



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Susan Duenas, Public Safety Manager

Approved by: Reva Feldman, City Manager

Date prepared: February 17, 2021 Meeting date: February 25, 2021

Subject: Addressing Homelessness in Malibu

RECOMMENDED ACTION: 1) Receive an update on the City's response to individuals experiencing homelessness; and 2) Provide direction to staff.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action. The Adopted Budget for Fiscal Year 2020-2021 included \$340,000 for homeless services. Depending on the direction provided by Council, there could be a future fiscal impact, but that impact is unknown at this time.

WORK PLAN: This task was included as item 1k in the Adopted Workplan for Fiscal Year 2020-2021.

DISCUSSION: On January 29, 2020, the Council held a Special meeting to address homelessness. At that meeting, the Council directed staff to return with a report that explored options for a Safe Parking program, the creation of a temporary homeless shelter at the former Malibu Courthouse, the need for additional staffing to support homeless programs, outside sources of funding to support the programs, and a report on successful approaches to homelessness by other cities.

Due to the COVID-19 pandemic, efforts to return with a report on these items were slowed down dramatically. However, since last January, staff has completed the following:

- Explored the use of the former Malibu Courthouse for a temporary shelter: A walkthrough was conducted in March 2020 with representatives from the County of Los Angeles. At the walkthrough, it was established the site could accommodate a temporary shelter by using the vacant hallway spaces. However, it has subsequently been determined that the former Courthouse was not a viable option since it would require extensive remodeling to bring the building up to code and the

State Judicial Council who controls part of the building declined a request to change the use of the building.

- Explored Safe Parking program options: Staff researched multiple possible locations for a Safe Parking program including Dan Blocker Beach parking area, the MRCA parking lot near Malibu Sea Food, the Topanga Ranch Motel site outside of the City boundary and identified a portion of the Zuma Beach parking lot as a potential possibility. After meeting with Los Angeles County Beaches and Harbors, Supervisor Kuehl's office and the Los Angeles Homeless Services Authority, a portion of Zuma lot 13 was identified as a site for a Safe Parking Program. However, in order to proceed with this site, a change is needed to the zoning. In May 2020, an item was presented to the Council to consider a zoning text amendment that would allow the County to pursue a Safe Parking program at Zuma Beach. The amendment was not approved.
- Determined if additional staffing would be beneficial for managing issues related to people experiencing homelessness: A position was proposed in the mid-year budget but was not approved at that time and it was recommended that the proposal be brought to the Special City Council Meeting on homelessness to ensure that the proposed position would adequately meet the needs of the community.
- Explored outside funding sources: Los Angeles County's Measure H remains the primary source of outside funding that is available to the City for most types of projects. Funding priorities for the coming fiscal year, beginning on July 1, are currently being developed.
- Explored successful approaches to homelessness by other cities: Representatives from the City's Homelessness Working Group visited the City of Laguna Beach in February 2020 to learn about their program that includes an Alternative Sleeping Location. Councilmembers Pierson and Farrer visited the New Hope Temporary Shelter in the City of Bellflower that was opened in May 2020 in response to a settlement agreement with homeless advocate plaintiffs in September 2019. Members of the Working Group have also contacted and researched numerous other cities to learn about their programs.

Homelessness in Malibu

In recent years, the population of individuals experiencing homelessness has increased throughout California. There are many factors that contribute to the homeless crisis, including the cost of housing for both single-family homes and rental properties, unemployment, drug abuse and addiction, mental health challenges, and system failures, such as young adults who are transitioning out of foster care without adequate support. The City, along with many community partners and faith-based organizations, has been proactively working to assist individuals experiencing homelessness in Malibu.

The City regularly participates in the Greater Los Angeles Homeless Count. The data collected during the count is provided to the Los Angeles Homeless Services Authority

(LAHSA). LAHSA applies an algorithm to the data to adjust for inherently subjective observations by volunteers before it is released to communities.

In 2021, the Count was cancelled due to the pandemic. However, the Malibu Homelessness Working Group decided to conduct their own count on February 12, 2021. Homeless count numbers have been relatively steady with the exception of 2020, which saw a marked increase in the number of people living in vehicles.

- 2017 – 178 (57 vehicle dwellers)
- 2018 – 155 (55 vehicle dwellers)
- 2019 – 154 (93 vehicle dwellers)
- 2020 – 239 (132 vehicle dwellers)
- 2021 – 157 (72 vehicle dwellers)

The sharp increase in 2020 is likely due to vehicle dwellers that moved west into Malibu after new parking restrictions in the Los Angeles County area of Pacific Coast Highway (PCH) were implemented in 2019. Malibu has since implemented similar parking restrictions in many areas of PCH, which likely accounts for the decrease of vehicle dwellers in 2021.

Current Efforts in the City of Malibu

The People Concern Outreach Team

In 2016, the Malibu Task Force on Homelessness secured the first professional homeless outreach team as a pilot project. The Task Force contracted with The People Concern, a non-profit based in Santa Monica, for a two-person outreach team. The team demonstrated success in the field and the City assumed responsibility for funding the contract with The People Concern in July 2018.

The City’s contract with The People Concern includes funding two full-time outreach workers. The team locates, engages, and builds relationships with homeless individuals in order to connect them with a fully integrated system of care. This system includes mental and medical health care, substance abuse services, permanent supportive housing and, in some cases, reunification with family and loved ones.

In 2019, the City received a Measure H Planning Implementation grant to hire a full-time housing navigator to assist the outreach team. Measure H, approved by voters in Los Angeles County in 2017, is a quarter percent sales tax increase to provide an estimated \$355 million per year for ten years to fund services, rental subsidies and housing for people experiencing homelessness. Funds are used to award grants to non-profit agencies and cities based on their point-in-time homeless count.

Housing navigators assist clients in developing a plan to address their barriers to housing, increase their income, and maintain and sustain permanent housing. Housing navigators also spend time building relationships with landlords and educating them regarding the housing voucher program, which is crucial to increasing available housing opportunities for those experiencing homelessness.

The People Concern's Permanent Housing Services Department works collaboratively with case managers and housing navigators to match program participants with housing that will meet their specific needs. This can mean:

- Individual apartments
- An apartment or home through government-subsidized Housing Choice Vouchers
- Project-based housing where other previously homeless program participants live that includes onsite supportive services
- Shared housing in which several individuals share a large home
- “Board and care” for program participants who need additional support services
- Skilled nursing facilities for program participants who require advanced medical assistance
- Sober living programs
- Special housing programs for unique populations, such as veterans and/or seniors

The lack of available and affordable housing is a major impediment to securing permanent housing for individuals experiencing homelessness. However, since 2018, and in spite of this challenge, Malibu’s outreach team has moved 136 individuals off the streets and into either temporary (27) or permanent (28) housing or reconnected them to family (81).

Las Virgenes-Malibu Council of Governments (COG) Outreach

In 2019 the Las Virgenes-Malibu COG received a Measure H grant to fund a full-time homeless Outreach Coordinator who serves all cities within the COG, which includes the cities of Malibu, Agoura Hills, Calabasas, Westlake Village and Hidden Hills. The Outreach Coordinator, who started in March 2020, responds to calls from city staff who need assistance addressing a problem involving a homeless individual, which is usually in response to a call from a community member. The Coordinator also regularly visits each city to assess the current situation, engage with homeless individuals, and refer them to case workers and services. The Coordinator provides a weekly update to all cities and is in regular contact with city staff regarding current conditions and issues related to each city’s homeless population.

Homelessness Strategic Plan

In 2017, the City was awarded a \$50,000 grant through Measure H to develop a Strategic Plan for Homelessness. On December 11, 2017, the Council awarded a contract to MIG,

Inc. to lead the community outreach and prepare the plan. A community advisory group was established that included members of the representatives from the Malibu Task Force on Homelessness, The People Concern, the City's Public Safety Commission, the faith community, Community Assistance and Resource Team (CART), the County Library, and the general community.

The Advisory Group met three times to participate in a facilitated strategic planning process to identify the problems and potential solutions. MIG also conducted a community survey in which 572 people responded (Attachment 1).

Based on the strategic planning process and results of the survey, a plan was developed that strived to balance public safety with the needs of the homeless community. The goal of the plan is to improve the effective use of existing resources, identify new strategies and resources, and align with the County's Homeless Initiative.

The plan was adopted by the Council in Resolution No. 18-37 on June 25, 2018 (Attachment 2). The Plan included the following seven goals:

1. Reduce the number of people experiencing homelessness in Malibu by providing access to temporary and permanent housing solutions within Los Angeles County
2. Prevent and mitigate any public health and public safety impacts on the community stemming from homelessness
3. Implement programs to prevent homelessness among residents of Malibu
4. Provide coordinated outreach and supportive services to homeless individuals and families that promote self-sufficiency and personal stability
5. Increase community awareness of the Malibu homeless initiative, its progress, and successes
6. Advocate for systemic changes at the county, state, and federal levels that will strengthen efforts to prevent and reduce homelessness
7. Develop governance infrastructure to facilitate collaboration, provide oversight, and support implementation of the Homelessness Strategic Plan

The Goals and Objectives of the Plan were updated in January 2021 to better reflect current conditions and priorities (Attachment 3). Notably, Goal 2, was moved up to be Goal 1.

Homelessness Working Group

To oversee the implementation of the Plan, the stakeholder group that helped develop the Plan transitioned into the Malibu Homelessness Working Group. The City's Public Safety office oversees the Group, which includes representatives from The People Concern, the City's Public Safety Commission, the faith community, the Sheriff's Department, CART, Los Angeles County Supervisor Sheila Kuehl's Office, the Los Angeles County Sheriff's Department, Malibu Library, Los Angeles County Department of Mental Health, the general community, and two Malibu City Councilmembers.

The group meets monthly to share progress and discuss current issues and solutions to problems. Community members are welcome to attend to learn more about what efforts are being made and to express their concerns. Since 2018, the group has:

- Identified possible locations for a Safe Parking Program and presented them to the Public Safety Commission and the City Council
- Supported the Homeless Connect Days
- Assisted Malibu's participation in the Greater Los Angeles Homeless Count
- Met with the City of Laguna Beach City Manager, Chief of Police, Mayor and Director of their Alternative Sleeping Location (ASL) to learn about their programs. After being impressed with the ASL and learning how it enabled them to better manage public safety issues related to people experiencing homelessness, the group began researching possible locations in and around Malibu and developing a draft plan for implementation.
- Updated the Strategic Plan to better reflect current conditions and efforts. The draft update was completed in January 2021.

Community Assistance Resource Team

The Community Assistance Resource Team (CART) was founded in 2015 in response to the growing homeless epidemic with the mission of stabilizing homeless individuals and those in need providing necessities and connecting them to available services. They have also worked with the local faith community to provide meals to homeless individuals. The location of the meals has changed several times over the years due to concerns voiced by nearby residents at each location.

In 2018, the Council directed staff to work with Los Angeles County Supervisor Sheila Kuehl's office to secure the use of the former Malibu Courthouse property located at 23525 Civic Center Way. The meals at the former Courthouse commenced in October 2018 but were interrupted by the Woolsey Fire the following month. The meal program then moved back to the Malibu United Methodist Church and then back to the Civic Center area in early 2020.

The meal program is currently being provided on Malibu Road, behind the old post office and usually serves 20-30 individuals. The City's homeless outreach team frequently participates in order to engage individuals and connect them to services and housing options.

Homeless Connect Days

Homeless Connect Day events, organized by the County of Los Angeles in cooperation with the City of Malibu, have been held at the former Malibu Courthouse to provide services and resources to those in need via state and county agencies, and volunteer and non-profit organizations. Connect Days provide homeless individuals access to medical and dental care, legal services, a haircut and shower, fresh clothing and socks, assistance with obtaining identification cards, connection to social services and housing resources. Prior to the COVID-19 pandemic, the events were generally held in Malibu twice each year, serving nearly 100 homeless individuals each time.

Winter Shelters

The Los Angeles Homeless Services Authority operates a Winter Shelter Program from December 1 through March 31 each year in West Los Angeles. These shelters operate from 5:00 p.m. to 7:00 a.m. and are available to individuals who meet the following criteria:

- 18 years of age or older
- Experiencing homelessness
- Able to manage activities of daily living independently (i.e., ability to transfer in and out of a bed, bathe and dress themselves, etc.)

Individuals who are experiencing homelessness in Malibu can access a Winter Shelter by going to the "Pick-Up" location at 23555 Civic Center Way. From there, they will be transported to the West Los Angeles Armory, which is a co-ed shelter with 160 beds that serves our area. However, due to the COVID-19 pandemic, the capacity of the Winter Shelter program has been greatly reduced in order to comply with physical distancing requirements.

Los Angeles County Sheriff Department Resources

While not all challenges related to individuals facing homelessness are related to law enforcement, the Malibu/Lost Hills Sheriff's Station has several resources to assist Malibu. For day-to-day issues, the station employs a special problems deputy who is experienced with and trained on interacting with homeless individuals.

The Sheriff's Homeless Outreach Services Team (HOST) is a partnership between the Sheriff's Department and the LAHSA. HOST works with outreach workers from LAHSA to

address large encampments on public property. If an encampment has five or more individuals, cities can request assistance from HOST, which will coordinate the implementation of its encampment clean-up protocol that begins with outreach. The City has used the HOST program three times to clear encampments in Legacy Park, Zuma Beach and Tuna Canyon. Unfortunately, due to pandemic related budget cuts, the HOST program was cut drastically from 14 HOST deputies to just four HOST deputies to serve the whole County of Los Angeles.

In 2017, the County Board of Supervisors authorized funding for 23 Mental Evaluation Teams (MET) throughout the County. A full-time MET has been based at the Malibu/Lost Hills Sheriff's Station since September 2019. MET consists of one deputy and one clinical social worker from the Los Angeles County Department of Mental Health. Sheriff's deputies can request this resource when they encounter situations involving people who may require mental health services. MET is trained to deescalate tense situations, reduce use of force, and direct individuals to mental health services rather than arresting them.

Clearing of Illegal Encampments

The City regularly partners with the Sheriff's Department to clear encampments on public and private property. In the last six months, the City has coordinated with three private property owners to clear more than a dozen large encampments, most of which were in Tuna Canyon and four were in the Civic Center area.

If an encampment has more than five individuals, the City may request assistance from HOST. However, specific protocols must be followed by both the City and law enforcement, and sometimes this process can take up to two months. Before clearing any encampment, campers must be given access to outreach services, and clear warnings must be posted noting the scheduled clean-up day.

These procedures help ensure three things: 1) people experiencing homelessness are connected with services and housing rather than just being relocated to a new campsite; 2) the City and law enforcement are protected from liability, decreasing costs to the community resulting from litigation; and 3) the procedures of clearing encampments help to prevent wildfires caused by cooking and warming fires.

