



CITY COUNCIL
Staff Report

Meeting Date: May 14, 2019

To: Mayor and City Council

From: Scott Chadwick, City Manager

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Subject: Status Report on the Homeless Response Plan and Homeless Outreach Team efforts

Recommended Action

Receive an informational staff report on the status of the Homeless Response Plan and Homeless Outreach Team efforts.

Executive Summary

On October 17, 2017, City Council approved and adopted the Carlsbad Homeless Response Plan (the "Plan") which established key principles and system responses that the city will employ to address the community impacts of homelessness. On May 22, 2018, the City Council approved the fiscal year 2018-19 administrative budget for Plan implementation, which included \$244,944 in funding for a contract with Interfaith Community Services to provide social worker services for the benefit of homeless residents in Carlsbad.

On March 26, 2019, the City Council approved the following minute motion (5-0) "directing staff to prepare an update of the Carlsbad Homeless Response Plan's (the "Plan") current implementation, as well as an update on the Homeless Response Team ("HRT") efforts within two months." (The HRT is comprised of staff from several city departments, including Housing & Neighborhood Services ("HNS"), Police, Fire, Library, Parks & Recreation, Public Works and the City Attorney's Office) This staff report and attached Plan update (Exhibit 1) is in response to the City Council's direction. The Plan update also highlights additional issues and concerns associated with homelessness in Carlsbad.

The following provides some general highlights from the attached comprehensive report on efforts made to date to implement the Plan, and the successes to date:

- Since adoption of the Plan in October 2017, the Homeless Outreach Team ("HOT"), comprised of one sergeant, two dedicated fulltime police officers, other city staff, the Community Services Manager (HNS) and the city's 2.5 contracted social workers, has worked with approximately 180 homeless residents, which includes 84 homeless residents the social workers have assisted since August 2018.
- In June 2018, the city contracted with Interfaith Community Services to provide 2.5 licensed social workers to assess individual needs and assist willing homeless residents

to prepare action plans to change his/her life story; this addition expanded the city's capacity to serve the homeless residents of Carlsbad and provided the expertise and access to various programs that the city required to successfully implement its homeless response plan.

- Of the 84 homeless residents working with the city's contracted social workers, eight individuals moved into permanent supportive housing, eleven individuals went into emergency shelters in San Diego County, four individuals moved into sober living homes or family or friend's homes, four individuals were admitted to inpatient substance abuse treatment programs, 14 individuals were connected with mental health services and 19 individuals were connected with a primary care doctor for medical services.
- The social worker team has assisted eight individuals in earning or increasing their income through Social Security Insurance ("SSI"), General Relief, CalWorks or reduction in child support payments. This team also completed three Assertive Community Treatment ("ACT") referrals for individuals experiencing serious mental illness and homelessness, and all three were accepted to these programs. These individuals will receive lifelong case management support, 24/7 care, mental health treatment and housing resources.
- In 2018, the Police Department handled approximately 4,480 calls for service which were related to homeless/transients incidents or concerns; these incidents or concerns frequently involved repeated contacts with the same homeless persons within similar locations. To date in 2019, the Police Department has handled 1,864 calls for service related to homeless/transients.
- During fiscal year 2017-18, the Police Department spent approximately \$1.1 million on their response to homelessness.
- An encampment tracking system was developed to prioritize weekly clean-ups and cost impacts and an encampment enforcement plan was created; in the last six months of 2018, 95 homeless camps were removed resulting in the clean-up of 300 cubic yards of refuse on primarily public lands or open space.
- In April 2019, in response to community feedback, the Police Department began posting an encampment clean-up map on its webpage to assist in informing the general public of their efforts.
- Substantial work has been completed by the City Attorney's Office to explore the various legal issues that surround the response to homelessness in Carlsbad and throughout the region; there are numerous legal constraints that limit legislative and law enforcement powers with regard to homeless individuals.
- Ordinances are being prepared that align with the Plan and will soon be submitted to the City Council for consideration. The goals for these ordinances is primarily to address the increasing health, safety and environmental concerns that have accompanied an increase in local transient encampments and the troubling conduct of chronic criminal offenders.
- Miscellaneous other legal issues are under review, including possible revised policies for public places such as the city's libraries and the Senior Center.
- The City Attorney's Office has also joined a local discussion with the San Diego District Attorney's Office to address chronic offenders, many of whom are also homeless.

- Ongoing research has been conducted to study the work of other cities and counties to address the challenges of responding to the needs and impacts of homelessness and discover some best practices.
- Collaboration has been initiated with community partners and service providers to better coordinate services to the homeless residents; a survey has been completed to learn more about the resources and services currently being provided to Carlsbad homeless residents; city staff is beginning to analyze the gaps in services/resources. There is more work to do in this area.
- A resource guide has been developed for city departments to help with referrals and information to the homeless residents.
- A rehousing pilot project was initiated in Carlsbad to assist in placing homeless residents in existing affordable housing developments and provide support from the contracted social workers for up to nine months to allow for successful rehousing efforts; this has resulted in the rehousing of five homeless individuals to date. Other individuals (three to date) have been rehoused through alternative housing such as independent living facilities.
- The city launched a “Home Share” program in 2019 to offer alternative housing solutions to Carlsbad residents. This program matches home providers with housing seekers through carefully monitored agreements.
- Other housing programs are being researched and studied to determine if they are feasible for homeless residents in Carlsbad; these programs include tiny homes and the matching of accessory dwelling unit owners with homeless families, veterans and seniors.
- City staff, volunteers, elected officials, social workers and others assisted with a count of the homeless residents of Carlsbad in January 2019. The raw data indicates a homeless population count of 131 for Carlsbad; the raw data in 2018 indicated a homeless population of 129. There is no significant change in the population count for homeless residents in Carlsbad. However, the city has much better documentation in 2019 on its homeless residents and has begun to work with many of them.

While there has been success in implementing strategies within the Plan, there is more work to be done. Additional resources needed for implementation of the Plan will be addressed in the fiscal year 2019-20 budget. Staff will also return to the City Council as needed for consideration of additional programs, services or legislative actions determined to be necessary to more successfully address the needs and impacts of homeless residents in Carlsbad.

Discussion

Attached is a comprehensive Plan update and HOT update (Exhibit 1) for City Council review and consideration. The Plan update identifies the role of the City of Carlsbad in addressing homelessness and defines its function as distinct from other tiers of government and community partnerships. The Plan provides for ongoing and new strategies to prevent, reduce and manage homelessness in Carlsbad; to support and build capacity within the city as an agency and as a community; to encourage collaboration within the city, with community partnerships and with residents; and to retain, protect and increase the supply of affordable

housing. It establishes key principles and system responses that the city has employed and will continue to employ to address the community impacts of homelessness.

Exhibit 1 also provides information on the costs associated with homelessness, data and outcomes related to implementation of the Plan, activities of HOT, other jurisdictions' response to homelessness, various legal considerations and challenges/concerns to successful implementation of the Plan.

As indicated in 2017, the causes of homelessness continue to be as varied as the individuals experiencing homelessness and continues to require an individualized approach to assistance and ultimately rehousing. The city's approach to this complex issue has required staff and community partners to work collaboratively to address the needs of the homeless residents of Carlsbad and expand the city's capacity to serve them. This multifaceted and layered approach has allowed the city to assist the homeless, while also being equally mindful of community members' health, safety and welfare concerns.

In addition to the data provided in Exhibit 1, staff would like to take this opportunity to highlight homeless count data for the City of Carlsbad. On January 25, 2019, the city's Community Services Manager (HNS) convened a team from several city departments, including Police, Fire, Library & Cultural Arts, HNS, Community & Economic Development, Public Works, elected officials and community volunteers to conduct a homeless count to gather additional data and related information on the homeless residents of Carlsbad. The team counted the number of homeless individuals, including those in vehicles and hand-built structures, and conducted informational surveys during this time. The team counted a total of 131 unsheltered homeless residents in Carlsbad and conducted a total of 42 surveys of those individuals. By way of reference, in 2018, the raw number of unsheltered homeless in Carlsbad was 129 individuals.

As follow-up action related to the January 2019 count of our homeless residents, staff tabulated the information and plotted the location of the homeless populations to allow for future efforts of outreach work and to identify trends in homeless numbers and locations. The raw data obtained by city staff through this count was also shared with the Regional Task Force on the Homeless San Diego, which recently reported on the survey data for the entire County of San Diego. For comparison purposes, below are the point-in-time counts of Carlsbad homeless residents as report by the Regional Task Force on the Homeless (both sheltered and unsheltered) for years 2016 through 2019:

Carlsbad: We All Count Totals

	<u>Sheltered</u>	<u>Unsheltered</u>
2016	67	41
2017	59	101
2018	58	152
2019	59	102

Based on the January 2019 count and the resulting raw data, Carlsbad has not experienced a significant decrease in the unsheltered homeless population from 2018 to 2019. However, as staff has shared in previous reports, the count is only one data point of several data points used by the city to evaluate the effectiveness of its Plan and homeless outreach efforts. Some of those other data points relate to the tracking of encampments and encampment cleanup efforts, homeless individuals contacted and those the HRT is actively working with as well as outcomes on engagement activities.

The Police Department has reported that they made contact with 361 self-reported homeless or transient individuals in 2018 and 71 to date in 2019. Without a full assessment of these individuals, it is difficult to determine if they all would be classified as "homeless" for the purposes of eligibility for various service programs, but it is a data point that indicates the number of homeless in Carlsbad is difficult to determine from day to day; it is a regularly changing population because individuals move into and out of homelessness for various reasons. Staff has discovered that some programs established to assist the homeless are often also used by low income households who are having financial difficulties. For example, some of those who are fed in the parks by churches or other service organizations are not all homeless, but are in need due to financial constraints. They are not turned away from these programs by the service providers because they do not meet the technical definition of "homeless".

To summarize, the HRT has had many successes working with the homeless in Carlsbad, has taken steps to minimize the impact of homelessness to the community and has implemented programs to house homeless individuals. That said, the HRT continues to work on action items related to the Plan. The city's Plan will continue to be a dynamic document; implementing strategies will continually be assessed as to their effectiveness and application as staff continues to learn more about its homeless residents and identify the gaps in services.

