

# San Francisco Bay Conservation and Development Commission

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**TO:** Enforcement Committee Members

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**SUBJECT: Executive Director’s Recommended Enforcement Decision Regarding Proposed Revised Commission Cease and Desist Order No. CCD2020.001.00 Issued to City of Oakland**

(For BCDC Enforcement Committee consideration on October 1, 2020)

## Executive Director’s Recommendation

The Executive Director recommends that the Enforcement Committee adopt the Recommended Enforcement Decision, including the accompanying proposed revised Cease and Desist Order No. CCD2020.001.00 (“Order”) to the City of Oakland (“City”), for the reasons stated below. This matter arises out of an enforcement action initiated by BCDC staff in February of 2019, following numerous reports of unauthorized activities over several months in Union Point Park, which is located within BCDC’s Shoreline Band jurisdiction. The Order that is being presented to the Enforcement Committee has been revised to include definite dates by which the City will clear Union Point Park of encampments.

The matter was previously discussed with the Enforcement Committee on July 24, 2019, October 10, 2019, November 20, 2019, March 12, 2020, and August 13, 2020. The background of the action and measures that are being negotiated to resolve the situation were discussed during those prior meetings.

Over the course of the past several months, BCDC staff and City representatives worked jointly to develop the measures set forth in the proposed revised Cease and Desist Order No. CCD2020.001.00, and the accompanying Encampment Closure and Park Restoration Plan (Plan). At the September 17, 2020 Commission meeting, the Enforcement Committee recommended a revised Order to the Commission that the Enforcement Committee approved, with the City’s agreement, at the meeting on August 13, 2020. That proposed revised Order would have required the City to clear the Park of encampments after the occurrence of a “Triggering Event,” which would signal that the COVID-19 emergency has ended. After hearing from residents of the adjacent marina who spoke on the item at the Commission meeting, the



Commission remanded the matter to the Enforcement Committee to consider amendments to the Order to require that the encampments be removed prior to the end of the COVID-19 emergency.

The proposed Order has now been revised to include a definitive date by which the clearing and closure of encampments in the Park must occur. The proposed date is February 12, 2021, which may be before the City has adopted a resolution ending the COVID-19 local emergency and before the Alameda County Public Health Department has fully lifted the mandatory shelter in place order that was issued in March.

The proposed Order also includes revisions to some other dates by which the City must undertake certain measures to restore the Park to its permitted condition have also changed. In negotiations between BCDC staff and City staff, the City noted that it would be more effective and efficient to replace signage and undertake other measures after the encampments have been cleared. Thus, the deadline for replacing the signage is now early 2021.

While the City and BCDC staff have previously agreed on the measures set forth in the proposed revised Order, the City is not in agreement with the revised deadlines for undertaking some of these measures, including, in particular, the revised deadlines for clearing the encampments from the Park. The City had previously consented to clearing the Park within 90 days after the current COVID-19 emergency has ended. The new deadline for clearing the encampments will likely arise before the local COVID-19 emergency measures are fully lifted. This new deadline has also not been discussed with City officials. Thus, the City is not agreeing to this condition in the revised Order.

## Staff Report

### I. SUMMARY OF BACKGROUND TO THE ALLEGED VIOLATION

#### A. Permitting Background

Union Point Park ("Park" or "Union Point Park")<sup>1</sup> was created more than ten years ago on a former industrial site in the City of Oakland, near Coast Guard Island, at 2311 Embarcadero East. The Park history and the details of these permits are addressed in prior memoranda.

#### B. Violation Background

The Violation Reports issued to the City and its co-permittees allege several separate violations of Permit Nos. M2003.028.01 and M2008.030.00 ("Permits"). These violations stem from the failure by the City to maintain required public access areas and associated amenities at Union Point Park and the adjacent beach area. As noted in prior memoranda, the violations are

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<sup>1</sup> Permit No. M2003.028.01 was issued for a 7-acre area referred to in the permit as Union Point Park. Permit No. M2008.030.00 was issued for an approximately 1-acre area referred to as "Cryer Site Park," which, as noted in the Permit is adjacent to Union Point Park. The Cryer Site Park and Union Point Park areas are often referred to collectively as Union Point Park.



related to the unauthorized homeless encampments that have been present in the area for several years, as well as unauthorized materials and debris in the Commission's Shoreline Band jurisdiction related to the presence of the encampments. Unauthorized encampments have been present in various areas of the Park and nearby beach since at least early 2018.

