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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SEAN GEARY, LINDA MILES, JARED CARR,
HARRY BODE, STEPHEN SANDERS, and all
others similarly situated,

Plaintiffs,

v.

CITY OF PACIFICA,

Defendant.

Case No. 3:21-cv-01780-VC

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM OF POINTS OF
AUTHORITY IN SUPPORT
THEREOF**

JUDGE VINCE CHHABRIA

DATE: May 27, 2021

TIME: 2pm

PLACE: SAN FRANCISCO – VIRTUAL
CONFERENCE

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

NOTICE OF MOTION AND MOTION..... 1

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. Introduction 1

II. Statement of Facts..... 2

 A. Pacifica’s affordable housing shortage forces residents who cannot afford fixed housing to shelter in RVs and other vehicles. 2

 B. Rather than assist its vehicularly housed population, the City enacted the OSV Ban to expel them..... 4

 C. Plaintiffs face escalating and irreparable harm from the OSV Ban’s excessive fines and the threat of criminal prosecution and towing..... 8

 D. The City’s confusing, inconsistent, and contradictory signage and enforcement continue to harm Plaintiffs..... 10

III. Legal Standard 13

IV. Argument..... 14

 A. Plaintiffs are likely to succeed on the merits of their claims. 14

 1. The OSV Ordinance—which imposes criminal penalties on Pacifica residents who have no other options for shelter—violates the 8th Amendment 14

 2. The OSV Ordinance—which prevents Plaintiffs from staying in or visiting Pacifica—violates Plaintiffs’ fundamental right to free movement and travel. 16

 3. The OSV Ordinance—which provides for arbitrary and discriminatory enforcement and fails to provide fair notice—is unconstitutionally vague.... 19

 B. In the absence of an injunction, Plaintiffs are likely to suffer irreparable harm. 23

 C. The balance of equities favors Plaintiffs. 23

 D. Plaintiffs should not be required to post bond. 24

V. Conclusion..... 25

TABLE OF AUTHORITIES

Cases

Babbitt v. United Farm Workers Nat. Union,
442 U.S. 289 (1979).....23

Barahona-Gomez v. Reno,
167 F.3d 1228 (9th Cir. 1999).....25

Blake v. City of Grants Pass,
No. 1:18-CV-01823-CL, 2020 WL 4209227 (D. Or. July 22, 2020).....15

Bloom v. City of San Diego,
No. 17-cv-23-24-AJB-NLS, 2018 WL 9539239 (S.D. Cal. Aug. 21, 2018)..... 22, 24

California Teachers Ass’n v. State of California,
20 Cal. 4th 327 (1999).....20

Chicago v. Morales,
527 U.S. 41 (1999).....16, 20, 21

Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.,
598 F.3d 30 (2d Cir. 2010)14

Colautti v. Franklin,
439 U.S. 379 (1979).....20

Colin ex rel. Colin v. Orange Unified Sch. Dist.,
83 F. Supp. 2d 1135 (C.D. Cal. 2000).....25

Desertrain v. City of Los Angeles,
754 F.3d 1147 (9th Cir. 2014)..... 22, 23

Drakes Bay Oyster Co. v. Jewell,
747 F.3d 1073 (9th Cir. 2014).....23

Elrod v. Burns,
427 U.S. 347 (1976).....23

F.C.C. v. Fox Television Stations, Inc.,
132 S. Ct. 2307 (2012).....20, 21, 22

Foti v. City of Menlo Park,
146 F.3d 629 (9th Cir. 1998).....18

Golden Gate Rest. Ass’n v. City & Cty. of San Francisco,
512 F.3d 1112 (9th Cir. 2008).....13

Grayned v. City of Rockford,
408 U.S. 104 (1972)..... 20, 21

Hernandez v. Sessions,
872 F.3d 976 (9th Cir. 2017).....14

In re Marriage of Fingert,
221 Cal. App. 3d 1575, (Ct. App. 1990).....17

In re White,
97 Cal. App. 3d 141 (Ct. App. 1979).....16

Jeremiah v. Sutter County,
No. 2:18-cv-00522-TLN-KJN, 2018 WL 1367541 (E.D. Cal. Mar. 16, 2018)24

Johnson v. Couturier,
572 F.3d 1067 (9th Cir. 2009).....25

Justin v. City of Los Angeles,
No. CV0012352LGNAIJX, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000).....24

Kincaid v. City of Fresno,
No. 1:06-cv-1445 OWW SMS, 2006 WL 354273224

King v. New Rochelle Mun. Housing Authority,
442 F.2d 646 (2d Cir. 1971)17

Kolender v. Lawson,
461 U.S. 352 (1983)..... 20, 21

Lavan v. City of Los Angeles,
797 F. Supp. 2d 1005 (C.D. Cal. 2011)24

Lopez v. Brewer,
680 F.3d 1068 (9th Cir. 2012).....13

Martin v. Boise,
920 F.3d 584 (9th Cir. 2019).....passim

McLaughlin v. State of Florida,
379 U.S. 184 (1964).....17

Melendres v. Arpaio,
695 F.3d. 990 (9th Cir. 2012)..... 23, 24

Mem'l Hosp. v. Maricopa Cty.,
415 U.S. 250 (1974).....17, 18, 19

Metromedia, Inc. v. City of San Diego,
453 U.S. 490 (1981).....18

Mitchell v. City of Los Angeles,
No. CV1601750SJOGJSX, 2016 WL 11519288 (C.D. Cal. Apr. 13, 2016)24

Mitchell v. Cuomo,
748 F.2d 804 (2d. Cir. 1984).....23

Moore v. City of E. Cleveland, Ohio,
431 U.S. 494 (1977).....16

Nunez v. City of San Diego,
114 F.3d 935 (9th Cir 1997)..... 16, 17

Papachristou v. City of Jacksonville,
405 U.S. 156 (1972) 20, 22

Planned Parenthood of Se. Pennsylvania v. Casey,
505 U.S. 833 (1992)20

Plyler v. Doe,
457 U.S. 20217

Reno v. Flores,
507 U.S. 292 (1993)16

Saenz v. Roe,
526 U.S. 489 (1999)19

Scherr v. Volpe,
466 F.2d 1027 (7th Cir. 1972)25

Shapiro v. Thompson,
394 U.S. 618 (1969)18

the Wild Rockies v. Cottrell,
632 F.3d 1127 (9th Cir. 2011) 13, 14

Trump v. Int’l Refugee Assistance Project,
137 S. Ct. 2080 (2017)13

U.S. v. Wheeler,
254 U.S. 281 (1920)16

Varney & Green v. Williams,
155 Cal. 318, 100 P. 867 (1909)18

Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,
455 U.S. 489 (1982)20

Washington v. Glucksberg,
521 U.S. 702 (1997)16

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008)13

Winters v. New York,
333 U.S. 507 (1948)20

Youth Justice Coal. v. City of Los Angeles,
264 F. Supp. 3d 1057 (C.D. Cal. 2017)25

Statutes

Cal. Gov’t Code § 655823

Rules

Fed. R. Civ. P. 65 1

Other Authorities

Civ. L.R. 651

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 27, 2021, at 2:00 p.m., or as soon thereafter as Plaintiffs may be heard, Plaintiffs Sean Geary, Linda Miles, Jared Carr, Harry Bode, and Stephen Sanders, on behalf of themselves and the putative class described herein, (collectively, “Plaintiffs”) will and hereby respectfully do move the Court for entry of an order preliminarily enjoining Defendant City of Pacifica (the “City”) from enforcing Pacifica Ordinance No. 855-C.S. (the “OSV Ordinance”) along with Pacifica Municipal Code (“PMC”) Sections 4-7.1204 & 4-7.1205 which were created or amended by the OSV Ordinance (the “OSV Ban”).

