No. 24-7691

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DAVID ALLEN YESUE, JESSICA MARIE WETCH, AND SONOMA COUNTY ACTS OF KINDNESS
Plaintiffs-Appellants,

v.

CITY OF SEBASTOPOL,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California
No. 4:22-cv-06474-KAW
Hon. Kandis A. Westmore

PLAINTIFFS-APPELLANTS' OPENING BRIEF

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INTRODUCTION

The City of Sebastopol enacted an ordinance in 2022 that severely restricts people's ability to park "recreational vehicles" ("RVs") in the City. Among other restrictions, Ordinance No. 1136 (the "Ordinance") makes it unlawful to park or leave standing an RV (1) on any street that is "zoned residential" at any time; or (2) on any street that is non-residentially zoned, between 7:30 a.m. and 10:00 p.m. A person can be criminally cited and fined for violating the Ordinance—and their vehicle can be towed for a first offense, without any prior notice.

It is no secret that the Ordinance is not actually about parking—or, for that matter, recreational vehicles. Instead, the law was intended to effectively banish people who live or sleep in their vehicles. The Sebastopol City Council enacted the Ordinance after residents and merchants complained about the presence of vehicularly housed people in their neighborhoods. Many of these individuals are longtime community members who were pushed out of fixed housing due to rising costs; because Sebastopol has almost no homeless shelters, they were forced to live in their vehicles instead of living unsheltered on the streets. Although these individuals had lawfully parked in the City, other

residents complained about the "negative impact on neighborhood aesthetics." City officials also observed "an escalating tone of accusation" and "aggressive" acts against unhoused people in the community.

In response, city officials developed the Ordinance at issue here. They knew that a law that directly excluded people living in vehicles from the City would raise serious legal concerns. So they crafted an ordinance that would enable the City to reach the same result through selective enforcement. The Ordinance's restrictions, for example, apply to all "recreational vehicles," defined as *any* vehicle "designed or altered for human habitation." Nevertheless, the City's police chief testified he would not enforce the Ordinance against a parked RV "simply being used as a point of transportation"; but if the same vehicle was being used as a "point of habitation," he would. And he admitted that the Ordinance's real purpose was "to deter those who do not have an actual home on a foundation with a mailing address in the City from parking RVs there."

This Ordinance is a textbook example of an unconstitutionally vague law. It not only "authorize[s]" but was *designed* to "encourage arbitrary and discriminatory enforcement." *See City of Chicago v. Morales*, 527 U.S. 41, 56 (1999); *Desertrain v. City of Los Angeles*, 754

F.3d 1147, 1155 (9th Cir. 2014). And it fundamentally fails to "provide the kind of notice that will enable ordinary people to understand what conduct it prohibits." *See id.* In fact, Plaintiffs presented voluminous evidence—all uncontested—showing that the city officials responsible for drafting, enacting, and enforcing the Ordinance disagreed about the interpretation of its key provisions. If these officials could not understand the Ordinance's meaning, how could "ordinary people"?

Yet the district court here concluded that the Ordinance was not vague as a matter of law. To reach that conclusion, it disregarded the city officials' uncontradicted deposition testimony, which established that the law did not provide fair notice about its prohibitions. And it ignored the substantial (and undisputed) evidence showing that the City intended for the Ordinance to enable discriminatory enforcement. Instead, the court substituted its own judgment about the Ordinance's meaning by, for example, formalistically applying various linguistic canons of construction. That approach violated not only Rule 56's well-established summary-judgment standards, but also the Due Process Clause's requirement that fair notice be evaluated from the perspective of an "ordinary person." Reversal is warranted on both grounds, and this Court

should direct the district court to grant partial summary judgment on Plaintiffs' void-for-vagueness claim.

Nor were the district court's errors limited to its analysis of Plaintiffs' vagueness claim. Throughout its summary-judgment order, the court consistently dismissed Plaintiffs' undisputed evidence and drew factual inferences in the City's favor. This systemic error was enabled by the court's mistaken adoption of an impossibly high standard for facial constitutional challenges. The court observed that under *United States v. Salerno*, 481 U.S. 739, 745 (1987), a plaintiff asserting a facial challenge must establish that "no set of circumstances exists" under which the law could be validly applied. But the Supreme Court has since clarified *Salerno,* holding that "the proper focus of the constitutional inquiry" in facial challenges must be the applications "that the law actually authorizes, not those for which it is irrelevant." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). The district court's facial analysis, however, repeatedly turned on such "irrelevant" applications of the Ordinance—including its hypothetical prohibition of conduct that the City already had the authority to punish under existing constitutional doctrine or other city laws.

By imposing an impermissibly strict facial standard and inverting the City's burden at summary judgment, the district court required Plaintiffs not only to prove their claims before trial but also to *disprove* the City's hypothetical and irrelevant applications of the Ordinance. Nothing in this Court's precedent supports the district court's approach. For all these reasons, this Court should reverse.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331. The court granted the City's motion for summary judgment on all claims on November 22, 2024, and it entered judgment in favor of the City on November 26, 2024. Plaintiffs timely filed their notice of appeal on December 20, 2024. Accordingly, this Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Should the district court have granted summary judgment in favor of Plaintiffs where the Ordinance is unconstitutionally vague as a matter of law, because it (a) fails to provide "ordinary people" with fair notice of the conduct it prohibits, or (b) encourages arbitrary and discriminatory enforcement?

2. Did the district court err in granting summary judgment to the City because it misapplied the standard for facial constitutional challenges, improperly weighed the evidence, and drew factual inferences in the City's favor?

STATEMENT OF THE CASE

I. Factual background

A. Known animus towards people living in vehicles causes Sebastopol officials to consider measures to restrict vehicle residency.

Like many cities in Northern California, Sebastopol has recently experienced a dramatic rise in the number of residents without fixed housing, as rents have risen to the point where the listed cost to rent even the smallest available apartment is roughly 100% of the monthly net income for a full-time worker making California's minimum wage. 11-ER-2746. Because Sebastopol provides almost no shelter facilities, people who are pushed out of fixed housing yet need to live near their families, jobs, schools, and medical facilities often have only one alternative to living unsheltered on the street—living in their vehicles. *Id.*

As early as 2018, Sebastopol residents and merchants expressed to City leaders their opposition to the presence of people living in vehicles

on City streets. Residents complained about "the negative impact on neighborhood aesthetics" of "over-sized vehicles parked within residential neighborhoods." 10-ER-2489. In his deposition, Police Chief Nelson testified that residents "made it known that they would prefer not to have lived in vehicles … parking in town," 10-ER-2610, and that the parking of RVs in residential neighborhoods "causes a lot of angst and frustration for people who reside in those homes…." 10-ER-2599. City Attorney Lawrence McLaughlin[1] testified that the mere presence of inhabited RVs "close to people in private homes," by itself, constituted a "public nuisance." 10-ER-2552. According to Chief Nelson, local merchants also made "a lot of complaints" about people living in RVs nearby. 10-ER-2598; 10-ER-2613.[2]

City leaders were aware of the general atmosphere of antipathy toward unhoused people. Chief Nelson testified that it "wouldn't

[1] Mr. McLaughlin also served as City Manager but is referred to throughout as City Attorney.

[2] One particular area of concern was the presence of lived-in vehicles near a business district along Morris Street. 10-ER-2631. A 2018 Police Department report to the City Council revealed that the City had received "a number of complaints from community members and business representatives" about this situation, even as it acknowledged that the vehicles were "legally parking." 10-ER-2512.

surprise" him if there was harassment of unhoused people in town because "[t]here are people who lack empathy and compassion and have an unhealthy feeling towards unhoused people. They don't like them. They don't want them in town." 10-ER-2621. Mayor Rich likewise acknowledged "an escalating tone of accusation" and reports of "aggressive" acts against unhoused people, including that unhoused people were being yelled at and made to feel threatened. 10-ER-2575; 10-ER-2564–65. One of the plaintiffs in this case, Jessica Wetch, experienced multiple incidents of harassment while she was living in her vehicle, including an incident in which a brick was thrown through her windshield, and a separate incident in which her windows were broken with a hammer while she was in the vehicle, and all her tires were slashed. 4-ER-671. Ms. Wetch also testified that it was common for her to hear motorists "drive down Morris [Street] early in the morning and honk[] loud horns" at people living in their vehicles. 4-ER-672.

