May 16, 2022

E-MAIL

Burlington Development Review Board
P.O. Box 849
Burlington, VT 05402-0849

Re: In re 51 Elmwood Avenue, ZP-22-199

Dear Members of the Board:

Preliminary Statement

The City needs to ensure that all members of our community are supported and their well-being is taken into consideration. In attempting to help one vulnerable group, the City must not inadvertently harm other vulnerable groups who are struggling to survive and grow. McKenzie House has made strides to help low income families and their children have a safe, affordable, and nurturing environment where they can reach for their hopes and dreams. While the City’s attempt to address homelessness is admirable and much-needed, the question is how this goal can be achieved while taking into consideration the needs of all members of the community.

The City’s proposal will harm the residents of the McKenzie House and McKenzie House Families and their community. The declarations that residents are providing to the Development Review Board include voices from mothers and children, the disabled, and elderly residents. A mother is concerned that her young son will suffer from active drug users outside his bedroom window. (Exhibit 1.) A disabled elderly person worries that the stress of living next to the Shelter Pod development as well as the cigarette and marijuana smoke will hurt her health and exacerbate her conditions. (Exhibit 2.) Older residents who have experience in the social services field know the problems that drug addiction poses to those who live next to them. (Exhibits 3 and 4.) These residents face noise, cigarette and marijuana smoke, personal violence, property crimes, and stress from the proposed development.

To their credit, these residents of McKenzie House are also concerned for others in their community. They worry about others who live at McKenzie House that struggle with drug addiction issues or post-traumatic stress disorder. (Exhibits 3 and 4.) They worry about the children that will walk to school by the Shelter Pod development. One of the key risks factors to

The residents also fear that they and other residents will be victims of both violent crime and property crime. The likely population for the proposed Shelter Pod community has residents that pose a significant health and safety risk for those surrounding them. In responding to the conditions at the former Sears Lane encampment, the representatives of the City swore under oath that the residents of that encampment were engaged in risky behaviors, including the use of illegal firearms by a convicted felon, “extensive methamphetamine distribution,” and “threats” by an individual armed with an air rifle. (See Opposition to Plaintiff’s Request for Emergency Relief at 5-6, attached as Exhibit 5; Affidavit of Acting Chief of Police Jon Murad ¶¶ 5-6, attached as Exhibit 6; Affidavit of Chief Engineer for the Burlington Fire Department Steven A. Locke ¶ 4; attached as Exhibit 7. The individual arrested for methamphetamine distribution “was part of a larger network using the Sears Lane site.” Murad Aff. ¶ 5. The Police Department also had evidence of stolen bicycles and a process to strip them for parts. Id. ¶ 6. They have also found multiple stolen vehicles at the Sears Lane encampment. Id. ¶ 7.

“As a result of the threat [from the air rifle,] the City’s fire and ambulance services have requested a police escort every time they go to the site.” Locke Aff. ¶ 4. Unfortunately, the residents of McKenzie House and McKenzie House Families do not have the access that the Fire Department has to the Burlington Police Department. They cannot call for a police escort every time they walk to school or go outside to play.

The lack of a clear plan from the City makes all of these concerns much worse. McKenzie House residents who have experience in social services know that working with this population requires a clear plan. Exhibit 3 ¶ 7; Exhibit 4 ¶ 7. The City has not informed the residents of this neighborhood what the plan is. The City admits that it has not determined who the social service provider is who will run this facility. Lilly St. Angelo, “City Struggles to Find Management.”

1 In the Frequently Asked Questions Regarding the Burlington Shelter Community and Community Resource Center, which is incorporated by reference into the City’s application for a zoning permit at page 7, the City acknowledges that the Shelter Pod community is being built to replace the Sears Lane encampment.(available at https://www.burlingtonvt.gov/sites/default/files/tiles/Condensed%20FAQ%20for%20Shelter%20Village%20and%20Community%20Resource%20Center%20-%20Copy%20%282%20-%20281%29.pdf, Question #9.)
Burlington Free Press, May 16, 2022, A1. The City has only very recently provided a “Draft Emergency Shelter Community Values & Guidelines Agreement” and provided no information about who will be responsible for enforcing these guidelines. The guidelines confirm that the City is constructing a low barrier or “wet shelter” as there is no requirement that a resident not be currently intoxicated.

The draft guidelines do not make the nuisances any less likely. Barring certain behaviors on the property will only push the behaviors out into surrounding areas. For example, if someone is addicted to substances and cannot use these substances in the shelter, they will seek the closest place that they can to satisfy their addiction. That closest place is the McKenzie House and McKenzie House Families.

