



Northern  
California



*Transmitted Via Electronic Mail*  
January 24, 2022

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**Re: Appeal of OSV Ban Ordinance and Associated Coastal Permit**

To the Santa Cruz City Council and Planning Commission:

By this letter, the American Civil Liberties Union of Northern California (“ACLU”), Disability Rights Advocates (“DRA”), Abbi Samuels, Peter Gelblum, and Veronica Crow (together, “Appellants”) demand the City of Santa Cruz (“City” or “Santa Cruz”) rescind Ordinance 2021-20 (the “OSV Ban Ordinance” or “Ordinance”), which effectively prohibits people from residing in “oversized vehicles (“OSVs”) within the City. Pursuant to Santa Cruz Municipal Code (“SCMC”) Sections 24.04.182-183, *this letter also serves as a notice of appeal of the coastal permit issued by the Zoning Administrator on January 12, 2022 in support of the OSV Ban Ordinance (“Permit”).*<sup>1</sup> The Ordinance and the Permit violate the California Coastal Act and

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<sup>1</sup> With this notice of appeal, Appellants submit the demanded \$699 fee under protest. Under the unambiguous terms of the Municipal Code, such a fee is *not* to be charged with respect to “developments project which are appealable to the Coastal Commission.” See SCMC § 24.04.182 (“A written notice of appeal, together with the appropriate fee, *except development projects which are appealable to the Coastal Commission where no fee will be charged*, must be received by the secretary to the zoning board or the city clerk...” (emphasis added). The City’s Planning Commission website provides the same. See *Planning Commission*, CITY OF SANTA CRUZ, <https://www.legalbluebook.com/bluebook/v21/rules/18-the-internet-electronic-media-and-other-nonprint-resources/18-2-the-internet#b-320180> (last accessed Jan. 24, 2022). Further, the January 12, 2022 Zoning Administrator Agenda states “an appeal must be accompanied by a six hundred ninety-nine dollar (\$699) filing fee, *unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee.*” CITY OF SANTA CRUZ, January 12, 2022 Special Meeting Zoning Administrator Agenda (Jan. 12, 2022), <https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Meetings/ViewMeeting?id=1845&doctype=1>. Although OSV Ban, Project No. CP21-0174, also included a design permit, it principally involves a coastal permit, and therefore no fee should be charged. Appellants demand that the City

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related environmental justice policies, and Santa Cruz's local plans (including its General Plan, Housing Element, Local Coastal Program, and Municipal Code). The Ordinance and Permit also violate the Federal and California Constitutions and Federal and State disability laws. If enforced, the OSV Ban and associated Coastal Permit would have a disproportionate impact on marginalized groups, driving people of color, people with disabilities, and low-income people out of the City.

## **I. Interests of the Appealing Parties**

The **ACLU** and **DRA** are civil rights organizations that have repeatedly written to the City to inquire about its treatment of unhoused people, including vehicularly housed people. The ACLU and DRA submit this appeal both as organizations and on behalf of all people whose rights would be harmed if the OSV Ban Ordinance and Permit were allowed to go into effect.

**Abbi Samuels** and **Peter Gelblum** are members of the Santa Cruz ACLU Chapter who have individually contested the City's OSV Ban. Ms. Samuels lives on the Westside and is a neighbor of many vehicularly housed people in the area. Mr. Gelblum owns an OSV and has parked within the Coastal Zone, including when evacuated due to recent wildfires.

**Veronica Crow** is a 70-year-old woman who lives in a recreational vehicle ("RV") next to the ocean in west Santa Cruz. Ms. Crow resides in her RV because she cannot afford housing rents in Santa Cruz on her fixed income. She has several disabilities, including chronic brain cancer and arthritis in her hands and knees. Due to her disabilities, she cannot stay in congregate-type shelters (which are full) as the increased noise and stimulus cause her headaches to be even more unbearable. Congregate shelters also fail to provide sufficient safety for her as a trans woman. She has attempted to secure "safe parking" with the Association of Faith Communities ("AFC") Safe Parking Program without success. She always strives to be a good neighbor, but she is harassed and ticketed by the City.