Encampments on private property can be removed by enforcement of trespassing laws. Property owners may contact the Sheriff's Department if an unwanted encampment is on their property. Encampments that are on undeveloped private property can also be removed if the property owner requests it or if the property owner has a Letter of Agency on file with the Sheriff's Department. The Letter of Agency provides the Sheriff's Department with the legal authority to remove individuals from private property when the property owner cannot be reached. The City continues to work with private property owners to ensure that Letters of Agency are maintained with the Sheriff's Department.

Enforcement of City Ordinance Prohibiting Camping or Sleeping on Public Property

Malibu Municipal Code (MMC) Section 9.08.090 prohibits camping or sleeping in any public park, beach, or street, including vehicles parked on public streets, within the City of Malibu. Historically, deputies have been able to cite individuals sleeping or camping in their vehicles, including recreational vehicles. However, in September 2018, the Ninth Circuit Court of Appeals (which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) held in the case of *Martin vs. City of Boise* (Attachment 4) that if a person experiencing homelessness has no option of sleeping indoors, a city cannot cite him or her for violating an ordinance disallowing sleeping outside in a public space. Following this ruling, the Los Angeles District Attorney's Office instructed the Sheriff's Department to stop issuing camping citations to individuals sleeping on public property and in their vehicles.

Restricted Parking Enforcement

The City and County have been working to address issues related to overnight parking on PCH and local streets for several years.

On December 11, 2017, the Council adopted Ordinance No. 427 adding MMC Chapter 10.18 to Title 10 (Vehicles and Traffic) and modifying MMC Section 1.10.040 to include Chapter 10.18 as subject to administrative fines to implement a citywide restriction on the parking of oversize vehicles. On December 11, 2017, the Planning Commission approved Coastal Development Permit (CDP) No. 17-090 to implement the proposed oversize vehicle ordinance. However, the California Coastal Commission (CCC) staff raised concerns about the proposed ordinance, and, at the risk of an appeal, the City chose not to pursue the CDP. CCC staff indicated that the County of Los Angeles was currently pursuing a similar parking ordinance, so the City chose to wait for the outcome of that application prior to moving forward.

On October 17, 2019, the CCC approved the Los Angeles County Public Works Department's CDP and denied the appeal to enact overnight parking restrictions on PCH. With this approval, the County can now implement overnight parking restrictions and associated regulatory signage along a 0.7-mile stretch of PCH adjacent to the City. The restrictions will prohibit parking on the landward side of PCH between 12:00 a.m. and 2:00 a.m. and prohibit parking on the seaward side of PCH between 2:00 a.m. and 4:00 a.m. daily.

Following the County's successful implementation of parking restrictions along PCH, between Coastline Drive and Topanga Canyon Boulevard, the City chose to pursue a similar ordinance that would prohibit parking on portions of PCH in the areas near Las Tunas Beach and near the Malibu Pier.

On January 13, 2020, the Council adopted on first reading Ordinance No. 460 adding MMC Chapter 10.19 to Title 10 (Vehicles and Traffic) to prohibit parking on the landward side of PCH between 12:00 a.m. and 2:00 a.m. and on the seaward side of PCH between 2:00 a.m. and 4:00 a.m. daily on two segments of PCH. The Council also directed staff to bring a separate ordinance to enact similar parking prohibitions on PCH for the areas near Zuma Beach, Corral Canyon, and Westward Beach, processing each prohibited parking section as a separate CDP. The second reading and adoption of Ordinance No. 460 took place at the January 27, 2020 Regular City Council meeting.

Safe Parking Program

Safe Parking Programs provide individuals a safe place to park each night with restroom access, a security guard, and social service resources. Safe Parking lots are typically run by non-profit organizations that provide the services and security.

In addition to the zoning text amendment that was rejected in May 2020 that would have allowed the County to pursue a Safe Parking program at Zuma Beach, the Public Safety Commission was asked to consider a Safe Parking program in June 2019. The Public Safety Commission received a request from the City's Homelessness Working Group to review the possibility of implementing the program at the Dan Blocker Beach parking lot. While the Public Safety Commission rejected the idea of implementing Safe Parking at that location, it did recommend that City staff look for other, more suitable locations. Upon further evaluation, it was determined that Safe Parking would best be implemented on private property where trespassing laws could be enforced, and the Martin vs. Boise ruling would not complicate restricting access to the location. However, a private lot has not yet been identified.

Programs in Other Cities

Cities across the west coast have employed a variety of strategies to manage the homeless crisis in their communities. Following are some examples from other hard hit west coast cities:

Laguna Beach

Since November of 2009, the City of Laguna Beach has owned, funded, and contracted for the operation of a low barrier, 45-bed emergency shelter within the City commonly known as the Alternative Sleeping Location (ASL). Until recently, the ASL was the only emergency shelter in Orange County owned and funded by a city. Located on Laguna Canyon Road, the ASL is operated by the Friendship Shelter pursuant to a service provider contract. The ASL has a housing-focused enrollment program, offering 30-day renewable increments of time to homeless individuals actively pursuing a housing plan, with an enrollment preference provided to persons having demonstrated connections and ties to the local community. A separate day pilot program is available, with support staff,

County mental health resources, laundry, hygiene amenities, computer/internet access, and connections to community-based services.

Establishing the ASL allowed the City to clear encampments from beaches and other public places and minimize the likelihood of litigation. To further protect the City from potential legal difficulties, the City proactively reached a settlement agreement with Orange County Catholic Worker in 2019, thereby avoiding costly and time-consuming litigation. On September 23, 2019, United States District Judge David O. Carter approved the settlement agreement between the parties.

The provisions of the settlement agreement reiterate many policies and practices already in place within the City: that the City work with trained personnel to offer available shelter placement at the ASL if possible, ensure that trained outreach and engagement personnel help assess the needs of individuals with disabilities to determine an appropriate placement with a reasonable accommodation, and ensure the number of beds at the ASL does not fall below 60% of the unsheltered individuals in Laguna Beach as described in the 2019 countywide Point-in-Time Count. Also, the settlement agreement provides the City with the ability to continue to enforce applicable laws under appropriate circumstances.

Redondo Beach

The City of Redondo Beach, who has a homeless population of approximately 200, is currently experimenting with Pallet Shelters (tiny houses) to house some of its homeless population. Each 64-square-foot cabin contains two beds, mattresses, a heater, an air conditioner and two electrical outlets. The city is providing portable toilets and mobile shower services. One of the Redondo Beach's 16 units will house an on-site supervisor. The Redondo Beach project is being funded by \$420,000 in CARES Act funds that will cover capital costs. Another \$409,000 in Homeless and Housing Program funds from the county along with \$300,000 in Community Development Block Grant funds will cover the operating costs for up to nine months.

City of Ventura

The City of Ventura, in partnership with the County of Ventura, opened ARCH, its first year-round 24/7 shelter in January 2020. ARCH, which stands for All Roads Connect to Housing, is run by Mercy House. It is low barrier (few rules) and will accommodate 55 individuals (17 women, 38 men) and their pets. Every individual at the shelter must work on their housing plan and be committed to transitioning out of homelessness. The City and County are splitting the estimated \$1.2 million in annual operating costs.

Olympia, Washington

In 2018, the City of Olympia, Washington, established a Mitigation Site, a temporary, legal camping site that provides a level of order, safety, dignity, and cleanliness. While not an ideal long-term situation, it was established to reduce human suffering and address the

urgent need to respond to a growing concentration of unmanaged homeless encampments in their downtown area and the associated public health and safety concerns. The City was also responding to case law established by the Ninth Circuit Court in Martin v. City of Boise in September 2018. This case law limits cities from enforcing trespass on public property. The City of Olympia is now looking to swap the tents at the Mitigation site for “micro-houses” that are built with six prefabricated plywood panels. Each microhouse costs approximately \$700.

While much has been done in the last five years to address the needs of homeless individuals and protect the public safety of the community, additional and more effective strategies are needed. Staff is seeking input and direction from the Council on what new strategies should be implemented at this time. Multiple subject matter experts and partner agencies will be present at this meeting and will be available to answer questions from the Council.

ATTACHMENTS:

1. Homeless Survey Summary
2. Resolution No. 18-37
3. Updated Strategic Plan Goals and Objectives
4. Martin vs. City of Boise

Homelessness In Malibu
Survey Results

March 2018

ATTACHMENT 1

Introduction

In support of the Homelessness in Malibu Project, MIG conducted an online survey. Overall, 572 individuals responded. The results are summarized below.

Respondent Profile (Q1, Q2, Q3)

88% of the survey respondents live in Malibu, while 60% indicated they work in the city. For those who neither live nor work here, 90% regard themselves as “a frequent visitor.”

Most Critical Issues in Malibu (Q4)

This question sought to understand how concerned citizens are about homelessness relative to other important issues. Here, respondents felt that **fire safety** is most critical, followed closely by **homelessness**, then **traffic and congestion**, and **water quality** in Santa Monica Bay and Malibu Lagoon.

The Seriousness of the Homelessness Issue (Q5)

On a scale from 1 (not serious) to 5 (very serious), 80% of respondents rated homelessness a 4 or 5. Overall the weighted average was 4.27.

Progress on Addressing Homelessness (Q6)

The City was interested in knowing whether people feel that the homelessness issue and associated impacts have decreased, stayed the same or increased in Malibu over the past five years. Virtually no one indicated that the issues have decreased; and only 11% felt that things had stayed the same. 89% of respondents said they believe the problems associated with homelessness in Malibu **have increased** over time.

Factors Contributing to Homelessness (Q7)

The survey asked citizens to indicate the degree to which, in their opinion, each of a number of factors contributes to the condition of homelessness. For each factor, respondents could say whether it was a primary, major or minor cause, or does not contribute to homelessness. The findings show that respondents feel that **mental health challenges** are the most likely primary cause, followed by **substance abuse**. People also feel that **unemployment** and **irresponsible behavior or bad choices** have a strong influence in homelessness.

Making It Personal (Q8 – Q12)

60% of respondents said they had known someone personally who has been homeless, while 33 individuals (about 6%) indicated they had been homeless themselves. 65% reported having encountered a problem with a homeless person in Malibu in the past. When asked, “Do you ever give money to homeless individuals (panhandlers) you encounter in Malibu?” 66% said they do not. Finally, approximately 53% of respondents

indicated they have volunteered at an organization that provides services to the homeless.

Best Ways to Address Homelessness (Q13, Q14)

The next two questions provided a set of strategies for addressing the issue of homelessness. First, respondents were asked which of these they believe are the best ways to address the issue. Consistent with the prior inquiry about causation, people most supported **providing readily available treatment for mental illness and substance abuse**. This idea was followed closely by two notions of **developing a case management program** for individuals released from jail, medical care, mental health programs and other institutions to prevent homelessness; and **coordinate services for people who are poor and/or homeless among all organizations in the community that provide services**; and **collaborating with neighboring cities and the County** to leverage investments and provide services and housing.

Answer Choices	Responses	
Provide counseling for families or individuals at risk of becoming homeless	51.25%	266
Coordinate services for people who are poor and/or homeless among all organizations in the community that provide services	65.90%	342
Develop an early detection and emergency assistance program to prevent homelessness	46.82%	243
Develop a case management program for individuals released from jail, medical care, mental health programs and other institutions to prevent homelessness	74.57%	387
Provide readily available treatment for mental illness and substance abuse	76.69%	398
Provide a rapid re-housing program (e.g. housing vouchers, landlord incentives, etc.)	44.12%	229
Provide access to permanent housing without any preconditions (housing first)	22.54%	117
Provide access to housing with conditions	46.63%	242
Provide a reasonable living wage and/or financial assistance	32.95%	171
Collaborate with neighboring cities and the County to leverage investments and provide services and housing	65.13%	338
Other solutions/ideas		136
	Answered	519
	Skipped	53

Next, respondents were asked to select the three strategies they believe Malibu could support to address homelessness. Here the top ideas were the **collaboration** and **treatment** strategies mentioned above, followed by **providing access to services for people who are poor and/or homeless among all organizations in the community that provide services**.

Answer Choices	Responses	
Provide access to counseling for families or individuals at risk of becoming homeless	24.51%	125
Provide access to services for people who are poor and/or homeless among all organizations in the community that provide services	49.41%	252
Develop an early detection and emergency assistance program to prevent homelessness	22.94%	117
Provide access to a case management program for individuals released from jail, medical care, mental health programs and other institutions to prevent homelessness	44.31%	226
Provide readily available treatment for mental illness and substance abuse	51.57%	263
Provide access to a rapid re-housing program (e.g. housing vouchers, landlord incentives, etc.)	16.47%	84
Provide access to permanent housing without any preconditions (housing first)	11.57%	59
Provide access to housing with conditions	19.41%	99
Provide a reasonable living wage and/or financial assistance	10.20%	52
Collaborate with neighboring cities and the County to leverage investments and provide services and housing	53.33%	272
Other solutions/ideas		108
	Answered	510
	Skipped	62

Other Comments (Q15)

197 of the 474 respondents chose to offer additional comments about the issue of homelessness. Some of the common themes mentioned include:

Compassion

Many people advocated for a compassionate view toward the homeless, recognizing that these are individuals who require assistance to meet basic needs. Some suggested that the public could become better informed about how best to interface with homeless people.

Enforcement

Several commenters believe that the City needs to do a better job of enforcing existing laws regarding loitering, public intoxication and drug use.

Provision of services

Comments included both encouragement of providing services to homeless individuals, as well as concerns that Malibu is a small town without the capacity to

accommodate homeless services. The opinion was also expressed that providing services would attract additional homeless people to the city. There were a number of comments about public support for affordable housing and housing for the mentally ill as a potential solution. Some suggested job training programs or other ways to help the homeless out of their situation. Many people had a positive experience with Homeless Connect.

Concerns for public safety

Some survey respondents felt that homeless people can be a source of crime and a threat to public safety. Several mentioned concerns about aggressive behavior in locations around the City, and many are worried about fires in homeless encampments spreading out and threatening the area.

Coordinated response

Commenters identify homelessness as a problem beyond Malibu's borders and suggested that there be a coordinated effort to address homelessness with the County, as well as the state. Some believe it would be useful to centralize services in Santa Monica.

Lack of leadership

Some commenters want to see more direction, policy and education from the City's leaders.