Residents' and merchants' generalized complaints about the supposed dangers of having unhoused people in the City were not supported by data. For example, one merchant complained to the mayor about "general scary conduct" and "people just hanging around the

businesses at odd hours with no apparent purpose." 10-ER-2506; 10-ER-2572–74. Yet even though the Police Department adopted a special code to track incidents that were "transient related" (*see* 10-ER-2509–10), it never established or even suggested any correlation between homelessness and crime. During his deposition, former Police Chief Kilgore was unable to recall a single instance of alleged crime having been committed by a person living in a vehicle, or any related prosecutions or convictions. 10-ER-2648–49. Chief Kilgore could not make any correlation between the presence of unhoused people and criminal activity. 10-ER-2652–53. Chief Nelson likewise admitted in deposition testimony that "the evidence isn't supporting the outcry … [I]t's difficult to make the nexus [between homelessness and criminal activity]." 10-ER-2618–19.

At a City Council meeting in 2021, then-Mayor Slater candidly acknowledged that "the root" of the Council's consideration of a parking ordinance was "complaints about people residing in RVs," which were based on "a visceral uncomfortableness of the unknown … that exists for an awful lot of people." 10-ER-2503.

B. The City responds to these expressions of animus by enacting the Ordinance to restrict vehicle residency.

The City Council's response to these complaints and "visceral uncomfortableness" came in the form of parking restrictions targeted at vehicles occupied by unhoused people. In late November 2021, a City Council committee recommended that the City "[m]ake a commitment to clearing Morris Street, and support[ ] parking rule changes, as needed, to protect Morris Street as well as the neighborhoods from developing overnight parking problems in the future." 10-ER-2470. The Ordinance was enacted three months later, on February 23, 2022. 10-ER-2472–76.

Section 3 of the Ordinance adds Chapter 10.76, entitled "Recreational Vehicle Parking," to the Sebastopol Municipal Code ("SMC"). 10-ER-2681–83 (Chapter 10.76 as codified). According to section 10.76.030, "'Recreational vehicle' or 'RV' means a motorhome, travel trailer, truck camper, camping trailer, or other vehicle or trailer, with or without motive power, *designed or altered for human habitation* for recreational, emergency, or other human occupancy." 10-ER-2473 (emphasis added). Section 10.76.040 sets forth the Ordinance's key prohibitions include the following:

> A. It is unlawful for a person to park or leave standing any recreational vehicle on any public street in the city that is zoned residential at any time.
>
> B. It is unlawful for a person to park or leave standing any recreational vehicle on any public street in the city that is zoned commercial, industrial, or community facility at any time between the hours of 7:30 a.m. and 10:00 p.m.

10-ER-2474.

The Ordinance provides that, in addition to any fines associated with the infraction, the penalty for a first offense can include immediate towing—without any individualized notice—of an RV that serves as a person's home. 10-ER-2475 (SMC § 10.76.080).

C. Although the City claimed one purpose of the Ordinance was to "ensure adequate parking," its sole actual purpose was to strictly regulate using a vehicle as "sleeping accommodations."

The Ordinance's "Findings and Purpose" section sets out two purported purposes for enactment of the Ordinance. It reads, in full: "The regulations enacted by this chapter are intended to ensure there is adequate parking for residents of the city and to regulate the parking of vehicles actively used as sleeping accommodations." 10-ER-2473 (SMC § 10.76.020). Tellingly, however, the Ordinance does not even attempt to provide any support for the first "purpose"; it contains no finding that

existing parking in the city was "inadequate." Moreover, none of the seven prefatory "whereas" recitations preceding the newly added chapter—which purport to set forth the rationales for the Ordinance's restrictions—make any reference to parking inadequacy. 10-ER-2472. Rather, they refer to a "Local Homeless Emergency" and "conditions of extreme peril to the safety of persons and property … as to homeless in general and particularly as to those who are living in RVs." 10-ER-2472.

The City has never presented evidence that the Ordinance was motivated by a general need for "adequate parking." The sum total of the City's evidence in the district court was that the City Council had received "reports of concerns" that parking of "lived-in vehicles" on a single street—Morris Street—was making parking difficult for people who wanted to access facilities and business on that street. 10-ER-2437; 8-ER-1902–03; 6-ER-1297–98. The Mayor and Police Chief both testified that the City never undertook any survey or study of the adequacy of parking. 8-ER-1903–04; 10-ER-2599. And the City never attempted to explain how "concerns" about access to parking on a single street could justify any city-wide parking restrictions.

By contrast, the Ordinance's second stated purpose—"to regulate the parking of vehicles actively used as sleeping accommodations"—was frequently discussed in City Council proceedings before enactment. City Attorney McLaughlin admitted in his deposition that the Ordinance sought "to regulate the parking of vehicles people actually slept in" and it was "designed to address habitation of vehicles." 10-ER-2523; 10-ER-2555. As McLaughlin testified, "there was more of a concern with regulating the parking of vehicles that people were continuously or habitually sleeping in than regulating the parking of similar vehicles that people weren't using to sleep in." 10-ER-2531. Similarly, in an email to a local resident, Chief Kilgore candidly acknowledged that the purpose of the prohibition on parking in residential areas was "to deter those who do not have an actual home on a foundation with a mailing address in the city from parking RVs there." 10-ER-2484–85.

D. City officials concede that multiple provisions of the Ordinance are vague.

Plaintiffs presented significant—and uncontested—evidence that the Ordinance's most critical terms were unintelligible even to the city officials responsible for drafting, enacting, and enforcing them.

First, city officials disagreed about the meaning of the Ordinance's definition of "recreational vehicle." Chief Nelson testified that a vehicle is "altered for human habitation" only if its structure is permanently modified to include sleeping quarters and a kitchen. 10-ER-2600. The mayor similarly testified that only having a sleeping bag would not "alter" a vehicle so as to make it an RV. 10-ER-2566. By contrast, Chief Kilgore—who drafted the Ordinance—maintained that the definition was broad enough to cover any vehicle that was actually used for sleeping, including "vans" and "cars." 10-ER-2634–36. In his testimony, City Attorney McLaughlin repeatedly concurred that the Ordinance was intended to cover "people who were sleeping in cars that were not what might be traditionally defined as recreational vehicles." 10-ER-2556; 10-ER-2553–54. In fact, when Mclaughlin was asked, "Does the change [to a vehicle] have to be permanent?" he responded, "I could argue it both ways," and observed that "altered" "could even include, I suppose, changing what's loaded into the vehicle in some manner." 10-ER-2527. He also stated that even a sedan, "[i]f they were living in it, occupying it as a living space, then I would say it falls within the definition." 10-ER-2530.

Second, city officials conceded that the Ordinance's zoning-based designations are incomprehensible. SMC § 10.76.040(A) and (B) make it unlawful to park on "any public street in the city that is zoned" in a certain manner. 10-ER-2474. But, as McLaughlin testified, in Sebastopol, "our streets aren't zoned"; only parcels of property are zoned. 10-ER-2540; 10-ER-2558.[3] McLaughlin also admitted that he was "not sure as I sit here today" whether zoning boundaries include the streets themselves; to determine that, he would "have to research zoning law and also look at our Zoning Code in its entirety." 10-ER-2538–39. And he conceded that on some streets, the property parcels on opposite sides of the street are zoned differently, 10-ER-2539, making impossible any determination of how a street is "zoned" for purposes of the Ordinance.

The City never produced evidence that it posted any signs stating how any particular area (or street) within the City was zoned. Mr. McLaughlin testified that "[s]igns are very expensive, and we wanted to limit the number of signs we had to purchase." 10-ER-2533. As a result, among other things, there are no signs within any residential area

[3] 10-ER-2558 is the errata sheet to Mr. McLaughlin's deposition, in which he corrected the transcript of his testimony from "I believe our streets are zoned." to "I believe our streets aren't zoned."

concerning the prohibition on RV parking there. 10-ER–2478. Chief Nelson conceded that in the absence of such signs, "it would be difficult for [people living in vehicles] to know" where "they could park an RV overnight." 10-ER-2604–05.

Reflecting the confusion of its own officials, in a sworn interrogatory response, City Attorney McLaughlin incorrectly claimed that overnight RV parking was legal in multiple locations when in fact, it is not. Plaintiffs propounded a straightforward interrogatory: "List all public streets (or portions thereof) within the CITY where [RVs] can legally park between the hours of 10:00 p.m. and 7:30 a.m." 10-ER-2670. McLaughlin testified that the response was prepared by the Assistant City Planner, who "went through the city's streets one by one" and came up with a list; and that Mr. McLaughlin personally "double checked" the list before verifying the response. 10-ER-2545. When cross-examined about this list, however, Mr. McLaughlin had to admit that as to five separate streets, he had asserted under oath that overnight parking was lawful under the Ordinance, when in fact it was not. 10-ER-2545–51; *see also* 10-ER-2670–72 (interrogatory response).

E. Sebastopol Police promise to engage in arbitrary and discriminatory enforcement of the Ordinance against unhoused people.