While the City Council's full support of continued implementation of the city's Plan is key to ongoing success, staff has identified one area of critical services where the City Council's proactive advocacy could be very beneficial. As background, in October 2018, the Crisis Stabilization and Behavioral Health unit at Tri-City Medical Center in nearby Oceanside was closed, leaving a significant gap in emergency mental health services. There are now only two options for care when someone is considered a danger to himself/herself: Palomar Health in Escondido and the County of San Diego's psychiatric hospital in San Diego. Mental health services are a critical need for assisting the homeless, especially in assisting them to be successfully rehoused. Funding, services and facilities are in great need to meet the mental health needs of the majority of the homeless as well as assist with homelessness prevention. This is an area where legislative and additional financial resources as well as governmental partnerships with the County of San Diego may be most helpful; the City Council could provide the most impactful advocacy and legislative assistance with this issue of concern and need within our homeless response.

Fiscal Analysis

There are no fiscal impacts associated with the presentation of this staff report and the attached Plan update (Exhibit 1). That said, the Plan update addresses some of the fiscal

impacts of homelessness in the City of Carlsbad. Additional resources needed to continue successful implementation of the Plan will be addressed in the presentation of the fiscal year 2019-20 budget.

Next Steps

City staff will continue to implement the Plan as set forth and approved by City Council. Staff will continue to work towards full engagement of our homeless residents in Carlsbad, ultimately connecting them with needed resources and working towards successful rehousing efforts. Staff is evaluating resources allocated to implementing the HRP and will request resources through the city's annual budgeting process as needed. Staff will also continue to coordinate with our stakeholders and collaborate on how they can best help with implementation of the city's Plan. Quarterly updates on the status of implementation efforts for the Plan will be provided to the City Council via memorandum in fiscal year 2019-20.

Environmental Evaluation (CEQA)

Pursuant to Public Resources Code section 21065, this action does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore, does not require environmental review.

Public Notification and Outreach

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date.

Exhibits

1. Homeless Response Plan Update, status updated April 2019.

City of Carlsbad Homeless Response Plan Update

April 2019

Background

In the past few years, the City of Carlsbad has experienced an increase in issues related to homelessness, as well as increased calls for emergency and police services and citizen complaints related to homelessness. Residents and other community members, including business owners, have requested a response from the city to address the increasing impacts associated with this challenging issue, both to the homeless individuals themselves and to the surrounding community.

The reasons for homelessness are many and often complicated; it is indeed one of the most challenging social issues of our time to be resolved. To better understand the specific needs and the impacts of the homeless on the Carlsbad community, Housing & Neighborhood Services ("HNS") convened a working group of staff from several city departments, including Police, Fire, Library, Parks & Recreation, Public Works and the City Attorney's Office to share experiences and collaborate on potential strategies. This working group, known internally as the Homeless Response Team ("HRT"), met several times in late 2016 and early 2017 with the goal of developing a proactive, solution-oriented program to address the homelessness challenge. While we coordinate with other cities and other regional service organizations to meet the needs of the homeless, the Carlsbad HRT decided to focus on addressing the needs of our homeless residents as a first priority.

We work closely with other cities to expand our model to help other cities through an ongoing collaborative approach. There are potential negative impacts to surrounding cities when one city begins putting pressure on their homeless residents to make changes. It was our hope to resolve the crisis to the greatest degree possible for Carlsbad, and not to just relocate it to another city.

As part of this working group effort, a decision was made to participate actively in the annual Regional Task Force on the Homeless Point-In-Time Count which occurred on January 27, 2017. City staff and volunteers who know the city well went into the field and took the counts, and subsequently conducted interviews of a sample of the homeless as prescribed by the Task Force. It was very important to get an accurate count of the homeless to allow staff to better understand the homeless population in Carlsbad specifically. With a more accurate count, compared to previous counts, it was anticipated that the city would have much better access to state and federal funding to help address the needs of the homeless in our community. The city also participated in the Regional Task Force's 2019 Homeless Point-In-Time Count, and staff used this data to further evaluate the city's Homeless Response Plan ("Plan") strategies and to coordinate homeless outreach efforts. The total homeless count for Carlsbad in 2017 was 160; 59 sheltered and 101 unsheltered. This is not the raw data, however; it is data that includes a multiplier for vehicle and hand-made structure counts applied by the Regional Task Force on the Homeless.

In addition to receiving the final counts from the Regional Task Force on the Homeless, the following tasks were also completed prior to the development of the original Plan in 2017:

- A survey of local service, community and faith-based organizations to identify the resources and services currently being provided to Carlsbad homeless residents and to identify any gaps;
- Development of a resource guide for city departments to help provide referrals and information to the homeless community;
- Preliminary efforts to identify local social service agencies, churches, service groups, businesses and residents serving the homeless population and what each can do to help;
- Ongoing research for alternative affordable housing and homeless shelter opportunities;
- Learning from the City of Oceanside's Homeless Outreach Team and its model for how to assess the homeless population and identify how to assist them from a range of solutions.

Based on the initial research and on the feedback from the community, the Carlsbad Police Department created a Homeless Outreach Team ("HOT") which became fully operational in September 2017. HOT is comprised of one sergeant, two dedicated fulltime police officers, the Community Services Manager (HNS) and the city's contracted social workers. The team's role is to address the growing concerns from Carlsbad residents about the homeless and to address homeless individuals' needs and impacts on the community. The goal of this team is to make consistent and frequent contact with the homeless and seek opportunities to connect homeless residents with appropriate resources and services. Indeed, the Police Department's entire patrol fleet consistently participate in homeless outreach efforts and help to make these contacts on a 24/7 basis. The team takes a compassionate enforcement approach to working with the homeless with a focus on the clean-up of homeless encampments and addressing community concerns as related to the homeless residents, including any related criminal activity. To complement the Police Department's outreach program, the City Council approved and adopted the Plan on October 17, 2017 which established key principles and additional system responses that the city has employed to address the needs of the homeless residents and the community impacts of homelessness.

On May 22, 2018, the City Council approved an administrative budget for the Plan's implementation, which included \$244,944 in funding and authorization to enter into a contract for social worker services for the benefit of homeless residents in Carlsbad. The city currently has a contract with Interfaith Community Services for 2.5 social workers to assist homeless residents. The HRT continues to collaborate to implement and monitor execution of the Plan.

Overview

The reasons for homelessness in Carlsbad and other cities throughout the nation are many, and often different for each individual. Some of the causes of homelessness are:

- Poverty
- Unemployment
- Lack of affordable housing
- Poor physical or mental health
- Drug and Alcohol Abuse
- Physical and/or sexual abuse
- Victims of financial or identify theft
- Escalating health care costs
- Aging out of foster care system with no support

- Gambling
- Family and relationship breakdown
- Domestic violence
- Human trafficking
- Lack of transportation or access to services for various reasons

A homeless person could be homeless for one, several or all of the above reasons. These factors not only cause a person to become homeless but can be the reasons a person remains homeless. The solutions are not easy, and often require a multi-pronged and individualized response. Resolution is also often time consuming and labor intensive to successfully move someone out of homelessness.

It is staff's opinion, as it was in October 2017, that the current service environment to address the needs of the homeless has not been more successful because 1) services are not being well-coordinated and there is limited collaboration among service agencies; 2) there is duplication of effort in many services due to overlapping organizational missions; 3) there is competition for available funding to sustain individual organizations rather than to expand services through partnerships; and 4) homeless persons have difficulty accessing the services for a variety of reasons including public transportation.

Regional efforts have been made to present a unified response to homelessness in San Diego County specifically, and considerable funding has been made available to address the needs. Unfortunately, these efforts have had limited success to date and the homeless populations in San Diego County are continuing to grow. Because the reasons are many, the solutions which would allow a homeless person to be housed and remain successfully housed are difficult and complex to resolve; the solutions require a more comprehensive understanding of the individual needs and, as noted above, can take considerable time and staff resources to case manage each person.

In 2017 the United States Interagency Council on Homelessness found that leaving a person to remain chronically homeless costs taxpayers as much as \$30,000 to \$50,000 per year. If a homeless individual does not have connections to the right types of care, they can cycle in and out of hospital emergency departments and inpatient beds, treatment programs, jails and psychiatric institutions, which contributes to high public expense when considered from the perspective of a medical emergency response and care standpoint.

In October 2018, staff prepared a report on the cost of homelessness in Carlsbad which estimates that in fiscal year 2017-18, the city spent \$3 million to address homelessness. This is only an estimate at this time because all departments are not yet fully tracking the resources being utilized to address the needs and impacts of the homeless. Efforts are currently underway to enhance the tracking of costs and staff resources to provide for a better accounting at a later date.

A large portion of the above noted costs are related to Fire and Police department responses. The Fire Department spends approximately \$500,000 annually on costs related to homelessness, typically when fire personnel respond to health checks and crisis calls for the homeless. Considering response costs for the Fire Department, transportation to the hospital and related hospital costs for individuals with no insurance, the cost per person adds up fairly fast.

In 2018, the Police Department handled approximately 4,480 calls for service which were related to homeless/transient incidents or concerns. To date in 2019, the Police Department has handled 1,864 calls for service related to homeless/transients. These incidents are the result of proactive police activity such as welfare checks, subject stops or extra patrols in response to community concerns. The incidents may also originate from community calls for service related to specific concerns such as theft, suspicious circumstances, assisting the fire department or illegal camping, to name just a few. These homelessness related incidents frequently involve repeated contacts with the same homeless persons within similar locations. During the fiscal year 2017-18 the Police Department spent approximately \$1.1 million on homelessness related responses and incidents.

To address the rising cost of homelessness, the city decided to take the steps necessary to actively work directly with Carlsbad homeless residents and develop individualized action plans to move them forward in their journey to rehousing. In May 2018 the city contracted with Interfaith Community Services to provide licensed professional social workers to work with Carlsbad homeless individuals and develop action plans for those homeless residents willing to make the effort to change his/her life story. These social workers coordinate with city staff and other service providers to achieve a level of focused effort and service that moves homeless residents forward in meeting their life goals. These licensed professionals provide individualized case management services where those experiencing homelessness are physically located within the community, working with HOT officers, the city's Community Services Manager and community partners. The case management work through social workers embodies a holistic and wraparound service approach which addresses all domains of a person's life (e.g. mental, physical, housing, finances, family/social supports, addiction, safety, employment, basic needs, legal and community resources).