RESOLUTION NO. 18-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU
ADOPTING THE HOMELESSNESS STRATEGIC PLAN

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

- A. The City of Malibu, like most California communities, has experienced a substantial increase in homeless individuals living in the City.
- B. To address the immediate needs of homeless individuals, faith-based organizations have provided a variety of services such as food, clothing, and medical attention.
- C. The Malibu Task Force on Homelessness was formed in 2016 to raise funds to engage the support of outreach workers from The People Concern.
- D. In 2017, the City received a grant through the County of Los Angeles Measure H to develop a Homelessness Strategic Plan that will serve to coordinate the various local efforts and support the regional Homelessness Initiative.
- E. To develop the Plan, a Community Advisory Group was established that included representatives from key community groups, such as existing organizations currently serving the homeless, law enforcement, fire, businesses, and concerned residents.
- F. After three half-day planning meetings and extensive community input gathered through interviews, questionnaires and a communitywide survey, a Plan was developed that balances compassionate support for those experiencing homelessness with the protection of public safety.

SECTION 2. The Homelessness Strategic Plan (Exhibit A) is hereby adopted.

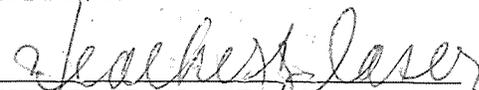
SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 25th day of June 2018.



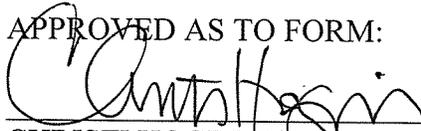
RICK MULLEN, Mayor

ATTEST:



HEATHER GLASER, City Clerk
(seal)

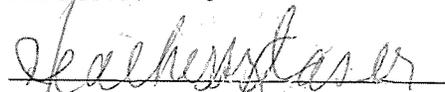
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 18-37 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 25th day of June 2018 by the following vote:

AYES: 5 Councilmembers: La Monte, Peak, Rosenthal, Wagner, Mullen
NOES: 0
ABSTAIN: 0
ABSENT: 0



HEATHER GLASER, City Clerk
(seal)

City of Malibu

DRAFT - Homelessness Strategic Plan



May 24, 2018
Prepared by
MIG, Inc.

Acknowledgments

Malibu City Council

Rick Mullen, Mayor
Jefferson Wagner, Mayor Pro Tem
Lou La Monte, Councilmember
Skylar Peak, Councilmember
Laura Rosenthal, Councilmember

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Reva	Feldman	City of Malibu
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EXECUTIVE SUMMARY

The City of Malibu developed the Homelessness Strategic Plan to help guide and coordinate efforts to prevent and alleviate homelessness within the Malibu community. The plan was funded through a grant from the Los Angeles County Homelessness Initiative, and it is one of many strategic plans being developed by local cities in Los Angeles County to complement and support regional efforts to address the homelessness crisis.

In order to identify meaningful, substantive and relevant strategies, the City relied on extensive community input, including five interviews and an on-line community survey to which 572 community members responded. Over a three-month period, from February through March 2018, a 30-member community advisory group reviewed findings from this outreach and met in three working sessions to build the content and structure of the plan.

The core of this plan is the Strategic Plan Framework, found in Section V on page 15 of the plan and presented on the following page of this summary. The framework outlines the Vision for Success, Guiding Principles, and seven primary Goals that the plan intends to achieve. Each goal is connected to a series of Supporting Actions, with detailed recommendations for successful implementation. The Supporting Actions are presented in detail in Section VI. Performance measures outlined in Section VII will be used to monitor the effectiveness of the plan.

While this strategic plan aligns with regional efforts led by Los Angeles County, it is based on input provided by the people who live and work in Malibu and so reflects their particular understanding of the local conditions, challenges, and opportunities for addressing homelessness here in our community.

Our Vision of Success

Homelessness is declining steadily, as people are finding permanent housing with services as needed, while public safety and health concerns are alleviated.

Many factors have come together to create this **Vision of Success** in Malibu:

- ✓ There is a plan in place with solid support from all sectors.
- ✓ Our plan is being implemented by a closely coordinated network of local organizations.
- ✓ Our solutions are responsive to the diverse needs of individuals.
- ✓ It is a sustainable initiative that is fully aligned with a larger regional effort.
- ✓ The City is proactively engaged in homelessness advocacy efforts.
- ✓ The services and supports provided are helping to stabilize lives and create hope for the future.

Guiding Principles

- We believe a **shared framework** with a **clear plan of action** will ensure all involved are **working together** to address homelessness in Malibu.
- We are striving to develop and implement **long-term solutions** using a **field-based model** to help each individual experiencing homelessness find **permanent housing with supportive services**.
- We believe the **safety and well-being of the community is a priority**, including people experiencing homelessness.
- Our **plan is flexible** to adapt to changing conditions over time.
- We assess the effectiveness of our plan to address homelessness by **tracking outcomes** that are meaningful indicators of success.
- **We recognize homelessness is not a crime.**
- We understand **community awareness and involvement** in our initiative is critical to our success.
- We recognize that those experiencing homelessness are **unique individuals** with diverse needs requiring a **tailored case management approach** founded on **trust and respect** for each individual.

Goals

1. Reduce the number of people experiencing homelessness in Malibu by providing access to temporary and permanent housing solutions within Los Angeles County.
2. Prevent and mitigate any public health and public safety impacts on the community stemming from homelessness.
3. Implement programs to prevent homelessness among residents of Malibu.
4. Provide coordinated outreach and supportive services to homeless individuals and families that promote self-sufficiency and personal stability.
5. Increase community awareness of the Malibu homeless initiative, its progress, and successes.
6. Advocate for systemic changes at the county, state, and federal levels that will strengthen efforts to prevent and reduce homelessness.
7. Develop governance infrastructure to facilitate collaboration, provide oversight, and support implementation of the homelessness strategic plan.

I. INTRODUCTION

Purpose of Strategic Plan

The City of Malibu developed this strategic plan to increase efforts to prevent and alleviate homelessness within the City. The increasing presence of people experiencing homelessness has led to public health and safety concerns, along with a desire to provide compassionate, effective solutions. Community organizations, the City, and residents in Malibu have already taken significant steps to help the homeless living in our community. The City of Malibu has provided funding to support these efforts.

Given the complex nature of the homeless challenge, however, a more coordinated, integrated effort is now required. The challenge is bigger than any single public or private entity or local city acting on its own can surmount. The purpose of developing the plan collaboratively is to leverage existing resources, identify new strategies and resources, and align with a regionwide Homeless Initiative that is being led by the County of Los Angeles. Success requires an overarching strategy and shared goals that will tie all our actions together toward a common purpose.

To create this shared framework for action, the City reached out to form an advisory group of community members who have long dealt with the challenge of homelessness. In a series of meetings, advisory group members shared their ideas and views based on their experience working with and interacting with the homeless, and this input has formed the core content of this strategic plan.

Overview of the Strategic Plan

Following this introduction, **Section II** of the Strategic Plan provides an overview of the current state of homelessness in Malibu and a description of past and current efforts to reach out to and help the homeless members of our community. This section also describes how the Malibu plan relates to and supports the larger regional efforts being undertaken by the County of Los Angeles to address homelessness.

Section III is an overview of some of the best practices from other cities and counties around the country.

Section IV portrays the community outreach and planning process used to generate information for development of this plan. Findings from the outreach including stakeholder interviews and a community survey are provided in the appendices, under separate cover

Section V contains the strategic plan framework, which is the core of this planning document. It consists of a Vision for Success, Guiding Principles, seven primary Goals, and their corresponding Performance Measures.

- The Vision for Success describes the desired impact on homelessness we are striving to achieve in the future through the successful implementation of this strategic plan.
- Guiding Principles are the long term, underlying beliefs and values that have shaped our approach to the homelessness challenge.
- Goals are broad statements of direction that define the key results we are striving to achieve.
- Performance Measures are the metrics that will be used to monitor the progress of the plan and to provide feedback if there is a need to modify the plan to achieve its goals.

Section VI presents the Goals with Supporting Actions that will be carried out to achieve each Goal. There is a specific Action Plan for each Goal, which identifies the supporting actions along with:

- An organization that will have lead responsibility for that action
- Supporting partners that will work with the lead agency,
- Required resources, and
- Estimated timeframe for implementation.

Section VII concludes with a directory of resources for addressing homelessness, including ways for members of Malibu community to join this effort and for individuals experiencing homelessness to seek help.

II. BACKGROUND

State of Homelessness in Malibu

In recent years, Malibu has seen a substantial increase in the number of homeless living in our community. Homelessness in Malibu is not a recent phenomenon, but the homeless surge is. According to the most recently available data, the number of unsheltered homeless individuals in Malibu grew from 161 in 2016 to 180 in 2017, a nearly 12% increase. According to information provided by the Los Angeles Homeless Services Authority (LAHSA), the 180 homeless individuals that were counted in January 2017¹ included:

- 57 persons living on the Street
- 46 persons living in Makeshift Shelters
- 21 persons living in Cars
- 19 persons living in RVs/Campers
- 19 persons living in Tents
- 18 persons living in Vans

These numbers represent a fraction of what is being experienced at the regional level, which has seen the unsheltered homeless population in Los Angeles County reach epidemic proportions—climbing from 33,000 in 2010 to nearly 58,000 in 2017, a 75% increase. Los Angeles now has the largest concentration of homeless in the western United States and is second only to New York City nationally.

¹ A new homeless count was conducted on January 25, 2018. Data from that count has not yet been released at the time of this writing.

Community Efforts to Address Homelessness

Efforts to help the homeless in Malibu have been underway for many years, including several community-led initiatives. It is extremely likely that the number of homeless in Malibu would be even higher than it is today were it not for the dedicated efforts of these groups, most of whom collaborate with each other while receiving financial support from the City of Malibu.

Community Assistance Resource Team (C.A.R.T.)

C.A.R.T. is a community-based team of volunteers founded in 2015 to help the homeless and others in need. Among its various efforts, C.A.R.T. provides food, clothing, medical attention, and other immediate needs to people without homes. They also work closely with local cities to provide transportation to winter shelters, host the "Homeless Connect Days" in Malibu, and partner with local churches to offer dinners to the homeless.

Malibu Task Force on Homelessness

The Malibu Task Force on Homelessness was formed in early 2016 as an offshoot of CART for the primary purpose of raising funds to engage the support of a professional organization with expertise in working with homeless individuals. The Task Force succeeded in raising \$500,000 in donations and two City General Fund Grants to pay for two full-time, dedicated outreach workers from The People Concern to assist the homeless in Malibu.

The People Concern

The People Concern, based in Santa Monica, is the largest social services agency in the West Los Angeles area, and its services have become the heart of local efforts to assist the homeless population in Malibu. The People Concern brings with it over 50 years of experience. It provides fully integrated "wraparound" services to the most vulnerable and needy members of our community, including individuals who are chronically homeless, people dealing with severe mental or physical illness or substance addiction, victims of domestic violence, and challenged youth.

Since September 30, 2016, the two outreach workers provided by The People Concern have worked with Malibu's homeless population—engaging with homeless individuals on the streets, hillsides, and beaches of Malibu and gradually building their trust until they are ready and open to accept assistance. As of March 31, 2018, these workers have succeeded in getting 49 homeless individuals off the streets and 29 of them into permanent housing. Additional private funding was recently secured and as a result, the two-person Malibu outreach team is now supported by a medical doctor, a psychiatrist, a full-time Housing Locator and a full-time Clinical Case Manager.

Project Homeward Bound

Affiliated with St. Aidan's Episcopal Church, Project Homeward Bound works directly with homeless individuals who find themselves stranded in Malibu without sufficient funds to support themselves. Unlike those who may be suffering from mental illness or substance abuse, these individuals simply need funds to return to their family and friends in other states where they can get a fresh start. At a total cost of only \$1,790, St. Aidan's has succeeded in returning 11 people to their homes outside California by simply reconnecting them with their families and providing their travel expenses.

Standing on Stone (S.O.S.)

Possibly the first such community group in Malibu, S.O.S. is a volunteer organization founded in the early 2000's to help Malibu's homeless population. A faith-based organization, S.O.S. partners with local churches—originally with Malibu Presbyterian Church and later with Malibu United Methodist—to host dinners for the homeless.

Malibu Community Labor Exchange

The Malibu Community Labor Exchange is a 501©3 non-profit organization founded in 1990 to provide day labor job connections, including services for homeless people.

City of Malibu and LA County Sheriff Homeless Programs

City of Malibu

The City of Malibu works to address issues related to homelessness on many fronts including providing funding to several of the community-based initiatives described in the previous pages.

Over the past several years, the City has worked closely with the Malibu Task Force on Homelessness (MTFH) to help fund two full-time dedicated outreach workers from The People Concern to engage the homeless in Malibu. In Fiscal Year (FY) 2016-2017, the City Council provided a general fund grant in the amount of \$38,000 to help establish The People Concern outreach team in Malibu. In the following fiscal year, the City Council doubled the grant amount to \$76,000. In the proposed budget for FY 2018-2019, the City Council has created a line item in the Public Safety budget in the amount of \$200,000 to continue to fund The People Concern outreach workers. The City also supports the efforts of the MTFH and The People Concern with an annual Holiday Outreach Donation Drive. Donated items are used by The People Concern outreach team as they initiate and develop relationships with homeless individuals, which can make them more amenable to receiving other assistance such as medical care and counseling.

The City Council supports other local initiatives to address homelessness through the General Fund Grant Program including:

- Malibu Community Labor Exchange: \$30,000 in FY 2017-2018 and \$30,000 in FY 2016-2017
- Children's Lifesaving Foundation (provides services for low income and homeless children): \$7,500 in FY 2017-2018 and \$8,400 in FY 2016-2017
- Standing on Stone (SOS): \$1,000 in FY 2016-2017
- Malibu Presbyterian Church: \$1,000 in FY 2016-2017
- Community Assistance Resource Team (CART): \$1,500 in FY 2017-2018 and \$2,000 in FY 2016-2017

In addition, the City utilizes its federal Community Development Block Grant (CDBG) funds to support local initiatives. Every year, the City Council allocates the maximum amount of its CDBG funds to community service organizations serving low income individuals (approximately \$7,000). The funds have generally been awarded to the Malibu Community Labor Exchange, a local community service organization that meets the Department of Housing and Urban Development criteria of benefiting low and moderate income residents. In FY 2017-2018, the City was given the opportunity to utilize surplus CDBG funds to assist people without homes. The City Council allocated \$100,000 in CDBG funds to support the County's Homeless Initiative. This includes \$50,000 for the County's Rapid Rehousing Program and \$50,000 for the County's Shelter Partnership Program. The Rapid Rehousing funds will be used primarily for homeless individuals in Malibu's Service Planning Area.

In recent years, as the Malibu Branch of the Los Angeles County Public Library has become a popular location for many homeless, the City Council has approved the use of Library Set Aside Funds to hire a full-time security guard for the Malibu Library. In December 2017, the City Council voted to continue funding the dedicated security guard in 2018 in the amount of \$130,000.

