier, public streets, public alleyways, public parking lots, public passageways, public rights-of-way, publicly-owned landscaped areas or greenbelts, public educational institutions including properties owned by the Santa Monica-Malibu Unified School District or Santa Monica College, or other government-owned properties located within the City of Santa Monica.

(c) The City Council may, by majority vote, establish one or more specified camping areas. Such camping areas, if any, may be located in prohibited public places, except that such camping areas shall not be located within public parks.

(d) This Section shall not take effect until March 1, 1995. (Added by Ord. No. 1768CCS § 4, adopted 9/13/94)

**Section 4.08.097 Prohibition against sitting or lying in downtown and the Main Street areas doorways at night**

(a) No person shall sit or lie down in any entrance to a building in the downtown or Main Street areas between the hours of eleven p.m. and seven a.m. if that entrance is posted with a sign prohibiting such conduct. “Downtown” means the area bounded by and including the east side of Ocean Avenue, the north side of Wilshire Boulevard, the east side of Lincoln Boulevard, and the south side of Pico Boulevard. “Main Street area” means the area bounded by and including the west side of Neilsen Way, the north side of Pico Boulevard, the east side of Main Street from Pico Boulevard to Strand Street, the north side of Strand Street to Second Street, the east side of Second Street and the City’s southern border. “Entrance” means the entire area between the outer edge of an entrance to a building and the exterior door and includes the entry way, doorway or vestibule. The prohibition contained in this Section shall not apply

to any person sitting or lying down in any entrance to a building due to a medical emergency.

- (b) Any person violating the provisions of this Section shall be guilty of a misdemeanor which shall be punishable by a fine not exceeding one thousand dollars per violation, or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment. (Added by Ord. No. 2056CCS § 1, adopted 10/22/02)

**Section 8.96.050 Public Nuisances**

(8) Any condition which renders air, food or drink unwholesome, unsanitary or detrimental to health.

(9) Any condition which poses a fire hazard.

(10) Any condition in violation of Chapter 4.04 of this Code (Animals).

(11) The keeping, storage, depositing or accumulation on the premises for an unreasonable period of time of any personal property including, but not limited to, abandoned, wrecked, dismantled or inoperative vehicles, abandoned, wrecked, dismantled, or unseaworthy boats or vessels, automotive parts and equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, junk, rubbish, debris, dirt, sand, gravel, concrete or other similar materials which is within the view of persons on adjacent or nearby real property or the public right-of-way and which is detrimental to the public health, safety and general welfare. However, building materials being used or to be used for a project of repair or renovation for which a building permit has been obtained may be stored for such period of time as is necessary expeditiously to complete the project.

APPENDIX C:  
Current City of Boise Code

**5-2-3: DISORDERLY CONDUCT:**

A. Violations: Any person who violates the provisions below is guilty of a misdemeanor:

1. Occupying, lodging or sleeping in any building, structure or place, whether public or private, or in any motor vehicle, without the permission of the owner or person entitled to possession or in control thereof; or
2. Loitering, prowling or wandering upon the private property of another, without lawful business, permission or invitation by the owner or the lawful occupants thereof; or
3. Loitering or remaining in or about school grounds or buildings, without having any reason or relationship involving custody of or responsibility for a pupil or student, school authorized functions, activities or use. (1952 Code § 6-01-05)

B. Availability Of Overnight Shelter: Law enforcement officers shall not enforce subsection A of this section (disorderly conduct) when the individual is on public property and there is no available overnight shelter.

1. The term "available overnight shelter" is a public or private shelter, with an available overnight space, for an individual experiencing homelessness, at no charge, as defined in subsection B.2.
2. The term "available overnight shelter" shall not include the following:
  - a. Shelter space where an individual cannot stay because the individual has exceeded a shelter's maximum stay rule or because shelter is unavailable due to the individual's sex or sexual orientation.
  - b. Shelter space that cannot reasonably accommodate the individual's mental or physical needs or disabilities.
  - c. Shelter space that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian.
  - d. Shelter space for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.
3. Police or their designee shall initiate contact with the shelters after eleven o'clock (11.00) P.M. daily to determine whether the shelters have available space and, if so, the number of available sleeping spaces. Prior to issuing any citation, a police officer shall also confirm that a shelter has available space that can be utilized by that particular individual. No police officer shall issue a citation to a homeless person sleeping, lying, sitting, or camping outdoors unless the officer first confirms the shelter has available space that can be utilized by the individual.

C. Exception: This section does not affect subsection [7-7A-5E](#) or [7-7A-11A](#) of this Code, which do not prohibit sleeping in a public park during hours of operation. (Ord. 38-14, 9-23-2014; amd. Ord. 4-21, 2-9-2021)

### **7-3A-2: CAMPING IN PUBLIC PLACES:**

A. Prohibitions: It shall be unlawful for any person to use any of the streets, sidewalks, parks or public places as a camping place at any time, or to cause or permit any vehicle to remain in any of said places to the detriment of public travel; or to cause or permit any livestock of any description to be herded into any of said places during any hours of the day or night; provided, that this section shall not prohibit the operation of a sidewalk café pursuant to a permit issued by the City Clerk.

1. The term "camp" or "camping" shall mean the use of public property as a temporary or permanent place of dwelling, lodging or residence, or as a living accommodation at any time between sunset and sunrise.

2. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire in an unauthorized area, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).

B. Enforcement: Law enforcement officers shall not enforce this camping section when the individual is on public property and there is no available overnight shelter.

1. The term "available overnight shelter" is a public or private shelter, with an available overnight space, for an individual experiencing homelessness, at no charge, as defined in subsection B.2.

2. The term "available overnight shelter" shall not include the following:

a. Shelter space where an individual cannot stay because the individual has exceeded a shelter's maximum stay rule or because shelter is unavailable due to the individual's sex or sexual orientation.

b. Shelter space that cannot reasonably accommodate the individual's mental or physical needs or disabilities.

c. Shelter space that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian.

d. Shelter space for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

3. Police or their designee shall initiate contact with the shelters after eleven o'clock (11.00) P.M. daily to determine whether the shelters have available space

and, if so, the number of available sleeping spaces. Prior to issuing any citation, a police officer shall also confirm that a shelter has available space that can be utilized by that particular individual. No police officer shall issue a citation to a homeless person sleeping, lying, sitting, or camping outdoors unless the officer first confirms the shelter has available space that can be utilized by the individual.

C. Exception: This section does not affect subsection [7-7A-5E](#) or [7-7A-11A](#) of this title, which do not prohibit sleeping in a public park during hours of operation. (Ord. 38-14, 9-23-2014; amd. Ord. 4-21, 2-9-2021)