If the OSV Ban is allowed to go into effect, Ms. Crow fears it will be aggressively and repeatedly enforced against her. She would be unable to park her RV on any of the designated spots along West Cliff Drive because it will be too big, too close to an intersection, or in a prohibited overnight area. Thus, if she were unable to park her RV in the coastal zone due to the ordinance she would effectively be driven out of Santa Cruz and the coast, and would have to drive miles to get to the ocean every day. However, she would be unable to afford that because of prohibitive gas costs—driving her RV is very expensive as it gets just five miles per gallon. Furthermore, if she were in a safe parking program an unknown distance away from the beach, she would be dependent on it to be close enough to walk to the beach every day, notwithstanding her disabilities. Being fined for parking her RV would make it even more difficult for Ms. Crow to afford food and other necessities, and make the possibility of returning to fixed housing even farther out of reach. Being towed for accumulating multiple infractions under the OSV Ban would deprive her of all her possessions and leave her with no place to live, leaving her in the precarious prospect of living on

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refund the fee provided herewith, and similarly refund the fee to any other party who has paid it in connection with an appeal of this project.

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the streets. If she were forced to leave Santa Cruz, she would lose her hometown of eighteen years, access to support groups and friends, access to her doctors, and access to the coast.

Ms. Crow deliberately parks within a half-mile from the ocean. She walks along the beach and along the cliffs every day. She loves the water and used to surf. Her dog Eric also loves it—especially playing with other dogs at the dog beach. She has said that “the ocean is the only thing that keeps me sane.” She has always lived relatively close to the beach, claiming “the peace and tranquility are in [her] blood, giving [her] a sense of calm.” She used to take her daughter to the seashore frequently and said that it has always been part of her life. She says that once one has lived so close to the ocean and had it in one’s life, it is hard not to feel that way. She would not know what to do without access to it.

Ms. Crow is respectful of people who live in homes with coastal views, avoiding parking in front of their houses. However, she feels that she also has the right to coastal access, having lived next to the coast her whole life, having contributed to the community for over 70 years, and—most importantly—because the ocean is there for the public. She finds the RV Ban and homeowners’ complaints especially galling because coastal access is supposed to be a public right in California, and complaints from wealthy homeowners about RVs ruining their nice views and expensive homes overlooks the fact that one should not be able to buy up the coast in California.

With rising rents, the influx of new homeowners from Silicon Valley have brought in what Ms. Crow calls a “gated community ethos” that is anti-Californian and that takes away her one of her rights as a Californian—access to the coast. She feels she is being told, “You don’t deserve to be on the beach because you are poor,” an idea she sees as biased, prejudiced, and trying “to privatize the ocean.” She said that coastal access should not just be for people with money.

## II. Santa Cruz’ Homelessness Crisis

According to the 2019 Santa Cruz County Homeless Point-in-Time Count (“Count”), there are 2,167 unhoused people in Santa Cruz County (“County”), including those who live in their vehicles.<sup>2</sup> 78% of all unhoused people in the County are unsheltered, with 69% of chronically homeless people in the County unsheltered. 44% of unhoused people in the County live on the streets or in an encampment; 15% live in a car, van, camper, or RV. Approximately half of the unhoused population in the County is in the City of Santa Cruz. In the City, the Count found 1,197 unhoused residents, 865 of whom were unsheltered (72%). The majority of unhoused people in the County were housed residents in the County for five or more years prior to their houseless status.

In terms of racial demographics, the County’s unhoused population is disproportionately Black and Native American. 33% of unhoused people in the County are Hispanic/Latinx, 8% are Black,

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<sup>2</sup> Applied Survey Research, *2019 Santa Cruz County Homeless Point-In-Time Survey*, SANTA CRUZ CNTY. 14 (2019), <https://housingmatterssc.org/wp-content/uploads/2019/08/2019-PIT-Count-Full-Report.pdf>.

and 10% are Native, as compared to 34%, 1%, and 1% of the general population in the County, respectively. 67% of unhoused people in the County are men and 33% are women.