The City also provides staff assistance and other resources to support Los Angeles County's Homeless Connect Days, which are scheduled twice a year at the old County Courthouse and provide an array of free services for homeless residents.

In addition to helping to fund community-based initiatives, the City also expanded its own organizational capacity to address homelessness. In FY 2016-2017, the City Council created the Public Safety Manager position with responsibilities that include overseeing issues related to homelessness. The City's Public Safety Manager has been in place since April 2017 and spends approximately 40% of her time on issues related to homelessness, which includes working closely with the many community-based initiatives in Malibu, as well as the Sheriff's Department. Going forward, the City plans to expand its organizational capacity with the support of a \$30,000 grant from the County to hire an assistant for the Public Safety Manager to assist with regional coordination and implementation of the Plan.

Los Angeles County Sheriff

As in other communities, law enforcement officers in Malibu frequently interact with the homeless. The City contracts its law enforcement services through the Los Angeles County Sheriff's Department (LASD). Operating out of the Malibu/Lost Hills Sheriff's Station, the Sheriff's Office responds to calls related to homelessness and conducts regular outreach among Malibu's homeless population. Similar to the two outreach workers from The People Concern, LASD deputies have acquired in-depth experience with the homeless, and report that the number of calls for services related to homeless residents has been climbing in recent years.

To assist on calls with mentally-ill people, particularly those who are experiencing acute psychological distress, the LASD has 23 Mental Evaluation Teams (MET) that are comprised of specially-trained Sheriff's deputies that are paired with mental health clinicians. Currently the MET teams operate throughout the County, supported by funding authorized by the LA County Board of Supervisors. The City of Malibu and the Malibu/Lost Hills Sheriff's Station have requested and received assistance from MET services on numerous occasions and are working to have a team dedicated to this area. Their purpose is to direct individuals suffering from mental health challenges to support services where they can receive psychological help, rather than enter the criminal justice system and remain untreated.

LASD recognizes that the presence of homeless individuals creates public safety concerns for Malibu residents and business owners, as well as among the homeless community. For this reason, the LASD maintains a proactive approach by responding to all calls for service regarding homeless individuals.

Malibu Homelessness Program and LA County Homeless Initiative

On March 7, 2017, Los Angeles County voters approved Measure H, a ¼ cent special sales tax dedicated to combatting and preventing homelessness. As Measure H resources are deployed throughout Los Angeles County, many cities in the County including Malibu are broadening the collective impact by undertaking local planning initiatives to combat homelessness.

The Los Angeles County Homelessness Initiative is comprised of 47 interlocking strategies, focused on six key areas to combat homelessness: prevent homelessness, subsidize housing, increase income, provide case management and services, create a coordinated system and increase affordable/homeless housing.

Many of the regional strategies that support these key areas are beyond the capabilities of a city the size of Malibu with no housing authority or dedicated homeless services infrastructure. However, the City is actively working with Los Angeles County to support the regional effort and Malibu's Homelessness Strategic Plan includes meaningful contributions, as follows:

Prevent Homelessness

Malibu Goal 3: Implement programs to prevent homelessness among residents of Malibu.

Provide Case Management and Services

Malibu Goal 4, Supporting Action 4a: Provide field-based outreach to connect homeless individuals with services and permanent housing options.

Create a Coordinated System

Malibu Goal 4, Supporting Action 4c: Establish regular communication among all who regularly interact with the homeless in order to share information.

Malibu Goal 7c. Align the Malibu program with the Los Angeles County Homeless Initiative and coordinate with nearby cities on shared strategies.

The City of Malibu Homelessness Strategic Plan provides a framework to coordinate and leverage the local community-initiated efforts undertaken in recent years by organizations such as CART, the Malibu Task Force on Homelessness, and the faith-based community. The Homelessness Strategic Plan Working Group (Goal 7, Supporting Action 7a) will serve as the primary forum for this coordination. And, just as the County is providing funding to support development of this strategic plan, the City is providing funding to support many of the local efforts, such as the People Concern homeless outreach workers.

III. BEST PRACTICES FOR ADDRESSING HOMELESSNESS

Communities throughout the nation and elsewhere in the world are engaged in efforts to address and alleviate homelessness. While some strategies have proven more effective than others in practice, the process of learning what works best continues. The “best practice” model for identifying effective approaches has proven effective through rigorous scientific research in other fields and can be adapted and applied to other contexts such as this. The *Homelessness Task Force Report* recently released by the League of California Cities and the California State Association of Counties features numerous case studies of current best practices applied by cities and counties throughout California. The following paragraphs offer a brief overview of many of the current best practices specifically applied to address homelessness.

Housing First

The Housing First strategy provides homeless persons safe and secure housing with few or any preconditions and includes needed supportive services with that housing. This approach reverses the traditional shelter model that requires people without homes to demonstrate they are “housing ready” by undergoing treatment for issues such as drug and alcohol addictions or mental health problems. The Housing First model first removes or reduces financial barriers for those with substance use issues, poor credit or financial history, or past involvement with the criminal justice system. This model is used successfully in communities across the nation and provides homeless individuals with a stable environment in which to improve their mental and physical health, as well as their future employability and capacity to live independently.

Rapid Rehousing

The Rapid Rehousing approach is designed to help homeless individuals and families entering the emergency shelter and transitional housing system to quickly exit homelessness and return to permanent housing. It is a version of the Housing First strategy that is particularly effective for those who have only recently become homeless and remain open and willing to receive assistance. This assistance is typically in the form of temporary rental assistance and case management to stabilize and maintain their housing once it has been established.

Supportive Housing

Supportive Housing is a variation of the Housing First strategy designed for people experiencing chronic homelessness, or those leaving institutional and restrictive settings. It provides affordable housing in combination with an array of on-site services such as case management, substance abuse or mental health counseling, advocacy, independent living skills, child care, and employment services. It is “permanent” in that it is not time limited and is not transitional. Housing tenants are not expected to pay more than 30 percent of their income toward rent and utilities.

Coordinated Outreach Teams

Coordinated Outreach Teams identify and engage with people experiencing chronic homelessness and link them to housing and services. The outreach is person-centered and intended to build rapport and trust over time in order to help them accept the assistance they need. Outreach teams may include law enforcement officers as well as health and human service representatives and clinicians.

Landlord Outreach

Landlords are provided financial incentives to encourage them to rent units to homeless individuals or families. Incentives can include payments to hold the rental unit while a tenant is being referred, money for the security deposit, and financial assistance to the landlord to mitigate any potential damage caused by tenants.

Homeless Prevention

Prevention assistance can help individuals and families preserve their current housing situation and avoid becoming homeless in the first place. This may take the form of short-term rental assistance to prevent evictions or more long-term support through vocational and job training to increase self-reliance and earning potential.

Coordinated Entry System (CES)

CES is an assessment process designed to quickly identify, assess, refer and connect people in crisis to housing and assistance no matter where they initially ask for help. It is a shared tool that is used by homeless programs working collaboratively within a community to match people experiencing homelessness to the most appropriate housing and services. CES is meant to help people move through the system faster by reducing the amount of time they spend moving from one program to another before finding the right match. It can also reduce homelessness by offering prevention and diversion services upfront when that is the most appropriate solution, rather than entering the homelessness system.

IV. PLANNING PROCESS

Homelessness is an issue that affects everyone, and any strategies designed to prevent and alleviate homelessness should have community involvement. The City reached out to the Malibu community for its help when it came time to develop the Homelessness Strategic Plan, understanding that if it were to be an effective guide for the work to come, the plan must be based on public knowledge of local conditions, challenges, and opportunities for addressing homelessness. With this goal in mind, the City designed a process centered on public participation and input. The City retained a strategic planning consultant, MIG, Inc., to assist with the implementation of this process.

Community participation encompassed interviews, an on-line survey, and an advisory group composed of 30 community members, many of whom had prior extensive experience with the homeless, who worked together to help develop the plan. The process began with stakeholder interviews held with five community leaders who shared their insights based on their experience with the homeless. Complementing these in-person interviews was a questionnaire sent out to all 30 members of the Community Advisory Group (CAG) that explored many of the same topics covered in the interviews.

Information generated by the interviews and the questionnaire responses was used to develop an online survey posted on the City of Malibu's public website from late January through mid-March. During this six-week period 572 community members completed the 15-question survey. Results from all outreach (including survey results received to date) were shared with the CAG during its first meeting in February. A summary of the community outreach results is available in the appendices of this Strategic Plan.

Between February and April 2018, the CAG met three times to generate the overall structure, content and substance of the Strategic Plan. During the first meeting held on February 13 the CAG reviewed results from the public outreach activities and drew upon these findings and their own expertise to clarify the homeless issues, challenges, and opportunities facing Malibu and defined what "success" would look like—what the plan should aspire to and what they believed the community would support.

At the second meeting held on March 20, the CAG was presented with a draft vision for success and an initial set of goals and proposed actions for achieving these goals, derived from input provided during the prior meeting. CAG members reviewed and refined the draft materials and worked together in breakout groups to further refine the vision and goals of the Strategic Plan and to craft the actions that would be carried out to implement them effectively.

During the third and final meeting held on April 25, the CAG determined there was a need for additional goals, continued to refine the action plans, and considered potential performance measures that would be used to monitor the progress of the plan once implementation began. The Strategic Plan was finalized after it was shared with the public in a community meeting held in late May, after which it was presented to the Malibu City Council for adoption in June.

V. STRATEGIC PLAN FRAMEWORK

The core of the Homelessness Strategic Plan is expressed by the strategic plan framework, which is defined by the following elements:

Vision for Success: The preferred future that the City and community of Malibu are striving to achieve through their efforts to address homelessness.

Guiding Principles: The beliefs, principles and values that guided the development of the plan and its implementation.

Goals: The key outcomes that must be accomplished to achieve the vision and around which all actions are organized

Performance Measures: The indicators that will be used to monitor the progress of the Homelessness Strategic Plan and to provide feedback to modify the plan if needed to achieve its goals.

Our Vision of Success

Homelessness is declining steadily, as people are finding permanent housing with services as needed, while public safety and health concerns are alleviated.

Many factors have come together to create this **Vision of Success** in Malibu:

- ✓ There is a plan in place with solid support from all sectors.
- ✓ Our plan is being implemented by a closely coordinated network of local organizations.
- ✓ Our solutions are responsive to the diverse needs of individuals.
- ✓ It is a sustainable initiative that is fully aligned with a larger regional effort.
- ✓ The City is proactively engaged in homelessness advocacy efforts.
- ✓ The services and supports provided are helping to stabilize lives and create hope for the future.

Guiding Principles

- We believe a **shared framework** with a **clear plan of action** will ensure all involved are **working together** to address homelessness in Malibu.
- We are striving to develop and implement **long-term solutions** using a **field-based model** to help each individual experiencing homelessness find **permanent housing with supportive services**.
- We believe the **safety and well-being of the community is a priority**, including people experiencing homelessness.
- Our **plan is flexible** to adapt to changing conditions over time.
- We assess the effectiveness of our plan to address homelessness by **tracking outcomes** that are meaningful indicators of success.
- **We recognize homelessness is not a crime.**
- We understand **community awareness and involvement** in our initiative is critical to our success.
- We recognize that those experiencing homelessness are **unique individuals** with diverse needs requiring a **tailored case management approach** founded on **trust and respect** for each individual.

Goals

1. Reduce the number of people experiencing homelessness in Malibu by providing access to temporary and permanent housing solutions within Los Angeles County.
2. Prevent and mitigate any public health and public safety impacts on the community stemming from homelessness.
3. Implement programs to prevent homelessness among residents of Malibu.
4. Provide coordinated outreach and supportive services to homeless individuals and families that promote self-sufficiency and personal stability.
5. Increase community awareness of the Malibu homeless initiative, its progress, and successes.
6. Advocate for systemic changes at the county, state, and federal levels that will strengthen efforts to prevent and reduce homelessness.
7. Develop governance infrastructure to facilitate collaboration, provide oversight, and support implementation of the homelessness strategic plan.

Performance Measures

Measure	Data Source	Goal
<i>Number of people experiencing homelessness in Malibu</i>	Annual Homeless Count/LA County	Goal 1 Homelessness Reduction
<i>Number of homeless that are off the streets, i.e. housed in interim housing or stable permanent housing</i>	The People Concern	Goal 1 Homelessness Reduction
<i>Number of calls for service regarding homeless individuals</i>	LA County Sheriff	Goal 2 Public Safety
<i>Number of known encampments</i>	City of Malibu	Goal 2 Public Safety
<i>Number of Malibu residents at risk of becoming homeless that were able to retain housing due to local efforts</i>	City of Malibu	Goal 3 Homelessness Prevention
<i>Number of homeless who have consented to receive homeless services</i>	The People Concern	Goal 4 Outreach/Support
<i>Increased community awareness and support for services provided to the homeless in Malibu</i>	Options – complaint log, media coverage, social media counts, community survey	Goal 5 Community Awareness

VI. ACTION PLANS

This section presents the detailed Action Plans identified by the Community Advisory Group as the means for achieving the goals of the strategic plan. There is one action plan for each of the seven goals.