Before the Ordinance was enacted, Chief Kilgore expressly promised the City Council that the police would use their discretion (and the related vagueness about whether a vehicle has been "designed or altered for human habitation") to enforce the Ordinance against only certain persons who parked their vehicles in town—namely, those who lived in them. He said: "Somebody who drives a vehicle such as a VW van that's been modified for that purpose into downtown to eat dinner is probably not going to see a whole lot of us . . . but if we see that vehicle that is staying in the same spot over and over again for a long period of time, then common sense kicks in that somebody's probably utilizing that vehicle to live in, and that would be a violation of the ordinance at that point." 10-ER-2481–82 (meeting minutes); *see* 10-ER-2637 (deposition testimony confirming accuracy of this statement as reflected in minutes). Chief Kilgore also testified that he told the City Council he would not enforce the Ordinance against a parked recreational vehicle that was "simply being used as a point of transportation," but would enforce it if the same vehicle was being used as a "point of habitation." 10-ER-2638.

Consistent with these reassurances about who, specifically, the Ordinance would be used against, Chief Nelson testified in his deposition that enforcement of the Ordinance is mostly "complaint driven"—meaning that enforcement is based on complaints to police by residents. 10-ER-2606–07.

F. Plaintiffs are harmed and will continue to suffer harm because of the Ordinance.

The uncontested facts showed that enactment of the Ordinance imposed significant harms—and threatens further harm—on people, including Plaintiffs, who need to use their vehicles for shelter.

Plaintiff Jessica Wetch, for example, needs to park her vehicle in Sebastopol, where her family members, friends, and support systems are located. 3-ER-367; 3-ER-369. She cannot live in the shelter options in the surrounding area, in part because she has disabilities including anxiety, post-traumatic stress disorder, heart disease, and head trauma. 3-ER-367–68. Nor can she afford to park outside of the city at night and drive into the city every day, given the high gas prices and her limited income resulting from her inability to work due to her disabilities. 3-ER-368–69. Although she previously lived in a vehicle in Sebastopol, she has been "couch surfing" because she fears having her vehicle confiscated under

the Ordinance if she sleeps in it. 3-ER-367–69. She has access to a camper and would be safer living in it, but will not do so out of fear that if she parks it in Sebastopol, she will be towed. 3-ER-368–69.

Another plaintiff, David Yesue, testified that it is important that he be able to live in Sebastopol, where he has lived since 1996 and has built up community ties; and that if he lost his housing, the safest place for him to live would be in a vehicle.[4] 3-ER-363–64; 4-ER-792. In addition, Plaintiff Sonoma County Acts of Kindness, a non-profit organization that provides services to unhoused persons, established that the Ordinance harmed its ability to deliver those services because it caused people to move frequently or leave the area, making it more difficult or impossible to locate them. 3-ER-514–15; 3-ER-391–93; *see also* 1-ER-9–10.[5]

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[4] The district court dismissed Mr. Yesue's claims for lack of standing because, although his housing situation is "precarious," he lives "currently in at-will housing." 1-ER-7–8. That dismissal is not at issue in this appeal.

[5] The Ordinance's harms are not limited to Plaintiffs; they affect many other vehicularly housed people. For example, Elightza Corley testified that rents in Sebastopol were beyond her financial means, and that living unsheltered on the streets would exacerbate her anxiety, depression, and post-traumatic stress disorder. 4-ER-645–46; 4-ER-650. In contrast, living in a vehicle provides her with an increased sense of security. *Id.* Yet the Ordinance's parking restrictions would effectively deny her the benefit of all city services and force her to leave the City.

II. Procedural history

Faced with the Ordinance's severe restrictions and the prospect of serious harms, Plaintiffs filed this action in October 2022 seeking a declaration that the law was facially invalid and a permanent injunction against its enforcement. They brought 14 claims under the federal and California constitutions, as well as federal and state civil rights laws. 11-ER-2761–2775.[6]

Following discovery, Plaintiffs sought partial summary judgment on their claims that the Ordinance was void for vagueness and that it violated equal protection. 10-ER-2690–2718. On the same day, the City filed a motion for summary judgment, seeking summary adjudication in its favor on all of Plaintiffs' claims. 10-ER-2459–64.[7]

After oral argument, the district court granted the City's motion, denied Plaintiffs' motion, and entered judgment in favor of the City on all claims. 1-ER-2–32. As to Plaintiffs' void-for-vagueness claim, the court ignored the overwhelming evidence showing that the city officials who

[6] Plaintiffs voluntarily dismissed their Eighth Amendment claim for cruel and unusual punishment following the U.S. Supreme Court's decision in *City of Grants Pass v. Johnson,* 603 U.S. 520 (2024).

[7] In its motion, the City also sought dismissal for lack of Article III standing, 10-ER-2460, which the district court denied in part, 1-ER-7-10.

drafted, enacted, and enforced the Ordinance could not agree about the meaning of its key terms. 1-ER-22–29. Instead, in considering whether the Ordinance provided fair notice of what conduct it proscribed, the court formalistically parsed the Ordinance according to canons of statutory construction, in violation of the void-for-vagueness doctrine's focus on the "ordinary person." *See id.* Furthermore, the court erred in its analysis of the second basis for Plaintiffs' vagueness challenge by disregarding city officials' uncontradicted admissions that the Ordinance would be discriminatorily enforced only against unhoused people, and that such enforcement would be "complaint driven." 1-ER-28–29; *see* Statement, Part I.E, *supra*.

More generally, throughout its order, the court misapplied the standard governing facial constitutional challenges. The district court mentioned, but did not apply, the Supreme Court's instruction that courts facing facial challenges should only consider the constitutionality of those applications "that the law actually authorizes, not those for which it is irrelevant." 1-ER-10. Instead, on multiple claims, it determined that the Ordinance was constitutional based on irrelevant applications—namely, hypothetical applications of the Ordinance to

conduct that would be independently prohibited by other city ordinances or constitutional doctrines. *See, e.g.*, 1-ER-14; 1-ER-18–20. As a result, the district court granted summary judgment for the City on all claims, despite multiple genuine disputes of material fact. 1-ER-2–32.

SUMMARY OF ARGUMENT

I. The Ordinance is unconstitutionally vague under both the "fair notice" and "discriminatory enforcement" standards. The district court should have entered summary judgment in favor of Plaintiffs on their void-for-vagueness claim.

The Due Process Clause requires that a law give "fair notice" of what conduct it proscribes. That notice must be evaluated from the perspective of a "person of ordinary intelligence" and "in light of the facts of the case at hand." *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 946 (9th Cir. 2013). Here, the uncontested evidence showed that the city officials responsible for drafting, enacting, and enforcing the Ordinance did not agree on the interpretation of its two most important provisions—those that defined *which* vehicles were subject to parking restrictions and *where* those restrictions applied.

These conflicts necessarily mean that ordinary people do not have adequate notice of the Ordinance's restrictions.

The void-for-vagueness doctrine also prohibits laws that "authorize and even encourage arbitrary and discriminatory enforcement." *Morales*, 527 U.S. at 56; *see Desertrain*, 754 F.3d at 1155. The Ordinance's vague language affords Sebastopol police officers unfettered discretion to apply the parking restrictions discriminatorily. The undisputed record—including the police chief's sworn testimony—confirms that the whole point of the Ordinance was to improperly target vehicularly housed people.

The district court erroneously denied Plaintiffs' motion for partial summary judgment, and granted the City summary judgment, on Plaintiffs' vagueness claim. Not only did the district court fail to credit Plaintiffs' evidence and draw factual inferences in their favor, as Rule 56 requires, but it also adopted a formalistic analytical approach to the Ordinance's key language that cannot be squared with the Due Process Clause's "ordinary person" standard. Moreover, the district court simply ignored the uncontroverted evidence showing that the Ordinance was

intended to enable discriminatory and selective enforcement. These multiple errors compel reversal.

II. Multiple legal errors require reversal of Plaintiffs' non-vagueness claims as well.

To start, the district court improperly required Plaintiffs to address hypothetical applications of the Ordinance to conduct independently prohibited by the Constitution or other laws. But "the proper focus of the constitutional inquiry" in facial challenges must be the applications "that the law actually authorizes, not those for which it is irrelevant." *Patel*, 576 U.S. at 418–19; *see also Garcia v. City of Los Angeles*, 11 F.4th 1113, 1119 n.7 (9th Cir. 2021). The court compounded its error by repeatedly flouting Rule 56's mandate to resolve factual disputes in Plaintiffs' favor. Although these errors infected the district court's entire summary-judgment analysis, at a minimum the court's order as to Plaintiffs' unreasonable seizure, procedural due process, and equal protection claims should be reversed.