Plaintiffs seek an injunction requiring the City to immediately cease enforcement of the OSV Ban. The requested injunction would prohibit the City from ticketing Plaintiffs under the OSV Ban, prosecuting Plaintiffs for any infraction or misdemeanor criminal charge for prior or new violations of the OSV Ban; collecting fines for tickets previously issued under the OSV Ban or adding additional fines or fees for prior violations of the OSV Ban; referring uncollected tickets previously issued under the OSV Ban to the California Department of Motor Vehicles for collection or prosecution; or impounding, encumbering, or towing Plaintiffs’ vehicles as a result of, or partly due to, one or more tickets under the OSV Ban.

This motion is brought pursuant to Fed. R. Civ. P. 65(a) and Civil L.R. 65-2 and is based upon this Notice of Motion, Motion, and Memorandum and Points of Authorities; the accompanying Declarations of Sean Geary, Linda Miles, Jared Carr, Harry Bode, Stephen Sanders, Suzanne Moore, James O’Shea, and Grayce Zelphin; the pleadings and papers on file; any subsequent briefing; and any evidence and oral argument that may be requested or permitted by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Faced with a dire shortage of affordable housing, the City has decided, instead of trying to solve its housing crisis, to punish and banish those who have lost fixed housing and who have been relegated to living in vehicles. In December 2019, the City enacted an “oversized vehicle” (“OSV”) Ordinance under the guise of addressing traffic safety. However, both the public record and

language of the OSV Ordinance reveal its real purpose was to address City residents' complaints about aesthetics and "blight." In September 2020, the City began enforcing the OSV Ban. As a result, Plaintiffs—who are current or former Pacifica residents compelled to live in their recreational vehicles ("RVs") because they cannot afford fixed housing in the City—face banishment, crushing debt, and the loss of supportive services, family connections, and proximity to employment. This is because the OSV Ban effectively bars vehicularly housed residents of Pacifica from parking their vehicles on any public street in the City. Faced with unpayable and escalating parking fines, coupled with the threat of imprisonment, towing, and impoundment of their only source of shelter (and often their only form of transportation), Plaintiffs are being unlawfully forced out of town.

The OSV Ordinance violates numerous federal and state constitutional guarantees and has a particularly insidious impact on people with disabilities. Its continuing enforcement threatens Plaintiffs with irreparable harm by forcing them to choose between (1) staying in Pacifica and facing financial ruin, imprisonment, and loss of shelter; or (2) being exiled from Pacifica and losing their jobs, their community, and their support networks. For Plaintiffs, the stakes are dire. On the other hand, the City will suffer no harm from an injunction, which would simply suspend enforcement of a law that until recently did not exist. Plaintiffs respectfully urge the Court to vindicate their constitutional rights and protect them from irreparable harm by issuing a preliminary injunction prohibiting the enforcement of the OSV Ban until the time of trial.

II. Statement of Facts

A. Pacifica's affordable housing shortage forces residents who cannot afford fixed housing to shelter in RVs and other vehicles.

For decades, the City has resisted efforts to increase housing density or build affordable housing, despite being aware of the urgent need for such development. Declaration of Grayce Zelphin in Support of Plaintiffs' Motion for Preliminary Injunction ("Zelphin Decl.") Ex. A at 26 (Pacifica Housing Element Report 2015-2023 ("PHER")).¹ As a consequence, rental housing is

¹ A municipality is required to develop a "Housing Element" as part of the community's general plan. Cal. Gov't Code § 65582(f). The purpose of the Housing Element is to describe the "goals and policies for housing and action programs which detail the steps the City can take to respond to the community's evolving housing needs." Zelphin Decl. Ex. A, at 1.

scarce, prices are high, and an enormous percentage of City residents qualify as “rent burdened” or “severely rent burdened” under Federal standards—meaning they spend thirty to forty percent or more of their income on rent, and may have difficulty paying for food, clothing, transportation, medical care, and other basic necessities. *See* Zelphin Decl. Ex. B at 1 (U.S. Dep’t of Housing & Urban Dev., *Rental Burdens: Rethinking Affordability Measures*). By the City’s own estimates, at least ninety-four percent of the City’s lowest-income renters pay an unsustainable amount of money for housing in Pacifica. Zelphin Decl. Ex. A at 26 (PHER). At the same time, there is not a single overnight shelter bed within City limits, and the City has systematically blocked all efforts to establish transitional housing within the City. *Id.* at 42; *see also* Declaration of Suzanne Moore in Support of Plaintiffs’ Motion for Preliminary Injunction (“Moore Decl.”) Ex. A at 4 (Unhoused in Pacifica Taskforce Preliminary Draft Report (“Draft Taskforce Report”)); Declaration of James O’Shea in Support of Plaintiffs’ Motion for Preliminary Injunction (“O’Shea Decl.”) ¶ 19; Declaration of Linda Miles in Support of Plaintiffs’ Motion for Preliminary Injunction (“Miles Decl.”) ¶ 12; Declaration of Sean Geary in Support of Plaintiffs’ Motion for Preliminary Injunction (“Geary Decl.”) ¶ 21; Declaration of Jared Carr in Support of Plaintiffs’ Motion for Preliminary Injunction (“Carr Decl.”) ¶ 20.² As a result, there have been as many as an estimated seventy-five inhabited RVs in Pacifica at any one time. Zelphin Decl. Ex. M at 12 (12/9/19 Pacifica City Council Meeting Minutes).³ Plaintiffs and many others have been forced to seek shelter in RVs and other “oversize vehicles.” Geary Decl. ¶ 21; Miles Decl. ¶ 12; Carr Decl. ¶ 20; Declaration of Stephen Sanders in Support of Plaintiffs’ Motion for Preliminary Injunction (“Sanders Decl.”) ¶ 3; Declaration of Harry Bode in Support of Plaintiffs’ Motion for Preliminary Injunction (“Bode

² The City’s actions come at a time when houselessness is increasing dramatically in California (6.8% increase between 2019 and 2020). Before the pandemic, HUD found, of the estimated 161,548 houseless people in California, 70.4% were unsheltered, meaning their primary nighttime location was somewhere not designated for, or ordinarily used as, a regular sleeping accommodation for people, including streets or vehicles. This is the highest rate of unsheltered houseless people in the country. *See* U.S. Dep’t of Housing & Urban Dev., *The 2020 Annual Assessment Report (AHAR) to Congress*, at 3, 11, 81 (Jan. 2021), *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

³ Hereinafter Pacifica City Council Meeting Minutes are referred to as “Minutes.”

Decl.)) ¶ 2; Zelphin Decl. Ex. A at 42 (PHER); Moore Decl. Ex. A at 4 (Draft Taskforce Report); O’Shea Decl. ¶ 19.

B. Rather than assist its vehicularly housed population, the City enacted the OSV Ban to expel them.

Since 1987, the City has maintained a law that criminalizes the act of sleeping or being in a vehicle overnight by making it unlawful for any person to occupy a vehicle within the City between the hours of 10:00 p.m. and 6:00 a.m., “except where such use occurs lawfully in areas officially designated for such purposes by the City.” *See* Zelphin Decl. Ex. C (PMC § 4-7.1114). Successive convictions under this “Human Habitation Ban” result in an escalating series of fines, and a fourth conviction within a 12-month period can be charged as a criminal misdemeanor, punishable by up to six months of imprisonment. *Id.*; *see also* PMC §§ 1-2.01(c),(f).