Goal 1: Reduce the number of people experiencing homelessness in Malibu by providing access to temporary and permanent housing solutions within Los Angeles County.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
1a.	Conduct outreach to encourage landlords to accept housing and rental subsidies for the homeless.	LA County Supervisor Kueh's Office/ City	The People Concern & Other Homeless Service Providers Chamber of Commerce Realtor association		Mid-term
1b.	Establish a flexible spending account funded by donations and City grants which complements Measure H by helping fund rapid rehousing and other related services for homeless individuals who may not qualify for Measure H eligibility.	Community Organization	Homeless Service Providers Community Stakeholders	City Grants	Mid-term
1c.	Explore the feasibility of developing a new building or converting an existing building to provide bridge/permanent housing.	Community Organization	City County Pepperdine Non-Profit or For-Profit Developers		Long-term
1d.	Explore creative housing solutions to create more affordable housing.	Community Organization	City County Pepperdine Non-Profit or For-Profit Developers		Long-term

Goal 2: Prevent and mitigate any public health and public safety impacts on the community stemming from homelessness.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
2a.	Expand public safety enforcement and surveillance capacity by organizing and training volunteers to support the LA County Sheriff and Fire Departments.	City	Pepperdine Private property owners Arson Watch		Short-term
2b.	Provide access to temporary housing during red flag warnings through vouchers that can be used at motels and local shelters.	County	City		Short-term
2c.	Reduce fire risk through an encampment management initiative designed to ensure that fire restricted zones are not used by the homeless or other community members for illegal camping.	City	Sheriff Fire Faith-based Institutions Arson Watch	Sheriff	Ongoing
2d.	Develop strategies for increasing access to sanitation facilities (showers and bathrooms) for the homeless.	County	City, Stakeholders	County Beaches	Short-term
2e.	Develop a plan to prevent and mitigate potential impacts on nearby neighborhoods from the homeless meal services that will be held at the old courthouse.	City	Stakeholders County	Sheriff CART	Short-term
2f.	Seek opportunities for safe haven parking areas (modeled after the LA Safe Parking Program).	CART	City Faith-based Institutions Safe Parking LA		Mid-term
2g.	Request help from a peer-advocate group of the homeless (see action 4h) to improve cooperation between Sheriff deputies and the homeless community.	The People Concern	St. Josephs Center LAC Sheriff		Short-term

Goal 3: Implement programs to prevent homelessness among residents of Malibu.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
3a.	Create a mechanism to identify and assist individuals or families at imminent risk of becoming homeless (such as receiving an eviction notice).	Community Organization	City		Short-term
3b.	Implement an emergency housing fund to assist Malibu residents who are at risk of becoming homeless. (complements action 1b.	Community Organization	City Foundations United Way Donors	City Grants	Short-term
3c.	Establish a pilot inter-generational affordable housing program for single moms and their children, students, and seniors modeled after Home4Veterans that uses "sweat equity" to empower individuals and build community.	Community Organization	City Pepperdine		Long-term
3d.	Support/advocate for ordinance to reduce the impact of short-term rentals on affordable housing.	City	Chamber of Commerce		Mid-term
3e.	Explore strategies to encourage developers to provide more affordable housing by allowing increased density for projects that set aside a minimum percentage for affordable units.	City	Chamber of Commerce		Long-term

Goal 4: Provide coordinated outreach and supportive services to homeless individuals and families that promote self-sufficiency and personal stability.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
4a.	Provide field-based outreach to connect homeless individual with services and permanent housing options.	The People Concern	City St. Joseph Center	The People Concern City St. Joseph Center	Ongoing
4b.	Use the Old County Courthouse as a centrally located facility for providing meals and services to the homeless.	County of Los Angeles	City Faith-Based Organizations Sheriff DMV DPSS SOS Library	Old County Courthouse	Short-term
4c.	Establish regular communication among all who regularly interact with the homeless in order to share information.	City	Sheriff People Concern Faith-Based Organizations Malibu Labor Exchange	Technology	Short-term
4d.	Expand outreach to homeless individuals by using trained volunteer teams to remain in touch with the homeless population.	Community Organization	Non-profits Faith-Based Organizations	Community members	Ongoing
4e.	Establish partnership with Pepperdine University social work students and faculty to strengthen local outreach capacity.	City	Pepperdine	Pepperdine	Short-term
4f.	Expand availability and access to case management services in Malibu.	City/County	The People Concern St. Josephs Center	St. Josephs Center	Short-term
4g.	Incorporate best practices for addressing homelessness from other municipalities which are applicable to Malibu.	City	Chamber Faith-Based Organizations Non-profits		Short-term and Ongoing
4h.	Create a peer-advocate group to self-regulate the homeless community.	The People Concern	St. Josephs Center		Short Term
4i.	Partner with local businesses to create jobs for the homeless.	Community Organization	City Chamber of Commerce		On-going

Goal 5: Increase community awareness of the Malibu homeless initiative, it's progress, and successes.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
5a.	Implement strategies to change the public perception of affordable housing by demonstrating it meets the real need of members of the Malibu community (e.g. seniors).	City	County United Way Task Force Future Stakeholders	"Everyone In Campaign"	Short Term & Ongoing
5b.	Host regular community meetings and educational workshops to improve community understanding of homelessness and progress in implementing the Homelessness Strategic Plan.	City	Faith-Based Organizations Pepperdine Santa Monica College	City Hall Pacific Palisades Task Force on Homelessness Library Malibu High School	Short Term & Ongoing
5c.	Create and disseminate FAQs.	City	Chamber Service providers Non-profits	Reference Existing FAQs from The People Concern MFTH	Short Term & Ongoing
5d.	Create a website.	City	Community Stakeholders	Domain & Maintenance Volunteer / Staff Time	Short Term & Ongoing
5e.	Develop a social media strategy.	City	Community Stakeholders	Local Press	Short Term & Ongoing
5f.	Promote hotlines for the homeless living in Malibu.	City	The People Concern County	The People Concern Los Angeles County 2-1-1 LA County Homeless Outreach Portal (coming soon)	Short Term & Ongoing

Goal 6: Advocate for systemic change at the county, state, and federal levels that will strengthen efforts to prevent and reduce homelessness.				
Supporting Actions	Lead	Partner(s)	Resources	Timeline
6a. Work with the U.S. Department of Housing and Urban Development to reform housing voucher rules and restrictions that will broaden housing opportunities for the homeless.	County of Los Angeles	City of Malibu The People Concern St. Joseph Center		
6b. Collaborate with other local agencies to lobby for policy changes in the criminal justice system to help prevent and reduce homelessness.	County of Los Angeles	City of Malibu The People Concern St. Joseph Center		
6c. Collaborate with other local agencies to lobby at a state and national level to expand and improve mental health services to reduce the number of mentally ill individuals who are living on the street.	County of Los Angeles	City of Malibu The People Concern St. Joseph Center		
6d. Advocate for a system-wide assessment of the capacity and effectiveness of homelessness programs and services available in Los Angeles County.	County of Los Angeles	City of Malibu The People Concern St. Joseph Center		
6e. Advocate for budget allocations at the city, county, state, and federal levels to increase funding for programs that prevent and end homelessness.	County of Los Angeles	City of Malibu The People Concern St. Joseph Center		

Goal 7: Develop governance infrastructure to facilitate collaboration, provide oversight, and support implementation of the homelessness strategic plan.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
7a.	Establish an 8 to 12-member Working Group on homelessness to oversee the implementation of the homeless initiative in Malibu.	City	Homeless Service Providers Community Stakeholders County	Community Advisory Group for Homelessness Strategic Plan	Short term
7b.	Increase the City's capacity to manage all matters related to homelessness in Malibu.	City			Short-term
7c.	Monitor and evaluate the effectiveness of the Homelessness Strategic Plan through the Performance Measures (page 17).	City	The People Concern Other Homeless Service Providers Sheriff's Department		Short Term & Ongoing
7d.	Align the Malibu program with the Los Angeles County Homeless Initiative and coordinate with nearby cities on shared strategies.	City	Homeless Service Providers Community Stakeholders		Ongoing

VII. MALIBU HOMELESSNESS RESOURCES

The following are organizations and resources available in Malibu to assist the homeless, to respond to concerns and questions about the homeless, and that offer volunteer opportunities for those who wish to be more involved in responding to the needs in our community.

Homeless Hotlines

Los Angeles County: 211

The People Concern: 310-460-2638

Immediate Safety Concerns

Call 911 or

Malibu /Lost Hills Sheriff's Station – 310-456-5552

City of Malibu

Susan Dueñas, Public Safety Manager

SDuenas@malibucity.org

310-456-2489, ext. 313

The People Concern – Malibu Outreach Team

To request assistance or provide information:

310-460-2638

MalibuOutreach@ThePeopleConcern.org

Contact Information Form: <http://malibutaskforce.org/malibu-outreach/community-contact-procedure/>

To volunteer at The People Concern:

323-334-9000, ext. 463

Malibu Task Force on Homelessness (MTFH)

info@malibutaskforce.org

Contact Information Form: <http://malibutaskforce.org/contact/>

Labor Exchange Center of Malibu

(310) 317-4717

Community Assistance Resource Team (CART)

Contact:

malibucart@gmail.com.

Provide donations:

424-781-7347

23708 Malibu Colony Road, Malibu, CA., 90265

St. Joseph Center

Front Desk/General Information: 310-396-6468

Non-urgent community concerns or questions:

community@stjosephctr.org
24-hour call center for non-urgent community concerns: 310-358-2835

Volunteer Services:
volunteer@stjosephctr.org

Gifts or Contributions:
contributions@stjosephctr.org
Monetary Contributions: 310-396-6468 x336
Food/Supply Drives and other non-monetary contributions: 310-396-6468 x326

Los Angeles Homeless Services Authority

<https://www.lahsa.org/contact-us>

Phone - (213) 683-3333

Volunteer for the next Homeless Count

<https://www.theycountwillyou.org/>

Malibu Homelessness Strategic Plan Goals and Objectives – 2021 Update

Goal 1: Prevent and mitigate any public health and public safety impacts on the community stemming from homelessness.					
Supporting Actions		Lead	Partner(s)	Resources	Timeline
1a.	Engage Arson Watch to identify and monitor encampments in high fire risk areas and report them to the City	Arson Watch	Private property owners City		Short-term
1b.	Provide access to temporary housing during red flag warnings through vouchers that can be used at motels and local shelters	The People Concern Outreach	City		Short-term
1c.	Reduce fire risk through an encampment management initiative that includes identifying all open space areas to determine if they are public or private property and obtain Letters of Agency for all private property and install Red Flag Ordinance signage if public property	City	Sheriff's, COG Outreach Coordinator Arson Watch	Sheriff	Short-term
1d.	Develop a plan to prevent and mitigate potential impacts on nearby neighborhoods from the homeless meal services	Faith community	City	Sheriff CART	Short-term
1e.	Seek opportunities for safe haven parking areas (modeled after the LA Safe Parking Program)	City	Faith-based Institutions Safe Parking LA		Mid-term
1f.	Work with recipients of the meals program to partner with us to assist with peer advocacy for those who would benefit.	The People Concern and COG Outreach Coordinator	LAC Sheriff Faith Community CART		Short-term

Goal 2: Reduce the number of people experiencing homelessness in Malibu by providing access to temporary and permanent housing solutions within Los Angeles County.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
2a.	Conduct outreach to encourage landlords to accept housing and rental subsidies for the homeless	The People Concern	LA County Supervisor Kuehl's Office The City Homeless Service Providers Volunteers (CART, Priorities Center)		Short-term
2b.	Establish a flexible spending account funded by donations and City grants which complements Measure H by helping fund rapid rehousing and other related services for homeless individuals who may not qualify for Measure H eligibility	Community Organization	Homeless Service Providers Community Stakeholders	City Grants	Short-term
2c.	Explore the feasibility of developing a new building or converting an existing building to provide bridge/alternative sleeping location	City	County Pepperdine Non-Profit or For-Profit Developers		Mid-Term
2d.	Explore the feasibility of creating affordable housing for Malibu residents and people who work in Malibu	City Community Organization	County Pepperdine Non-Profit or For-Profit Developers		Long-term

Goal 3: Implement programs to prevent homelessness among residents of Malibu.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
3a.	Create a mechanism to identify and assist individuals or families at imminent risk of becoming homeless (such as receiving an eviction notice)	Community Organization	City		Mid-Term
3b.	Implement an emergency housing fund to assist Malibu residents who are at risk of becoming homeless (complements action 1b.	Community Organization	City Foundations United Way Donors	City Grants	Mid-Term
3c.	Explore strategies and incentives to encourage landlords and developers to provide more affordable housing for people who work in Malibu	City	Chamber of Commerce		Long-term

Goal 4: Provide coordinated outreach and supportive services to homeless individuals and families that promote self-sufficiency and personal stability.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
4a.	Provide field-based outreach to connect homeless individual with services and permanent housing options	The People Concern	City St. Joseph Center COG Outreach Coordinator	The People Concern City of Malibu St. Joseph Center	Ongoing
4b.	Establish regular communication among all who regularly interact with the homeless in order to share information	City COG Outreach	Sheriff People Concern Faith-Based Organizations Malibu Labor Exchange	Technology	Short-term
4c.	Establish partnership with Pepperdine University social work students and faculty to strengthen service capacity at ASL	City	Pepperdine	Pepperdine	Long Term
4d.	Continue to provide availability and access to case management services in Malibu	City/County	The People Concern St. Josephs Center COG Outreach	St. Josephs Center	Ongoing
4e.	Incorporate best practices for addressing homelessness from other municipalities which are applicable to Malibu	City	Chamber Faith-Based Organizations Non-profits		Short-term and Ongoing
4f.	Partner with local businesses to create jobs for the homeless being serviced by the ASL	City	Chamber of Commerce		Long Term

Goal 5: Increase community awareness of the Malibu homeless initiative, its progress and successes.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
5a	Implement strategies to change the public perception of affordable housing by demonstrating it meets the real need of members of the Malibu community (e.g. seniors)	City	County United Way Task Force Future Stakeholders	“Everyone In Campaign”	Short Term & Ongoing
5b.	Host regular community meetings and educational workshops to improve community understanding of homelessness and progress in implementing the Homelessness Strategic Plan	City	Faith-Based Organizations Pepperdine Santa Monica College	City Hall Pacific Palisades Task Force on Homelessness Library Malibu High School	Short Term & Ongoing
5c.	Maintain City website	City	Community Stakeholders	Domain & Maintenance Volunteer / Staff Time	Short Term & Ongoing
5d.	Implement a public relations effort to help bridge the gap between our homeless population and the community	CART	City Faith-Based community Local media	Local newspapers	Short Term

Goal 6: Advocate for systemic change at the county, state, and federal levels that will strengthen efforts to prevent and reduce homelessness.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
6a.	Work with County and State elected officials to reform housing voucher rules and restrictions and/or create incentives that will broaden housing opportunities for the homeless	City of Malibu Non-Profits Malibu Residents	City of Malibu The People Concern St. Joseph Center		Mid-Term
6b.	Collaborate with other local agencies to lobby at a state and national level to expand and improve mental health services to reduce the number of mentally ill individuals who are living on the street	City of Malibu	City of Malibu The People Concern St. Joseph Center		
6c.	Advocate for budget allocations at the city, county, state, and federal levels to increase funding for programs that prevent and end homelessness	City of Malibu	City of Malibu The People Concern St. Joseph Center		Ongoing

Goal 7: Develop governance infrastructure to facilitate collaboration, provide oversight, and support implementation of the homelessness strategic plan.

Supporting Actions		Lead	Partner(s)	Resources	Timeline
7a.	Establish an 8 to 12-member Working Group that meets monthly with a structured agenda to oversee the implementation of the homeless initiative in Malibu, including committees that are assigned to specific action items	City	Homeless Service Providers Community Stakeholders County	Community Advisory Group for Homelessness Strategic Plan	Short term
7b.	Advocate for and advise the City regarding resource needs to implement and maintain the Strategic Plan	City			Ongoing
7c.	Monitor and evaluate the effectiveness of the Homelessness Strategic Plan through the Performance Measures (page 17)	City	The People Concern Other Homeless Service Providers Sheriff's Department		Short Term & Ongoing
7d.	Coordinate the Malibu program with the Los Angeles County Homeless Initiative and coordinate with nearby cities on shared strategies	City	Homeless Service Providers Community Stakeholders		Ongoing

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROBERT MARTIN; LAWRENCE LEE
SMITH; ROBERT ANDERSON; JANET
F. BELL; PAMELA S. HAWKES; and
BASIL E. HUMPHREY,
Plaintiffs-Appellants,

v.