In terms of disability, 39% of unhoused people in the County reported at least one disabling condition, with 32% reporting a history of mental illness, 30% reporting post-traumatic stress disorder, 26% reporting a physical disability, and 21% reporting chronic health conditions. 31% were employed. In comparison, 7.5% of the City's general population under 65 reported a disability.

It is undisputed that Santa Cruz lacks sufficient housing, shelter, and parking for its unhoused residents. The City has failed to set up *any* safe parking on its own nor has it identified the exact number or location of safe parking by nonprofits.

### III. The Ordinance and Permit

Unable to alleviate its affordable housing shortage, the City has, for many years, sought to expel unhoused persons from the City by attempting to make it so difficult and dangerous for them to survive that they will decide to move elsewhere to live. The City's efforts have included issuing repeated citations for alleged violations of unconstitutional laws prohibiting sitting or lying down in public places, or being in public places during prohibited hours; severely limiting the availability of "sanctioned" campground space to areas that are prone to winter flooding, and preventing encampment in other parts of the city; aggressive enforcement of parking and other motor vehicle ordinances targeted at people living in recreational vehicles; and verbally and physically harassing unhoused persons.

Most recently on November 9, 2021, the City Council adopted Ordinance 2021-20, which amended various provisions of the SCMC relating to the parking of oversized vehicles, like RVs. The Ordinance prohibits the *overnight* (i.e., between 12:00 a.m. and 5:00 a.m.) parking of OSVs *anywhere* in the City, with narrow exceptions for OSVs owned by individuals who already own or rent real property and wish to park their OSVs adjacent to their homes. SCMC §10.40.120(a), (g). It also prohibits the parking of OSVs *at any time* in many locations that are open to parking for other vehicles, such as within 100 feet of a crosswalk, intersection, stop sign, traffic signal, or on any arterial street. SCMC §10.40.120(f). These "prohibited zones" of 100 feet—or one-third the length of a football field—occur multiple times on any given street segment, and are each *five times as long* as the 20-foot zones "prohibited zones" pertaining to the parking of other vehicles near the same street features. *See* SCMC §10.40.040. Moreover, the prohibition of parking "at any place within 100 feet of a...boulevard" appears to prohibit parking along the entire length of all "boulevards." Elsewhere in the SCMC, "boulevard" is defined as "[a]n arterial street or parkway." *See* SCMC 23.24.030.7. Thus, the Ordinance appears to prohibit OSV parking at any time along the entire length of many of the major thoroughfares in the City.<sup>3</sup>

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<sup>3</sup> Although the SCMC does not define "arterial street," according to a City planning document, arterial streets "carry the City's heaviest traffic flows and provide regional and inter-community access. Arterial streets within the City include Ocean Street, Mission Street, Water Street, Soquel

In addition, the Ordinance requires that a person living in an OSV may not “permit the area surrounding the oversized vehicle to be maintained in an unsafe, untidy, and/or unsanitary/unhygienic fashion.” “Surrounding areas” must be “kept free from litter, debris, waste, discarded food products...discarded property...unleashed animals, and garbage.” §10.40.120(d). This subsection of the Ordinance does not define “unsafe” or “untidy;” does not delimit by any kind of measurement what is the “surrounding area;” and imposes on an OSV resident an obligation to clean up after anyone else who may choose to dump trash or debris in the vicinity of their vehicle. A violation of this provision is a criminal misdemeanor, which subjects the person living in the vehicle to arrest<sup>4</sup> and is punishable by a fine of up to \$1,000 and imprisonment for up to 6 months. SMC §4.04.010(5). A single violation also subjects the vehicle to towing under Cal. Vehicle Code § 22651(h)(i).<sup>5</sup> In addition, under the Vehicle Code, an accumulation of as few as five parking citations can subject a vehicle to towing. Cal. Vehicle Code § 22651. Given the history of the City’s enforcement of other parking ordinances against RV residents, this section is a powerful weapon that is likely to be used aggressively as a means to unlawfully threaten and harass OSV residents.<sup>6</sup>

The Ordinance provides that any person who parks an oversized vehicle such as an RV anywhere in the City between the hours of 12:00 p.m. and 5:00 a.m. is subject to punitive and excessive fines and towing, regardless of the unavailability of alternative shelter or a “safe parking” alternative within the City.