It is important to note that the work of social workers is different than homeless outreach workers. Generally, the homeless outreach workers do not provide for a comprehensive assessment of all the domains of a person's life. The outreach workers are attached to a specific program (e.g. substance abuse or mental health) and can only engage individuals who have that specific need and meet the program's criteria. Without the skills or training, the outreach workers may not always identify the client's needs and will address only one issue when there could be many needs that are intertwined and multi-faceted. The social workers provide for both outreach to the homeless as well as intensive case management services. The social workers are not limited to a specific population or program.

Plan Update/Implementation Status

This updated Plan provides a status on action items for each strategy currently being implemented within the city's homeless response. The Plan is a dynamic document and will change based on the city's learnings as it proceeds with implementation. Some of the key actions to date are as follows:

- Staff is continuing to develop a data collection system to track outcomes on key performance indicators to assist with program effectiveness and allow for necessary changes in a timely manner. As part of this effort, the Police Department and Public Works

have developed an encampment tracking system to prioritize weekly cleanups and cost impact.

- Working in partnership, the Police Department, Public Works and the City Attorney's Office also created an encampment enforcement plan. In the last six months of 2018, the Police Department, with the assistance of the Public Works Department and Urban Corps, removed 95 homeless camps in the city, cleaning up over 300 cubic yards of refuse. The majority of these encampments are located on public lands or open space property. Pursuant to Police Department policy, if personal property of value is located during an encampment clean up, the Police Department secures the property as found property for safekeeping, for a minimum of 90 days. These encampments come to the attention of the Police Department based on officer reports as they are located during their patrols, along with community reports of illegal encampments.
- To facilitate the community's ability to report homelessness related issues, concerns or encampments, the Police Department established a dedicated telephone hotline and email address which allows community members to report their observations in a convenient and timely fashion. HOT Police Department personnel monitor these reports and conduct follow-up investigations to address the community's concerns. Additionally, the police department has posted maps on its department webpage indicating the locations of encampment cleanups and calls for service related to homelessness issues.
- In March 2018, the City Council adopted a policy to exercise the city's options to purchase resales of affordable housing for the purposes of creating new housing opportunities for very low and/or extremely low-income households.
- Staff has met with homeless service providers to develop relationships around the delivery of homeless services and programs in Carlsbad. Some of these service providers include County of San Diego Health & Human Services, Mental Health Systems iHOT, McAlister Institute and Interfaith Community Services.
- In June 2018, the city contracted with Interfaith Community Services to provide 2.5 licensed professional social workers to assess the individual needs of the homeless residents who are willing to make the effort to change his/her life story. Since August 2018, the social workers have engaged with 84 individuals. Of those individuals, 25 have agreed to work with the social workers to develop individualized action plans that coordinate comprehensive case management needs, ranging from entry into treatment programs, to benefits, to temporary or permanent housing.

Social workers also coordinate with the HOT officers during encampment cleanups to provide resources and connect the homeless residents to necessary resources. As part of HRT, the social workers also provide insight on service gaps and program development.

- HOT officers work proactively with the city's social workers, community partners and community groups to coordinate a homeless person's needs, which can include drug treatment, medical care, veterans' assistance, mental health treatment, Medi-Cal benefits and Calfresh benefits (food stamps). In addition to providing resource information, officers assist homeless persons in accessing the services by providing transportation, assisting in application preparation and obtaining necessary documents.
- With the assistance of the contracted social workers, staff has worked on the initial development of a program and process for the city's social service and outreach effort delivery. Staff has researched the work of other cities in the area of homeless outreach to identify best practices.
- The program goal is to provide comprehensive case management services to those actively working with a city contracted social worker, while prioritizing the expanding needs of the homeless and community.
- In September 2018, the city developed the Carlsbad Rehousing Set-Aside Program intended to assist homeless Carlsbad residents. Participants are required to collaborate with a contracted city social worker to develop an Individualized Action Plan (IAP) that will set forth use of supportive services and/or other actions necessary for the homeless resident to be rehoused and to successfully remain housed.

The city partnered with WSH Property Management Company at Tyler Court Senior Apartments to launch the Carlsbad Rehousing Set-Aside program as a pilot to assist homeless seniors working with a contracted city social worker. To date, the city has housed five homeless senior residents at Tyler Court. These residents are then monitored by the social workers for up to 9 months to ensure that they can remain successfully housed and help them to learn to be rehoused after many years of homelessness.

- In November 2018, the Housing Commission was established as the advisory group for homeless services and engagement. Staff has reported to the commission updates to the Plan, introduction of the HOT officers and social workers, trends in homeless services and programs, new city housing programs to assist the homeless and homeless data and statistics.
- Staff has met with community partners who serve the homeless in Carlsbad to educate them on the city's Plan and work to coordinate outreach efforts in a more effective manner. Some of these community partners include St. Patrick's Church, Fill-a-Belly, Community of Christ Church, Carlsbad Community Church and Rotary Hi-Noon.
- In January 2019, the city launched an additional pilot program, HomeShare, in partnership with ElderHelp, to offer alternative housing solutions to Carlsbad residents. The HomeShare program is a matching service (providers and seekers of housing) that coordinates shared housing opportunities through carefully monitored agreements. The

program focuses on maximizing the use of existing housing stock by matching seniors who want to remain in their own homes with screened and qualified adults of all ages in need of housing. This is a free service. One of the parties must be a senior, but there are no other age restrictions.

- City staff has also been researching and studying other alternatives for providing affordable housing opportunities to both the homeless and other lower income households in Carlsbad. These alternatives include the development of a tiny home village with supportive services, the acquisition and rehabilitation of apartment complexes, a partnership with Habitat for Humanity and recruitment of accessory dwelling unit owners to make their rentals available to lower income households with potential management assistance from the city.

Below is a summary of the various strategies identified in the city's Homeless Response Plan with status of implementation for those strategies.

Strategy #1: Prevent, reduce and manage homelessness in Carlsbad	
Action	Comments
Continue to evaluate existing city services and programs that serve homeless residents.	This is an ongoing activity.
Compile homeless and/or transient related data from departments (transient camps cleaned up, number of homeless-related emergency calls) to set a benchmark to track success of plan efforts.	This is an ongoing activity.
Develop homeless encampment enforcement plan in coordination with the city's crime suppression team and HOT, other city departments and select service providers.	Team has developed an encampment tracking sheet to coordinate clean-up efforts, and clean ups are conducted every week.
Strategy #2: Support and build capacity within the city and community to address homelessness	
Action	Comments
Hire a Homeless Response Manager to allow for dedicated support to the team and implementation of the city's homeless response	Manager to be hired in FY19/20, if budget is provided to do so.
Contract with one or more local service provider(s) for social workers to work with homeless residents and city staff to develop individualized action plans for homeless residents.	City has contracted with Interfaith Community Services for 2.5 social workers
Conduct a community analysis of existing homeless programs and services provided by the city, faith-based and community organization and service providers to identify gaps and opportunities. Implement efforts to address gaps.	This is an ongoing activity depending on assessments of homeless residents.

Develop a city protocol to assist staff to serve homeless residents at city facilities or in the community.	This is a work in progress.
Engage the Housing Commission to serve as an advisory group for homeless services, programs and/or issues.	The Housing Commission is receiving regular reports and providing comments/feedback
Evaluate existing city ordinances: Noise, property maintenance, open container, camping, parking, land use/zoning (e.g. churches – soup kitchens) that impact the community and city response to homeless-related issues	Proposed amended and new ordinances will be presented to the Council at a future meeting for consideration.
Strategy #3: Encourage collaboration within the city, community partnerships and residents	
Action	Comments
Coordinate with services providers (e.g. mental health, recovery and housing) to support rapid rehousing and successful connection to needed services.	This is an ongoing activity
Develop partnerships with service providers, faith-based and community organizations, residents and businesses to collaborate on homeless related issues and needs.	This is a work in progress.
Develop educational materials for residents and businesses on how to address or report homeless related concerns (e.g. homeless resident going through trash in a dumpster on private property-how to resolve?)	This is a work in progress.
Develop working relationship with local DMV and Social Security Administrative offices to eliminate barriers to housing or connections to support services.	This is a work in progress.
Host a one-day resource fair that provides access to local services and programs, while allowing for a coordinated effort to have attendees assessed by a local service provider or case management team.	Future activity.

Work with faith-based organizations to coordinate community outreach and service plan to reduce duplication of efforts and crime-related issues (e.g. providing meals, clothes, bus passes)	This is a work in progress.
Work with service groups and faith-based organizations to provide home items for newly housed homeless.	Future activity.
Develop a plan with Tri-City Medical Center to address the cycling of Carlsbad homeless in and out of the center, which has a negative impact on homeless residents' care and drains city emergency resources.	This is a work in progress.
Leverage existing Memorandums of Understanding (MOUs) or community partnerships to connect homeless residents to appropriate community services or programs	This is an ongoing activity.
Strategy #4: Retain, protect and increase the supply of housing in Carlsbad	
Action	Comments
Work with existing housing developments to consider voluntarily set-aside units for the homeless. Possibly provide incentive to pay person's rent for a period of time or pay the deposit.	Future activity.
Inclusionary housing policy: 10% set-aside units to serve homeless residents for new developments	Future activity for City Council consideration.
Evaluate alternate housing options to address high rent rates and limited housing inventory: Tiny homes, motel or apartment conversion, shared housing and shelters for women and families	This is an ongoing activity.
Request authorization from City Council to pursue the purchase of existing housing units to rehouse homeless families, veterans and/or seniors as a priority.	City Council approved and authorized staff to exercise option on existing affordable home resales.