Beginning in 2018, due partly to concerns expressed by City staff that the Human Habitation Ban might be unconstitutionally vague, the City Council sought other means to ban vehicularly housed persons from the City. *See* Zelphin Decl. Ex. D at 2 (7/9/18 Pacifica City Council Summary Report).⁴ The City Council held a meeting to discuss “Homelessness/Recreational Vehicle Issues.” *See* Zelphin Decl. Ex. E. at 6 (Excerpt of 7/9/18 Minutes). During the “public comment” section of the meeting, residents’ complaints focused on trash and waste disposal and the undesirability of RV housed individuals. *Id.* at 8-10. Citing these complaints made by housed residents about an increase in the number of RVs parked on City streets, then-Mayor John Keener told City staff he felt the City might have to outlaw RV parking on all City streets 24 hours a day to address the “RV Problem.” *Id.* at 11. However, he also noted that to pass such a law, the City would “have to have a designated area for...homeless people in RVs.” *Id.*

At the February 11, 2019 City Council meeting, City staff presented a proposed ordinance that called for an explicit ban on all RV parking on City streets. *See* Zelphin Decl. Ex. F (2/11/19

⁴ Prior to the July 9, 2018 Pacifica City Council meeting, City staff informed councilmembers that ordinances prohibiting the “human habitation” of vehicles parked on public streets were “an area of law that is still in flux” as “there have been recent decisions which both struck down and upheld ordinances which prohibited use of a vehicle as living quarters” and, as a result, the City “would want to assure that legal review of any future amendments comply with current law.” Zelphin Decl. Ex. D at 2 (7/9/2018 Pacifica City Council Summary Report).

Agenda Summary Report). At that meeting, members of the community who had lost permanent housing and were living in RVs argued against the ban, explaining the devastating impacts it would have on them. *See* Zelphin Decl. Ex. G at 4-10 (2/11/19 Minutes). While some members of the City Council advocated emotionally for a solution that would acknowledge the plight of their vehicularly housed neighbors, other members discussed RV parking in terms of “quality of life” in Pacifica, the cost of a “dump station,” and “visual blight.” *Id.* at 17-18, 19-20. Then-Mayor and current City Council member Sue Vaterlaus raised the question of whether “they would allow someone to sleep in their driveway in an RV” and expressed that “[s]he wasn’t sure the City Manager should have to look into the safe parking program” because “other compassionate people in our community could come up with that.” *Id.* at 19.

Subsequent City emails and communications reflected a similar anti-unhoused motive underlying the proposed ban on OSV parking. In April 2019, in response to a plea that people housed in vehicles should not be “push[ed] out” of Pacifica, Councilmember Mike O’Neill responded: “I feel we should try to help those individuals on hard times however **I will not let the City become a RV haven.**” *See* Zelphin Decl. Ex. I (4/17/19 O’Neill email) (emphasis added). In response to a November 2019 email from a Pacifica resident concerned the City Council was rushing to enact a law targeting “the RV situation,” Mayor Vaterlaus stated: “We have a task force [to consider these issues] but there is no plan. **They [the vehicularly housed] are multiplying and making more messes.**” *See* Zelphin Decl. Ex. J (11/1/19 Vaterlaus email) (emphasis added).

In preparation for a November 12, 2019 meeting, the City Manager issued a City Council report for the City Council, summarizing the background of the City’s “RV Problem” and suggesting a pretextual basis for any legislation. Zelphin Decl. Ex. K (11/12/2019 Agenda Summary Report). Describing an increase in resident complaints concerning RVs, the report stated: “[m]ost complaints surround parking for extended periods of time in a neighborhood, littering complaints, as well as several complaints of illegally dumping human waste from motorhome tanks.” *Id.* at 2. There was no mention of any complaints related to traffic safety. *Id.* Nonetheless, noting the recent decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019) and referencing a new policy in the City of Mountain View, the report urged that “ordinances drafted by cities should be mindful of the holding

in *Martin* and **should be justified based on specific health and safety concerns** which are caused by the location and duration of parked motorhomes.” *Id.* at 3 (emphasis added). At the City Council meeting, Police Chief Dan Steidle stated outright: “[T]he City of Mountain View adopted ordinances prohibiting oversized vehicle parking...These ordinances were adopted focusing on certain health and safety concerns. Any Pacifica ordinance considered now or in the future should also focus on these concerns given the recent 9th Circuit Court of Appeals decision, the *Martin* versus Boise decision.” Zelphin Decl. ¶ 13 at 2:30:00 (Video of 11/12/19 City Council Meeting). The Assistant City Attorney observed that Council members had “indicated that they have health and safety concerns,” but cited no studies or evidence supporting those concerns; Mayor Pro Tem Martin responded that nearly all of these concerns were “pure conjecture.” Zelphin Decl. Ex. L at 40-41 (Excerpt of 11/12/19 Minutes). In response to a comprehensive request under the California Public Records Act for “all documents and materials related to the enactment of the Pacifica OSV Ban,” the City did not produce a single document citing a traffic accident or injury attributable to the parking of an OSV. Zelphin Decl. ¶ 21.

On December 9, 2019, the City met again and discussed the proposed ordinance. Zelphin Decl. Ex. M at 27 (12/9/2019 Minutes). Councilmember O’Neill conceded that the proposed OSV Ban was being considered because “there is a large segment of the community that is not happy, is fed up, and wants something done...People are angry and [the City Council] need[s] to address that.” *Id.* at 27. Council members made clear that the City Council only wanted to give “the opportunity to potentially park” RVs on Pacifica’s public streets to residents who were “happily in unison with their neighbors”—that is, homeowners or renters who could afford both fixed housing and RVs. *Id.* at 26.

Mayor Pro Tem Martin tried in vain to encourage the City to wait and pass a more humane version that would include a “safe parking” option for RV residents. Responding to a statement by the City Attorney that the proposed ordinance was “not a ban” but was “solely related to traffic concerns,” Ms. Martin dismissed these purported rationales as “attorney speak,” concluding that “the lay person sees it as a ban on vehicle of such size and parking, and it is 24 hours.” *Id.*

On December 9, 2019, the City passed the OSV Ordinance, which amended the PMC's traffic laws relating to OSVs. Zelphin Decl. Ex. N (Ordinance No. 855-C.S.). The OSV Ordinance's preamble, while alluding generally to "public safety hazards" and "public health risks," cites no evidence for the existence of such risks but concedes that: "the City has experienced a significant increase in the number of oversized vehicles" parked on City streets and that "significant City resources have been expended to address complaints" related to OSV parking. *Id.* at 1. Under the OSV Ordinance it is unlawful to park or leave standing an "oversized vehicle" on any road less than 40 feet wide, or any other streets that "have width constraints which cause the street to be unsafe for traffic," as determined by either the City Council or the City's Traffic Engineer. PMC § 4-7.1205(a)(1). The OSV Ordinance does not apply equally to all "oversized vehicles." Delivery and construction vehicles enjoy exemptions, and persons who reside in fixed housing may park their RVs "at or near their residence" for up to 36 hours. PMC §§ 4-7.1205(b), 4-7.1206. The OSV Ordinance also makes it unlawful to park or leave standing any oversized vehicle within one hundred feet of any uncontrolled intersection, or on public streets where parking of such a vehicle "encroaches upon an identified bicycle lane with defined boundaries." PMC § 4-7.1205(a)(2),(3). Finally, the OSV Ordinance affirms that the Traffic Engineer has unlimited authority to prohibit oversized vehicle parking "on public streets where such parking, in her or his professional opinion, would interfere with **aesthetics, ocean views**, parking, traffic, or otherwise create a safety concern." PMC § 4-7.1204(b) (emphasis added).

A single violation of the OSV Ordinance is an infraction punishable by a fine of \$100; a second violation is punishable by a fine of \$200; and subsequent violations are punishable by fines of \$500 each. PMC §§ 4-7.1205(c), 1-2.01(a), (b), (d). Each separate day of unlawful parking constitutes a separate offense, and a violation beyond the third offense within a twelve-month period can be charged as a misdemeanor punishable by a fine of \$1,000 and imprisonment for up to six months. PMC § 1-2.01(c), (f). After five or more unpaid tickets, a cited vehicle can be towed—meaning its occupants would lose their only home. Cal. Vehic. Code § 22651(i)(1); *see also* PMC § 1-2.01(g) (allowing for summary "abatement" of conditions that exist in violation of City law).