While the Ordinance makes passing reference to the *possibility* that the City “may” operate or sponsor a “safe parking” program to enable people living in RVs to park their vehicles safely on City-owned property, it neither requires the City to develop such a program nor makes the ability of the City to ticket and tow the homes of vehicularly housed persons conditional on the availability of any “safe parking” spaces or alternative shelter.

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Avenue, Broadway Avenue, Laurel Street, Bay Street, Delaware Avenue, Morrissey Boulevard, Murray Street, San Lorenzo Boulevard, Seabright Avenue, Market Street, Beach Street, Second Street, Front Street, Pacific Avenue, Cedar Avenue, Center Street, Walnut Street, River Street and High Street. CITY OF SANTA CRUZ, *General Plan 2030 Draft EIR* at 4.4-7, <https://www.cityofsantacruz.com/home/showdocument?id=22462>.

<sup>4</sup> SMC § 4.02.050 provides that “City enforcement officials are authorized to arrest” a person “whenever the enforcement official has reasonable cause to believe that the person has committed a violation of the municipal code...in his or her presence.”

<sup>5</sup> Cal. Vehicle Code § 22651(h)(i) provides that a peace officer “may remove a vehicle...if [the] officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is...required or permitted to take, and does take, the person into custody.”

<sup>6</sup> By contrast, with respect to other violations of the municipal code, the City appears to encourage enforcement by administrative citations. *See* SMC § 4.14.010.

#### **IV. The Ordinance and Permit Unlawfully Limit Access to the Coast and are Contrary to California Environmental Justice Principles**

This is not the first time the City has attempted, by the enactment of an ordinance, to expel persons living in RVs. In 2016, the City passed a similar OSV ordinance and approved a coastal permit, which never went into effect following a finding by the Coastal Commission of the existence of a “substantial issue.” Like the prior iteration presented to the Coastal Commission in August 2016, the OSV Ban Ordinance and associated Permit unlawfully limit access to the coast, particularly for low-income people, people of color, and those with disabilities. And given the amendment of relevant legislation in 2016 authorizing both the “issuing agency” and the Coastal Commission to consider environmental justice principles, the Ordinance and Permit must be reconsidered. Pub. Res. Code § 30604(h). The City has not cured the deficiencies identified by the Coastal Commission. The Ordinance and Permit create an absolute overnight OSV ban city-wide, severely curtail daytime OSV parking, treat RV inhabitants differently than persons who dwell in fixed housing, and uniquely subject OSV residents to criminal liability for their undefined “surrounding area[s].” The repackaged OSV Ban and associated Coastal Permit are still supported by scant evidence of the link between purported harms and RV residents. Instead, there is a perpetuation of stereotypes about poor people. Nor is the ban narrowly tailored to address those harms. Similarly, there is little data or analysis on the number of OSV residents and the availability of alternative parking. The City still has no publicly-provided safe parking alternative and relies on vague aspirational expansion of privately run safe parking programs. Condoning the OSV Ban and associated Coastal Permit will only encourage the proliferation of these exclusionary policies across the state.

Article X of the California Constitution guarantees the right of access to navigable waters for all people. The California Coastal Act Section 30210 mandates that “maximum access...and recreational opportunities shall be provided for all the people...” Additionally, Section 30312.5 provides that “public facilities, including parking areas or facilities, shall be distributed throughout an area.” Further, Section 30223 protects “upland areas necessary to support coastal recreational uses,” including parking areas. It is undisputed that the OSV Ban Ordinance and Permit would severely limit street parking opportunities for OSV residents without any guaranteed alternatives.