CITY OF BOISE,

Defendant-Appellee.

No. 15-35845

D.C. No.
1:09-cv-00540-
REB

OPINION

Appeal from the United States District Court
for the District of Idaho
Ronald E. Bush, Chief Magistrate Judge, Presiding

Argued and Submitted July 13, 2017
Portland, Oregon

Filed September 4, 2018

Before: Marsha S. Berzon, Paul J. Watford,
and John B. Owens, Circuit Judges.

Opinion by Judge Berzon;
Partial Concurrence and Partial Dissent by Judge Owens

SUMMARY*

Civil Rights

The panel affirmed in part and reversed in part the district court's summary judgment in an action brought by six current or formerly homeless City of Boise residents who alleged that their citations under the City's Camping and Disorderly Conduct Ordinances violated the Eighth Amendment's prohibition on cruel and unusual punishment.

Plaintiffs sought damages for the alleged violations under 42 U.S.C. § 1983. Two plaintiffs also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances. In 2014, after this litigation began, the ordinances were amended to prohibit their enforcement against any homeless person on public property on any night when no shelter had an available overnight space.

The panel first held that two plaintiffs had standing to pursue prospective relief because they demonstrated a genuine issue of material fact as to whether they faced a credible risk of prosecution on a night when they had been denied access to the City's shelters. The panel noted that although the 2014 amendment precluded the City from enforcing the ordinances when shelters were full, individuals could still be turned away for reasons other than shelter capacity, such as for exceeding the shelter's stay limits, or for

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

failing to take part in a shelter's mandatory religious programs.

The panel held that although the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994) and its progeny precluded most — but not all — of the plaintiffs' requests for retrospective relief, the doctrine had no application to plaintiffs' request for an injunction enjoining prospective enforcement of the ordinances.

Turning to the merits, the panel held that the Cruel and Unusual Punishments Clause of the Eighth Amendment precluded the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter. The panel held 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.

Concurring in part and dissenting in part, Judge Owens disagreed with the majority's opinion that *Heck v. Humphrey* did not bar plaintiffs' claim for declaratory and injunctive relief. Judge Owens stated that a declaration that the city ordinances are unconstitutional and an injunction against their future enforcement would necessarily demonstrate the invalidity of plaintiffs' prior convictions. Judge Owens otherwise joined the majority in full.

COUNSEL

Michael E. Bern (argued) and Kimberly Leefatt, Latham & Watkins LLP, Washington, D.C.; Howard A. Belodoff, Idaho Legal Aid Services Inc., Boise, Idaho; Eric Tars, National Law Center on Homelessness & Poverty, Washington, D.C.; Plaintiffs-Appellants.

Brady J. Hall (argued), Michael W. Moore, and Steven R. Kraft, Moore Elia Kraft & Hall LLP, Boise, Idaho; Scott B. Muir, Deputy City Attorney; Robert B. Luce, City Attorney; City Attorney's Office, Boise, Idaho; for Defendant-Appellee.

OPINION

BERZON, Circuit Judge:

“The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”

— Anatole France, *The Red Lily*

We consider whether the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.

The plaintiffs-appellants are six current or former residents of the City of Boise (“the City”), who are homeless or have recently been homeless. Each plaintiff alleges that,

between 2007 and 2009, he or she was cited by Boise police for violating one or both of two city ordinances. The first, Boise City Code § 9-10-02 (the “Camping Ordinance”), makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The Camping Ordinance defines “camping” as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.” *Id.* The second, Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private . . . without the permission of the owner or person entitled to possession or in control thereof.”

All plaintiffs seek retrospective relief for their previous citations under the ordinances. Two of the plaintiffs, Robert Anderson and Robert Martin, allege that they expect to be cited under the ordinances again in the future and seek declaratory and injunctive relief against future prosecution.

In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007), a panel of this court concluded that “so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds [in shelters]” for the homeless, Los Angeles could not enforce a similar ordinance against homeless individuals “for involuntarily sitting, lying, and sleeping in public.” *Jones* is not binding on us, as there was an underlying settlement between the parties and our opinion was vacated as a result. We agree with *Jones*’s reasoning and central conclusion, however, and so hold that an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to

them. Two of the plaintiffs, we further hold, may be entitled to retrospective and prospective relief for violation of that Eighth Amendment right.

I. Background

The district court granted summary judgment to the City on all claims. We therefore review the record in the light most favorable to the plaintiffs. *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014).

Boise has a significant and increasing homeless population. According to the Point-in-Time Count (“PIT Count”) conducted by the Idaho Housing and Finance Association, there were 753 homeless individuals in Ada County — the county of which Boise is the seat — in January 2014, 46 of whom were “unsheltered,” or living in places unsuited to human habitation such as parks or sidewalks. In 2016, the last year for which data is available, there were 867 homeless individuals counted in Ada County, 125 of whom were unsheltered.¹ The PIT Count likely underestimates the number of homeless individuals in Ada

¹ The United States Department of Housing and Urban Development (“HUD”) requires local homeless assistance and prevention networks to conduct an annual count of homeless individuals on one night each January, known as the PIT Count, as a condition of receiving federal funds. State, local, and federal governmental entities, as well as private service providers, rely on the PIT Count as a “critical source of data” on homelessness in the United States. The parties acknowledge that the PIT Count is not always precise. The City’s Director of Community Partnerships, Diana Lachiondo, testified that the PIT Count is “not always the . . . best resource for numbers,” but also stated that “the point-in-time count is our best snapshot” for counting the number of homeless individuals in a particular region, and that she “cannot give . . . any other number with any kind of confidence.”

County. It is “widely recognized that a one-night point in time count will undercount the homeless population,” as many homeless individuals may have access to temporary housing on a given night, and as weather conditions may affect the number of available volunteers and the number of homeless people staying at shelters or accessing services on the night of the count.

There are currently three homeless shelters in the City of Boise offering emergency shelter services, all run by private, nonprofit organizations. As far as the record reveals, these three shelters are the only shelters in Ada County.

One shelter — “Sanctuary” — is operated by Interfaith Sanctuary Housing Services, Inc. The shelter is open to men, women, and children of all faiths, and does not impose any religious requirements on its residents. Sanctuary has 96 beds reserved for individual men and women, with several additional beds reserved for families. The shelter uses floor mats when it reaches capacity with beds.

Because of its limited capacity, Sanctuary frequently has to turn away homeless people seeking shelter. In 2010, Sanctuary reached full capacity in the men’s area “at least half of every month,” and the women’s area reached capacity “almost every night of the week.” In 2014, the shelter reported that it was full for men, women, or both on 38% of nights. Sanctuary provides beds first to people who spent the previous night at Sanctuary. At 9:00 pm each night, it allots any remaining beds to those who added their names to the shelter’s waiting list.

The other two shelters in Boise are both operated by the Boise Rescue Mission (“BRM”), a Christian nonprofit

organization. One of those shelters, the River of Life Rescue Mission (“River of Life”), is open exclusively to men; the other, the City Light Home for Women and Children (“City Light”), shelters women and children only.

BRM’s facilities provide two primary “programs” for the homeless, the Emergency Services Program and the New Life Discipleship Program.² The Emergency Services Program provides temporary shelter, food, and clothing to anyone in need. Christian religious services are offered to those seeking shelter through the Emergency Services Program. The shelters display messages and iconography on the walls, and the intake form for emergency shelter guests includes a religious message.³

Homeless individuals may check in to either BRM facility between 4:00 and 5:30 pm. Those who arrive at BRM facilities between 5:30 and 8:00 pm may be denied shelter, depending on the reason for their late arrival; generally, anyone arriving after 8:00 pm is denied shelter.

Except in winter, male guests in the Emergency Services Program may stay at River of Life for up to 17 consecutive nights; women and children in the Emergency Services Program may stay at City Light for up to 30 consecutive

² The record suggests that BRM provides some limited additional non-emergency shelter programming which, like the Discipleship Program, has overtly religious components.

³ The intake form states in relevant part that “We are a Gospel Rescue Mission. Gospel means ‘Good News,’ and the Good News is that Jesus saves us from sin past, present, and future. We would like to share the Good News with you. Have you heard of Jesus? . . . Would you like to know more about him?”

nights. After the time limit is reached, homeless individuals who do not join the Discipleship Program may not return to a BRM shelter for at least 30 days.⁴ Participants in the Emergency Services Program must return to the shelter every night during the applicable 17-day or 30-day period; if a resident fails to check in to a BRM shelter each night, that resident is prohibited from staying overnight at that shelter for 30 days. BRM's rules on the length of a person's stay in the Emergency Services Program are suspended during the winter.

The Discipleship Program is an “intensive, Christ-based residential recovery program” of which “[r]eligious study is the very essence.” The record does not indicate any limit to how long a member of the Discipleship Program may stay at a BRM shelter.

The River of Life shelter contains 148 beds for emergency use, along with 40 floor mats for overflow; 78 additional beds serve those in non-emergency shelter programs such as the Discipleship Program. The City Light shelter has 110 beds for emergency services, as well as 40 floor mats to handle overflow and 38 beds for women in non-emergency shelter programs. All told, Boise's three homeless shelters contain 354 beds and 92 overflow mats for homeless individuals.

A. The Plaintiffs

Plaintiffs Robert Martin, Robert Anderson, Lawrence Lee Smith, Basil E. Humphrey, Pamela S. Hawkes, and Janet F.

⁴ The parties dispute the extent to which BRM actually enforces the 17- and 30-day limits.

Bell are all homeless individuals who have lived in or around Boise since at least 2007. Between 2007 and 2009, each plaintiff was convicted at least once of violating the Camping Ordinance, the Disorderly Conduct Ordinance, or both. With one exception, all plaintiffs were sentenced to time served for all convictions; on two occasions, Hawkes was sentenced to one additional day in jail. During the same period, Hawkes was cited, but not convicted, under the Camping Ordinance, and Martin was cited, but not convicted, under the Disorderly Conduct Ordinance.

Plaintiff Robert Anderson currently lives in Boise; he is homeless and has often relied on Boise's shelters for housing. In the summer of 2007, Anderson stayed at River of Life as part of the Emergency Services Program until he reached the shelter's 17-day limit for male guests. Anderson testified that during his 2007 stay at River of Life, he was required to attend chapel services before he was permitted to eat dinner. At the conclusion of his 17-day stay, Anderson declined to enter the Discipleship Program because of his religious beliefs. As Anderson was barred by the shelter's policies from returning to River of Life for 30 days, he slept outside for the next several weeks. On September 1, 2007, Anderson was cited under the Camping Ordinance. He pled guilty to violating the Camping Ordinance and paid a \$25 fine; he did not appeal his conviction.

Plaintiff Robert Martin is a former resident of Boise who currently lives in Post Falls, Idaho. Martin returns frequently to Boise to visit his minor son. In March of 2009, Martin was cited under the Camping Ordinance for sleeping outside; he was cited again in 2012 under the same ordinance.

B. Procedural History

The plaintiffs filed this action in the United States District Court for the District of Idaho in October of 2009. All plaintiffs alleged that their previous citations under the Camping Ordinance and the Disorderly Conduct Ordinance violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, and sought damages for those alleged violations under 42 U.S.C. § 1983. *Cf. Jones*, 444 F.3d at 1138. Anderson and Martin also sought prospective declaratory and injunctive relief precluding future enforcement of the ordinances under the same statute and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

After this litigation began, the Boise Police Department promulgated a new “Special Order,” effective as of January 1, 2010, that prohibited enforcement of either the Camping Ordinance or the Disorderly Conduct Ordinance against any homeless person on public property on any night when no shelter had “an available overnight space.” City police implemented the Special Order through a two-step procedure known as the “Shelter Protocol.”

Under the Shelter Protocol, if any shelter in Boise reaches capacity on a given night, that shelter will so notify the police at roughly 11:00 pm. Each shelter has discretion to determine whether it is full, and Boise police have no other mechanism or criteria for gauging whether a shelter is full. Since the Shelter Protocol was adopted, Sanctuary has reported that it was full on almost 40% of nights. Although BRM agreed to the Shelter Protocol, its internal policy is never to turn any person away because of a lack of space, and neither BRM shelter has ever reported that it was full.

If all shelters are full on the same night, police are to refrain from enforcing either ordinance. Presumably because the BRM shelters have not reported full, Boise police continue to issue citations regularly under both ordinances.

In July 2011, the district court granted summary judgment to the City. It held that the plaintiffs' claims for retrospective relief were barred under the *Rooker-Feldman* doctrine and that their claims for prospective relief were mooted by the Special Order and the Shelter Protocol. *Bell v. City of Boise*, 834 F. Supp. 2d 1103 (D. Idaho 2011). On appeal, we reversed and remanded. *Bell v. City of Boise*, 709 F.3d 890, 901 (9th Cir. 2013). We held that the district court erred in dismissing the plaintiffs' claims under the *Rooker-Feldman* doctrine. *Id.* at 897. In so holding, we expressly declined to consider whether the favorable-termination requirement from *Heck v. Humphrey*, 512 U.S. 477 (1994), applied to the plaintiffs' claims for retrospective relief. Instead, we left the issue for the district court on remand. *Bell*, 709 F.3d at 897 n.11.

Bell further held that the plaintiffs' claims for prospective relief were not moot. The City had not met its "heavy burden" of demonstrating that the challenged conduct — enforcement of the two ordinances against homeless individuals with no access to shelter — "could not reasonably be expected to recur." *Id.* at 898, 901 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). We emphasized that the Special Order was a statement of administrative policy and so could be amended or reversed at any time by the Boise Chief of Police. *Id.* at 899–900.

Finally, *Bell* rejected the City’s argument that the plaintiffs lacked standing to seek prospective relief because they were no longer homeless. *Id.* at 901 & n.12. We noted that, on summary judgment, the plaintiffs “need not establish that they in fact have standing, but only that there is a genuine issue of material fact as to the standing elements.” *Id.* (citation omitted).

On remand, the district court again granted summary judgment to the City on the plaintiffs’ § 1983 claims. The court observed that *Heck* requires a § 1983 plaintiff seeking damages for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid” to demonstrate that “the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486–87. According to the district court, “a judgment finding the Ordinances unconstitutional . . . necessarily would imply the invalidity of Plaintiffs’ [previous] convictions under those ordinances,” and the plaintiffs therefore were required to demonstrate that their convictions or sentences had already been invalidated. As none of the plaintiffs had raised an Eighth Amendment challenge as a defense to criminal prosecution, nor had any plaintiff successfully appealed their conviction, the district court held that all of the plaintiffs’ claims for retrospective relief were barred by *Heck*. The district court also rejected as barred by *Heck* the plaintiffs’ claim for prospective injunctive relief under § 1983, reasoning that “a ruling in favor of Plaintiffs on even a prospective § 1983 claim would demonstrate the invalidity of any confinement stemming from those convictions.”