Public comments provided by residents of the adjacent marina at the Commission meeting on September 17, 2020 alleged that encampments have grown over the past several months, and that episodes of violence and vandalism have increased. The residents stated that members have been threatened and that the harbormaster building and cars in the parking lot have been damaged. In general, the encampments have prevented the public from using the Park for its intended uses, caused damage to the Park and its amenities, and contributed to public health and safety concerns in the Park and adjacent areas.

## **II. SUMMARY OF CHANGES TO THE REVISED ORDER**

Starting in March of 2020, in the wake of the Covid-19 pandemic, the City placed a temporary moratorium on encampment closures. The City's response to the COVID-19 pandemic is described in detail in the revised Encampment Closure and Park Restoration Plan. The background sections of the Plan describe the City's current efforts to prevent further deterioration of the Park, stating that City Public Works has placed a dumpster in the Park and is conducting regular pickups. The Plan also states that the City has provided portable toilet and hygiene stations at the Park. The language of the Plan also describes the policies and measures that are in place as a result of the COVID-19 outbreak. Among other measures, on March 23, 2020, the Oakland City Administrator issued an Emergency Order suspending all policies and procedures related to homelessness encampments for the duration of the local emergency or until the Order is rescinded. The City subsequently adopted a Temporary Encampment Management Policy (TEMP) which currently serves as the interim temporary policy that the City will use for the duration of the emergency, unless it is amended or suspended. This Plan describes the City's Temporary Encampment Management Policy ("TEMP") and the measures recommended by the Center for Disease Control (CDC), that the City is following.

Recognizing that homeless individuals should not be moved during while COVID-19 is still spreading in the community, the City originally revised the deadlines set forth in the Encampment Closure and Park Restoration Plan that the City developed to have these deadlines take place after the occurrence of a "Triggering Event," which would signal that the COVID-19 emergency has ended. Under these revisions to the Plan, the City would have enacted a partial encampment closure and a later full encampment closure within 60 and 90 days of the Triggering Event, which would have included the adoption by the City Council of a resolution ending the local emergency that was previously confirmed by adoption of a resolution in March.

The revisions to the City's Plan that BCDC is submitting along with the proposed revised Order developed by BCDC require that the encampments in the Park must be fully closed and cleared by February 12, 2021. In the proposed revised Order, BCDC is also requiring that encampments

that are in areas outside of the established Secondary Priority Area be cleared before the end of the year.

The revisions also establish some new deadlines for Park restoration and maintenance. The plan for installing missing signage is now due January 1, 2021. The City wanted this deadline pushed out a few months because it will be more effective to replace missing signage after the encampments are cleared. The deadlines for development and submission of a long-term maintenance plan and restoration plan are the same as those in the prior proposed revised order. The City must develop and submit for review and approval a plan for restoring the Park and associated amenities no later than September 1, 2021. The City must fully restore the Park no later than April 1, 2022.

The proposed revised Order also retains the extension of time provisions that were negotiated in the prior proposed revised order. If the City encounters any unforeseeable event arising from causes beyond its control that will delay compliance with the conditions in the proposed revised Order, the City may request an extension in writing. These unforeseen events that would justify an extension include a court injunction which prevents the City from clearing the encampments in the Park.

### **III. SUMMARY OF UNRESOLVED ISSUES**

While the City and BCDC previously jointly negotiated a plan to clear the Park of the remaining encampments and restore it so that it can be safely used, the City is not, at this time, in agreement that the encampments must be cleared from the Park by February 12, 2020. The City has noted that current local resolutions and orders emphasize providing interventions focused on garbage and debris pickup, as well as hygiene facilities and public health communications. These resolutions and orders state that clean and clear operations should occur only where there are confirmed exposures to COVID-19 or excessive animal or vermin vector hazards, uncontrolled presence of biological hazards, or a need for encampment decompression.

### **IV. RECOMMENDATION**

The Executive Director recommends that the Enforcement Committee adopt the accompanying proposed revised Cease and Desist and Civil Penalty Order No. CCD2020.001.00 requiring the City of Oakland to undertake the measures necessary to clear Union Point Park of unauthorized homeless encampments and restore the Park to its intended use as an area available to the surrounding communities and other Bay Area residents for walking, bicycling, sitting, viewing the Oakland estuary, fishing, picnicking, and other related purposes. Adopting this proposed Order will also require the City to maintain the Park in conformance with the Special Conditions in the Permits issued to the City and its co-permittees.

Attachments to this staff recommendation include: (1) the Violation Reports; (2) the Statements of Defense; and (3) the Order.