The Coastal Commission’s 2016 questions and observations remain equally unanswered and applicable to the current OSV Ban and Coastal Permit application.<sup>7</sup> Commissioners Howell and Turnbull-Sanders asked how the City could blame OSV residents with any increase of crime. The City provides the same vague conclusory response. One of the few specific statistics provided is a reference to a mere three of thirty-eight recent fire incidents being related to an OSV.<sup>8</sup>

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<sup>7</sup> Cal. Coastal Comm’n, August 10, 2016 Meeting, <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2016-08-10>.

<sup>8</sup> City of Santa Cruz, Jan. 12, 2022 Zoning Administrator Agenda Report at 1.3, [https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Documents/Downloadfile/Zoning\\_Administrator\\_-\\_Special\\_Meeting\\_1845\\_Agenda\\_Packet\\_1\\_12\\_2022\\_10\\_00\\_00\\_AM.pdf?documentType=5&meetingId=1845&isAttachment=True](https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Documents/Downloadfile/Zoning_Administrator_-_Special_Meeting_1845_Agenda_Packet_1_12_2022_10_00_00_AM.pdf?documentType=5&meetingId=1845&isAttachment=True).

Conspicuously absent is any evidence of a “specific nexus,” as Commissioners Turnbull-Sanders described, that increased debris, water discharges, or thefts are causally connected to OSV residents. Instead, the Ordinance and Permit wrongly “identif[ies] anyone [who] is homeless as a chronic drug user or thief” in the words of Commissioner McClure. The City has therefore failed to substantiate neighborhood complaints, raising the possibility that the complaints are actually driven by blanket animus towards unhoused people.

Not only do the alleged harms need to be substantiated, but the Coastal Commission requires that proposed solutions must be narrowly tailored. The City has failed to make any effort to tailor its proposed solutions. It has, for example, failed to consider providing RV residents with trash disposal or waste disposal.<sup>9</sup> As Commissioner McClure observed, the provision of services also does not lead to a drawing in of unhoused people. Rather, if the OSV Ban and Coastal Permit are affirmed, it is such “drastic draconian” policies that would spread.<sup>10</sup>

Despite multiple commissioners inquiring about the City’s identification of parking alternatives in 2016, Santa Cruz provides largely the same response now. In the intervening six years, the City has not created a single public safe parking spot. *Not one.* Instead, the City identifies the same Association of Faith Communities safe parking program. “As many as 22 spots” are available in Santa Cruz, but their locations, requirements, and the hours of operation are not disclosed. It is therefore unknown whether such spaces can accommodate all OSV residents. Indeed, the City does not even provide a meaningful estimate of the number OSV residents. The City proffers a number of 65 OSVs based on a count of limited streets. The conservative 2019 Point-in-Time Homeless Count suggests there are 180 vehicularly housed people in Santa Cruz. Further, the Santa Cruz Police Department cited 294 OSVs in 2021, suggesting the number of OSVs is far greater than 65.

The City has also failed to provide any analysis on the impact of its daytime parking restrictions. Neither the unspecified AFC program spots nor the City’s aspirational goal of adding 3 emergency parking spots and 30 safe parking spots can accommodate the need. The City has provided no specifics about their safe parking plans, hinting only that the programs would be time-limited (nighttime hours only), located *outside* of the Coastal Zone, and limited to unhoused people who meet certain barriers. Given the City’s abysmal record of creating additional parking alternatives, the aspiration parking should not be credited when considering the OSV Ban and Coastal Permit. Without alternatives, the OSV Ban and Coastal Permit will only “push[] out” people and have them “living on the street instead” as Commissioner Turnbull-Sanders observed. Or in the words of Commissioner McClure, it is time to stop “chasing people around the city.”

Newly adopted environmental justice policies also require reconsideration of the OSV Ban and Coastal Permit. In late 2016, the Governor signed AB 2616, which amended the Coastal Act and gives the Coastal Commission new authority to specifically consider environmental justice when

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<sup>9</sup> *Id.* at 1.7.