The City compounded the cruelty of the OSV Ordinance by refusing to create any “safe parking” program despite having created a task force to study the possible adoption of such a program. *See* Moore Decl. ¶¶ 6-13. At a July 15, 2020 City Council meeting devoted to a proposed “safe parking” program, Assistant City Attorney Bazzano warned Councilmembers that while a complete OSV parking ban “could be considered criminalization of conduct that is an unavoidable consequence of being homeless...one way to avoid such a challenge would be to create a program [...] which would allow some parking options for homeless individuals.” Zelfin Decl. Ex. O at 34 (7/15/20 Minutes). Councilmember O’Neill responded, however, that the City had “passed the oversized vehicle ordinance to not park here,” and if “someone still stays in Pacifica,” a permitted safe parking option would simply “reward” them for that behavior. *Id.* at 36.

The City discussed a safe parking program for the last time on September 14, 2020, and once again rejected all iterations of a safe parking program, including the options of using private parking and parking at churches. Moore Decl. ¶¶ 10-12. At the end of the discussion, City Manager Woodhouse summed up the councilmembers’ unanimous decision: “[The City] will not be moving anything forward through the Planning Commission regarding an ordinance for this permit parking.” Zelfin Decl. Ex. P at 30 (9/14/20 Minutes).

C. Plaintiffs face escalating and irreparable harm from the OSV Ban’s excessive fines and the threat of criminal prosecution and towing.

The day after the September 14, 2020 City Council meeting, the City began to enforce the OSV Ban aggressively. Within one week it issued fifty-three citations and imposed over \$4,000 in fines on Plaintiffs and other impoverished residents. Zelfin Decl. ¶ 19, Ex. S (ordinance citations). The continuing enforcement of the OSV Ban has inflicted ongoing damage to Plaintiffs’ vulnerable livelihoods, mental health, and safety as they live with a daily threat of losing their homes and being consumed by irrecoverable debt simply for trying to remain in Pacifica.

Plaintiffs in this case all have longstanding roots in Pacifica. Plaintiffs Linda Miles and Harry Bode grew up in Pacifica, and Mr. Bode has lived there for his entire life. Miles Decl. ¶¶ 1, 14; Bode Decl. ¶ 2. Mr. Geary has spent much of his life in Pacifica’s Rockaway Beach neighborhood and was married on the Rockaway Beach. Geary Decl. ¶¶ 2, 25. Plaintiff Miles’s son, daughter-in-law, and

three grandchildren all live in town, which is one of the main reasons she tries to return frequently. Miles Decl. ¶ 4. Plaintiff Stephen Sanders has similarly lived in Pacifica for most of his life. Sanders Decl. ¶ 2. Plaintiff Jared Carr has several friends in town, and works in construction, helping build and renovate the very houses in which he cannot currently afford to live. Carr Decl. ¶¶ 2-3, 23. Despite Plaintiffs' desire to remain in Pacifica, their lack of financial means prevents them from affording fixed housing in the City. Carr Decl. ¶ 3; Bode Decl. ¶ 5; Geary Decl. ¶ 6; Miles Decl. ¶¶ 2, 9; Sanders Decl. ¶¶ 3-4. Each has been pushed out of apartments and forced to cobble together limited resources to secure refuge in RVs or other large vehicles that have become their homes. Bode Decl. ¶ 2; Carr Decl. ¶¶ 2, 20; Geary Decl. ¶¶ 2, 4-5, 23; Miles Decl. ¶¶ 2-3; Sanders Decl. ¶ 3.

Enforcement of the OSV Ban has put Plaintiffs in dire jeopardy by threatening their homes and exacerbating their vulnerable economic situations. Plaintiff Sean Geary has received at least five tickets since the OSV Ordinance went into effect. Geary Decl. ¶¶ 9-11, 17, Ex. C-E, P (citations). He constantly worries he will receive further tickets, fines, and other penalties, including misdemeanor charges, or the possibility that the RV, which is his only home, will be towed. *Id.* ¶¶ 20-21. Plaintiff Linda Miles has received at least one warning notice for an alleged violation of the OSV Ordinance, despite parking in an area where there are no signs indicating that parking of oversized vehicles was prohibited. Miles Decl. ¶ 6, Ex. B (photo of parking spot), Ex. C (warning notice). With the OSV Ban in place, she cannot visit Pacifica to see her son and grandchildren without the threat of being ticketed, towed, or criminally charged. *Id.* ¶¶ 9-11. While Plaintiff Jared Carr is staying in Pacifica, he likely will not be able to continue doing so for long. He has received at least **twenty-nine** tickets under the Ordinance and owes over \$3,800 in fines. Carr Decl. ¶ 4, Ex. A (photos of tickets), Ex. B (list of tickets). Mr. Carr already skips meals and struggles to make ends meet, and he has no way of paying the thousands of dollars he now owes to the City of Pacifica—paying one ticket would cost more than he makes in an entire day of work, when he has work. *Id.* ¶¶ 3-4, 19, 21.

Plaintiff Harry Bode has received three tickets and associated fines totaling \$283 for violating the OSV Ban since it went into effect—none of which he could afford to pay on his fixed income. Bode Decl. ¶¶ 5, 10-11, Ex. C-E (citations). Mr. Bode was required by law enforcement to move his

RV so frequently that he felt he was playing a game of musical chairs in constantly searching for a safe parking space. *Id.* ¶ 18. In January 2021, Mr. Bode contracted COVID-19 and had to shelter in isolation in his RV for three weeks while he recovered, and friends and family in Pacifica brought him food. *Id.* ¶ 16. He realized he was fortunate during this time to be living in Pacifica, where he had support and the ability to isolate in his RV rather than staying in congregate shelter where he might have infected others. *Id.*

Plaintiff Stephen Sanders—a long-time Pacifica resident—has been forced to leave Pacifica because of the OSV Ban and will be subjected to ticketing and other penalties if he returns. Sanders Decl. ¶¶ 7-10. Mr. Sanders was given confusing and contradictory information from law enforcement about where he could safely park and observed that many of the RVs parked near him were ticketed repeatedly. *Id.* The stress of living in uncertain anticipation of ticketing, coupled with periodic harassment from Pacifica residents, caused Mr. Sanders to flee to a street in San Francisco where he could park without the constant threat of the OSV Ban enforcement. *Id.*

Plaintiffs and class members have done nothing to justify Pacifica’s attempt to expel them—other than being too poor to afford the ever-increasing cost of fixed housing. By enacting and enforcing its OSV Ban, the City of Pacifica is pushing this vulnerable segment of its population, the vehicularly housed, even deeper into poverty, driving them away from family and friends, and threatening them with losing the only home they have: their RVs.

D. The City’s confusing, inconsistent, and contradictory signage and enforcement continue to harm Plaintiffs.

Plaintiffs have repeatedly attempted to comply with the OSV Ban by parking in places City documents or police officers say are permissible, but they have been ticketed in these places anyway, suggesting there is nowhere in Pacifica they can safely sleep or even be.

While the OSV Ordinance appears at first glance to regulate parking only on certain streets, the Traffic Engineer has unlimited discretion to prohibit parking impacting “ocean views” or “aesthetics,” and the OSV Ordinance has in fact created a blanket, citywide ban untethered to any traffic safety rationale. *See* PMC § 4-7.1204(b). The City has banned OSV parking on streets wider than forty feet without or that do not meet any other “safety” measurement without any

explanation. Carr Decl. ¶ 6, Ex. C (photo of Oddstad Boulevard); Zelphin Decl. ¶¶ 22-25, Ex. X (sign on Esplanade Avenue), Ex. Z (photo Esplanade Avenue), Ex. Y at 15-28 (12/9/19 City Council Summary Report, Table 1 & 2).

More confusing still, “not every prohibited street has signage” and streets where OSV parking is prohibited may change at any time without notice or updated signage.⁵ City officials have repeatedly refused to provide Plaintiffs with an accurate and consistent list of places in Pacifica where oversized vehicles may be parked. Carr Decl. ¶¶ 10-18; Bode Decl. ¶ 7; Geary Decl. ¶¶ 17-18; Sanders Decl. ¶ 6. And, while the City has posted an incomplete and byzantine list of streets where such parking is **not** allowed, Plaintiffs have repeatedly been ticketed while parked on Pacifica streets not on that list. Carr Decl. ¶ 8; Geary Decl. ¶¶ 12-15; O’Shea Decl. ¶¶ 12-14.