STANDARD OF REVIEW

This Court "review[s] the district court's grant of summary judgment de novo, viewing the evidence and drawing all reasonable

inferences in the light most favorable to the non-moving party." *Anthony v. Trax Int'l Corp.*, 955 F.3d 1123, 1127 (9th Cir. 2020).[8] On summary judgment, courts must "review all of the evidence in the record," and refrain from "mak[ing] credibility determinations or weigh[ing] the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). "If a rational trier of fact could resolve a genuine issue of material fact in the nonmoving party's favor," summary judgment is improper. *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011).

ARGUMENT

I. The district court erred when it granted summary judgment to the City on the vagueness claim.

"[T]he void for vagueness doctrine addresses at least two connected but discrete due process concerns. . . ." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). *First*, it ensures that "people of ordinary intelligence" receive "fair notice of what is prohibited." *United States v. Williams*, 553 U.S. 285, 304 (2008). *Second*, "the doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors,

[8] Unless otherwise indicated, all internal citations, quotation marks, and alterations are omitted.

juries, and judges." *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). Accordingly, a law is unconstitutionally vague if it (1) "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits," *or* (2) "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *Desertrain*, 754 F.3d at 1155. Each rationale is an "independent" reason to strike down a law for vagueness. *See id.*

The Ordinance here fails under both rationales. Plaintiffs' uncontested evidence showed that even the city officials responsible for the Ordinance's enactment and enforcement were unable to say what conduct it allowed or prohibited. Based on this record, no reasonable factfinder could find that ordinary people had "fair notice of what is prohibited" by the Ordinance. Additionally, the statutory language and Plaintiffs' undisputed evidence confirm that the Ordinance gives officers unlimited discretion to determine whether a vehicle is subject to the law's restrictions, and that officers intended to use that discretion to target unhoused people. The Ordinance thus not only "authorizes" but also "encourages" arbitrary and discriminatory enforcement.

Because the Ordinance is impermissibly vague as a matter of law, this Court should remand the case with instructions to enter summary judgment in favor of Plaintiffs as to the vagueness claim. *See, e.g.*, *Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126, 1134 (9th Cir. 2018).

A. The Ordinance fails to provide ordinary people with "fair notice" of the conduct it forbids.

1. The Due Process Clause imposes a "person of ordinary intelligence" standard.

As the Supreme Court has long recognized, one of our legal system's most "fundamental" principles is that "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *Fox Television*, 567 U.S. at 253 (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). "This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment." *See id.* Thus, "a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits. . . ." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966).

Indeed, both the Supreme Court and this Court have held that vague laws are particularly susceptible to "facial attack." *Morales*, 527

U.S. at 55; *see Desertrain*, 754 F.3d at 1157. "The Court has long recognized that ambiguous meanings cause citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden area were clearly marked." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.6 (1982). That is because where legislation "sweeps too widely and too indiscriminately" across a liberty interest guaranteed by the Constitution, legislation must be "narrowly drawn to prevent the supposed evil"; "precision must be the touchstone of legislation so affecting basic freedoms." *Aptheker v. Secretary of State*, 378 U.S. 500, 514 (1964).

Crucially, the vagueness doctrine has always employed an "ordinary person" standard for assessing whether a law is impermissibly vague. This reflects the doctrine's central concern with fair notice, the purpose of which is "to enable *the ordinary citizen* to conform his or her conduct to the law." *Morales*, 527 U.S. at 58 (emphasis added). Thus, as the Supreme Court put it nearly a century ago: "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as

to its application, violates the first essential of due process of law." *Connally*, 269 U.S. at 391.

In other words, regardless of how lawyers or judges may interpret a statutory text, the test for determining vagueness "is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by *common* understanding and practices." *Jordan v. De George*, 341 U.S. 223, 231–32 (1951) (emphasis added). When courts "evaluate a provision . . . that regulates the conduct of the public at large and not a particular industry or subgroup," they should "not impute specialized knowledge to the 'person of ordinary intelligence' by whom [they] judge the statute's vagueness." *United States v. Caseer*, 399 F.3d 828, 837 (6th Cir. 2005). And that vagueness "must be examined in light of the facts of the case at hand," including by reference to evidence demonstrating how a "person of ordinary intelligence" would understand the statutory language. *See Ass'n des Eleveurs de Canards et d'Oies du Quebec*, 729 F.3d at 946.

2. Uncontested evidence, including city officials' conflicting testimony about the Ordinance's meaning, establishes that the law is incomprehensible to ordinary people.

The Ordinance's key provisions flunk the applicable "fair notice" standards. In fact, as explained below, even the city officials responsible for drafting, enacting, and enforcing the Ordinance "differ as to its application"—they could not agree on what the provisions require. *See Connally*, 269 U.S. at 391. In addition, some of them candidly admitted that they had no idea what certain terms mean—and the City Attorney had to admit that he gave, under oath, incorrect answers as to where one could lawfully park an RV. If these provisions are not sufficiently clear to city officials, it follows that they fail to inform *ordinary* people about what conduct the Ordinance proscribes.

a. The Ordinance's definition of "recreational vehicles" is incurably vague. The Ordinance's deficiencies begin with the definition of which vehicles are covered by its prohibitions. Although the law purports to regulate "recreational vehicles," the definitions provision does not limit itself to commonly recognized recreational vehicles, such as motor homes and camping trailers. Instead, SMC § 10.76.030 defines "recreational vehicle" as *any* "vehicle or trailer . . . designed or *altered for*

human habitation for recreational, emergency, or other human occupancy." 10-ER-2473 (emphasis added).

Critically, nothing in the Ordinance defines the meaning of the phrase "altered for human habitation." Multiple City officials admitted in their depositions that the City has never issued any guidance or developed any training to clarify the meaning of this phrase. *See* 10-ER-2601 (Nelson); 10-ER-2640-41 (Kilgore); 10-ER-2591 (Beckman). It is therefore unclear whether an "alteration" to the vehicle need be permanent, or if something as simple as having a sleeping bag, pillow, or blanket in one's vehicle would suffice to trigger the Ordinance's prohibitions. Indeed, as explained, city officials *disagree internally* on this point. *See* Statement, Part I.D, *supra*. The Ordinance thus invites "the public to speculate as to its meaning while risking . . . liberty, and property in the process." *See Desertrain*, 754 F.3d at 1155.

Desertrain is instructive. That case concerned a Los Angeles ordinance that prohibited people from using a vehicle "as living quarters either overnight, day-by-day, or otherwise," yet the law did "not define 'living quarters,' or specify how long—or when—is 'otherwise'." 754 F.3d at 1155. This Court held that the ordinance was unconstitutionally vague

because it left the plaintiffs "guessing as to what behavior would subject them to citation and arrest by an officer," even if they engaged in "otherwise perfectly legal" actions. *See id.* at 1155–56. As this Court explained, "[i]t is difficult to imagine how anyone loading up his or her car with personal belongings, perhaps to go on a camping trip or to donate household wares to the Salvation Army, and parking briefly on a Los Angeles street, would know if he or she was violating the statute." *Id.* at 1156. Thus, this Court concluded, there was "nothing [one] c[ould] do to avoid violating the statute short of discarding all of their possessions or their vehicles, or leaving Los Angeles entirely"—a result that could not be squared with due process. *Id.*

So too here. The Ordinance's definition of "recreational vehicle" would encompass a host of "otherwise perfectly legal" actions, from using a pillow or blanket while taking a short nap to transporting a sleeping bag or other camping gear to a friend. And that is not merely Plaintiffs' position—it reflects the understanding of *city officials* responsible for drafting and enforcing the statute. For example, when City Attorney McLaughlin was asked, "Does the change [to a vehicle] have to be permanent?" he responded, "I could argue it both ways," and observed

that "altered" for purposes of the Ordinance "could even include, I suppose, changing what's loaded into the vehicle in some manner." 10-ER-2527; *see also* 10-ER-2530. Notably, McLaughlin did not contend that someone would need to "live" or "occupy" the vehicle permanently—or for any minimum period of time—to trigger the Ordinance's prohibitions. Likewise, Chief Kilgore (who drafted the Ordinance) maintained that the definition of "recreational vehicle" was broad enough to cover any vehicle that was actually used for sleeping, including cars and vans. 10-ER-2634–36; *see also,* 10-ER-2556 (McLaughlin).[9] In contrast, other City officials—including the current police chief and mayor—testified the Ordinance applies only to a vehicle with a structure *permanently* modified to include sleeping quarters *and* a kitchen. 10-ER-2600 (Chief Nelson); 10-ER-2566 (Mayor Rich).