<sup>10</sup> August 10, 2016 Meeting, *supra* n.7 (quoting Commissioner Vargas).

making permit decisions. § 30604(h)<sup>11</sup>. The unanimously adopted 2019 Environmental Justice Policy provide that “opportunities not be denied on the basis of background, culture, *race, color*, religion, national origin, *income*, ethnic group, age, *disability status*, sexual orientation, or gender identity.”<sup>12</sup> This specifically includes “low-income communities and communities of color that are disproportionately burdened by or less able to prevent, respond, and recover from adverse environmental impacts.”<sup>13</sup> It further states that “[t]he coast belongs to everyone, and access *cannot be denied or diminished* on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors listed in the Policy Statement.”<sup>14</sup> Therefore, development and permits should “protect, encourage, and *provide lower-cost visitor and recreational opportunities* embody fundamental principles of environmental justice, “identify[] and eliminat[e] barriers...in order to provide for those who may be otherwise deterred from going to the beach or coastal zone.” The Coastal Commission must “*strive for a no-net-loss of lower-cost facilities* in the coastal zone, while implementing a longer-term strategy to increase the number and variety of new lower-cost opportunities.”<sup>15</sup> Santa Cruz provides for *no environmental justice analysis*, let alone a demonstration of compliance. Had the City considered these equity principles, the Ordinance and Permit could not survive. OSV residents, like all unhoused people, are disproportionately people of color, people with disabilities, and poor. Unlike those who can afford to live on Santa Cruz’ coast in fixed housing, the Ordinance and Permit target OSV residents’ access to the coast by barring overnight parking, limiting daytime parking, and subjecting them to fines, towing, and arrest. And again, no reasonable alternatives are provided.

#### V. The Ordinance and Permit do not Comply with Santa Cruz’ General Plan, Housing Element, Local Coastal Program, and Municipal Code

The Ordinance and Permit are in direct conflict with provisions of the Santa Cruz 2030 General Plan (“General Plan”). Santa Cruz’s General Plan provides policies to effectuate a vision and principle of a balanced community with mobility, parks and recreation, affordable housing options, and community services. The General Plan states Santa Cruz will “maintain the community’s longstanding commitment to shared social and environmental responsibility, fostering a balance between employment, housing *affordable to persons of all income levels*, transportation, and

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<sup>11</sup> “Where a local government fails to consider environmental justice when evaluating a proposed development that has the potential to adversely or disproportionately affect a historically disadvantaged group’s ability to reach and enjoy the coast, that failure may be the basis for an appeal to the Coastal Commission. Similarly, where a local coastal program includes policies that implement environmental justice principles, a local government’s failure to consider those principles may also be the basis of an appeal to the Coastal Commission.” Environmental Justice Policy at 7.

<sup>12</sup> Cal. Coastal Comm’n, Environmental Justice Policy at 4 (Mar. 8, 2019), [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf) (“Environmental Justice Policy”) (emphasis added).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Id.* at 7 (emphasis added).

<sup>15</sup> *Ibid.* (emphasis added).



natural resources.”<sup>16</sup> The Ordinance and Permit instead provide for disparate treatment of those who have the means to live on Santa Cruz’s coast in fixed housing and those who must live in their oversized vehicles.

The City is to “integrat[e] automobile use”<sup>17</sup> and “[e]ncourage innovative solutions that provide adequate parking.”<sup>18</sup> The Ordinance does the opposite by limiting vehicle usage and parking. It makes streets inaccessible to people living in their vehicles by providing for an outright ban in the evening and severely curtails daytime parking without mandating additional, alternative parking for the parking lost.

The General Plan’s prescriptions on parks and recreation are equally ignored. Under PR3.3 the City is to “enhance publicly accessible coastal and open space areas.” This includes “ensur[ing] that development does not interfere with the public’s right to access the ocean,” (PR3.3.2), “requiring new development and public works projects to provide public access from the nearest public roadway to the shoreline and along the coast” (PR3.3.3), and “maximize public access and enjoyment of recreation areas along the coastline” (PR3.3.4). The public includes those who must reside in their vehicles, not just those with fixed housing. Therefore, the OSV Ban uniquely restricts RV residents, contrary to these provisions.