City Departments' Coordinated Work

Housing & Neighborhood Services has taken the lead in implementing the Plan in coordination with the city's HRT. This multi-department effort to address the needs of the homeless has been efficient and effective because it builds on the strengths and current work effort of each of the HRT members. In addition to executing the developed protocol for addressing the needs of the homeless at city facilities and within the community, following are some of the current roles for the HRT members:

Department	Role on team
Library & Cultural Arts	Maintains a resource guide for all to use in addressing the needs of the homeless; continues to provide insight to challenges and opportunities in meeting the needs of homeless library patrons.
Parks & Recreation	Continues to provide insight to challenges and opportunities in meeting the needs of homeless residents at the Senior Center, Pine Park and other city recreation facilities and parks.
Public Works	Works collaboratively with HOT-Police Department and Urban Corp on encampment cleanup projects and other related service needs; continues to provide insight to challenges and opportunities for addressing the impacts of homeless residents and their actions on public facilities.
Fire	Provides life emergency services to homeless residents; acts as subject matter expert for emergency services best practices for homeless residents; continues to assist with interviewing homeless residents and helps them move forward to obtain assistance through the city's case management program.
Police	Working as part of the HOT, two dedicated officers and their sergeant make consistent and frequent contact with the homeless through a compassionate enforcement approach to homeless outreach; seek opportunities to move homeless residents towards the city's contracted social worker/case management program in coordination with HNS and other HRT members. The HOT-Police Department leads the effort on addressing the impact of homeless encampments and works with the general public on their concerns and complaints regarding the homeless.
City Attorney	Provides legal guidance, advice and insight around homeless related issues; assists with new policies and ordinances to address and limit, where necessary, homeless impacts on the community.
Housing & Neighborhood Services	Lead on management of the Plan, which includes strategies and action items. Staff is a member of HOT and supports in homeless engagement efforts.

Measuring Success

A critical element of the city's Plan involves monitoring progress and measuring success against established objectives. Using indicators to help gauge the impact of actions has been important to help the city and community to better understand where success is emerging or where efforts need to be re-evaluated.

Staff has developed tracking and reporting systems to measure the effectiveness of the Plan. The following items are some of the key measures for the homeless response project. Over time, key performance indicators will be added or changed based on review of the homeless response plan and development of the longer term strategic homeless plan. The measures include, but are not limited to:

- Number of homeless residents assessed, and action plans developed for each person and/or family.

- Full implementation of a case management system, put into place to effectively collaborate with city departments, service providers and community organizations to address the unique needs of homeless residents.
- Increase in number of community and service partnerships to serve homeless residents.
- Increased housing opportunities for short and long-term housing for homeless residents.
- HOT-Police Department homeless outreach, enforcement activity and encampment cleanup efforts.
- Public Works' tracking of detailed data on encampment cleanup events, capturing information on the number of encampments cleaned per week, the number of camps in each encampment and the number of hours for each cleanup.

Below are some of the key reporting areas for the Plan, which include HOT outcomes, encampment cleanups and Fire Department data.

Homeless Outreach Team ("HOT") Efforts and Successes to Date

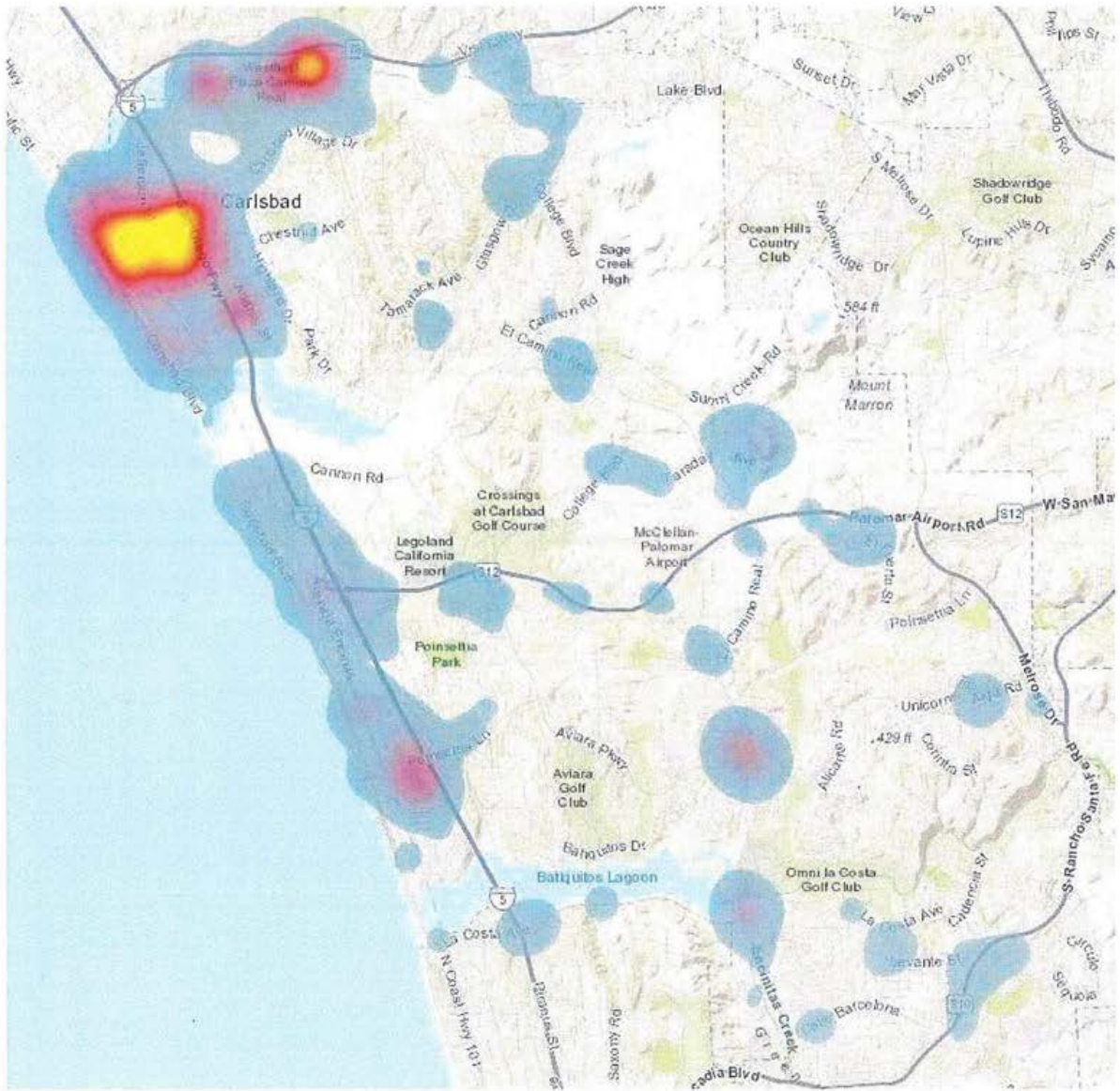
Staff worked on the development of a program and process to support the work of HOT, which includes a database to capture information on the number of homeless the team has contacted or is working with in Carlsbad. This area of the Plan is a work in progress, as staff works on an enhanced data collection model.

Since 2017, HOT has worked with approximately 180 homeless individuals, which includes 84 individuals who city social workers have assisted since August 2018. Of those 84 people, eight individuals moved into permanent supportive housing, 11 individuals went into emergency shelters in San Diego County, four individuals moved into sober living homes or family or friends' homes, four individuals were admitted to inpatient substance abuse treatment programs, 14 were connected with mental health services and 19 were connected with a primary care doctor. The social worker team also assisted eight individuals to earn or increase their income through SSI, General Relief, CalWorks or reduction in child support payments. This team also completed three Assertive Community Treatment ("ACT") referrals for individuals experiencing serious mental illness and homelessness, and all three were accepted to these programs; these individuals will receive life-long case management support, 24/7 care, mental health treatment and housing resources. The social workers continue to work with the remaining homeless residents to the extent that they are willing to accept the city's services.

In 2018, the Police Department handled approximately 4,480 calls for service which were related to homeless/transient incidents or concerns; these incidents or concerns frequently involved repeated contacts with the same homeless persons within similar locations. To date in 2019, the Police Department has handled 1,864 calls for service related to homeless/transients. As explained above, when Police Department HOT officers contact homeless persons, officers are proactive in providing resource information with respect to drug treatment, medical care, veterans' assistance, mental health treatment, Medi-Cal benefits and Calfresh benefits (food stamps). In addition to providing resource information, officers assist homeless persons in accessing the services by providing transportation, assist in application preparation and obtaining necessary documents.

In addition to the calls for service noted above, the Police Department reported 532 arrests in 2018 and 182 arrests year to date for 2019 for involuntary psychiatric holds for homeless or transients in Carlsbad. Citations for illegal camping by homeless/transients were issued by Police Department, with 464 issued in 2018 and 134 issued year to date for 2019.

In April 2019 the Police Department, in response to community feedback, began posting on its city web page a HOT heat map calls for service for six-month period. An example of the map is noted below.



To help prioritize the work of the HOT, staff uses a level and stage of engagement model to determine a person's level of motivation to work with a team member. This approach also allows us to manage resources and plan for an increase in staffing resources based on the number and need of the homeless.

Below is the level of engagement chart, which reflects the stages of homeless resident engagement totals and the current level of engagement per contracted social worker caseload.

