

EXECUTIVE ORDER 2024-1:

Protection, Preservation, Access, and Maintenance of Critical Infrastructure to Eliminate Imminent Dangerous and Emergency Conditions Which Pose Public Safety and Health Hazards.

WHEREAS, the Oakland City Council adopted the Encampment Management Policy (“EMP”) on October 20, 2020 in Resolution No. 88341 and the EMP is one of three pillars supporting the City of Oakland’s (“City”) goal of creating Permanent Access to Housing (“PATH”);

WHEREAS, the EMP is direct in its purpose to create an “Emergency Response” to shelter and rehouse households and improve health and safety on the street, while addressing homelessness with compassion and care, and to not criminalize the act of homelessness or poverty;

WHEREAS, since the EMP was adopted, the City has developed and funded approximately 1,200 emergency shelter and transitional housing beds, 280 Safe RV Parking spaces, and 600 permanent homeless housing units, but recognizes that, even with this extraordinary effort to provide emergency shelter options, the current number of homeless individuals living in Oakland far outpaces the number of existing safe parking spots, shelter beds, transitional housing or permanent supportive housing units available in the City;

WHEREAS, the EMP divides the City into Low Sensitivity Areas which are deprioritized for intervention as long as certain public health and safety criteria are met, and High Sensitivity Areas which are always subject to intervention by the Encampment Management Team (“EMT”) given the potential degradation of critical infrastructure, restriction of public amenities or services, or significant obstructions to residences, businesses, emergency routes, and right-of-ways;

WHEREAS, the City has determined its “critical infrastructure” to be systems and assets, whether physical or virtual, that are so vital to its community, that the incapacity or destruction of such systems and assets would have a debilitating impact on the City’s security, economic stability, public health, public safety, and/or any combination of those matters;

WHEREAS, the EMP protects City schools, waterways, businesses, residences, playgrounds, tot lots, recreational centers, baseball fields, and temporary emergency shelter sites by significantly limiting an encampment’s proximity to these City assets that are located within High Sensitivity Areas;

WHEREAS, High Sensitivity Areas also include vehicular traffic lanes, bike lanes, and sidewalks that do not comply with the American with Disabilities Act (“ADA”) because they do not allow for the safe passage of pedestrians, bicycles, vehicles, including the safe operation of emergency equipment, because they are obstructed by encampments;

WHEREAS, over the past four years the City has seen significant degradation of its critical infrastructure due to the proliferation of encampments in High-Sensitivity Areas;

WHEREAS, the City desires to immediately address the proliferation of encampments in High-Sensitivity Areas by enforcing ordinances and policies that are aimed at punishing criminal conduct and eliminating unlawful conduct that is unrelated to the status of being homeless;

WHEREAS, the EMP incorporated the precedent in *Martin v. Boise*, 902 F.3d 1031 (9th Cir. 2018) (“*Martin v. Boise*”) which required the City to make good-faith alternative indoor shelter offers before enforcing anti-camping laws against unhoused individuals, and was subsequently modified in October 2022 to incorporate the terms of the settlement agreement in *Miralle, et al. v. City of Oakland, et al.* (“*Miralle*”) that addressed notice and storage procedures used during encampment interventions under the EMP;

WHEREAS, the EMP and *Miralle* settlement agreement include exceptions to the typical notice and shelter offer requirements for encampments when such encampments present an “emergency” and/or “urgent health and safety concerns;”

WHEREAS, the recent United States Supreme Court decision in *Grants Pass v. Johnson*, 144 S.Ct. 2202 (2024) (“*Grants Pass*”) reverses the precedent in *Martin v. Boise* and enables local jurisdictions to

enforce anti-camping laws and clear encampments without making indoor shelter offers but, importantly, does not require such enforcement;

WHEREAS, it is my intent to further clarify the process and findings necessary to close encampments in High Sensitivity Areas and those that present an “emergency” and/or “urgent health and safety concerns” without altering the EMP or terms in the *Miralle* settlement agreement; and

WHEREAS, it is vital that the City of Oakland fully execute the EMP to ensure that we address the most dangerous encampments throughout the City and we are aware of the actions of neighboring cities that have resulted in the City of Oakland hosting over 58% of the existing unhoused population as identified in the January 2024 Point in Time Count even though the City of Oakland’s population is only 29% of Alameda County and we are at our temporary emergency shelter capacity and must focus on minimizing impacts to our citizens and children while working to provide our unhoused with pathways to dignified housing.