The City has never contested that its own officials disagree about the basic question of how to determine which "recreational vehicles" are subject to the Ordinance's parking restrictions. And the fact that these

[9] In its order granting summary judgment, the court recited much of this testimony, but then simply ignored it when concluding that "[t]he testimony cited by Plaintiffs makes clear that this alteration must be something more than simply putting a mattress or a sleeping bag in a vehicle." *See* 1-ER-24.

officials "differ as to [the] application" of the Ordinance's definition provision proves the law's vagueness. *See Connally*, 269 U.S. at 391. If the City's top officials cannot agree even as to *which* vehicles are subject to the Ordinance, how could an ordinary person?

b. The City could not identify how to apply the Ordinance's "zoning"-based restrictions. The Ordinance's parking prohibitions are purportedly based on the "zoning" of the City's streets. As explained above, SMC § 10.76.040(A) and (B) make it "unlawful for a person to park or leave standing any recreational vehicle on any public street in the city that is zoned residential at any time," and to do so on "any public street in the city that is zoned commercial, industrial, or community facility at any time between the hours of 7:30 a.m. and 10:00 p.m." 10-ER-2474.

The problem, however, is that, as the City conceded, "our streets aren't zoned." 10-ER-2540; 10-ER-2558 (McLaughlin). Rather, only *parcels of property* are zoned. And there are no signs indicating how a particular parcel or area is zoned; nor are there any street signs identifying that RVs are prohibited from parking in a particular area because of the zoning designations. *See* Statement, Part I.D, *supra.* Moreover, on many streets in Sebastopol, there are differently zoned

parcels on the same street—meaning that different prohibitions could apply based on whether someone parked on the left or right side of the street. *Id.*

In the district court, the City pointed to a zoning map on its website as providing sufficient notice to individuals. But the zoning map, 10-ER-2685, does not clearly state whether sizable portions of the city are zoned "residential" or "commercial." City Attorney McLaughlin was asked whether the area zoned "downtown core" (labeled "CD" on the map) was residential or commercial; he agreed that if one looked at the zoning code, one could conclude that this zone was "part commercial and part residential," and that "you'd have to be on the inside in city government" to reach his conclusion that the letter "C" in the designation "CD" denoted a commercial zone. 10-ER-2536–37. Asked how one would know whether an area zoned "planned community" was commercial or residential, McLaughlin responded: "Using the zoning map, I guess that could be a problem." 10-ER-2537. Looking at the map, Chief Kilgore also admitted that he could not tell whether the areas zoned "Downtown Core" and "Planned Community" were residential or commercial. 10-ER-2645. Chief Nelson, too, did not know whether "Downtown Core" was

residential or commercial. 5-ER-1023. And even if a person could somehow access the map, it would still only show the zoning of particular *parcels*, some of which carried the very labels that the City and two Chiefs of Police could not definitively identify as residential or commercial. And it still would not provide an answer as to how the *street* was zoned—which is all that matters for purposes of the Ordinance.

In addition to admitting their own uncertainty, the City's top officials expressly admitted that the Ordinance's zoning-based restrictions are incomprehensible to an ordinary person. *See, e.g.*, 5-ER-1022–23 (Chief Nelson's concession that it is "difficult for [people living in vehicles] to know" where "they could park an RV overnight" given absence of signs); 10-ER-2538 (City Attorney McLaughlin's admission that for "the person with an RV figuring out how to park . . . I'm not sure how you would know that."). Most damningly, given the luxury of time and the assistance of the Assistant City Planner to prepare written interrogatory responses, City Attorney McLaughlin repeatedly asserted incorrectly that overnight RV parking would be legal in a particular location when in fact, it is not. *See* Statement, Part I.D, *supra.* That city officials themselves cannot understand the zoning-based restrictions only

confirms that the Ordinance fails to provide fair notice about those restrictions to ordinary people.

B. The Ordinance encourages arbitrary and discriminatory enforcement.

Apart from failing to provide fair notice, the Ordinance is unconstitutionally vague for an independent and distinct reason: It "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *See Desertrain*, 754 F.3d at 1155; *see also Kolender v. Lawson*, 461 U.S. 352, 357–8 (1983) (noting that this rationale is the "more important aspect of the void-for-vagueness doctrine").

The void-for-vagueness doctrine aims to impose "precision and guidance" on our laws "so that those enforcing the law do not act in an arbitrary or discriminatory way." *Fox Television*, 567 U.S. at 253. It thus prevents a vague law from "becom[ing] a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure." *Desertrain*, 754 F.3d at 1156; *see Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis.").

The Ordinance violates these basic principles. As the uncontested evidence shows, the Ordinance's drafters expressly acknowledged that the law's purpose was to enable discriminatory enforcement—that is, to prohibit *certain* people from parking "recreational vehicles" in the City. For example, Chief Kilgore promised the City Council that the police would not enforce the Ordinance against a parked vehicle that was "simply being used as a point of transportation," but would enforce it if the same vehicle was being used as a "point of habitation." *See* Statement, Part I.E, *supra*. Chief Kilgore's admission that he would selectively enforce the Ordinance's restrictions against certain groups of people and not others, using criteria nowhere mentioned in the Ordinance itself, is a textbook illustration of the concerns posed by vague statutes. And these concerns are only heightened by the evidence establishing that the Ordinance is intended to be primarily "complaint driven," meaning that enforcement is based on residents' complaints to police—which inevitably will reflect residents' bias against certain undesirable groups. *See id.*

In this respect as well, this case resembles *Desertrain*. There, the ordinance was "broad enough to cover any driver in Los Angeles who eats

food or transports personal belongings in his or her vehicle" yet it "appear[ed] to be applied only to the homeless." *See* 754 F.3d at 1156; *see also, e.g.*, *Metro Produce Distributors, Inc. v. City of Minneapolis*, 473 F. Supp. 2d 955, 961 (D. Minn. 2007) (law prohibiting "idling" in certain vehicles, without defining length of "idling" before it violated law, was unconstitutionally vague because it gave police "unfettered discretion to apply the ordinance in an arbitrary manner"). To be sure, unlike in *Desertrain*, this case is a facial challenge, and so there is not yet a pattern of arbitrary enforcement. Nevertheless, unlike *Desertrain,* here there is uncontradicted evidence that city officials *expressly promised* that the Ordinance will be enforced only against people who have nowhere else to live but their vehicles—even though the law is broad enough to apply to a wide range of vehicles that are modified for "human habitation." Because the Ordinance encourages city officials to "decide arbitrarily which members of the public" shall be subject to its restrictions, it is unconstitutionally vague. *See Morales*, 527 U.S. at 58.

C. In rejecting Plaintiffs' vagueness challenge, the district court misapplied the governing legal standards and ignored the record evidence.

Notwithstanding the above, the district court found that the Ordinance was not unconstitutionally vague—*as a matter of law*. In doing so, it committed at least three reversible errors. *First*, the court refused to credit Plaintiffs' undisputed evidence showing how ordinary people (and city officials themselves) understand the Ordinance's provisions, instead relying on its own unsupported view of the law's meaning. *Second*, while the court recited the "ordinary person" standard, it mechanically applied various statutory-interpretation tools to decide the Ordinance's meaning—a formalistic approach that is inconsistent with the governing standard. *Third*, the district court ignored the uncontested evidence showing that the Ordinance was intended, indeed designed, to encourage discriminatory enforcement.

1. As explained above, the record evidence showed that City officials themselves could not agree on the key provisions' meanings. This evidence was uncontested: The City did not present *any* evidence supporting its contention that the Ordinance afforded ordinary people with fair notice. To the contrary, the City *conceded* that "reasonable

people may differ regarding the extent of alteration necessary to" subject a particular vehicle to the Ordinance's restrictions. 10-ER-2452.

This alone should have compelled summary judgment in Plaintiffs' favor—or, at the very least, denial of the City's motion. After all, this Court has been clear that vagueness "must be examined in light of the facts of the case at hand." *Ass'n des Eleveurs de Canards et d'Oies du Quebec*, 729 F.3d at 946. Thus, in *Desertrain*, this Court pointed to deposition testimony that "revealed conflicting views among the enforcing officers as to what [the challenged ordinance] mean[t]." 754 F.3d at 1152. In reversing summary judgment in favor of the city on vagueness, this Court expressly relied on "the City's own documents," which demonstrated "the different ways the ordinance was interpreted by members of the police department." *See id.* at 1157; *see also, e.g.*, *Cunney v. Bd. of Trustees of Vill. of Grand View*, 660 F.3d 612, 622 (2d Cir. 2011) (holding that the defendants' "various interpretations of [the challenged ordinance's] requirements serve only to reinforce our view that the ordinance's vagueness authorizes arbitrary enforcement"); *Flores v. Bennett*, No. 22-16762, 2023 WL 4946605, at *2 (9th Cir. Aug. 3, 2023) (holding college policy vague based in part on "emails between

… administrators demonstrat[ing] that they did not understand what … the Policy proscribed").