For example, Plaintiff Jared Carr received a ticket for violating the OSV Ban when he tried to park on Terra Nova Boulevard, a wide street which is not on the City’s list of prohibited streets. Carr Decl. ¶ 8, Ex. E (list of prohibited streets). When Mr. Carr asked a Pacifica police officer why he had been ticketed on Terra Nova, the officer told him that parking on the street was “hit or miss”—a frank admission that the City police arbitrarily ticket people living in oversize vehicles, even on streets their official pronouncements declare are “safe.” *Id.* ¶ 11. After being ticketed on Terra Nova, he moved to a nearby side street, but a police officer told him to move and that he “could park on Oddstad Boulevard without getting ticketed.” *Id.* ¶ 9. Following these instructions, Mr. Carr moved **back** to Oddstad Boulevard—and **got ticketed again**. *Id.* 9. Mr. Carr had similar conversations with other Pacifica police officers who also gave him incorrect information about where he could park without being ticketed. *Id.* ¶¶ 10-12. When he asked one officer where he could park without being ticketed, he was told the **only** place police would not ticket him was on a single small section of Oceana Boulevard between Milagra Drive and Avalon Drive—a stretch of street typically fully occupied by 3-4 other vehicles. Carr Decl. ¶ 10; *see also* Miles Decl. ¶ 10, Ex. E (photo of Oceana Boulevard).

⁵ City of Pacifica’s Oversized Vehicles Parking webpage, *available at* https://www.cityofpacific.org/depts/police/vehicles/oversized_vehicles_parking.asp (last accessed 3/26/2021); also available at Zelphin Decl., Ex. X.

Mr. Carr was also asked once to repark his vehicle by a City councilmember, who told him he could park on sections of Oddstad Boulevard, Terra Nova Boulevard, or Linda Mar Boulevard in the Linda Mar neighborhood. Carr Decl. ¶ 15. Ten minutes after this exchange, though, the councilmember sought Mr. Carr out again and told him those streets were a “trap” and not actually safe to park on. *Id.* ¶ 16. The councilmember then gave Mr. Carr a list of street sections where he could park—even though a number of these streets were on the City’s published list of prohibited streets. Carr Decl. Ex. I (list from councilmember); Zelphin Decl. Ex. T (list of prohibited streets).

Additionally, putative class member James O’Shea was told by a Pacifica police officer to repark his vehicle on Ridgeway Drive, a street not on the City’s prohibited list. O’Shea Decl. ¶ 12; Zelphin Decl. Ex. T (list of prohibited streets). When he moved his vehicle there, he was ticketed by a different Pacifica police officer. O’Shea Decl. ¶ 13, Ex. F (photo of O’Shea’s RV parked on Ridgeway Drive), Ex. G (OSV Ban ticket). When he stayed on the street after the ticket—believing the street was safe per the original officer’s guidance—he received a tow warning and was then told to move his vehicle by another officer, even though that officer admitted the street was an allowed parking street under the OSV Ordinance. *Id.* ¶¶ 12-15, Ex. H (tow warning notice). According to City records, several other people have been ticketed under the OSV Ban for parking on streets where it is theoretically allowed. Zelphin Decl. Ex. S at 88 (citation on section of Esplanade Avenue), Ex. T at 5 (Esplanade Avenue section not listed on prohibited streets list).

The City’s inconsistent signage further misleads Plaintiffs as to where parking is banned or allowed. In many instances, Pacifica placed a single sign on a street at the beginning of a neighborhood, purportedly as a means of conveying that **every** street in that neighborhood is off-limits to oversize vehicles. Carr Decl. ¶ 6, Ex. D (photo of sign at entrance to neighborhood); Zelphin Decl., Ex. U (City’s OSV parking webpage). The posted signs lack any information indicating which streets the OSV Ordinance applies to, or where parking is permitted. *Id.*; *see also* O’Shea Decl. ¶ 9, Ex. D (photo of sign at entrance to neighborhood). For instance, the nearest sign to Mr. Carr’s parking spot on Oddstad Boulevard is approximately two miles away and only reads that parking is prohibited on streets narrower than forty feet in the neighborhood. Carr Decl. ¶ 6, Ex. D (photo of sign at entrance to neighborhood). Although Mr. Carr’s parking place was on a

street section wider than forty feet, he has received thousands of dollars in ticket fines for parking there. *Id.* In other areas of the City, signs were placed on streets where, according to the Ordinance’s text, oversized vehicle parking should be allowed. This includes a straight section of Esplanade Avenue where the City has placed numerous signs prohibiting oversized vehicle parking. Zelphin Decl. ¶¶ 20-25, Ex. X (sign prohibiting OSV parking), Ex. Y, at 15-28 (12/9/19 City Council Summary Report, Table 1 & 2), Ex. Z (photo of prohibited street wider than forty feet).

III. Legal Standard

The purpose of a preliminary injunction is “to prevent irreparable injury so as to preserve [a] court’s ability to render a meaningful decision on the merits.” *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008) (citation omitted). Such interim relief is not meant “to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017) (internal citation omitted).

Plaintiffs are entitled to obtain a preliminary injunction if they can show (1) “that [they are] likely to succeed on the merits,” (2) “that [they are] likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in [their] favor,” and (4) “that an injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). These elements “must be balanced, [such] that a stronger showing of one...offset[s] a weaker showing of another.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For example, “a stronger showing of irreparable harm [...can] offset a lesser showing of likelihood of success on the merits.” *Cottrell*, 632 F.3d at 1131. Thus, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of an injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135 (internal quotation marks omitted).

This “serious questions” standard “permits a district court to grant a preliminary injunction in situations where it cannot determine with **certainty** that the moving party is more likely than not to prevail on the merits of the underlying claims, but where the costs outweigh the benefits of not

granting the injunction.” *Id.* at 1133 (quoting *Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010)) (emphasis added).⁶

IV. Argument

A. Plaintiffs are likely to succeed on the merits of their claims.

1. The OSV Ordinance—which imposes criminal penalties on Pacifica residents who have no other options for shelter—violates the 8th Amendment

“[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019), *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). “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.” *Id.* at 617. “Whether [an] ordinance is consistent with the Eighth Amendment will depend...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 617 n.8.

The holding in *Martin* applies here. Pacifica’s OSV Ordinance, like the ordinance found unconstitutional in *Martin*, punishes Plaintiffs for “lacking the means to live out the ‘universal and unavoidable consequences of being human’ in the way the ordinance prescribes.” *Id.* While the Ninth Circuit noted the presence of three non-profit homeless shelters providing emergency shelter services in Boise, *see id.* at 605, in Pacifica there are none. Nor does Pacifica have any parking lots or locations—public or private—that are “realistically available...for free” where Plaintiffs may reside without the threat of enforcement. *See id.* at 617 n.8; Moore Decl. ¶¶ 12-14. Under these circumstances, an ordinance penalizing the act of living in an RV violates the Eighth Amendment. *See Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227, at *7 (D. Or. July 22, 2020) (anti-camping ordinances violate Eighth Amendment where city “lacks adequate shelter for its

⁶ Plaintiffs seek a prohibitory, not mandatory, injunction. *See Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (an injunction that “prevents future constitutional violations [is] a classic form of prohibitory injunction”).

homeless population”). In that case, the court explicitly rejected the city’s argument that it “should be permitted to continue to punish its homeless population because Plaintiffs have the option to just leave the City...” *Id.*

As in *Martin*, Pacifica’s ordinance is not limited in scope to “particular times or...locations.” *See Martin*, 920 F.3d at 617 n.8. The OSV Ordinance prohibits Plaintiffs from parking their vehicles “at any time of the day or night.” PMC § 4-7.1205(a). And, while the ordinance may be crafted to appear as though it only regulates certain locations, it has resulted in a ban on RV parking throughout all of Pacifica. Plaintiffs’ experiences confirm there are no public streets on which they can park their homes without actual or threatened enforcement of the OSV Ordinance. *See* Section II.5 *supra*. The City, in intent and effect, has implemented legislation that penalizes Plaintiffs at all times and in all locations for simply living in public. In addition, like in *Martin*, the OSV Ban here “impos[es]...criminal penalties.” *Martin*, 920 F.3d at 616. A violation constitutes an infraction. PMC § 4-7.1205(c). The Municipal Code also provides generally that the fourth violation in any 12-month period can be charged as a misdemeanor. PMC § 1-2.01(f).