Finally, the district court determined that, although *Heck* did not bar relief under the Declaratory Judgment Act, Martin and Anderson now lack standing to pursue such relief. The linchpin of this holding was that the Camping Ordinance and the Disorderly Conduct Ordinance were both amended in 2014 to codify the Special Order’s mandate that “[l]aw enforcement officers shall not enforce [the ordinances] when the individual is on public property and there is no available overnight shelter.” Boise City Code §§ 6-01-05, 9-10-02. Because the ordinances, as amended, permitted camping or sleeping in a public place when no shelter space was available, the court held that there was no “credible threat” of future prosecution. “If the Ordinances are not to be enforced when the shelters are full, those Ordinances do not inflict a constitutional injury upon these particular plaintiffs” The court emphasized that the record “suggests there is no known citation of a homeless individual under the Ordinances for camping or sleeping on public property on any night or morning when he or she was unable to secure shelter due to a lack of shelter capacity” and that “there has not been a single night when all three shelters in Boise called in to report they were simultaneously full for men, women or families.”

This appeal followed.

II. Discussion

A. Standing

We first consider whether any of the plaintiffs has standing to pursue prospective relief.⁵ We conclude that there are sufficient opposing facts in the record to create a genuine issue of material fact as to whether Martin and Anderson face a credible threat of prosecution under one or both ordinances in the future at a time when they are unable to stay at any Boise homeless shelter.⁶

“To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013) (citation omitted). “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes — that the injury is *certainly* impending.” *Id.* (citation omitted). A plaintiff need not, however, await an arrest or prosecution to have standing to challenge the constitutionality of a criminal statute. “When the plaintiff has alleged an

⁵ Standing to pursue retrospective relief is not in doubt. The only threshold question affecting the availability of a claim for retrospective relief — a question we address in the next section — is whether such relief is barred by the doctrine established in *Heck*.

⁶ Although the SAC is somewhat ambiguous regarding which of the plaintiffs seeks prospective relief, counsel for the plaintiffs made clear at oral argument that only two of the plaintiffs, Martin and Anderson, seek such relief, and the district court considered the standing question with respect to Martin and Anderson only.

intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (citation and internal quotation marks omitted). To defeat a motion for summary judgment premised on an alleged lack of standing, plaintiffs “ need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements.” *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002).

In dismissing Martin and Anderson’s claims for declaratory relief for lack of standing, the district court emphasized that Boise’s ordinances, as amended in 2014, preclude the City from issuing a citation when there is no available space at a shelter, and there is consequently no risk that either Martin or Anderson will be cited under such circumstances in the future. Viewing the record in the light most favorable to the plaintiffs, we cannot agree.

Although the 2014 amendments preclude the City from enforcing the ordinances when there is no room available at any shelter, the record demonstrates that the City is wholly reliant on the shelters to self-report when they are full. It is undisputed that Sanctuary is full as to men on a substantial percentage of nights, perhaps as high as 50%. The City nevertheless emphasizes that since the adoption of the Shelter Protocol in 2010, the BRM facilities, River of Life and City Light, have never reported that they are full, and BRM states that it will never turn people away due to lack space.

The plaintiffs have pointed to substantial evidence in the record, however, indicating that whether or not the BRM facilities are ever full or turn homeless individuals away *for lack of space*, they *do* refuse to shelter homeless people who exhaust the number of days allotted by the facilities. Specifically, the plaintiffs allege, and the City does not dispute, that it is BRM's policy to limit men to 17 consecutive days in the Emergency Services Program, after which they cannot return to River of Life for 30 days; City Light has a similar 30-day limit for women and children. Anderson testified that BRM has enforced this policy against him in the past, forcing him to sleep outdoors.

The plaintiffs have adduced further evidence indicating that River of Life permits individuals to remain at the shelter after 17 days in the Emergency Services Program only on the condition that they become part of the New Life Discipleship program, which has a mandatory religious focus. For example, there is evidence that participants in the New Life Program are not allowed to spend days at Corpus Christi, a local Catholic program, "because it's . . . a different sect." There are also facts in dispute concerning whether the Emergency Services Program itself has a religious component. Although the City argues strenuously that the Emergency Services Program is secular, Anderson testified to the contrary; he stated that he was once required to attend chapel before being permitted to eat dinner at the River of Life shelter. Both Martin and Anderson have objected to the overall religious atmosphere of the River of Life shelter, including the Christian messaging on the shelter's intake form and the Christian iconography on the shelter walls. A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment. *Inouye v.*

Kemna, 504 F.3d 705, 712–13 (9th Cir. 2007). Yet at the conclusion of a 17-day stay at River of Life, or a 30-day stay at City Light, an individual may be forced to choose between sleeping outside on nights when Sanctuary is full (and risking arrest under the ordinances), or enrolling in BRM programming that is antithetical to his or her religious beliefs.

The 17-day and 30-day limits are not the only BRM policies which functionally limit access to BRM facilities even when space is nominally available. River of Life also turns individuals away if they voluntarily leave the shelter before the 17-day limit and then attempt to return within 30 days. An individual who voluntarily leaves a BRM facility for any reason — perhaps because temporary shelter is available at Sanctuary, or with friends or family, or in a hotel — cannot immediately return to the shelter if circumstances change. Moreover, BRM’s facilities may deny shelter to any individual who arrives after 5:30 pm, and generally will deny shelter to anyone arriving after 8:00 pm. Sanctuary, however, does not assign beds to persons on its waiting list until 9:00 pm. Thus, by the time a homeless individual on the Sanctuary waiting list discovers that the shelter has no room available, it may be too late to seek shelter at either BRM facility.

So, even if we credit the City’s evidence that BRM’s facilities have never been “full,” and that the City has never cited any person under the ordinances who could not obtain shelter “due to a lack of shelter capacity,” there remains a genuine issue of material fact as to whether homeless individuals in Boise run a credible risk of being issued a citation on a night when Sanctuary is full and they have been denied entry to a BRM facility for reasons other than shelter capacity. If so, then as a practical matter, no shelter is

available. We note that despite the Shelter Protocol and the amendments to both ordinances, the City continues regularly to issue citations for violating both ordinances; during the first three months of 2015, the Boise Police Department issued over 175 such citations.

The City argues that Martin faces little risk of prosecution under either ordinance because he has not lived in Boise since 2013. Martin states, however, that he is still homeless and still visits Boise several times a year to visit his minor son, and that he has continued to seek shelter at Sanctuary and River of Life. Although Martin may no longer spend enough time in Boise to risk running afoul of BRM's 17-day limit, he testified that he has unsuccessfully sought shelter at River of Life after being placed on Sanctuary's waiting list, only to discover later in the evening that Sanctuary had no available beds. Should Martin return to Boise to visit his son, there is a reasonable possibility that he might again seek shelter at Sanctuary, only to discover (after BRM has closed for the night) that Sanctuary has no space for him. Anderson, for his part, continues to live in Boise and states that he remains homeless.

We conclude that both Martin and Anderson have demonstrated a genuine issue of material fact regarding whether they face a credible risk of prosecution under the ordinances in the future on a night when they have been denied access to Boise's homeless shelters; both plaintiffs therefore have standing to seek prospective relief.

B. *Heck v. Humphrey*

We turn next to the impact of *Heck v. Humphrey* and its progeny on this case. With regard to retrospective relief, the

plaintiffs maintain that *Heck* should not bar their claims because, with one exception, all of the plaintiffs were sentenced to time served.⁷ It would therefore have been impossible for the plaintiffs to obtain federal habeas relief, as any petition for a writ of habeas corpus must be filed while the petitioner is “in custody pursuant to the judgment of a State court.” See 28 U.S.C. § 2254(a); *Spencer v. Kemna*, 523 U.S. 1, 7, 17–18 (1998). With regard to prospective relief, the plaintiffs emphasize that they seek only equitable protection against *future* enforcement of an allegedly unconstitutional statute, and not to invalidate any prior conviction under the same statute. We hold that although the *Heck* line of cases precludes most — but not all — of the plaintiffs’ requests for retrospective relief, that doctrine has no application to the plaintiffs’ request for an injunction enjoining prospective enforcement of the ordinances.

1. The *Heck* Doctrine

A long line of Supreme Court case law, beginning with *Preiser v. Rodriguez*, 411 U.S. 475 (1973), holds that a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his or her confinement, but must instead seek federal habeas corpus relief or analogous state relief. *Id.* at 477, 500. *Preiser* considered whether a prison inmate could bring a § 1983 action seeking an injunction to remedy an unconstitutional deprivation of good-time conduct credits. Observing that habeas corpus is the traditional instrument to obtain release from unlawful

⁷ Plaintiff Pamela Hawkes was convicted of violating the Camping Ordinance or Disorderly Conduct Ordinance on twelve occasions; although she was usually sentenced to time served, she was twice sentenced to one additional day in jail.

confinement, *Preiser* recognized an implicit exception from § 1983's broad scope for actions that lie "within the core of habeas corpus" — specifically, challenges to the "fact or duration" of confinement. *Id.* at 487, 500. The Supreme Court subsequently held, however, that although *Preiser* barred inmates from obtaining an injunction to restore good-time credits via a § 1983 action, *Preiser* did not "preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations." *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974) (emphasis added).

Heck addressed a § 1983 action brought by an inmate seeking compensatory and punitive damages. The inmate alleged that state and county officials had engaged in unlawful investigations and knowing destruction of exculpatory evidence. *Heck*, 512 U.S. at 479. The Court in *Heck* analogized a § 1983 action of this type, which called into question the validity of an underlying conviction, to a cause of action for malicious prosecution, *id.* at 483–84, and went on to hold that, as with a malicious prosecution claim, a plaintiff in such an action must demonstrate a favorable termination of the criminal proceedings before seeking tort relief, *id.* at 486–87. "[T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.*

Edwards v. Balisok, 520 U.S. 641 (1997) extended *Heck*'s holding to claims for declaratory relief. *Id.* at 648. The plaintiff in *Edwards* alleged that he had been deprived of earned good-time credits without due process of law, because the decisionmaker in disciplinary proceedings had concealed exculpatory evidence. Because the plaintiff's claim for declaratory relief was "based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed," *Edwards* held, it was "not cognizable under § 1983." *Id.* *Edwards* went on to hold, however, that a requested injunction requiring prison officials to date-stamp witness statements was not *Heck*-barred, reasoning that a "prayer for such *prospective* relief will not 'necessarily imply' the invalidity of a previous loss of good-time credits, and so may properly be brought under § 1983." *Id.* (emphasis added).

Most recently, *Wilkinson v. Dotson*, 544 U.S. 74 (2005), stated that *Heck* bars § 1983 suits even when the relief sought is prospective injunctive or declaratory relief, "if success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Id.* at 81–82 (emphasis omitted). But *Wilkinson* held that the plaintiffs in that case *could* seek a prospective injunction compelling the state to comply with constitutional requirements in parole proceedings in the future. The Court observed that the prisoners' claims for future relief, "if successful, will not necessarily imply the invalidity of confinement or shorten its duration." *Id.* at 82.

The Supreme Court did not, in these cases or any other, conclusively determine whether *Heck*'s favorable-termination requirement applies to convicts who have no practical opportunity to challenge their conviction or sentence via a

petition for habeas corpus. See *Muhammad v. Close*, 540 U.S. 749, 752 & n.2 (2004). But in *Spencer*, five Justices suggested that *Heck* may not apply in such circumstances. *Spencer*, 523 U.S. at 3.

The petitioner in *Spencer* had filed a federal habeas petition seeking to invalidate an order revoking his parole. While the habeas petition was pending, the petitioner's term of imprisonment expired, and his habeas petition was consequently dismissed as moot. Justice Souter wrote a concurring opinion in which three other Justices joined, addressing the petitioner's argument that if his habeas petition were mooted by his release, any § 1983 action would be barred under *Heck*, yet he would no longer have access to a federal habeas forum to challenge the validity of his parole revocation. *Id.* at 18–19 (Souter, J., concurring). Justice Souter stated that in his view “*Heck* has no such effect,” and that “a former prisoner, no longer ‘in custody,’ may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy.” *Id.* at 21. Justice Stevens, dissenting, stated that he would have held the habeas petition in *Spencer* not moot, but agreed that “[g]iven the Court’s holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear . . . that he may bring an action under 42 U.S.C. § 1983.” *Id.* at 25 n.8 (Stevens, J., dissenting).

Relying on the concurring and dissenting opinions in *Spencer*, we have held that the “unavailability of a remedy in habeas corpus because of mootness” permitted a plaintiff released from custody to maintain a § 1983 action for damages, “even though success in that action would imply the

invalidity of the disciplinary proceeding that caused revocation of his good-time credits.” *Nonnette v. Small*, 316 F.3d 872, 876 (9th Cir. 2002). But we have limited *Nonnette* in recent years. Most notably, we held in *Lyall v. City of Los Angeles*, 807 F.3d 1178 (9th Cir. 2015), that even where a plaintiff had no practical opportunity to pursue federal habeas relief while detained because of the short duration of his confinement, *Heck* bars a § 1983 action that would imply the invalidity of a prior conviction if the plaintiff could have sought invalidation of the underlying conviction via direct appeal or state post-conviction relief, but did not do so. *Id.* at 1192 & n.12.

2. Retrospective Relief

Here, the majority of the plaintiffs’ claims for *retrospective* relief are governed squarely by *Lyall*. It is undisputed that all the plaintiffs not only failed to challenge their convictions on direct appeal but expressly waived the right to do so as a condition of their guilty pleas. The plaintiffs have made no showing that any of their convictions were invalidated via state post-conviction relief. We therefore hold that all but two of the plaintiffs’ claims for damages are foreclosed under *Lyall*.

Two of the plaintiffs, however, Robert Martin and Pamela Hawkes, also received citations under the ordinances that were dismissed before the state obtained a conviction. Hawkes was cited for violating the Camping Ordinance on July 8, 2007; that violation was dismissed on August 28, 2007. Martin was cited for violating the Disorderly Conduct Ordinance on April 24, 2009; those charges were dismissed on September 9, 2009. With respect to these two incidents, the district court erred in finding that the plaintiffs’ Eighth

Amendment challenge was barred by *Heck*. Where there is no “conviction or sentence” that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application. 512 U.S. at 486–87; *see also Wallace v. Kato*, 549 U.S. 384, 393 (2007).