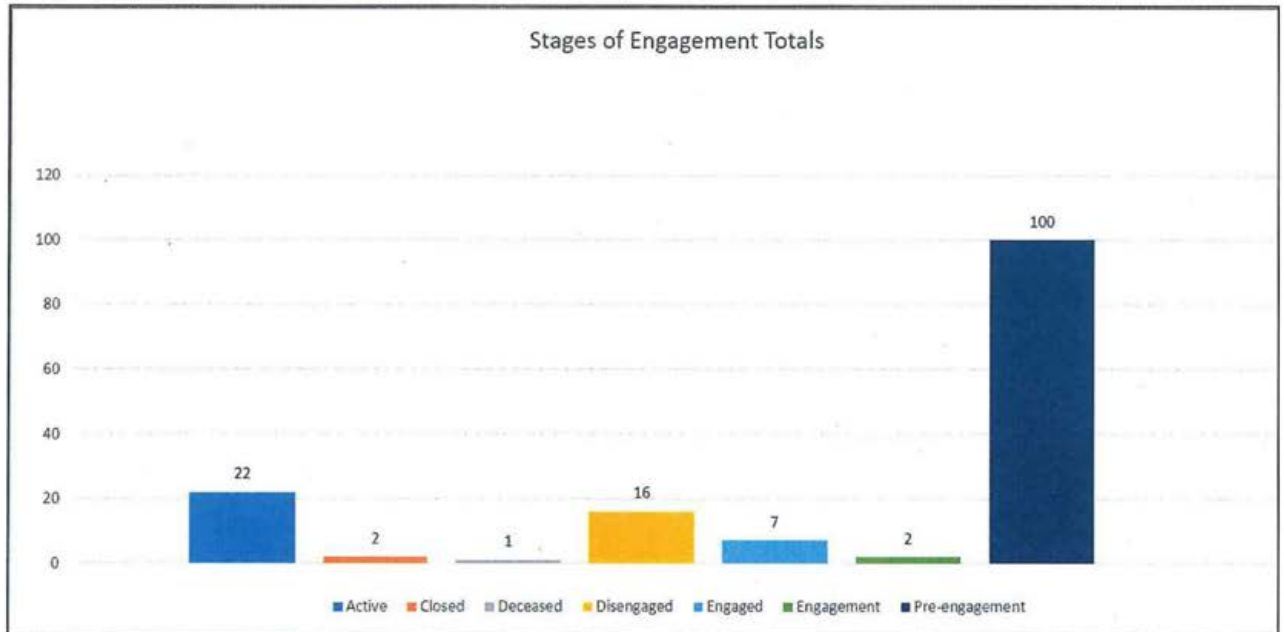
Definition of the Levels of Engagement:

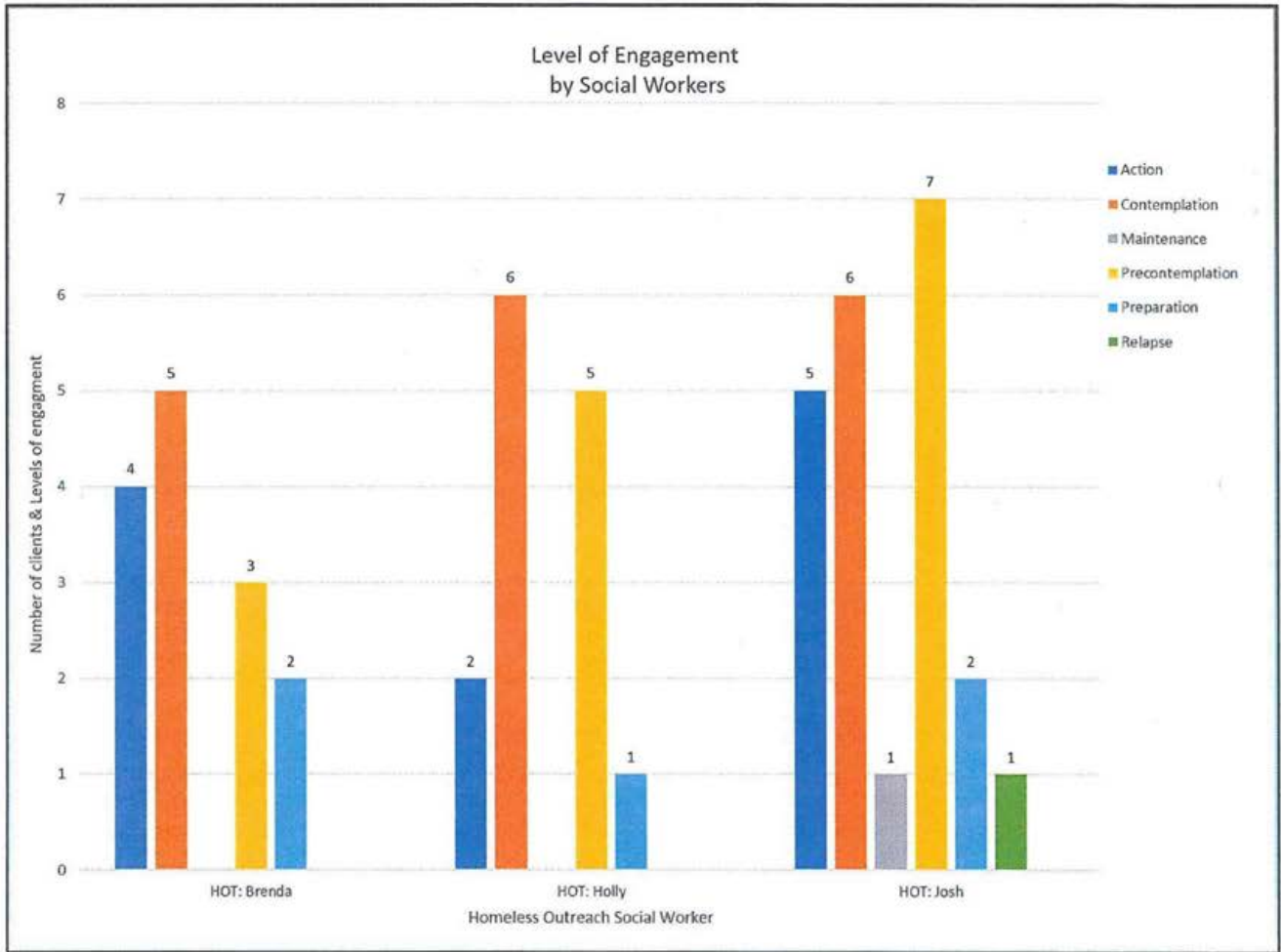
Level of engagement	Explanation
Precontemplation	Not thinking about or has rejected change.
Contemplation	Thinking and talking about change.
Preparation	Planning what it would take to make change happen
Action	Putting plan into practice by actively working with Homeless Outreach Social Worker
Maintenance	Achieving positive and concrete developments with continuing and potentially little support.
Relapse	Falling back into old patterns, actions, and behaviors.

Definition of Stages of Engagement:

Stages of engagement	Explanation
Pre-Engaged	HOT member has made contact with the individual, and the person may not be a Carlsbad homeless resident, has declined assistance from a team member or has not been assigned to a social worker.
Engaged	Homeless person has begun initial work with a HOT member.
Active	Homeless individual is actively working with a social worker on developing and executing an Individualized Action Plan.
Disengaged	Homeless individual was either in the Engaged or Active stage and has disengaged for a variety of reasons.
Closed	Homeless individual no longer requires assistance from HOT or has case transferred to another service provider based on the person's Individualized Action Plan.
Deceased	

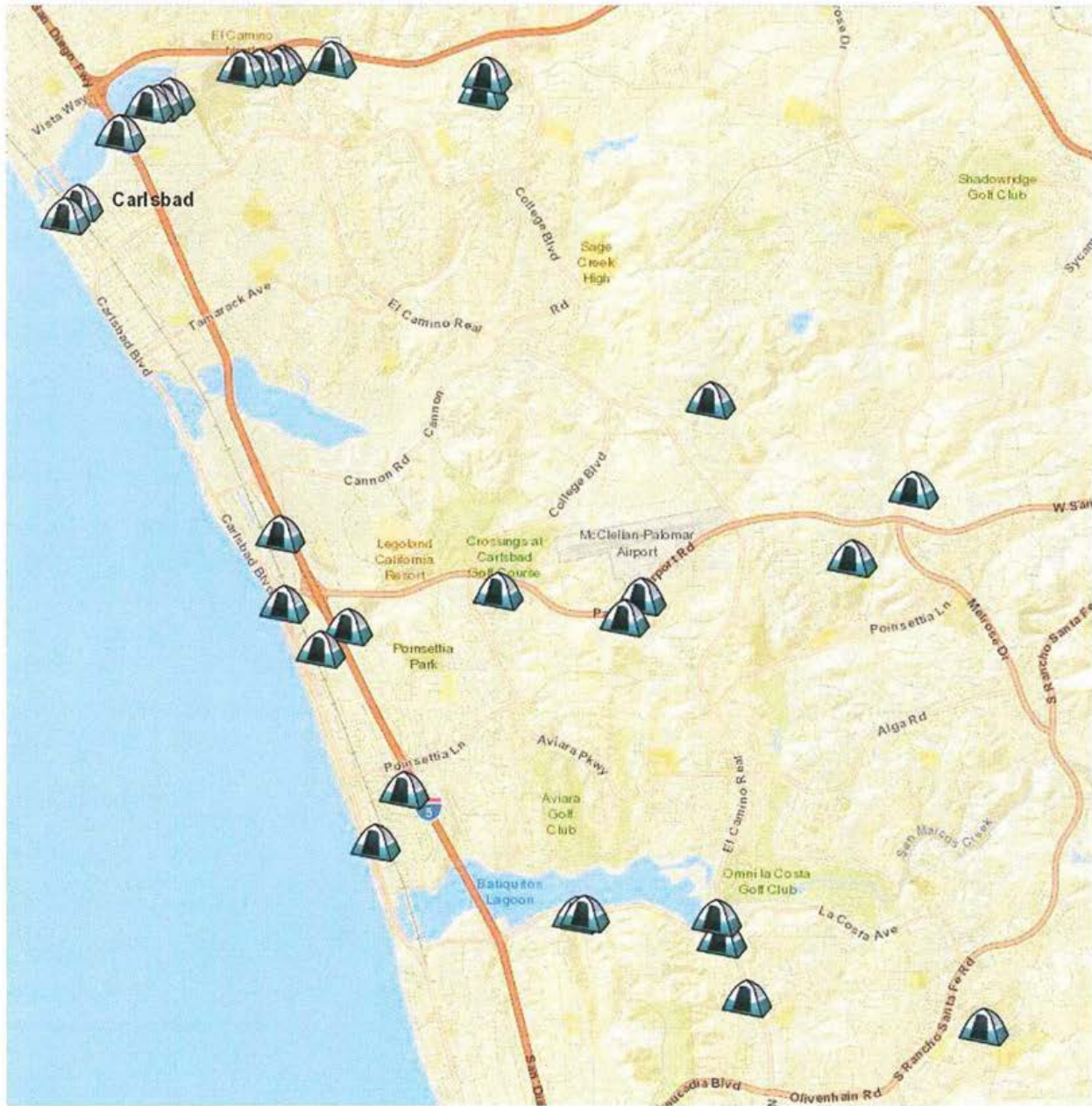
The following two charts, on pages 15 and 16, provide the status of engagement to date and the case load:





Police & Public Works: Encampment Cleanups

Public Works staff developed a tracking system to monitor the encampment cleanup activity. In April 2019 the Police Department, in response to community feedback, started posting an encampment cleanup map. An example of the map is shown below.