Many of the named Plaintiffs have received three or more infraction citations.⁷ Carr Decl. ¶ 4; Geary Decl. ¶ 5; Bode Decl. ¶¶ 8-11. Plaintiff Carr has received at least twenty-nine tickets. Carr Decl. ¶ 4. Plaintiffs all face a “credible risk of prosecution.” *Martin*, 920 F.3d at 610. Ordinances like Pacifica’s that criminalize “unavoidable” conduct inevitably mean repetitive enforcement and increased likelihood of mounting criminal penalties. *See, e.g., id.* at 611 n.7 (one plaintiff was charged twelve times under the same ordinance); *id.* at 589 (Berzon, J., concurring in the denial of rehearing en banc) (“People with no place to live will sleep outside if they have no alternative. Taking them to jail for a few days is both unconstitutional, for the reasons discussed in the opinion, and, in all likelihood, pointless.”). Similarly, Pacifica residents with no form of shelter other than their vehicles will continue to sleep in their vehicles if they have no alternative.

Because the OSV Ordinance lies squarely within *Martin*’s unconstitutional realm, Plaintiffs are likely to succeed on the merits of their Eighth Amendment claim against the City.

⁷ Further, “the label of crime or violation is not dispositive where the Eighth Amendment is concerned,” as the focus is whether the effect is to punish. *Blake*, 2020 WL 4209227 at *8.

2. The OSV Ordinance—which prevents Plaintiffs from staying in or visiting Pacifica—violates Plaintiffs’ fundamental right to free movement and travel.

The Fourteenth Amendment’s substantive due process protections extend to “those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition.’” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quoting *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503 (1977)). These protections “‘forbid[] the government to infringe... ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Id.* at 721 (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

The right of travel and to freedom of movement has long been recognized as a fundamental right. “In all states, from the beginning down to the adoption of the Articles of Confederation, the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the states to forbid and punish violations of this fundamental right.” *U.S. v. Wheeler*, 254 U.S. 281, 293 (1920); *see also Chicago v. Morales*, 527 U.S. 41, 51 (1999) (“an individual’s decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is a part of our heritage”); *Nunez v. City of San Diego*, 114 F.3d 935, 940 (9th Cir 1997) (striking down juvenile curfew ordinance that restricted the right to travel). California also recognizes the fundamental right to intrastate travel inherent in both the federal and state Constitutions. *See In re White*, 97 Cal. App. 3d 141, 148 (Ct. App. 1979) (“[T]he right to intrastate travel (which includes intramunicipal travel) is a basic human right protected by the United States and California Constitutions as a whole.”).

The right to move between states or choose the area or municipality in which one lives is a part of the fundamental right to travel. *King v. New Rochelle Mun. Housing Authority*, 442 F.2d 646, 648 (2d Cir. 1971) (holding that a municipal resolution imposing a five-year residency for admission to public housing burdened the fundamental right to intrastate travel). Choosing one’s home—not the exact land parcel but the place or area—has always been fundamental to American liberty. California

courts also recognize this right. *See, e.g., In re Marriage of Fingert*, 221 Cal. App. 3d 1575, 1581, (Ct. App. 1990) (“Courts cannot order individuals to move to and live in a community not of their choosing”). Here, the OSV Ban intentionally and effectively banishes people who live in their RVs or vehicles from Pacifica, infringing on their fundamental rights.

Because the right to travel is a fundamental right, the OSV Ordinance is subject to “strict scrutiny.” *Mem’l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 258 (1974) (collecting cases); *Nunez*, 114 F.3d at 946. This means that the OSV Ordinance’s restrictions can only survive if they are “precisely tailored to serve a compelling governmental interest.” *Plyler v. Doe*, 457 U.S. 202, 216-17 & n.5. This requirement is even stricter in the case of a criminal statute; an “exercise of the state police power which infringes on a constitutionally protected freedom...bears a heavy burden of justification...and will be upheld only if it is necessary, and not merely rationally related to, the accomplishment of a permissible state policy.” *McLaughlin v. State of Florida*, 379 U.S. 184, 196 (1964). “To be narrowly tailored, there must be a sufficient nexus between the stated government interest and the classification created by the ordinance.” *Nunez*, 114 F.3d at 946.

The OSV Ordinance’s history shows it was not designed to meet a compelling City interest, nor is it narrowly tailored. While the City added post-hoc rationalizations to the OSV Ordinance purporting to address traffic safety concerns, the City has never come up with any evidence that the presence of RVs in Pacifica has caused any traffic or other safety problems. Zelphin Decl. Ex. L at 40-41 (Excerpt of 11/12/19 Minutes). Instead, the record shows that the City’s motivating interests are aesthetic, which are not a compelling interest. *See* Zelphin Decl. Ex. E at 8-10 (7/9/18 Minutes), Ex. G at 17, 20 (2/11/19 Minutes), Ex. I (O’Neill 4/17/19 email), Ex. J (11/1/19 emails between Echelbarger and Vaterlaus), Ex. K at 2 (Update on Motorhomes and the Unhoused in Pacifica Report). “Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power.” *Varney & Green v. Williams*, 155 Cal. 318, 320, 100 P. 867, 868 (1909), overruled by *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848, 610 P.2d 407 (1980), reversed by *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). *See also Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th Cir. 1998), *as amended on denial of reh’g* (July 29, 1998); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 528 n.7, 530 (1981) (Brennan, J., concurring)

(“hesitat[ing] to accept the purported judgment of lawmakers that billboards are traffic hazards” because “many cities may have used the justification of traffic safety in order to sustain ordinances where their true motivation was aesthetics”).⁸

Even if the City could show the OSV Ban furthers a compelling interest such as public safety, the OSV Ordinance is not narrowly tailored. The power vested in the Traffic Engineer to ban parking for reasons of “ocean views” and “aesthetics,” and Plaintiffs’ documented experiences of being ticketed on wide streets due to neighbor complaints where their RVs created no safety hazard, show the OSV Ban is anything but “precisely tailored.”⁹ If the City had wanted a “precisely tailored” solution to traffic concerns, it could have restricted OSV parking only where safety was obviously implicated, or created a safe parking program for those who are vehicularly housed. Moore Decl. ¶¶ 9-14, Ex. A at 13-16 (Draft Taskforce Report), Ex. B (Draft Program Design—Pacifica Parking Permit Pilot). The City chose not to tailor the Ordinance in either fashion. *Id.* ¶¶ 9-14.

The right to travel implicates both the substantive due process and the equal protection guarantees of the Fourteenth Amendment where it concerns statutes or rules that distinguish between different groups or classes of people. The Supreme Court has consistently applied strict scrutiny to classifications involving the “necessities of life,” including welfare and medical care, mental health treatment, and the right to vote. *Memorial Hospital*, 415 U.S. at 258-259, 258 n.11. The Court specifically identified protecting people who receive welfare benefits from the “discomfort of

⁸ To the extent cities have been found to have even substantial, but not compelling, interests in aesthetics, it has been with respect to “visual clutter” like billboards, not the presence of **people** whom the City finds aesthetically unappealing. *Foti*, 146 F.3d at 637 (9th Cir. 1998).

