



Sent via electronic mail

February 7, 2025

Fremont Mayor Raj Salwan and City Council Members
Fremont City Hall
3300 Capitol Ave.
Fremont, CA 94538

Re: Public Comment on February 11, 2025 Agenda Item 2C

Dear Mayor Salwan and Honorable Members of Fremont City Council:

We, undersigned groups of legal, civil, and social service organizations, write to express our deep concerns about the City’s proposed ordinance to amend Chapter 8.90 of the Fremont Municipal Code to adopt an anti-camping prohibition. We urge the City government to carefully consider the potential impacts of this proposal, including potentially subjecting the jurisdiction to legal liability and creating devastating humanitarian consequences.

The recitals of the ordinance state that “the Council is committed to protecting the rights of individuals who cannot obtain shelter and to treating their personal property with respect and consideration,” and we ask the Council to remain true to this commitment by **voting no** on this ill-conceived proposal.

The Proposed City-Wide Camping and Property Ban Violates Constitutional and Statutory Rights

The proposed ordinance imposes misdemeanor penalties of up to \$1,000 and up to six months in jail on anyone who “camp[s]” (including living outdoors) on “any public property,” or anyone who “store[s]” personal property upon public property. This sweeping language would effectively make it a crime to be unsheltered in the City of Fremont. People who are unsheltered cannot avoid living outdoors when there is insufficient access to dignified interim or long term housing; nor can they avoid storing their belongings in public places. As such, there is effectively no way for unsheltered individuals to comply with the proposal.

While the Supreme Court’s recent ruling in *Grants Pass*¹ struck down one narrow legal protection for unhoused people, many other laws still protect the rights of unsheltered people. California’s constitution, which is unchanged by the *Grants Pass* ruling, includes a “cruel or unusual” clause which prohibits an all-out camping ban that criminalizes life-sustaining conduct. The Washington Court of Appeals recently ruled that their state constitution’s “cruel punishment” clause barred enforcement of an unauthorized camping code in Seattle.² California’s courts have similarly found that the state constitution is more protective than the federal constitution, and would likely strike down a camping ban like the one proposed by Fremont, potentially subjecting the city to liability.

Courts in the Ninth Circuit have enjoined policies and practices that displace unsheltered people or seize their property in ways that unduly burden people with disabilities, as well as jurisdictions that fail to accommodate disabilities of encampment residents during these operations. *See Tyson v. City of San Bernardino*, No. EDCV 23-01539 TJH (KKX), 2024 WL 3468832, at *6–7 (C.D. Cal. Jan. 12, 2024). This proposal would have the effect of pushing unsheltered people, including people with serious physical or mental health disabilities, into inaccessible areas to seek refuge from enforcement—demanding that they constantly move their bodies and carry all their belongings to avoid being punished under the law. This constitutes an undue burden in violation of state and federal disability laws, including California Government Code Section 11135 and the Americans with Disabilities Act (ADA). These disability laws apply

¹ *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520 (2024).

² *See Unpublished Opinion, Kitcheon v. Seattle*, No. 85583-2-I (Wash. Ct. App. Dec. 9, 2024), <https://www.courts.wa.gov/opinions/pdf/855832.pdf>.

to *all* programs, services, and activities performed by the City, including facially neutral laws enforced in ways that unduly burden people with disabilities. *See McGary v. City of Portland*, 386 F.3d 1259, 1265–66 (9th Cir. 2004).

Additionally, the proposal allows for several categories of unattended property to be summarily seized “[w]ithout prior notice.” It does not specify noticing procedures for any types of property, nor does it call for other procedural protections, except for a vague reference to notice in the recitals. Cases in the Ninth Circuit make clear that Fourth Amendment protections apply to the seizure of property, including unhoused people’s *unattended* property. *See Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1012 (C.D. Cal. 2011), *aff’d*, 693 F.3d 1022 (9th Cir. 2012); *Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1044 (C.D. Cal. 2020), *aff’d*, 11 F.4th 1113 (9th Cir. 2021). In applying a reasonableness analysis, courts look at what types of procedural protections are provided—such as notices, pre and post seizure hearings, opportunities to be heard and contest seizure, accessible storage options, etc. None of these are included in Fremont’s proposal.

The proposal bans a substantial amount of otherwise innocent conduct (e.g. sleeping outside and setting down one’s belongings) and contains no legislative or administrative guidelines for its enforcement. It unlawfully gives police unbridled discretion to selectively target Fremont’s unhoused population. *See Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1156 (9th Cir. 2014) (striking down “broad and cryptic statute [that] criminalizes innocent behavior, making it impossible for citizens to know how to keep their conduct within the pale”).

The Proposal Criminalizes Those Exercising Their Rights to Offer Aid

Shockingly, the proposed law not only criminalizes alleged violators but also “[a]ny person causing, permitting, aiding, abetting or concealing a violation of this chapter.” This broad language could apply to people providing humanitarian aid to unhoused people—including service providers, churches distributing food, and street medicine teams. It might also apply to bystanders exercising their First Amendment rights, or reporters documenting at the scene of encampment removals.

As written, the proposed law is patently unreasonable and will expose the City to legal liability. It does not specify what types of conduct qualify as “aiding,” “permitting,” or “abetting.” Nor does it specify a requisite mental state. California courts disfavor enforcing laws in ways that allow people to “indiscriminately be made the subject of prosecution,” especially in the context of misdemeanor offenses. *See People v. Lauria*, 251 Cal. App. 2d 471, 482 (Ct. App. 1967).