Furthermore, rather than promote “prosperity for all” or provide “provide excellent social services” (General Plan at 8), the OSV Ban and Coastal Permit promote instability by potentially stripping RV residents of their only homes. Rather than provides services or ensure alternative parking, the OSV Ban and Coastal Permit would leave people unsheltered in public.

They also run counter to Santa Cruz’ *2015-2023 Housing Element*, which provides that housing for “extremely low, very low, low, and moderate income households is of utmost concern.”<sup>19</sup> “Mobile homes,” “any vehicle designed, used, or intended to be used generally for living and/or sleeping quarters which is capable of moving, being moved, towed or transported,” can be part of meeting that need which should be maintained.<sup>20</sup> The Housing Element 3.1 also recognizes the special needs of housing for people with disabilities and the need for services. Again, the Ordinance and Permit limit use of OSVs, which disproportionately impacts people with disabilities, and fails to require the provision of any services to accommodate them.

The Coastal Act also requires that all counties and cities lying within the coastal zone prepare a Local Coastal Program (LCP) to guide coastal development actions with that jurisdiction. The City must ensure that any coastal permit will “[m]aintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.” SCMC § 24.08.250. The Santa Cruz LCP is “an

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<sup>16</sup> City of Santa Cruz, General Plan at 1 (June 2012), <https://www.cityofsantacruz.com/Home/ShowDocument?id=33418>.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.* M1.5.2.

<sup>19</sup> CITY OF SANTA CRUZ, 2015-2030 Housing Element of the General Plan at 7-113 (Mar. 22, 2016), <https://www.cityofsantacruz.com/home/showpublisheddocument/53522/636924960003000000>.

<sup>20</sup> *Id.* at 6-62.

integral part of the City’s General Plan since planning and land-use policies within the coastal zone are issues of concern to the community as a whole” and is aimed at “maximiz[ing] access to the coast *for people of all income ranges.*”<sup>21</sup> It includes directives to “enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act,”<sup>22</sup> “ensure that development does not interfere with the public’s right to access the ocean,”<sup>23</sup> and “[d]evelop and implement plans to maximize public access and enjoyment of recreations areas along the coastline.”<sup>24</sup> For the above reasons, the OSV Ban limits public access to the coast, particularly poor people, people of color, and those with disabilities. The LCP also has specific provisions requiring that vehicular access to coastal areas is maintained, including free parking.<sup>25</sup> Prohibiting oversized vehicles from parking on city streets directly impedes that access.

## VI. The Ordinance and Permit are Unconstitutional

Under the Eighth Amendment’s prohibition on “cruel and unusual punishment,” the City is prohibited from punishing indigent persons for life sustaining activities so long as those persons do not have reasonable alternatives for shelter. *See Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018), amended by 920 F.3d 584 (9th Cir. 2019), cert. denied, 140 S. Ct. 674 (2019). The Eighth Amendment also prohibits excessive fines, where the fine is grossly disproportionate to the gravity of the offense, will deprive the offender of their livelihood or is more than their circumstances and estate will bear. *See Timbs v. Indiana*, 139 S. Ct. 682 (2019); *see also* Article I, § 17 of the California Constitution. As the Supreme Court has recognized, excessive fines have often been used to wrongly punish status or a disfavored group. *Timbs*, 139 S. Ct. at 688-89. The OSV Ban violates these prohibitions because it imposes penalties for living in the only shelter some have access to, their RVs parked on public roads in Santa Cruz. There are not enough adequate shelters, housing, or safe parking for the unhoused in the City. So, for many, the only place to protect oneself from the elements is to sleep or simply “be” is in their vehicles. It is clear that the City seeks to RV residents from the City by (1) issuing repeating parking citations so as to make it economically impossible for such persons to live in their RVs, (2) increasing the likelihood of losing their homes through impoundment, and (3) threatening a loss of liberty through imprisonment. Accordingly, the OSV Ban violates the Eighth Amendment.