⁹ In addition, the City attempted to retroactively justify the OSV Ban by citing government interest in conserving the resources it spends related to the presence of RVs, including addressing complaints about RVs, addressing discharge of environmental contaminants, and disposing of mixed waste accumulation. Privileging certain residents over others to save the City money is not a compelling state interest. *See Shapiro v. Thompson*, 394 U.S. 618, 633 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974) (“The saving of welfare costs cannot justify an otherwise invidious classification”); *see also Mem’l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 263 (1974) (“[C]onservation of the taxpayers’ purse is simply not a sufficient state interest to sustain” a classification that “severely penalizes exercise of the right” to travel.). Furthermore, the Supreme Court has counseled hesitation with respect to taking a municipality’s word regarding which measures will save or cost it money. *Mem’l Hosp. v. Maricopa Cty.*, 415 U.S. at 265 (noting that county’s belief that denying nonemergency medical care to new residents would save money “may well be illusory”).

inadequate housing” as one of the reasons strict scrutiny applies to certain classifications or durational residency requirements. *Id.* at 259. In other words, a state or municipality may not discriminate against non-residents or new residents by penalizing them or denying them access to necessities. *See id.* at 256 (“What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State’s direction.”); *Saenz v. Roe*, 526 U.S. 489 (1999) (holding that residency requirements limiting access to benefits was unconstitutional under the right to travel).

Here, the City is effectively subjecting Plaintiffs to a residency requirement because they cannot afford the ultimate signifier of residency: a permanent address. As “non-residents” in the sense of lacking a permanent address, they are both penalized and denied the life necessity of making use of the only shelter to which they have access. The OSV Ordinance penalizes Plaintiffs’ right to travel by differentiating between classes of people—those who have permanent or fixed addresses in Pacifica and those who do not—and by denying them a necessity of life, the ability to live in their home, because they fall in the latter class. Pacifica has penalized their right to travel by subjecting them to criminal penalties and possible incarceration for traveling to, and having their homes in, the City. The City makes this explicit by allowing people with permanent Pacifica addresses to obtain permits for the very same conduct that it penalizes Plaintiffs—parking an RV on a public street. *See* Zelphin Decl. Ex. U (Pacifica Website Showing Temporary OSV Parking Permit System). The OSV Ordinance should therefore be subject to strict scrutiny, which, as demonstrated above, it cannot survive.

3. The OSV Ordinance—which provides for arbitrary and discriminatory enforcement and fails to provide fair notice—is unconstitutionally vague.

As the Supreme Court stated in *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972): “laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.” In other words, a statute is unconstitutionally vague if it fails to “provide a person of ordinary intelligence fair notice of what is

prohibited;” *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012); or if it provides “no standards governing the exercise of...discretion,” such that it can be used as a “convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.”¹⁰ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 170 (1972) (internal quotation marks omitted). The OSV Ordinance fails on both counts, and must be struck down.

“The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment.” *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). Courts strike down vague statutes more readily if they impose criminal penalties, “threaten to inhibit the exercise of constitutionally protected rights,” or contain no scienter (intent) requirement.¹¹ *Id.* Because the challenged ordinance imposes criminal penalties, inhibits the fundamental constitutional right to freedom of movement, and contains no intent requirement, it is especially susceptible to facial invalidation. *See Morales*, 527 U.S. at 55 (plurality opinion); *Kolender v. Lawson*, 461 U.S. 352, 358 n. 8. (1983).

Pacifica’s OSV Ordinance fails to “provide fair notice” of where parking is prohibited, such that it serves to “trap [...] innocent” people who are doing their best to comply with the law. *See Grayned*, 408 U.S. at 108–09; *Fox Television*, 132 S. Ct. at 2317. As discussed in Section II D above,

¹⁰ Both the United States Supreme Court and the California Supreme Court evaluate facial challenges to such statutes according to a “lenient” standard—striking them down if they would be unconstitutional in a “large fraction” of applications, or in the “generality” of cases. *See e.g., Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 895 (1992) (A statute is facially unconstitutional if it violates constitutionally-protected rights in a “large fraction” of cases in which it would be applied.); *California Teachers Ass’n v. State of California*, 20 Cal. 4th 327, 347 (1999) (A statute is facially unconstitutional if it would violate due process rights in the “generality” of cases.).

¹¹ Since citizens who violate criminal statutes can lose their liberty **and** acquire the stigma of criminality, courts must ensure such laws do not serve as “trap[s] for those who act in good faith.” *Colautti v. Franklin*, 439 U.S. 379, 395 (1979). When a criminal statute is not “defined with appropriate definiteness,” contains “no ascertainable standards of guilt,” or requires “persons of ordinary intelligence” to guess at its meaning or scope, it serves as just such a trap. *Winters v. New York*, 333 U.S. 507, 515 (1948). Because the consequences of unconstitutionality are more severe in the criminal context, such statutes are more susceptible to facial invalidation. *See Morales*, 527 U.S. at 55 (plurality opinion); *Kolender*, 461 U.S. at 358 n. 8.

the City has failed to provide Plaintiffs and others with any reliable information about where they can safely park, ticketed them even when they make every effort to comply with the law (including when they park exactly where police officers tell them to), and plainly told Plaintiffs even parking on supposedly permissible streets is “hit and miss.” Carr Decl. ¶¶ 7, 9, 11; Geary Decl. ¶ 17; O’Shea Decl. ¶¶ 12-15, 17. The limited signage installed by the City regarding prohibited parking does nothing to remedy this problem or provide fair notice of where parking is prohibited: in many instances, the nearest sign is located **miles** away from where people with oversize vehicles have been ticketed. Carr Decl. ¶ 6; Miles Decl. ¶ 15; Geary Decl. ¶¶ 8, 10-11, 13-15; O’Shea Decl. ¶¶ 6, 8-9, 16-17; Sanders Decl. ¶¶ 6-7.¹²

Moreover, the City’s list of where oversize vehicle parking is not allowed is incomplete and inaccurate as evidenced by enforcing officers ticketing whoever appears to be vehicularly housed based on neighborhood complaints. As discussed in Section II D, Plaintiffs and others have repeatedly been ticketed under the Ordinance when parked on streets or sections of streets not included on the City’s list, and where, by the City’s own stated standards, parking should be permissible (such as on streets well over 40 feet wide, where there is no conceivable safety concern). Carr Decl. ¶¶ 8-9; O’Shea Decl. ¶¶ 12-15. Plaintiffs have also been told—notwithstanding the list and whatever the OSV Ordinance might say—they can only park permissibly on a single tiny stretch of the City’s streets, a “ghetto” for Pacifica residents who have been forced to live in their vehicles that is less than 400 feet long, and always full. Carr Decl. ¶ 10; Miles Decl. ¶ 10, Ex. E (Parking on Single Allowed Block).

In addition to failing to provide to “person[s] of ordinary intelligence fair notice of what is prohibited,” *Fox Television*, 132 S. Ct. at 2317, the OSV Ordinance provides no true “standards governing the exercise of...discretion,” such that it is in fact used as a “convenient tool for harsh

¹² The City’s OSV website further demonstrates the City’s lack of signage, stating that “excessive signage is avoided” and “OSV vehicle signage is posted at all City entrances, select neighborhoods that have a singular entrance with all roads designated no OSV parking, and along sections of roadway with multiple incidents of unsafe OSC parking.” *See* https://www.cityofpacific.org/depts/police/vehicles/osv_faqs/default.asp (last accessed 3/26/2021).

and discriminatory enforcement by local prosecuting officials, against particular groups”—here, houseless residents who have no choice but to live in their oversize vehicles—“deemed to merit their displeasure” or that of housed Pacificans calling with complaints. *Papachristou*, 405 U.S. at 162, 170 (internal quotation marks omitted).