Here, however, the district court erroneously relied on its own judgment, rather than the overwhelming evidence provided by City officials themselves, when it concluded that the Ordinance's key terms were not confusing. 1-ER-22–28. The City presented no evidence to contradict city officials' confusion over the meaning of the vague phrase "altered for human habitation"; the lack of signage apprising individuals about the parking restrictions; or the absence of any clarifying policy documents. Yet the district court deferred to *its own understandings* of the Ordinance's meaning instead of crediting Plaintiffs' *uncontested* evidence, in violation of its duty at summary judgment to view the evidence and draw all factual inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987).

The district court applied this same flawed approach to the Ordinance's other key provisions. For example, as to the zoning-based restrictions, the court simply asserted—without any citation to the record or authority—that "a person of ordinary intelligence would understand

that their 'zoning' is tied to the adjoining property parcels," even though the Ordinance expressly ties its prohibitions to how the City's *streets* are zoned. 1-ER-25. That this assertion reflected the court's own speculation rather than the record evidence is evident from the court's statement at the summary-judgment hearing that "I think most people know when they're in a residential neighborhood, though." 2-ER-65; *see also id.* at 63–64 ("I thought, you know, wouldn't a person of ordinary intelligence be able to determine from their surroundings whether or not they're in a residential neighborhood . . . ?").

The court further reasoned that "the availability of the zoning maps and Municipal Code are sufficient to allow a person of ordinary intelligence to determine where they can and cannot park." 1-ER-26. But these external and complex reference materials cannot cure the Ordinance's vagueness, especially in light of the uncontested evidence demonstrating that, absent signs, ordinary people would not know where to lawfully park. And even on the court's own terms—even if individuals driving their vehicles to Sebastopol, stopped to look up the Municipal Code's zoning provisions, and cross-referenced them with the City's online zoning map—they would be unable to figure out where parking

was permitted and prohibited. That is not speculation: the City Attorney and two different Police Chiefs, even with the zoning map placed in front of them during their depositions, could not say whether large portions of the City were residential or commercial; and the City Attorney failed to correctly identify permissible parking locations in sworn interrogatory responses. *See* Statement, Part I.D, *supra*. The City presented no evidence to contradict its own officials' testimony, yet the district court ignored the record and again relied on its own view of how people would understand the Ordinance.[10] That is reversible error.

2. To the extent that the district court tried to justify its determinations as to the Ordinance's meaning, it implicitly invoked various canons of statutory construction. But the court never explained why these formalistic tools conclusively establish an ordinary person's

[10] To take another example, Plaintiffs presented uncontradicted evidence that city officials had conflicting understandings the Ordinance's exception permitting parking an RV in city-owned lots while on "city-related business." 10-ER-2707. Some officials testified this term could only mean official business with city government departments; others said it could include shopping in the city or even walking on a local nature trail. *Id.* In determining that the exception clause unambiguously applied only to "business with the city government," the court remarkably found that "[t]he fact that Defendant interprets 'City-related business' more broadly is of no consequence; it does not make the language vague, even if it does not comport with Defendant's own intent." 1-ER-27–28.

understanding of the Ordinance, particularly in light of Plaintiffs' uncontested evidence showing that city officials themselves could not agree on the Ordinance's requirements. This too was error.

Take, for example, the court's conclusion that "the term 'altered for human habitation,' as written, is not vague." 1-ER-24. To reach that conclusion, the court reasoned that the phrase was "in the context of other specific types of vehicles," and so the Ordinance's prohibitions did not apply to a vehicle unless the "alteration [was] . . . something more than simply putting a mattress or sleeping bag in a vehicle; rather, the alteration must be more permanent and/or not easily removed, similar to the specific vehicles identified in SMC § 10.76.030." 1-ER-24. The court appears to have "relie[d] on the canon of *noscitur a sociis*—that [w]hen a word appears in a list of similar terms, each term should be read in light of characteristics shared by the entire list, " *Leuthauser v. United States*, 71 F.4th 1189, 1198 (9th Cir. 2023)—and *ejusdem generis*—that a "general term following more specific terms means that the things embraced in the general term are of the same kind as those denoted by the specific terms," *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1058 (9th Cir. 2022).

But regardless of whether the court's application of these principles was correct as a matter of formal statutory construction, this is the wrong test—because there is no reason to believe that ordinary people would understand the Ordinance's language in this way. We stress again: The City's *own* officials did not use these tools when offering their own (conflicting) interpretations. Even when doing traditional statutory interpretation, courts must not over-rely on linguistic canons. *See Facebook, Inc. v. Duguid*, 592 U.S. 395, 404 n.5 (2021) (acknowledging that "canons are tools of statutory interpretation whose usefulness depends on the particular statutory text and context at issue"). That's because "[s]tatutes are written in English prose, and interpretation is not a technical exercise to be carried out by mechanically applying a set of arcane rules . . .. No reasonable reader interprets texts that way." *See id.* at 413 (Alito, J., concurring).

3. The district court's final error on vagueness is the most straightforward. In just a few sentences, the court brushed aside the argument that the Ordinance encourages arbitrary or discriminatory enforcement. 1-ER-28–29. But Plaintiffs presented considerable evidence showing that City officials, even before the Ordinance's enactment,

intended to enforce the parking restrictions in a discriminatory manner. *See* Statement, Part I.E, *supra*. Indeed, according to its drafters, this was the Ordinance's primary purpose. The City never controverted any of that evidence. And the district court itself acknowledged that the record showed "that the police may selectively enforce the" Ordinance. 1-ER-28–29. As explained above, *see* Statement, Part I.B, *supra*, that evidence was sufficient to find that the Ordinance was vague as a matter of law; at the very least, it established triable issues of material fact.

Nevertheless, the district court dismissed the relevance of this undisputed evidence because, in its view, "[t]he fact that police may selectively enforce the RV Ordinance" was an acceptable exercise of their "discretion." 1-ER-28–29. Again, that conclusion cannot be squared with the record—which showed that the City intended, from the outset, to enforce the Ordinance's vague restrictions on a discriminatory and selective basis. *See* Statement, Part I.E, *supra*.

More importantly, the district court's conclusion cannot be reconciled with the void-for-vagueness doctrine's central purpose, which is to *ensure* that statutes impose sufficiently definite "standards governing the exercise of . . . discretion." *Desertrain*, 754 F.3d at 1156.

Such constraints on executive discretion are necessary to prevent "selective enforcement, in which a net [can] be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of the police and prosecution . . . ." *Id.* That is precisely the problem here: The Ordinance "delegates too much discretion to a police officer to decide whom to order to move on, and in what circumstances"—and thus, the officer "enjoys too much discretion in *every* case." *See Morales*, 527 U.S. at 71 (Breyer, J., concurring). Yet, by supporting admitted discriminatory intent as a legitimate exercise of "discretion" (and green-lighting a vague definition of "recreational vehicles" that provided officers with that unfettered discretion) the district court's approach essentially eliminated the arbitrary-or-discriminatory-enforcement standard from the void-for-vagueness doctrine altogether. That legal error independently warrants reversal.

II. The district court erred in granting summary judgment to the City on Plaintiffs' other claims.

In granting the City's summary-judgment motion in its entirety, the district court concluded that no reasonable factfinder could rule in favor of the Plaintiffs on *any* of their multiple claims. This conclusion was deeply erroneous. It rested on two interrelated errors: the district court's

misapplication of Rule 56's basic standard and its mistaken understanding of the proper standard governing facial challenges. The district court's reasoning, if affirmed, would effectively immunize government action against most facial claims—a result that flies in the face of precedent and our constitutional structure.

A. The proper focus in a facial challenge is the applications in which "it is the challenged law alone that authorizes the government's conduct."

This case is a facial challenge to the Ordinance's constitutionality. Although "such challenges are the most difficult . . . to mount successfully," they are "not categorically barred or especially disfavored." *Patel*, 576 U.S. at 415. Quite the contrary: The Supreme Court "has allowed such challenges to proceed under a diverse array of constitutional provisions." *Id.* (collecting cases).

Nevertheless, in the district court, the City contended that Plaintiffs' facial challenge was foreclosed by *United States v. Salerno*, 481 U.S. 739 (1987). Under that standard, a facial challenge to a law purportedly "must establish that no set of circumstances exists under which the [law] would be valid." *Id.* at 745.