THEREFORE, IT IS RESOLVED: That through this Executive Directive, as the Mayor of the City of Oakland, I hereby direct the City Administrator to direct all applicable City Departments, divisions, or teams to undertake the following:

IT IS ORDERED THAT:

A. Review 311 service requests and conduct physical inspection and evaluation of identified hazards and known conditions that present “emergency” and/or “urgent health or safety concerns” under the EMP requiring less than the typical seven (7) day notice and individualized offer of shelter;

B. Develop and implement a plan to close all encampments, including vehicle encampments, that are an “emergency” and/or present “urgent health and safety concerns” as determined by the City Department authorized to enforce the applicable State or local code with objective and written findings:

Immediate Closure for Emergency with same-day (less than 12 hour) notice:

- 1) Determination with findings by Police and/or Fire of imminent risk of serious injury or death, including, but not limited to:
 - a) active fires;
 - b) criminal investigations; and
 - c) encampments attached to residential or business structures determined to be an imminent fire hazard by the Oakland Fire Department.
- 2) Determination by applicable City Department of imminent or active destruction to critical infrastructure, including:
 - Traffic signal and equipment;
 - Emergency warning equipment;
 - Light poles and power poles;
 - Electrical energy stations;
 - Active train tracks or bridges;
 - Drainage and sewer systems, including active dumping of hazardous waste or debris into sewer system; and
 - Obstruction of traffic lanes, including bike lanes or on and offramps where encampments lead to obstruction of drivers view.

Immediate Closure for Urgent Health and Safety Concerns where the city will attempt to provide 24-to-72-hour notice:

- 1) Determination with findings by Police and/or Fire of risk of serious injury or death, including, but not limited to:

- a) Unpermitted fires burning less than 30 feet from any structure, tent, or vehicle;
 - b) Open electrical splices or illegal wiring;
 - c) Roadway with less than twenty (20) feet unobstructed width;
 - d) Fire hydrants with less than three (3) feet unobstructed radial clearance;
 - e) Storage of tires, gasoline, or propane tanks, and other combustible materials;
 - f) Accumulation of combustible waste; and
 - g) Pervasive criminal activity.
- 2) Sidewalk obstructions in noncompliance with the ADA, as determined by the City ADA Coordinator;
 - 3) Obstructed waterways or storm drains;
 - 4) Obstructed signed construction zones;
 - 5) Unsafe proximity to objective dangers, such as active train tracks, as determined by the City Administrator;
 - 6) Any location where necessary to comply with regulatory requirements from oversight agencies; and
 - 7) Any location experiencing an outbreak of contagious disease or vermin infestation.

C. No later than 12/2/2024, coordinate with State of California, Alameda County, and non-governmental housing providers to continue to identify funding and develop shelter and housing options for encamped individuals so that shelter and supportive services may continue to be offered to qualifying individuals; and

D. Make temporary emergency shelter offers to impacted individuals during encampment closures for emergency and urgent health and safety conditions, which may be limited to available congregate shelter bed space, recognizing that families and individuals with disabilities may be offered non-congregate temporary emergency shelter options as resources allow, but understanding that, in no case, will emergency or urgent closures be delayed for shelter unavailability.

A handwritten signature in black ink, appearing to read "Sheng Thao". The signature is fluid and cursive, with the first name "Sheng" and last name "Thao" clearly distinguishable.

Mayor Sheng Thao, City of Oakland

Cc: Jestin Johnson, City Administrator, other appropriate departments.