Neighboring Cities' Response

Several of Carlsbad's neighboring cities have taken a proactive approach by developing a homeless strategic plan and city-specific programs similar to the City of Carlsbad's Plan, as in the case of Escondido and Vista. Oceanside developed a Homeless Outreach Team in 2014 with two dedicated officers and one sergeant. The city contracted with Interfaith Community Services to provide two social workers to work with its police and housing departments, similar to Carlsbad. Encinitas contracted with Community Resource Center to hire a Homeless Services Coordinator to work on their challenges associated with the homeless.

Because of the uniqueness of the needs of each homeless resident and the varying degrees of abilities to access services in each city, it appears that a community focused effort may be more successful than the regional approach at this time. These locally focused efforts may then be able to expand to regional solutions as each of the cities develop a better understanding of the specific needs of their homeless populations and responds accordingly to connect this population with resources and other longer-term solutions to address those needs. It is important to note, however, that there is a role for regional solutions in areas such as mental and behavioral health services, emergency care and funding. Elected officials, legislatures and county, state and federal agencies need to address these service and funding gaps to assist local governments to be successful in their responses to the challenges of addressing homelessness and its impacts on the local communities.

Community Partnerships

To respond successfully to the challenge of homelessness in Carlsbad, the coordinated assistance of a multitude of community partners are needed to work in coordination to implement the strategies of the Plan. The city would not be able to implement its Plan without the assistance of many others with expertise in a variety of areas of service to the homeless.

Staff has worked with its key stakeholders including caring residents, community members, service organizations, faith-based organizations, businesses and other government agencies to address the complex needs of the homeless and minimize the impact of homelessness in Carlsbad.

For example, Police Department HOT officers partner with the County of San Diego Health & Human Services and Mental Health Systems' iHOT program in the field to connect homeless individuals to mental health treatment, Medi-Cal benefits and CalFresh benefits (food stamps). HOT members actively work with Carlsbad faith-based organizations, who provide support to the homeless, by the coordination of services.

Residents and businesses are a valued partner in the implementation of the Plan. The Police Department HOT and the Community Services Manager (HNS) have met or spoken with residents and business owners who want to provide support to the city's Plan, have concerns about the impact homelessness is having on their business or neighborhood or would like to understand what the city's approach is to addressing homelessness.

Service providers and community organizations are an integral part of the success of the Plan, as they provide services and programs that meet the direct needs of the homeless which include housing, substance abuse treatment, mental health, healthcare, veteran assistance, senior services, employment, transportation, reunification with family and securing benefits, to name a few.

Legal Considerations

The following is an exploration of some of the legal issues that surround homelessness in Carlsbad and throughout the region.

The first subsection discusses a local ordinance package that will be introduced to the City Council in the near future. The second subsection provides a discussion of the landmark federal Ninth Circuit case, Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), which has significantly reduced governments' abilities to enforce camping ordinances throughout the Ninth Circuit. The third subsection discusses miscellaneous legal issues/questions that have been raised by members of the public, staff and/or the Council. The final subsection discusses inter-agency legal solutions.

It should be prefaced that there are numerous legal constraints that limit legislative and law enforcement powers with regard to homeless individuals. While homeless individuals do not receive special class protection for purposes of the equal protection clause of the Fourteenth Amendment, numerous other constitutional rights must be respected. Court challenges to laws restricting camping and sleeping in public have resulted in a complex patchwork of case law restricting the government's ability to regulate and particularly criminalize these activities. Governments must also tread carefully when regulating any conduct that might impact a homeless individual's First Amendment rights: Freedom to speak, associate or express views. All persons, homeless or otherwise, have the right to use public open space for free speech, expression and association. That said, the public's free speech rights are not without limits, and the government may impose content neutral and reasonable time, place and manner restrictions on communicative activities. The level of permissible government control fluctuates with the location or forum of the communicative activity (i.e., public forum, designated public forum, non-public forum). Most of the time, public open spaces will be considered a public forum by the courts, so regulation of these spaces are subject to strict judicial review standards.

Local Ordinance Package

The Carlsbad Police Department, in consultation with the City Attorney's Office, has been researching and drafting an ordinance package that aligns with the city's Plan. When the Plan was first adopted in October 2017, it recommended the implementation of new policies and ordinances to address and limit, where necessary, homeless impacts on the community and to prosecute criminal offenses as appropriate. This ordinance package is intended to provide another tool to address increasing health, safety and environmental concerns that have accompanied a rise in local transient encampments, as well as the troubling conduct of chronic criminal offenders. At the same time, any ordinance changes will seek to ensure that all persons' constitutional rights are respected and enforced accordingly. Any proposed ordinances will be limited in scope to

comply with constitutional limitations and take into consideration the ever-evolving legal landscape in this field.

By way of background, the Carlsbad Municipal Code (“CMC”) addresses some of the illegal conduct exhibited by members of the homeless population, including: Unlawful camping, urinating/defecating in public, open alcohol containers, scavenging, entering parks or beaches after the posted closing time and distribution or solicitation to persons in vehicles. Most of these offenses are chargeable as an infraction, although some such as urinating/defecating in public are a misdemeanor offense. Only the misdemeanor CMC offenses may be prosecuted by the City Attorney’s Office; the infraction offenses go to the “Minor Offenses” division of the Superior Court and are often dismissed or unresolved due to defendants’ failure to appear in court.

Notwithstanding this limitation on prosecutable offenses in the CMC, the City Attorney’s Office has prosecuted repeat unlawful camping cases under CMC section 1.08.010(B)(3), three or more of the same municipal code offenses within one year, a misdemeanor offense. Since April 2018, eight repeat public camping cases have been prosecuted under this section, in addition to other quality of life cases such as public urination. These cases have resolved by way of plea, resulting in three-year terms of probation, stay-away orders from the unlawful encampment area in question, and oftentimes jail terms (stayed or imposed custody). The City Attorney’s Office has also added, as a condition of probation, that defendants make a certain number of contacts with homeless resource centers, such as Carlsbad’s HOT.

That said, there is still room for change in the CMC to more adequately address the wide array of problematic activities associated with unlawful camping and chronic offenders. Staff believes that revisions to the CMC will provide an expanded “tool kit” to help remedy these issues.

Martin v. City of Boise: Implications on Enforcement of Unlawful Camping Laws

In September 2018, a three-judge panel of the U.S. Circuit Court of Appeals for the Ninth Circuit held in a landmark decision that, “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying and sleeping in public.’” Martin v. City of Boise, 902 F.3d 1031, 1048 (9th Cir. 2018) (citing Jones v. City of Los Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006)). The court went on to explain that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” Martin at 1048. At the same time, the panel explained in a footnote that “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.” Martin at 1048, FN 8. The panel further limited the scope of its holding, stating that “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.” Id. Ultimately, the court ended its footnote with a vague message to cities as to what type of camping ordinance would or would not be constitutionally compatible: “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.” Id. (citing Jones at 1136).

The effects of this landmark decision are wide-ranging, as the Ninth Circuit encompasses not only California, but also Oregon, Washington, Nevada, Montana, Idaho, Arizona, Alaska and Hawaii. That said, interpretation of the case is very nuanced and not yet fully understood by legal analysts. In many respects, we must “wait and see” what happens with future litigation that might pave the way for another court’s interpretation of Martin. Given these variables and the Ninth Circuit’s apparent desire to vigilantly protect homeless persons’ constitutional rights, the City Attorney’s Office believes that the most prudent course of action is to maintain our public camping charge as an infraction level offense and not seek to elevate this offense to a misdemeanor in a future ordinance package. The Carlsbad Police Department has also revised internal policies in response to Martin by limiting the times and places that the city’s public camping ordinance can be enforced. This limitation on enforcement is essential under Martin to ensure that homeless persons are provided times and places to lawfully carry out “universal and unavoidable” human activities, such as sleeping. The City of Carlsbad is not in a position to enforce a citywide ban on camping in public, given the current bed status within the city’s limits. In short, there is currently insufficient “alternative sleeping space” within the city’s limits to accommodate the city’s entire homeless population. Martin v. City of Boise, 2019 WL 1434046 at *3 (Apr. 1, 2019).

That said, this area of law—homeless individuals’ right to camp and do other activities in public—is still in a state of flux. Soon after the Martin case came down, the City of Boise filed petitions with the Ninth Circuit seeking panel rehearing or, in the alternative, rehearing en banc (rehearing by the entire Ninth Circuit). On April 1, 2019, the court denied both petitions and declared that no further petitions would be entertained. The court also provided a slightly amended opinion to its earlier opinion published in September 2018. Judge Berzon, concurring in the denial of rehearing en banc, emphasized that the court’s opinion was limited in scope and “holds only that municipal ordinances that criminalize sleeping, sitting, or lying in all public spaces, when no alternative sleeping space is available, violate the Eighth Amendment.” Martin, 2019 WL 1434046 at *3 (citing Martin, 902 F.3d at 1035). “Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.” Martin, 2019 WL 1434046 at *3.

Notwithstanding the Ninth Circuit’s official concurrence with the original opinion published in September 2018, two members of the court published lengthy dissenting opinions, in which numerous members of the court joined at least in part. Judge Bennett’s dissent addresses the notion that “except in extraordinary circumstances not present in this case, and based on its text, tradition, and original public meaning, the Cruel and Unusual Punishments Clause of the Eighth Amendment does not impose substantive limits on what conduct a state may criminalize.” Id. at *12.