As noted above, the OSV Ordinance grants Pacifica’s unelected City Traffic Engineer the power to ban parking on public streets that, in their “opinion,” would “interfere with aesthetics, ocean views, parking, traffic,” or safety in some vague way, without requiring any factual findings or imposing any true curb on this official’s discretion. PMC §§ 4-7.1204(b), 1205(a)(1).

Worse, while the OSV Ordinance is theoretically “broad enough to cover any driver” who parks their oversize vehicle on a City street, it “appears to be applied only to the homeless.” *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1156 (9th Cir. 2014); Bode Decl. ¶ 18; O’Shea Decl. ¶¶ 14-18; Sanders Decl. ¶¶ 5, 8, 13; Carr Decl. ¶¶ 5, 17, 23; Geary Decl. ¶ 25; Miles Decl. ¶¶ 14-16. In fact, the City provides a limited exemption to the OSV Ban for those who live in fixed housing and wish to park their RVs temporarily nearby. At the same time, Plaintiffs are targeted, ticketed, and harassed even when they are on streets to which the OSV Ordinance plainly should not apply. Carr Decl. ¶¶ 6-9, 15-18, 22; O’Shea Decl. ¶¶ 5, 12-15, 18. This demonstrates the OSV Ban is simply a “convenient tool” for targeting unhoused people. *See Papachristou*, 405 U.S. at 170; *see also Bloom v. City of San Diego*, No. 17-cv-23-24-AJB-NLS, 2018 WL 9539239 at *5 (S.D. Cal. Aug. 21, 2018) (enjoining ordinance because police officers could “choos[e] not to ticket” a retiree “who owns a surf van equipped with an outdoor shower, space for resting, equipment for beach dwelling such as chairs and a folding table, and coolers to store food and beverages [...] while at the same time ticketing a similar vehicle owned by [p]laintiffs or other homeless individuals”).

Because the OSV Ban fails to give Plaintiffs “fair notice” of what it prohibits and has in fact “paved the way for law enforcement to target the homeless,” this Court should find that Plaintiffs are likely to succeed on the merits of their vagueness challenge, and preliminarily enjoin the OSV Ordinance. *See Desertrain*, 754 F.3d at 1157.

B. In the absence of an injunction, Plaintiffs are likely to suffer irreparable harm.

As discussed above, the challenged OSV Ordinance violates Plaintiffs’ constitutional right to be free from cruel and unusual punishment, as well as their fundamental right to freedom of movement, and their right to due process under the Fourteenth Amendment. These are irreparable harms: “[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury’” for purposes of granting a preliminary injunction. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d. Cir. 1984) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) (internal quotation marks omitted)). This irreparable injury is also immediate, as Plaintiffs are currently being deprived of their constitutional rights under the OSV Ordinance. Carr Decl. ¶ 19; Sanders Decl. ¶ 14; *see also Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). Some Plaintiffs also already have DMV “holds” resulting from OSV Ban tickets, preventing them from renewing their registration and putting them at even greater risk of immediate towing and criminalization, and others could be subjected to a DMV hold at any time. Carr Decl. ¶ 21; O’Shea Decl. ¶ 20. Towing would cause Plaintiffs to lose their shelter and personal property, including necessary medications, and to suffer harm to their physical and mental health from being forced onto the street. Bode Decl. ¶¶ 2, 16; O’Shea Decl. ¶¶ 2-4, 17, 19-21; Sanders Decl. ¶¶ 3-4, 11-12, 14; Carr Decl. ¶¶ 2-3, 6, 20-21; Geary ¶¶ 3, 5, 7, 16, 19-21, 23; Miles Decl. ¶¶ 2-3, 9, 11-13.

C. The balance of equities favors Plaintiffs.

The balance of equities and public interest, which “merge” where the government is a party, *see, e.g., Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014), favor Plaintiffs. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. The OSV Ordinance deprives Plaintiffs of their constitutional rights, imposes criminal penalties, drives them deeper into poverty, and threatens them with the loss of the vehicles that are their homes. O’Shea Decl. ¶¶ 2-4, 17, 19-21; Sanders Decl. ¶¶ 3-4, 12, 14; Carr Decl. ¶¶ 2-3, 20-21; Geary ¶¶ 5, 7, 19-21; Miles Decl. ¶¶ 2, 12-13 It does not cost the City anything (and in fact saves hours of police officer labor) to **not** ticket RV dwellers under the OSV Ban, and the City can

demonstrate no harm to the City or the public resulting from loss of an enforcement tool it did not use as recently as six months ago. While a city may have a “discernable interest in promoting cleanliness and public health, a homeless person’s interest in their personal possessions, safety, and rights outweighs it.” *Bloom*, 2018 WL 9539239 at *7; *see also Jeremiah v. Sutter County*, No. 2:18-cv-00522-TLN-KJN, 2018 WL 1367541, at *5 (E.D. Cal. Mar. 16, 2018) (“[T]he County’s interest in cleaning up the river bottoms is outweighed by Plaintiffs’ interest in their personal property and their constitutional rights.”); *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1019 (C.D. Cal. 2011) (“[T]he City’s interest in clean streets is outweighed by Plaintiffs’ interest in maintaining the few necessary personal belongings they might have.”); *Mitchell v. City of Los Angeles*, No. CV1601750SJOJJSX, 2016 WL 11519288, at *10 (C.D. Cal. Apr. 13, 2016) (finding the additional burdens placed on the city did not outweigh plaintiffs’ threatened loss of essential personal property); *Kincaid v. City of Fresno*, No. 1:06-cv-1445 OWW SMS, 2006 WL 3542732 at *40- 41 (E.D. Cal. Dec. 6, 2006) (determining the balance of hardships weighed heavily towards homeless plaintiffs suffering harm to their dignity and security over the city’s interest in health and safety); *Justin v. City of Los Angeles*, No. CV0012352LGNAIJX, 2000 WL 1808426, at *11 (C.D. Cal. Dec. 5, 2000) (threat of civil rights violations outweighed city interest in cleanliness and safety).

Moreover, if the City is interested in promoting cleanliness and public health, there are many ways to meet those goals that do not involve impinging on the constitutional rights of Pacifica’s poorest and most vulnerable residents. Services such as dumping stations for sewage waste and trash, public showers, and provision of potable water are among the feasible and affordable options that would help address the expressed concerns by homeowners of potential sanitation issues. These options are significantly better for the public than pushing Plaintiffs out of their RVs and onto the streets, which carries a much higher risk to the public health.

D. Plaintiffs should not be required to post bond.

When issuing an injunction, this Court has complete “discretion as to the amount of security required, **if any.**” *Barabona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (emphasis added); *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). That is because the district court is in the best position to determine whether a bond is required. *Barabona-Gomez*, 167 F.3d at 1237. Where

there is little to no potential harm to the Defendant enjoined, little or no bond is needed. *See id.* Enjoining a government defendant from enforcing its policies often evinces no harm to that entity. *Id.* (enjoinment of government's immigration policy would result in minimal cost to the government). Furthermore, where public policy favors an injunction, and plaintiffs lack the means to pay a bond, the bond requirement should be waived or be nominal. *Id.* Courts have also waived the bond requirement where, when weighing the hardship to the plaintiff in making the bond versus the possible harm to the defendant in issuing the injunction, the balance of these equities weighs overwhelmingly in favor of the party seeking the injunction. *See Youth Justice Coal. v. City of Los Angeles*, 264 F. Supp. 3d 1057, 1073 (C.D. Cal. 2017) (citing precedent, and dispensing with a bond where plaintiff could not afford to pay it). Also, if plaintiffs show a strong likelihood of success on the merits, the security may be waived. *Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972); *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1151 (C.D. Cal. 2000) (waiving bond).

V. Conclusion

For the reasons stated herein, the Court should issue an injunction pending the outcome of trial in this case enjoining the City of Pacifica from enforcing its ban on oversized vehicle parking: Pacifica Ordinance 855-C.S., and associated changes and additions to Pacifica Municipal Code §§ 4-7.1204 and 4-7.1205.

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Respectfully submitted,
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