Further, under the Due Process Clause of the Fourteenth Amendment, a government may not act with deliberate indifference to place a person in a position of known or obvious danger that they would not otherwise have faced. OSV Ban Ordinance violates this prohibition because it

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<sup>21</sup> City of Santa Cruz, Local Coast Program and Coastal Land Use Policies and Maps at 1 (Oct. 27, 1992),

<https://www.cityofsantacruz.com/home/showpublisheddocument/51167/636924963727070000> (“Local Coast Program”) (emphasis added).

<sup>22</sup> Local Coast Program, Land Use Element, 3.5,

[https://www.sccoplanning.com/Portals/2/County/userfiles/106/GP\\_Chapter%202\\_Land%20Use](https://www.sccoplanning.com/Portals/2/County/userfiles/106/GP_Chapter%202_Land%20Use) (“Land Use Element”).pdf.

<sup>23</sup> Land Use Element, 3.5.2.

<sup>24</sup> Land Use Element, 3.5.5.

<sup>25</sup> Land Use Element, 3.5.4; Local Coast Program, Parks and Recreation Element Policies 1.7, 1.7.1, 1.7.2.

empowers the City to fine RV residents (and potentially arrest them), forcing them into even greater financial destitution, and to tow the vehicles which constitute their homes and only shelter, exposing them to the severe hardship of being unsheltered in public. This would deprive them greater access to food, water, electricity, secure sleeping, storage of life necessities, and access to care and services which undoubtedly heightens the level of stress and anxiety among persons who are already confronted with the significant challenges posed by their poverty. During the COVID-19 pandemic, the risks posed to individuals whose homes are towed are even greater. Individuals whose homes are towed are exposed to an increased risk of contracting the COVID-19 virus because they are unable to limit their travel in their homes. Rather than take COVID-19 into account, the City has expressly provided that it will only suspend enforcement during non-pandemic related emergencies.

The Federal and State Constitutions also protect the right of freedom of movement and travel. *U.S. v. Wheeler*, 254 U.S. 281, 293 (1920); *In re White*, 97 Cal. App. 3d 141, 148 (1979). Because the OSV Ban effectively banishes RV residents from the coast and the City, without sufficient justification, it is unconstitutional.

## **VII. The Ordinance and Permit Fail to Comply with the Americans with Disabilities Act and the California Disabled Persons Act**

Title II of the Americans with Disabilities Act (“ADA”) provides: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. A public entity is prohibited from “utiliz[ing] criteria or methods...that have the *effect* of subjecting qualified individuals with disabilities to discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(3)(i) (emphasis added). Further, under Title II a public entity is affirmatively obligated to make “reasonable modifications” when necessary to avoid discrimination based on disability unless the modifications would fundamentally alter the nature of the service, program, or activity. *See* 28 C.F.R. § 35.130(b)(7). The California Disabled Persons Act (“CDPA”) incorporates the ADA and states that “a violation of the right of an individual under the Americans with Disabilities Act...constitutes a violation of the CDPA. Cal. Civ. Code § 54.1(d).

People with disabilities are overrepresented in the City of Santa Cruz’s houseless population and many rely on oversized vehicles as their only form of shelter and vehicular transportation. Many such individuals have a disability-related need to remain in their RVs, which are crucial to managing their disabilities, and maintaining their physical and mental health. Though enforcement of the OSV Ban will harm everyone who uses an RV and seeks to access the coast in Santa Cruz, it will harm this population of houseless people with disabilities in a different and greater way. As just one example, while vehicularly-housed people who do not have disabilities may be able to walk the distances required to access services, facilities, and coastal areas the OSV Ban will prevent them from parking near—albeit with difficulty—many people with disabilities cannot. Moreover, the OSV Ban does not provide or allow for any accommodations to ensure that people with disabilities who rely on RVs for shelter and transportation are not disproportionately denied access to the coast, and to services and facilities in the Coastal Area.

### VIII. Conclusion

For the above reasons, the OSV Ban and associated Coastal Permit should be rescinded.

Sincerely,



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