The Proposal is Cruel and Contravenes Best Practices

In addition to the legal problems with the proposed ordinance, deploying police as first responders to unhoused encampments is costly and cruel. The housing crisis falls hardest on Black, Indigenous, and disabled Californians, who are vastly overrepresented in the state's unhoused population. This is particularly true in Alameda County where forty percent of people experiencing unsheltered homelessness are Black, according to the 2023 Point-In-Time (PIT) count.³ Thus, this ordinance would have disparate impacts on community members who are already marginalized and overcriminalized. Recent data from Racial Identity and Profiling Act Board's 2025 report found that "Black individuals were stopped at a rate of 126.46 percent more often than expected and, Hispanic/Latine(x) individuals were stopped 43.76 percent more often than expected," given the population of the state.⁴

Further, when unhoused people are penalized for offenses associated with their unhoused status, these negative interactions with law enforcement can lead to long lasting mental health effects and result in avoidance of social services and increased tension between law enforcement and unsheltered community members. Criminalizing and displacing unsheltered people wastes limited public funds citing, arresting, and moving people from block to block—traumatizing people who are already experiencing trauma; fostering mistrust of law enforcement and service providers; creating a cycle of fines, fees, and jail time; promoting unnecessary police encounters which disparately lead to violent use of force; and making it harder to gain access to housing. Criminalizing the provision of humanitarian aid to unsheltered people is cruel and counterproductive and punishes community members who provide necessary services and resources.

The proposed ordinance does nothing to address the reasons people are living outside. The causes of Fremont's housing crisis mirror those of the state and nation. The lack of affordable housing, paired with stagnating wages, is the primary reason that 614 people in the City have no choice but to live on the street. According to the U.S. Department of Housing and Urban Development's (HUD) most recent PIT and Housing Inventory County (HIC) data, Alameda County had 7,135 unsheltered homeless individuals but only 5,257 permanent supportive housing beds—a stark indicator that the number of unhoused people is outpacing the availability of permanent housing solutions.⁵ Additionally, while 3,371 year-round shelter beds exist, only

³ U.S. Dep't Housing and Urban Dev., *2007-2023-Pit-Counts-by-CoC Data*, (2023),

<https://www.huduser.gov/portal/sites/default/files/xls/2007-2023-PIT-Counts-by-CoC.xlsb>.

⁴ *Draft 2025 RIPA Report*, RIPA Board (2025), <https://oag.ca.gov/system/files/media/ripa-2025-report-draft-10162024.pdf>.

⁵ U.S. Dep't Housing and Urban Dev., *2007-2023-Pit-Counts-by-CoC Data*, *supra* note 3; U.S. Dep't Housing and Urban Dev., *2007-2023-HIC-Counts-by-CoC Data*, (2023),

<https://www.huduser.gov/portal/sites/default/files/xls/2007-2023-HIC-Counts-by-CoC.xlsx>.

2,624 individuals were sheltered—meaning that capacity does not equate to accessibility.⁶ Many unhoused people cannot or do not enter congregate shelters due to barriers such as restrictive policies, unsafe conditions, lack of accommodations for partners or pets, and inadequate facilities for those with disabilities. Studies show that congregate shelters are neither appropriate nor safe for long-term living, and they do not serve as an adequate replacement for permanent housing.⁷ Fremont has failed to invest sufficiently in deeply subsidized housing, instead allowing market-rate development to drive up costs while failing to meet the needs of its lowest-income residents.

Research is clear about how to solve this issue. The Housing First model is the state’s official policy; it is a proven solution based on decades of empirical studies demonstrating that houselessness is most effectively solved by providing low-barrier access to permanent, stable housing.⁸ Rather than dedicating its resources to harmful law enforcement approaches, Fremont should focus on expanding affordable and permanent supportive housing options to provide housing for unsheltered residents while passing protections to keep precariously housed renters in their homes.

* * *

We ask for your no vote on this misguided proposal.

Sincerely,

ACLU Foundation of Northern California

Centro Legal de la Raza

ACLU Foundation of Southern California

Coalition on Homelessness

Bay Area Legal Aid

Disability Rights California

California Homeless Union Statewide
Organizing Council

East Bay Community Law Center

East Bay Housing Organizations

Californians for a Responsible Budget
(CURB)

Homeless Action Center

⁶ *Id.*

⁷ See Eve Garrow, et al., *This Place is Slowly Killing Me, Abuse and Neglect in Orange County Shelters*, ACLU of Southern California, (March 2019), https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf; Joel C. Cantor, et al., *The Promise of Service-Enriched, Hotel-Based Housing as an Alternative to Congregate Shelters for High-Need Persons Experiencing Homelessness*, 5 JAMA (2022), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2794709>.

⁸ See Leyla Gulcur et al., *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 J. of Comm. & Applied Soc. Psych. 171 (2003); Sam Tsemberis et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals with a Dual Diagnosis*, 94 Am. J. Public Health 651 (April 2004).

Law Foundation of Silicon Valley

The Public Interest Law Project

Lawyers' Committee for Civil Rights of the
San Francisco Bay Area

Sacramento Homeless Union

Legal Services for Prisoners with Children

Secure Justice

National Homelessness Law Center

Western Center on Law and Poverty

Where Do We Go?