Relying on *Ingraham v. Wright*, 430 U.S. 651, 664 (1977), the City argues that the Eighth Amendment, and the Cruel and Unusual Punishments Clause in particular, have no application where there has been no conviction. The City’s reliance on *Ingraham* is misplaced. As the Supreme Court observed in *Ingraham*, the Cruel and Unusual Punishments Clause not only limits the types of punishment that may be imposed and prohibits the imposition of punishment grossly disproportionate to the severity of the crime, but also “imposes substantive limits on what can be made criminal and punished as such.” *Id.* at 667. “This [latter] protection governs the criminal law process as a whole, not only the imposition of punishment postconviction.” *Jones*, 444 F.3d at 1128.

Ingraham concerned only whether “impositions outside the criminal process” — in that case, the paddling of schoolchildren — “constituted cruel and unusual punishment.” 430 U.S. at 667. *Ingraham* did not hold that a plaintiff challenging the state’s power to criminalize a particular status or conduct in the first instance, as the plaintiffs in this case do, must first be convicted. If conviction were a prerequisite for such a challenge, “the state could in effect punish individuals in the preconviction stages of the criminal law enforcement process for being or doing things that under the [Cruel and Unusual Punishments Clause] cannot be subject to the criminal process.” *Jones*, 444 F.3d at 1129. For those rare Eighth Amendment

challenges concerning the state's very power to criminalize particular behavior or status, then, a plaintiff need demonstrate only the initiation of the criminal process against him, not a conviction.

3. Prospective Relief

The district court also erred in concluding that the plaintiffs' requests for prospective injunctive relief were barred by *Heck*. The district court relied entirely on language in *Wilkinson* stating that "a state prisoner's § 1983 action is barred (absent prior invalidation) . . . no matter the relief sought (damages or equitable relief) . . . if success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson*, 544 U.S. at 81–82. The district court concluded from this language in *Wilkinson* that a person convicted under an allegedly unconstitutional statute may never challenge the validity or application of that statute after the initial criminal proceeding is complete, even when the relief sought is prospective only and independent of the prior conviction. The logical extension of the district court's interpretation is that an individual who does not successfully invalidate a first conviction under an unconstitutional statute will have no opportunity to challenge that statute prospectively so as to avoid arrest and conviction for violating that same statute in the future.

Neither *Wilkinson* nor any other case in the *Heck* line supports such a result. Rather, *Wolff*, *Edwards*, and *Wilkinson* compel the opposite conclusion.

Wolff held that although *Preiser* barred a § 1983 action seeking restoration of good-time credits absent a successful challenge in federal habeas proceedings, *Preiser* did not

“preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid . . . regulations.” *Wolff*, 418 U.S. at 555. Although *Wolff* was decided before *Heck*, the Court subsequently made clear that *Heck* effected no change in the law in this regard, observing in *Edwards* that “[o]rordinarily, a prayer for . . . prospective [injunctive] relief will not ‘necessarily imply’ the invalidity of a *previous* loss of good-time credits, and so may properly be brought under § 1983.” *Edwards*, 520 U.S. at 648 (emphasis added). Importantly, the Court held in *Edwards* that although the plaintiff could not, consistently with *Heck*, seek a declaratory judgment stating that the procedures employed by state officials that deprived him of good-time credits were unconstitutional, he *could* seek an injunction barring such allegedly unconstitutional procedures in the future. *Id.* Finally, the Court noted in *Wilkinson* that the *Heck* line of cases “has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies *when they seek to invalidate the duration of their confinement*,” *Wilkinson*, 544 U.S. at 81 (emphasis added), alluding to an existing confinement, not one yet to come.

The *Heck* doctrine, in other words, serves to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge. In context, it is clear that *Wilkinson*’s holding that the *Heck* doctrine bars a § 1983 action “no matter the relief sought (damages or equitable relief) . . . if success in that action would necessarily demonstrate the invalidity of confinement or its duration” applies to equitable relief concerning an existing confinement, not to suits seeking to preclude an unconstitutional confinement in the future, arising from incidents occurring after any prior conviction and stemming

from a possible later prosecution and conviction. *Id.* at 81–82 (emphasis added). As *Wilkinson* held, “claims for *future* relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration)” are distant from the “core” of habeas corpus with which the *Heck* line of cases is concerned, and are not precluded by the *Heck* doctrine. *Id.* at 82.

In sum, we hold that the majority of the plaintiffs’ claims for retrospective relief are barred by *Heck*, but both Martin and Hawkes stated claims for damages to which *Heck* has no application. We further hold that *Heck* has no application to the plaintiffs’ requests for prospective injunctive relief.

C. The Eighth Amendment

At last, we turn to the merits — does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter? We hold that it does, for essentially the same reasons articulated in the now-vacated *Jones* opinion.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause “circumscribes the criminal process in three ways.” *Ingraham*, 430 U.S. at 667. First, it limits the type of punishment the government may impose; second, it proscribes punishment “grossly disproportionate” to the severity of the crime; and third, it places substantive limits on what the government may criminalize. *Id.* It is the third limitation that is pertinent here.

“Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.” *Robinson v. California*, 370 U.S. 660, 667 (1962). Cases construing substantive limits as to what the government may criminalize are rare, however, and for good reason — the Cruel and Unusual Punishments Clause’s third limitation is “one to be applied sparingly.” *Ingraham*, 430 U.S. at 667.

Robinson, the seminal case in this branch of Eighth Amendment jurisprudence, held a California statute that “ma[de] the ‘status’ of narcotic addiction a criminal offense” invalid under the Cruel and Unusual Punishments Clause. 370 U.S. at 666. The California law at issue in *Robinson* was “not one which punishe[d] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration”; it punished addiction itself. *Id.* Recognizing narcotics addiction as an illness or disease — “apparently an illness which may be contracted innocently or involuntarily” — and observing that a “law which made a criminal offense of . . . a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment,” *Robinson* held the challenged statute a violation of the Eighth Amendment. *Id.* at 666–67.

As *Jones* observed, *Robinson* did not explain at length the principles underpinning its holding. *See Jones*, 444 F.3d at 1133. In *Powell v. Texas*, 392 U.S. 514 (1968), however, the Court elaborated on the principle first articulated in *Robinson*.

Powell concerned the constitutionality of a Texas law making public drunkenness a criminal offense. Justice Marshall, writing for a plurality of the Court, distinguished the Texas statute from the law at issue in *Robinson* on the

ground that the Texas statute made criminal not alcoholism but *conduct* — appearing in public while intoxicated. “[A]ppellant was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in *Robinson*; nor has it attempted to regulate appellant’s behavior in the privacy of his own home.” *Id.* at 532 (plurality opinion).

The *Powell* plurality opinion went on to interpret *Robinson* as precluding only the criminalization of “status,” not of “involuntary” conduct. “The entire thrust of *Robinson*’s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’” *Id.* at 533.

Four Justices dissented from the Court’s holding in *Powell*; Justice White concurred in the result alone. Notably, Justice White noted that many chronic alcoholics are also homeless, and that for those individuals, public drunkenness may be unavoidable as a practical matter. “For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking. . . . For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans

a single act for which they may not be convicted under the Eighth Amendment — the act of getting drunk.” *Id.* at 551 (White, J., concurring in the judgment).

The four dissenting Justices adopted a position consistent with that taken by Justice White: that under *Robinson*, “criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change,” and that the defendant, “once intoxicated, . . . could not prevent himself from appearing in public places.” *Id.* at 567 (Fortas, J., dissenting). Thus, five Justices gleaned from *Robinson* the principle that “that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” *Jones*, 444 F.3d at 1135; *see also United States v. Roberston*, 875 F.3d 1281, 1291 (9th Cir. 2017).

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As *Jones* reasoned, “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.” *Jones*, 444 F.3d at 1136. Moreover, any “conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.” *Id.* As a result, just as the state may not criminalize the state of being “homeless in public places,” the state may not “criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” *Id.* at 1137.

Our holding is a narrow one. Like the *Jones* panel, “we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.” *Id.* at 1138. We hold only 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.” *Id.* That is, 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.⁸

We are not alone in reaching this conclusion. As one court has observed, “resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. . . . As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively

⁸ Naturally, our holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. *See Jones*, 444 F.3d at 1123. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. *Id.* at 1136.

punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); *see also Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (holding that a “sleeping in public ordinance as applied against the homeless is unconstitutional”), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995).⁹

Here, the two ordinances criminalize the simple act of sleeping outside on public property, whether bare or with a blanket or other basic bedding. The Disorderly Conduct Ordinance, on its face, criminalizes “[o]ccupying, lodging, or sleeping in *any* building, structure or place, whether public or private” without permission. Boise City Code § 6-01-05. Its scope is just as sweeping as the Los Angeles ordinance at issue in *Jones*, which mandated that “[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way.” 444 F.3d at 1123.

The Camping Ordinance criminalizes using “any of the streets, sidewalks, parks or public places as a camping place

⁹ In *Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000), the Eleventh Circuit upheld an anti-camping ordinance similar to Boise’s against an Eighth Amendment challenge. In *Joel*, however, the defendants presented unrefuted evidence that the homeless shelters in the City of Orlando had never reached capacity and that the plaintiffs had always enjoyed access to shelter space. *Id.* Those unrefuted facts were critical to the court’s holding. *Id.* As discussed below, the plaintiffs here have demonstrated a genuine issue of material fact concerning whether they have been denied access to shelter in the past or expect to be so denied in the future. *Joel* therefore does not provide persuasive guidance for this case.

at any time.” Boise City Code § 9-10-02. The ordinance defines “camping” broadly:

The term “camp” or “camping” shall mean the use of public property as a temporary or permanent place of dwelling, lodging, or residence, or as a living accommodation at anytime between sunset and sunrise, or as a sojourn. Indicia of camping may include, but are not limited to, storage of personal belongings, using tents or other temporary structures for sleeping or storage of personal belongings, carrying on cooking activities or making any fire in an unauthorized area, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping).

Id. It appears from the record that the Camping Ordinance is frequently enforced against homeless individuals with some elementary bedding, whether or not any of the other listed indicia of “camping” — the erection of temporary structures, the activity of cooking or making fire, or the storage of personal property — are present. For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.” The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the

elements. We conclude that a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.

III. Conclusion

For the foregoing reasons, we **AFFIRM** the judgment of the district court as to the plaintiffs' requests for retrospective relief, except as such claims relate to Hawkes's July 2007 citation under the Camping Ordinance and Martin's April 2009 citation under the Disorderly Conduct Ordinance. We **REVERSE** and **REMAND** with respect to the plaintiffs' requests for prospective relief, both declaratory and injunctive, and to the plaintiffs' claims for retrospective relief insofar as they relate to Hawkes' July 2007 citation or Martin's April 2009 citation.¹⁰

¹⁰ Costs shall be awarded to the plaintiffs.

OWENS, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994), bars the plaintiffs' 42 U.S.C. § 1983 claims for damages that are based on convictions that have not been challenged on direct appeal or invalidated in state post-conviction relief. See *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1192 n.12 (9th Cir. 2015).

I also agree that *Heck* and its progeny have no application where there is no "conviction or sentence" that would be undermined by granting a plaintiff's request for relief under § 1983. *Heck*, 512 U.S. at 486–87; see also *Wallace v. Kato*, 549 U.S. 384, 393 (2007). I therefore concur in the majority's conclusion that *Heck* does not bar plaintiffs Robert Martin and Pamela Hawkes from seeking retrospective relief for the two instances in which they received citations, but not convictions. I also concur in the majority's Eighth Amendment analysis as to those two claims for retrospective relief.

Where I part ways with the majority is in my understanding of *Heck*'s application to the plaintiffs' claims for declaratory and injunctive relief. In *Wilkinson v. Dotson*, 544 U.S. 74 (2005), the Supreme Court explained where the *Heck* doctrine stands today:

[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action

would necessarily demonstrate the invalidity of confinement or its duration.

Id. at 81–82. Here, the majority acknowledges this language in *Wilkinson*, but concludes that *Heck*'s bar on any type of relief that “would necessarily demonstrate the invalidity of confinement” does not preclude the prospective claims at issue. The majority reasons that the purpose of *Heck* is “to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge,” and so concludes that the plaintiffs’ prospective claims may proceed. I respectfully disagree.

A declaration that the city ordinances are unconstitutional and an injunction against their future enforcement necessarily demonstrate the invalidity of the plaintiffs’ prior convictions. Indeed, any time an individual challenges the constitutionality of a substantive criminal statute under which he has been convicted, he asks for a judgment that would necessarily demonstrate the invalidity of his conviction. And though neither the Supreme Court nor this court has squarely addressed *Heck*'s application to § 1983 claims challenging the constitutionality of a substantive criminal statute, I believe *Edwards v. Balisok*, 520 U.S. 641 (1997), makes clear that *Heck* prohibits such challenges. In *Edwards*, the Supreme Court explained that although our court had recognized that *Heck* barred § 1983 claims challenging the validity of a prisoner’s confinement “as a substantive matter,” it improperly distinguished as not *Heck*-barred *all* claims alleging only procedural violations. 520 U.S. at 645. In holding that *Heck* also barred those procedural claims that would necessarily imply the invalidity of a conviction, the Court did not question our conclusion that claims challenging a conviction “as a substantive matter” are barred by *Heck*.

Id.; see also *Wilkinson*, 544 U.S. at 82 (holding that the plaintiffs’ claims could proceed because the relief requested would only “render invalid the state *procedures*” and “a favorable judgment [would] not ‘necessarily imply the invalidity of [their] conviction[s] or sentence[s]’” (emphasis added) (quoting *Heck*, 512 U.S. at 487)).

Edwards thus leads me to conclude that an individual who was convicted under a criminal statute, but who did not challenge the constitutionality of the statute at the time of his conviction through direct appeal or post-conviction relief, cannot do so in the first instance by seeking declaratory or injunctive relief under § 1983. See *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm’rs*, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005) (assuming that a §1983 claim challenging “the constitutionality of the ordinance under which [the petitioner was convicted]” would be *Heck*-barred). I therefore would hold that *Heck* bars the plaintiffs’ claims for declaratory and injunctive relief.

We are not the first court to struggle applying *Heck* to “real life examples,” nor will we be the last. See, e.g., *Spencer v. Kemna*, 523 U.S. 1, 21 (1998) (Ginsburg, J., concurring) (alterations and internal quotation marks omitted) (explaining that her thoughts on *Heck* had changed since she joined the majority opinion in that case). If the slate were blank, I would agree that the majority’s holding as to prospective relief makes good sense. But because I read *Heck* and its progeny differently, I dissent as to that section of the majority’s opinion. I otherwise join the majority in full.