Initially, to the extent the Supreme Court has "consistently articulated a clear standard for facial challenges, it is *not* the *Salerno* formulation, which has never been the decisive factor in any decision of th[e] Court, including *Salerno* itself." *Morales*, 527 U.S. at 55 n.22 (emphasis added); *see also Washington v. Glucksberg*, 521 U.S. 702, 740 (1997) (Stevens, J., concurring). Indeed, whether *Salerno*'s highly restrictive formulation provides the proper rule is a "matter of dispute" the Court has not yet resolved. *See United States v. Stevens*, 559 U.S. 460, 472 (2010). There are good reasons to be skeptical. As members of this Court have recognized, the *Salerno* standard "is widely criticized, has fractured the circuits and raises too high a bar for litigants attempting to vindicate federal rights." *Montana Med. Ass'n v. Knudsen*, 119 F.4th 618, 632 (9th Cir. 2024) (McKeown, J., concurring).

In any event, even if the *Salerno* standard applies, the Supreme Court has made clear that it is subject to important limitations. In *City of Los Angeles v. Patel*, for example, the Court expressly rejected the city's argument that, under *Salerno*, the plaintiffs' facial challenge to an ordinance authorizing warrantless searches "must fail because such searches will never be unconstitutional in all applications." 576 U.S. at

417. This argument, the Court held, fundamentally "misunderstands how courts analyze facial challenges." *Id.* at 418. That's because, when "assessing whether a statute meets" the *Salerno* standard, courts should "consider[] only applications of the statute in which it actually authorizes *or prohibits* conduct." *Id.* (emphasis added). As this Court has since explained, *Patel* means that the "proper focus" in a facial challenge is those "applications in which it is the challenged law alone that authorizes the government's conduct." *Garcia*, 11 F.4th at 1119 n.7. Applied to this case, *Patel* and *Garcia* hold that an ordinance cannot be deemed valid merely because it prohibits certain conduct that is *already independently prohibited* by another law or legal doctrine.

The district court repeatedly failed to properly apply this standard, finding that the Ordinance was valid because it prohibited conduct that was already prohibited by other legal authorities. That error, combined with its misapplication of Rule 56's standards, infected the court's entire summary-judgment order. This Court should therefore reverse.

B. In granting summary judgment on the unconstitutional seizure claims, the district court misapplied the facial challenge standard in violation of *Patel* and *Garcia*.

The district court's failure to properly apply the above facial standards is most obvious in its analysis of Plaintiffs' claims challenging the City's unreasonable and unconstitutional seizure of their property.[11] 1-ER-18–19.

Here, there is no dispute that the Ordinance authorizes warrantless seizures of vehicles—which "are per se unreasonable" unless the government can show that a particular "warrantless seizure falls within an exception to the Fourth Amendment's warrant requirement." *See Garcia*, 11 F.4th at 1118. Instead of holding the City to that burden, however, the district court accepted the City's argument that the Ordinance was facially constitutional based on the existence of hypothetical "*scenarios* where a vehicle will be towed under the Ordinance that would fall under the community caretaking exception." 1-ER-19 (emphasis added).

[11] Plaintiffs brought these claims under the Fourth Amendment and Article I, section 13 of the California Constitution. As relevant here, the same analysis applies to both claims.

This conclusion is directly in conflict with *Patel* and *Garcia*. In *Patel,* the Supreme Court upheld the plaintiffs' facial challenge to an ordinance authorizing warrantless searches even though some of the searches authorized by the ordinance would be permissible, because they would be allowed under *independent* exceptions to the Fourth Amendment's warrant requirement, such as exigency and consent. *See Patel*, 576 U.S. at 417–18. In *Garcia,* this Court similarly upheld a facial challenge to an ordinance permitting destruction of unhoused persons' "bulky items" even though some items for which the ordinance permitted destruction could be destroyed pursuant to independent legal prohibitions (such as immediate threats to public health and safety). *See Garcia,* 11 F.4th at 1119 n.7. In both cases, the "applications" that the city raised in support of the ordinance's constitutionality were "irrelevant" because they were based on legal authority independent of the challenged provisions of the ordinances. *See Patel*, 576 U.S. at 419.

So too here. The district court concluded that the Ordinance's warrantless seizure of vehicles survived facial challenge because some vehicles could lawfully be seized under the "community caretaking" exception to the Fourth Amendment's warrant requirement. 1-ER-19.

But that exception independently permits "impound[ing] vehicles that jeopardize public safety *and* the efficient movement of vehicular traffic." *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) (emphasis added); *see* Cal. Vehicle Code § 22650(b) ("Any removal of a vehicle . . . based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism."). When those limited circumstances apply, Sebastopol police officers are *independently* authorized to impound a vehicle, entirely "irrespective of whether it is authorized by" the Ordinance. *See Patel*, 576 U.S. at 419. Because the "community caretaking" exception to the warrant requirement exists regardless of the Ordinance, circumstances in which that exception might apply are "irrelevant" to any analysis of Plaintiffs' unconstitutional seizure claims—which, again, must consider only applications of the statute where "it is the challenged law alone that authorizes the government's conduct." *See Garcia,* 11 F.4th at 1119 n.7; *Patel*, 576 U.S. at 418.[12]

[12] The district court also erroneously relied on hypothetical applications of the Ordinance that would not be constitutional in the first place. For

The City's other principal justifications for the Ordinance—that an RV might be parked so as to interfere with street cleaning or street repairs—are likewise irrelevant to analyzing the Ordinance's constitutionality. That is because these scenarios are fully addressed by *other* city ordinances. For example, SMC § 10.36.040(F) independently prohibits parking "in any area where the parking or stopping of any vehicle would constitute a traffic hazard or endanger life and safety," and SMC § 10.36.040(G) prohibits parking that would interfere with street cleaning, street repair, or utility work.[13] So any claim that a warrantless seizure would be constitutional in such situations cannot be factored into the analysis of whether the Ordinance is facially constitutional. *See Patel*, 576 U.S. at 418-19.

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example, the court highlighted "Plaintiffs' failure to challenge the validity of towing a vehicle that is … taking up parking needed by other vehicles for use at public facilities or local facilities." 1-ER-19. But the Fourth Amendment would not permit a warrantless seizure in that scenario, because the "community caretaking" exception applies only where a vehicle is "jeopardiz[ing] public safety *and* the efficient movement of vehicular traffic." *Miranda*, 429 F.3d at 864 (emphasis added).

[13] *See* Ex. A to Plaintiffs' Request for Judicial Notice, filed concurrently with this brief.

The district court's repeated, reflexive invocation of *Salerno* highlights the reasons why so many courts and judges have questioned the rigid application of that standard. If affirmed, the district court's "logic would preclude facial relief" in *every* challenge to a law that authorizes warrantless searches—and perhaps many others. *Patel*, 576 U.S. at 418. After all, a city could always *hypothesize* "circumstances that pose no conflict between [a] municipal code provision and federal law," and therefore defeat any facial challenge. *Knudsen*, 119 F.4th at 633 (McKeown, J., concurring).[14] But *Salerno*, as properly understood in light of *Patel* and *Garcia*, does not require this "absurd result." *See id.* at 632.

C. In granting summary judgment on the procedural due process claims, the district court relied exclusively on the City's claim of voluntary conduct and ignored contrary evidence.

Similar legal errors undermined the district court's grant of summary judgment as to Plaintiffs' procedural due process claim. 1-ER-

[14] The district court engaged in precisely this kind of "hypothesizing" when it analyzed Plaintiffs' excessive-fines claims; it upheld the Ordinance's constitutionality based on its speculation that the "Ordinance *could* be applied as to a RV owned by someone with ample ability to pay." 1-ER-14 (emphasis added). Of course, with respect to any statutory fine, there will always be someone wealthy enough to pay it. The district court's logic would thus preclude a facial challenge in any excessive fines case, no matter how high the fine.

19–20. It was uncontested that the Ordinance does not require pre-towing notice, and that it provides for immediate towing for a first violation. *See* Statement, Part I.B, *supra.* The court acknowledged this Court's precedent holding that generally "[d]ue process requires that individualized notice be given before an illegally parked car is towed." *Grimm v. City of Portland*, 971 F.3d 1060, 1063 (9th Cir. 2020); *see id.* at 1064 ("In short, pre-towing notice is presumptively required."). And it "agree[d] with Plaintiff[s] that it is unclear how the publication of its ordinances on the website and the posting of a sign is sufficient to provide *individualized* notice prior to towing." 1-ER-20 (emphasis original).