Likewise, Judge M. Smith’s scathing dissent calls out the panel for a “misguided ruling” in “three areas of binding Supreme Court precedent.” Id. at *4. Judge M. Smith’s dissent goes on to describe that the panel’s holding “has begun wreaking havoc on local governments, residents, and

businesses throughout our circuit. Under the panel's decision, local governments are forbidden from enforcing laws restricting public sleeping and camping unless they provide shelter for every homeless individual within their jurisdictions." *Id.* In short, "the panel's opinion shackles the hands of public officials trying to redress the serious societal concern of homelessness." *Id.* At the end of his dissent, Judge M. Smith reiterates: "The panel's decision, which effectively strikes down the anti-camping and anti-sleeping Ordinances of Boise and that of countless, if not all, cities within our jurisdiction, has no basis in current law." *Id.* at *12. There is also commentary on the fact that the judiciary typically has no place in political decisions such as the homelessness crisis: "By creating new constitutional rights out of whole cloth, my well-meaning, but unelected colleagues improperly inject themselves into the role of public policymaking." *Id.* at *7.

While dissenting opinions are not binding, these opinions certainly call into question the constitutional validity of the Martin case. Judge M. Smith's decision also highlights the divisive circuit split on homelessness rights throughout the country, by virtue of the panel's holding that Boise's enforcement of its ordinances violates the Eighth Amendment. In short, the dissent seems to be beckoning the U.S. Supreme Court to take up the issue. At the same time, based on the politically charged nature of this issue, the U.S. Supreme Court may choose not to hear this case and leave the issue to the legislative branch, whether that be at the federal, state or local level. In the interim, the law of this case governs our jurisdiction, and any current and future limitations on enforcement of Carlsbad's public camping ordinance appear to be necessary.

Miscellaneous Legal Issues:

Conduct in Libraries

Libraries in particular have heightened constitutional protections by nature of the free media that they offer to the public. The U.S. Supreme Court has held and reiterated that the First Amendment prohibits the government from denying individuals the right to read, the freedom of inquiry and the right to receive information and ideas. Griswold v. Connecticut, 381 U.S. 479 (1965); Stanley v. Georgia, 394 U.S. 557 (1969). However, this right is not absolute. The government may limit this right to some extent, depending on the nature of the public library as a forum.

Courts have consistently classified libraries as a limited public forum, meaning that they are governmental property that have been designated as places for a specific type of expressive activity. As a limited public forum, courts have held that a public library is obligated to permit the public to exercise only those rights that are consistent with the nature of the library and with the government's intent in designating the library as a public forum; other activities need not be tolerated. See Kreimer v. Bureau of Police for the Town of Morristown, 958 F.2d 1242, 1255 (3d Cir. 1992). In interpreting the "nature of the library," the U.S. Supreme Court has defined libraries as "a place dedicated to quiet, to knowledge, and beauty." Brown v. Louisiana, 383 U.S. 131, 142 (1996). The Court has also stated that "[p]ublic libraries pursue the worthy missions of facilitating learning and cultural enrichment." U.S. v. American Library Assn., Inc., 539 U.S. 194 (2003).

Library restrictions that do not directly limit First Amendment activities, such as banning talking on a cell phone while in a library, need only be reasonable and viewpoint neutral. Perry Education

Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46 (1983). On the other hand, a time, place or manner restriction that limits a person's permitted First Amendment activities within a designated public forum are legal only if they are "narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

Courts have generally placed a library's hygiene and appearance restrictions in the latter category, often finding that they do not withstand this heightened constitutional standard. So long as an individual is peacefully engaged in the First Amendment activities for which the library was established, s/he cannot be expelled from the premises just because s/he is violating a hygiene or appearance rule. Similarly, public library policies regarding which items may be brought into the establishment receive this higher level of scrutiny. For example, the Boston Public Library attempted to prohibit persons from bringing in "articles with a foul odor which . . . impede use of the library by others." Lu v. Hulme, 133 F. Supp. 3d 312, 329 (D. Mass 2015). The court upheld the library's policy, finding that the rule was narrowly tailored to serve the library's substantial interest in ensuring that all patrons could use the library for its designated purposes. However, on the Boston Public Library's related policy of disallowing wheeled carts in the library, the court found that the policy was not narrowly tailored to serve the governmental interest in keeping passageways and browsing areas clear. Id. at 331. The court suggested other less restrictive means of accomplishing the government's interest, such as allowing for wheeled devices "in designated areas." Id.

Under certain circumstances, disruptive individuals have been suspended or banned from libraries. See Spreadbury v. Bitterroot Public Library, 862 F.Supp.2d 1054 (D. Mont. 2012). While Spreadbury is not legally binding in California, it is instructive as to how a California court might interpret this constitutional issue. The Spreadbury court found that the plaintiff was not wrongfully deprived of his constitutional liberty interests to use a public library when the town library banned him from the premises. Id. at 1056. The plaintiff had intimidated library staff and patrons after the library received a request to include in its collection a letter drafted by the plaintiff. The court found that while everyone has a right to use public libraries, the right is not unqualified. Id. Additionally, so long as a person is afforded due process, s/he may be constitutionally deprived of a liberty interest. Id. (citing Pinnacle Armor, Inc. v. U.S., 648 F.3d 708, 716 (9th Cir. 2011)). The court cited to a non-binding Third Circuit federal case for the proposition that "as a limited public forum, the Library is obligated only to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum. Other activities need not be tolerated." Kreimer v. Bureau of Police for the Town of Morristown, 958 F.2d 1242, 1255 (3d Cir. 1992). In Spreadbury, the court found that "Spreadbury violated a Library policy, and the Library could refuse him service so long as it provided him with the minimum due process requirement of notice and an opportunity to be heard." Spreadbury, at 1056.

Like the hygiene policies discussed below, there is not any case law directly on-point in our jurisdiction with regard to a potential library policy of: Removing disruptive persons, prohibiting entry with certain belongings or appearance/hygiene restrictions. Any such policy is likely subject

to strict constitutional scrutiny based on the unique First Amendment protections associated with libraries. Any such proposed policy should be carefully reviewed by the City Attorney's Office prior to implementation.

Hygiene Policies

Although there does not appear to be any California or Ninth Circuit case directly on-point with this issue, two decisions from the Third Circuit and District of Columbia District Court are instructive. In Kreimer v. Bureau of Police for the Town of Morristown, 958 F.2d 1242, 1246 (3d Cir. 1992), the Third Circuit ultimately upheld a Morristown, New Jersey library policy relating to patron hygiene. Specifically, a homeless man was expelled from the library for violating the following provisions of the library's code of conduct:

1. Patrons shall be engaged in normal activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials may be asked to leave the building. Loitering will not be tolerated.

...

9. Patron dress and personal hygiene shall conform to the standard of the community for public places. This shall include the repair or cleanliness of garments.

Id. at 1247.

After receiving a letter from the New Jersey Office of the American Civil Liberties Union, the library amended the ninth rule, among others, as follows: "[p]atrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building." Id. at 1248. Kreimer sued the library, alleging the rules were "vague and overbroad, both on their face and as applied by library employees" and in violation of his First Amendment and Fourteenth Amendment due process and equal protection rights. Id. The equal protection claim asserted that Kreimer could not meet the library's "subjective (and vague) standards ... because of [his] homeless status or because of an involuntary physical condition." Id. The district court ruled that rules one and nine were null on their face, and enjoined the library from enforcing the rules. Kreimer v. Bureau of Police for Town of Morristown, 765 F. Supp. 181, 197-98 (D.N.J. 1991), rev'd, 958 F.2d 1242 (3d Cir. 1992).

The Third Circuit reversed the district court on appeal, finding no violation of due process in the rules. Kreimer, supra, at 1270-71. As to rule nine, the court found that it was valid under the First Amendment: It was sufficiently narrow to promote the significant government interest of ensuring that "all patrons of the [Library] [can] use its facilities to the maximum extent possible during its regularly scheduled hours." Id. at 1264. The Third Circuit explained that while "the rule may disproportionately affect the homeless who have limited access to bathing facilities, this fact . . . would not justify permitting a would-be patron, with hygiene so offensive that it constitutes a nuisance, to force other patrons to leave the Library, or to inhibit Library employees from performing their duties." Id. 1264-65. "Kreimer's [First Amendment] right has no lesser, or greater, significance than that of other residence." Id.

As to Kreimer's argument that the rule should be void as constitutionally vague, the court disagreed: "Although we agree that the 'nuisance' standard contained in this rule is broad, in our view it is necessarily so, for it would be impossible to list all the various factual predicates of a nuisance. . . . The determination of whether a given patron's hygiene constitutes a 'nuisance' involves an objective reasonableness test, not an annoyance test." Id. at 1268. The court came to the same conclusion as to rule one.

Finally, as to the equal protection argument, the court did not agree that the rules imposed any legally significant burden on homeless persons. "Further, in any event, as the homeless do not constitute a suspect class, the rules need only survive the lowest standard of review for equal protection purposes. Our previous discussion forecloses any serious contention that they do not pass muster under this standard." Id. at 1269, n.36.

Similarly, in Armstrong v. District of Columbia Public Library, a patron was expelled from a public library under a similar ordinance for failure to pass the appearance standards of the library. 154 F. Supp. 2d 67 (D.D.C. 2001). The library's policy provided for the exclusion of patrons based on "[o]bjectionable appearance (barefooted, bare-chested, body odor, filthy clothing, etc.)" Id. at 70, n.2. The original policy included the phrase "Loiterers and Vagrants" and was passed because "a proliferation of more street people and more homeless' in 1979 'precipitated the need for [the] policy." Id. (internal quotation marks omitted). While the "Loiterers and Vagrants" phrase was deleted in 1982, the substance of the policy remained unchanged. In this case, the plaintiff tried to enter the library "wearing a shirt, shoes, pants, several sweaters, and two winter jackets to stave off the cold weather." Id. He was turned away by a security guard who told him that he needed to "clean up" before entering the building. Id.

Unlike in Kreimer, the Armstrong court found that regulation was unconstitutionally vague and "unduly [interfered] with the exercise of the common right." Id. at 77-79. Specifically, there was no defined legal standard or specific definition of "objectionable appearance," so library staff necessarily exercised a subjective interpretation of the objectionable characteristics. Id. at 77-78. While these cases both concerned hygiene practices in a public library, their holdings could be extracted to other limited public forums such as Carlsbad's Senior Center. Again, without any case law directly on-point in our jurisdiction, it would be advisable to keep any hygiene policy for the library, Senior Center or other limited public forum narrow in scope with an objective standard of interpretation, to ensure that such policy passes constitutional muster.