Nonetheless, the court ruled that the Ordinance was facially constitutional based *solely* on the City's representation, without any supporting evidence, that "it has a pattern and practice of issuing warnings before any tows." 1-ER-20. To start, this ruling violated Rule 56's requirements. In their opposition to the City's motion for summary judgment, Plaintiffs hotly disputed the existence of any such a pattern and practice. *See* 3-ER-430. The deposition testimony did not reveal any pattern or practice; the City produced no evidence of a written policy or procedure related to notice; and Plaintiffs pointed to evidence showing

that, on at least one occasion, officers had ordered the towing of a vehicle for violating a related parking ordinance without anything more than a notice of violation, not a notice of towing, placed on the windshield. 5-ER-1200–1201. The district court acknowledged this material dispute of fact, but assigned no importance to it, stating that "[w]hile Plaintiffs dispute the evidence as to whether Defendant does, in fact, have such a pattern and practice, this is beside the point." 1-ER-20.

The reason the district court felt this disputed factual issue was "beside the point" was its conclusion that under *Salerno,* such disputed facts did not matter, even on a motion for summary judgment, so long as the City could suggest *any* scenario in which the City might have given actual notice. The court reasoned that, "because there are circumstances in which Defendant *can* provide adequate notice to satisfy the requirements for procedural due process, Plaintiffs' facial challenge fails." 1-ER-20 (emphasis added).

The district court's reasoning—that an ordinance that fails to provide for constitutionally required notice can still be valid if there is a *possibility* that notice will be *voluntarily* given—is plainly erroneous. Where due process requires individualized notice of a taking but the law

"provides *no* notice," even the fact that the plaintiffs received "actual notice" has "no bearing" on a facial procedural due process challenge to the law. *See Garcia-Rubiera v. Calderon*, 570 F.3d 443, 456 (1st Cir. 2009) (sustaining facial attack on statute that permitted escheat of unclaimed funds to government without providing notice to potential claimants provisions and holding that "actual notice cannot defeat [facial] due process claim"). It follows that where the best that a defendant can do is to speculate that *some* plaintiffs *may* receive notice, an ordinance that fails to *require* notice mandated by due process must be invalid.

Indeed, both this Court and the Supreme Court have consistently held that the possibility, or even the likelihood of voluntary compliance with constitutional or statutory requirements cannot save a statute that threatens an unconstitutional deprivation from facial invalidity. *See, e.g.*, *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894 (1992) (holding law requiring spousal notification prior to obtaining an abortion facially unconstitutional, even though defendant contended that nearly all covered women would not be adversely affected because they would voluntarily provide notice to their husbands); *Patel*, 576 U.S. at 418–422 (ordinance requiring hotel clerks to provide access to guest register

without a warrant or opportunity for pre-compliance review or risk being "arrested on the spot" was facially invalid despite possibility that some clerks might voluntarily consent to a search); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 789 (9th Cir. 2014) (statute that failed to provide for individualized determination before setting bail was facially unconstitutional, regardless of whether some detainees might receive such a determination under a different statutory scheme, because "every person has the right not to be subject to an unconstitutional law"). Following this logic, the Ordinance must be facially invalid because it permits an unconstitutional taking with no notice, notwithstanding the City's unsupported claim of a "custom" of voluntarily providing notice.

The district court's approach to the procedural due process claim illustrates how its erroneous invocation of *Salerno* to disregard the proper evaluation of evidence—whether at summary judgement or at trial—would effectively immunize the government from facial constitutional challenges altogether.

D. In granting summary judgment on the equal protection claims, the district court ignored substantial evidence that the Ordinance was motivated by animus toward vehicularly housed people.

Finally, the district court committed two distinct but related errors in granting summary judgment for the City on Plaintiffs' equal protection claim. 1-ER-16–18.[15] Its ruling cannot be squared with either controlling equal-protection precedent or well-established summary-judgment standards.

The Equal Protection Clause prohibits the government from "discriminat[ing] against classes of people in an 'arbitrary or irrational' way or with the 'bare . . . desire to harm a politically unpopular group.'" *Hecox v. Little*, 104 F.4th 1061, 1073 (9th Cir. 2024) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985)). And "[w]hen a law exhibits a desire to harm an unpopular group, courts will often apply a 'more searching' application of rational basis review." *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1200 (9th Cir. 2018). In *Cleburne,* for example, the Supreme Court reviewed *eight* proffered

[15] As to equal protection, Plaintiffs challenge only the district court's grant of summary judgment to the City, not the court's denial of their summary-judgment motion.

justifications for a city's requirement of a special permit for group homes for people with intellectual disabilities. 473 U.S. at 448–450. Applying "searching scrutiny" to these justifications, the Court concluded that the permit requirement was based on "an irrational prejudice" against a disfavored group because "the record does not reveal any rational basis" supporting the city's claim that the requirement was necessary to protect its "legitimate interests." *See id.*

Here, too, Plaintiffs presented substantial evidence showing that animus toward unhoused persons played a serious part in the Ordinance's enactment. *See* Statement, Part I.A, *supra.* The district court acknowledged that "the parties largely dispute whether there was impermissible animus towards the vehicularly-housed," but concluded that this did not preclude summary judgment because the City had offered some evidence that the Ordinance also purportedly "serve[d] *other* legitimate government purposes"—namely, "public safety and health, as well as the availability of parking." 1-ER-17 (emphasis added). But that violates the holding in *Cleburne* that when a law targets an unpopular group, a court must engage in "searching scrutiny" to determine whether the means chosen by the government are rationally related to the

purported ends. *See* 473 U.S. at 450. And an invidious discriminatory purpose need not be the sole reason for enacting the law; it is enough that it was "a motivating factor." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–266 (1977); *see also*, *e.g.*, *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir 2016).[16]

At the very least, Plaintiffs' presentation of substantial evidence on the issue of animus precluded a grant of summary judgment in favor of the City. Plaintiffs' evidence strongly suggested that the other purposes advanced by the City were pretextual. *See Ave. 6E Invs., LLC*, 818 F.3d at 504 ("[t]he presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views"). That these purported "legitimate purposes" were simply pretext for that animus is evidenced by the fact that City officials never actually conducted a parking study, nor did it find any connection between public safety and homelessness. *See*

[16] To the extent that this Court has previously stated that a classification violates equal protection *only* when it "exclusively" rests on irrational prejudice, *see Wasden*, 878 F.3d at 1201, that statement conflicts with Supreme Court precedent, including *Cleburne*. But even if this were the proper test, the district court's grant of summary judgement would still be improper because Plaintiffs raised contested issues of fact as to whether *any* of the proffered alternative purposes were genuine.

Statement, Parts I.A and I.C, *supra*. The government cannot cure an unconstitutional law by concealing its discriminatory intent. *See, e.g.*, *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973) (invalidating a regulation prohibiting food aid to "households containing one or more unrelated persons" because legislative history showed intent to target "so[-]called 'hippies and 'hippie communes'"); *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1162 (9th Cir. 2013) (evidence showed intent to discriminate against persons with disabilities even though ordinance only prohibited "group homes").

The district court's approach here was the exact opposite of the analysis required under *Cleburne*. Rather than engage in the "searching scrutiny" concerning the City's purported justifications that *Cleburne* requires, the court instead searched for any evidence *supporting* the City's justifications and presumed them to be valid, in the process ignoring or discrediting Plaintiffs' voluminous contradictory evidence. 1-ER-17-18. Unlike *Cleburne,* the court never questioned, for example, why prohibiting RVs from using parking spaces that were open to other vehicles promoted "health" or "safety," or whether the claimed need to provide additional parking access near businesses and facilities on

Morris Street was rationally related to a 24-hour ban on RV parking in residential neighborhoods. Instead, it cited, as sufficient justification for a rational relationship, the "whereas" recital clauses in the Ordinance itself, ignoring all of Plaintiffs' evidence concerning the community's hostility, fear, and "visceral uncomfortableness" that led to its enactment. 1-ER-17-18.

The district court's analysis thus ignored an essential component of the equal protection analysis required by *Cleburne:* whether, even if the City's purported goals were arguably "legitimate," the *relationship* of the City's *classification* to those goals was "so attenuated as to render the distinction arbitrary or irrational." 473 U.S. at 446. Simply put, it was not enough merely to recite that an ordinance is necessary to preserve parking, health, or safety; the court was required to engage in "searching scrutiny" as to whether the means adopted were rationally related to the stated goals. It plainly did not.

In sum, because the "bare . . . desire to harm a politically unpopular group" cannot be a legitimate government purpose, *Cleburne*, 473 U.S. at 446–47, Plaintiffs at the very least created triable issues of fact on their claim that the Ordinance violates equal protection. The district court

therefore erred when it disregarded this evidence in granting summary judgment.

CONCLUSION

The Court should reverse the district court's judgment. On Plaintiffs' void-for-vagueness claim, this Court should direct the district court to enter summary judgment in favor of Plaintiffs. The Court should remand Plaintiffs' other claims—or, at a minimum, their unreasonable seizure, procedural due process, and equal protection claims—for trial or further proceedings consistent with this Court's opinion.

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FOR THE NINTH CIRCUIT

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