Safe Parking Lots

Safe parking lot programs are often administered by a non-profit agency in agreement with a city. These programs allow homeless individuals to park a vehicle in a public parking lot for free and legal overnight parking. Most programs allow vehicles only, no tents or RV's. The parking lots are monitored by city staff. People seeking to use a safe lot must formally apply, and usually sobriety is a condition of registration. Many operating organizations also prohibit violent criminals, sex offenders and persons who have committed crimes against children. In many cases participation appears to be a long-term commitment so that the operating organization can work with a particular family or individual to provide assistance over time. Applicants are usually required to make a commitment to seek permanent housing or at least apply to a long-term transitional shelter.

A safe parking lot program would not be permitted by the Carlsbad Zoning Ordinance (Title 21). Whether a safe parking lot program is allowed or prohibited in Carlsbad depends on the nature of the operation of the use, the zoning designation and the zoning rules. The only classification in the Carlsbad Municipal Code (CMC) that might be viable is "emergency shelter." These are allowed in the "M" - Industrial Zone and the "PM" - Industrial Zone. But, the "shelter" would have to conform with CMC section 21.32.070. CMC subsection 21.32.070(G) provides: "No person shall be allowed to camp on the premises or sleep on the premises outside of the shelter building." A safe parking lot would squarely violate this provision.

Even if a safe parking lot could somehow be interpreted as a "shelter building" under section 21.32.070(G), which would be a stretch at best, there are various requirements that would unlikely be satisfied by a safe parking program. If the shelter has more than 30 beds, a Conditional Use Permit (CUP) would be required. Section 21.32.070 (E)(4) states the minimum requirements for the building and premises. Of note, it would be difficult to find that vehicles provide clean sanitary beds. Sanitation facilities such as showers and toiletries would also need to be provided.

That said, overnight parking is permitted in most areas of the city, providing homeless persons with ample locations to park their vehicles overnight. The proposed ordinance package discussed above would continue to allow overnight vehicle parking, with certain time and place restrictions.

Distributing Food to Homeless in Public Spaces

In October 2017, El Cajon enacted a temporary urgency ordinance that banned the sharing or distribution of food in parks and other public spaces. The short-lived El Cajon ordinance was uniquely passed as a temporary "urgency ordinance" based on the high number of reported Hepatitis A cases in El Cajon. The city's argument was that the ordinance would minimize the risk of spreading Hepatitis A through handling food given to the homeless. Opposition groups questioned the soundness of the city's argument, noting that Hepatitis A was not spread through food handling but instead through feces. The city carved out exceptions for events such as birthday parties, sport team celebrations and wedding anniversaries. The aftermath of the ordinance included protests, homeless persons gathering and sharing food under the guise of a "birthday party," and citizens simply defying the ban and feeding the homeless anyways. The

urgency ordinance was lifted shortly thereafter in January 2018 when the Hepatitis A emergency was lifted.

The viability of such an ordinance was unique to the circumstances that existed at the time of its passage. It would not be legally viable at this time to pass a similar such ordinance in Carlsbad. As an alternative to addressing this conduct, the HRT will continue reaching out to community groups to encourage solutions to help the homeless which aligns with the city's Plan.

It should further be noted that community events on public property are subject to strong constitutional protections. At the same time, local governments have successfully enacted and enforced reasonable and content-neutral time, place and manner regulations. See Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022 (9th Cir. 2006) (upholding Santa Monica's Community Events Law, including permitting, time, place and size limitations, against broad-based constitutional attack); Long Beach Area Peace Network v. City of Long Beach, 574 F. 3d 1011 (9th Cir. 2009) (approving 75-person threshold for events permit limitation).

In Santa Monica Food Not Bombs, the plaintiffs challenged the city's food distribution ordinance as it applied to city sidewalks, among other ordinances. The food distribution ordinance had two subsections, one that applied to public parks and the City Hall lawn, and one that applied to public streets and sidewalks. The parks subsection required persons who served or distributed food to comply with state health and safety standards, county health permit regulations (which required city approval as to location) and all requirements of the city's Community Events Law. The public streets and sidewalks subsection completely banned the distribution of food in these areas "without City authorization." Violations of these ordinances were deemed a misdemeanor. The streets/sidewalk section was amended after the filing of the lawsuit to clarify that "City authorization" could come in the form of a vending permit, use permit, outdoor dining license or community event permit. The amended ordinance also exempted any permit or license requirement for "noncommercial food distribution that does not interfere with the free use of the sidewalk or street by pedestrian or vehicular traffic." Santa Monica Municipal Code section 5.06.020.

The Ninth Circuit ultimately found that any challenge to the food distribution ordinance concerning city sidewalks was rendered moot because the amended ordinance allowed appellants to do exactly what they sought to do—engage in non-commercial food distribution on public sidewalks. As to the challenge to the ordinance concerning distribution of food in public parks, the court found that the plaintiffs improperly brought this challenge before the court. They failed to properly bring a "facial challenge" that the ordinance violated the First Amendment, because they failed to argue that food distribution is, on its face, an expressive activity. Similarly, they failed to allege that any particular individual was harmed by the ordinance, the prerequisite for an "as-applied" challenge, i.e., challenging the ordinance as inhibiting an expressive activity protected by the First Amendment under particular circumstances.

In short, it is difficult to discern from Santa Monica Food Not Bombs what the upper limit would be on an ordinance restricting non-commercial food distribution in public areas. The court never

reached this question, as it was moot with regard to food distribution on public streets and sidewalks and not properly raised with regard to food distribution in public parks.

Stay-away Orders

Some homeless individuals who have been prosecuted by the City Attorney's Office for three or more camping offenses in one year (CMC 1.08.010(B)(3)) are now subject to stay-away orders during the term of their probation (usually three years). These orders typically span a radius of 300 feet from the campsite location. Significantly, these orders must be imposed by a Superior Court judge, and they must be imposed pursuant to a plea of guilty or finding of guilt (by way of a trial or evidentiary hearing on a violation of probation). A judge would have to impose a probationary term, with the stay-away order as a condition of probation. Stay-away orders cannot be unilaterally imposed by law enforcement or city staff.

Inter-agency Solutions:

San Diego District Attorney's Office

City staff has joined a local discussion with the San Diego District Attorney's Office to address chronic drug offenders, many of whom are also homeless. Since the passage of Proposition 47 in 2014, which reduced many drug and theft crimes from felonies to misdemeanors, there has been an increase in nuisance and homelessness-related complaints in Carlsbad. Those persons who have plead guilty or been found guilty of these misdemeanor crimes often enter into probationary plea agreements. Unfortunately, the probation supervision resources that are available to felons are not available for misdemeanor offenders including: Formal probation, parole, AB 109 supervision (county jail or probationary supervision for certain felons and state prison parolees) and reentry programs. This sets up misdemeanor offenders for limited accountability, the "revolving door syndrome" and minimal incentives for offenders to accept treatment. The District Attorney's Office is currently considering alternatives to current prosecution practices and priorities to address chronic misdemeanor offenders, particularly those who are homeless and/or drug-addicted. This will require collaboration among judges, the Public Defender's Office, the District Attorney's Office, law enforcement, probation and other agencies to be successful. The Carlsbad Police Department and City Attorney's Office has expressed a strong interest in such a collaborative effort.

The San Diego City Attorney's Office has already found some success in combatting homelessness through a chronic misdemeanor diversionary pilot program called "SMART." The purpose of this program is to safely divert non-violent chronic misdemeanor drug and quality of life offenders, particularly those who are otherwise resistant to intervention. SMART offers individualized case management, substance abuse treatment and tailored housing placement for up to two years (not temporary shelter beds). The long-term goals of the program include: A reduction in recidivism, a reduction in emergency room visits, reduced drug use, increased access to healthcare, increased days in treatment and a reduction in court appearances. Staff will continue to press the District Attorney's Office and other local agencies/authorities to consider replicating a similar such

program in North County. Meanwhile, staff will work to implement aspects of this program at the local level.

Concerns/Challenges to Successful Plan Implementation

As part of the Plan's strategy to "support and build capacity within the city and community to address homelessness", staff has identified gaps in critical services to meet the complex needs of the homeless. Below are a couple of the most immediate challenges that may prevent further success in addressing the needs of the homeless and rehousing them:

1. In October 2018 Tri-City Medical Center closed its Crisis Stabilization and Behavioral Health units leaving a gap in emergency mental health services. The nearest options for care when someone is considered a danger to themselves or others are Palomar Health in Escondido and the County of San Diego's psychiatric hospital in San Diego. It is staff's understanding that Palomar Health is often at capacity and does not have a sufficient number of beds to serve the demand for this type of care. The transportation of persons to the County of San Diego facility oftentimes requires an officer to be out of service for an extended period of time.
2. City resources alone cannot adequately support the significant portion of homeless individuals who are suffering from mental health challenges. Supplementary county, state and/or federal resources are essential to meet this need.
3. Additional facilities, mental health services and funding for ongoing support are all needed to address this gap in much-needed assistance for homeless residents. Through Mental Health First Aid training, city staff learned that one in four persons have some type of mental health issues, with the most common form being depression. When depression becomes so severe that it negatively impacts day-to-day life functions, any person could face homelessness. Without mental health services, the efforts to assist the homeless will be much less successful overall.

Conclusion

Implementation of the city's Plan has been successful to date, and many strategies are moving forward in a productive manner. There, however, is more work to do and new strategies may be developed as the HRT continues its discovery of the individual needs of our homeless residents. Affordable housing opportunities will continue to be a challenge as the demand is continuing to far exceed the supply in Carlsbad. Creative alternatives for affordable housing will continue to be pursued. The gap in service and resources related to mental and behavioral health is a serious concern and will delay successful rehousing efforts if not addressed in the near future. If the homeless can't meet their basic needs of care and daily life activities due to mental health issues, they will not be able to remain successfully housed even if affordable housing can be made available to them. Carlsbad's homeless residents will need ongoing support and services to remain successfully housed; it is important for there to be a regional effort to ensure that adequate resources are made available to address the mental and behavioral health needs of homeless residents in order for Carlsbad's response to be as successful as possible.