While it is most concerned about its residents, McKenzie House itself faces significant adverse effects. The United States Department of Housing and Urban Development inspects the property around McKenzie House. Its inspection scores can be influenced by activity surrounding its property. In fact, the maintenance of the City owned parking lot has had an initial negative impact on the inspection scores it has received. In addition, the presence of the Shelter Pod community is likely to increase the maintenance costs associated with maintaining the property.

We have set forth below a legal analysis under Burlington’s zoning regulations, but we ask that the members of the Development Review Board use their common sense to realize that this is not the right location for this project.

Background

McKenzie House Associates, LLC (“McKenzie House”) is the owner of a low-income housing development located at 43 Elwood Avenue (the “McKenzie Property”), immediately adjacent to 51 Elwood Avenue (the “City Property”) where the City of Burlington is proposing to “[e]stablish temporary emergency shelter including 30 shelter pods, community resource center, and bathhouse” (the “Project”). McKenzie House provides Section 8 housing through the federal government housing program. According to the Conditional Use Application ZP-22-199 (the “Application”) for the Project, the City proposes that “Use of [the] Property” is to be a “Community Center,” however the narrative for the Project refers to the Project as an “Emergency Shelter.”

The City Property is located within the Residential High Density (RH) zoning district, and, according to the City of Burlington Property Database, the City Property is 24,125 square feet in size, or 0.55 acres in size. In the Residential High Density (RH) zoning district, an “Emergency Shelter”, is a “Conditional Use” and “Community Center” is permitted, with the caveat that the
“[p]ermitted hours of operation” are from “5:30 a.m. to 11:00 p.m.” Exhibit A, Use Table. However, a “Mobile Home Park” is not a permitted use under the Burlington Comprehensive Development Ordinance, effective January 30, 2008, as most recently amended February 22, 2022 (the “CDO”).

Discussion

The Project does not comply with the CDO for several reasons:

I. THE PROJECT DOES NOT COMPLY WITH THE APPLICABLE RESTRICTION FOR COMMUNITY CENTERS.

The Application characterizes the Project as a “Community Center,” which is only permitted in the Residential High Density (RH) zoning district during the hours between “5:30 a.m. to 11:00 p.m.” However, the Application states that:

The Emergency Shelter Community will operate **24 hours a day** with on-site staffing at all times. The Community Resource Center will operate, open to the public, seven days a week between the hours of 9am to 4pm

Emphasis added.

Because the Application expressly acknowledges that the Community Center will violate the hours set forth in the CDO, the Project cannot be permitted.

II. THE PROJECT DOES NOT COMPLY WITH THE REQUIREMENTS FOR EMERGENCY SHELTERS AS SET FORTH IN THE CDO.

Section 5.4.13 requires that Emergency Shelters comply with the following requirements:

(d) Overnight stays by any individual are limited to 180 consecutive days. An extension of up to 60 days may be provided if no alternative housing is available;

(e) There shall be onsite management by qualified adults during all hours of operation with at least 1 management person for every 25 beds...
The Project does not meet these standards. First, in regard to 5.4.14(d), the Application states that the Project has been approved by City officials for as long as 36 months. This, on its face, plainly violates the requirements that “[o]vernight stays by any individual are limited to 180 consecutive days” even with the one 60 day extension.

Second, the City has provided no evidence that there will be an “onsite management by qualified adults during all hours of operation with at least 1 management person for every 25 beds.” Therefore, the Project does not comply with the special standards for Emergency Shelters.

III. THE PROJECT DOES NOT COMPLY WITH THE CONDITIONAL USE STANDARDS FOR EMERGENCY SHELTER.

Section 3.5.6(a) states that approval of a project “shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards,” including

2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;

3. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;

. . .

6. Any standards or factors set forth in existing City bylaws and City and state ordinances

Regarding 3.5.6(a)(2), the Project will result in an undue adverse effect to the character of the area. Section 4.5 of the CDO provides that “[t]he Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors.” Emphasis added.

The Project, however, will not create safe, livable and pedestrian friendly environment. In fact, as described above, representatives of the City swore under oath that the residents of that encampment were engaged in a number of unsafe, risky behaviors, including the use of illegal
firearms by a convicted felon, “extensive methamphetamine distribution,” and “threats” by an individual armed with an air rifle. (See Opposition to Plaintiff’s Request for Emergency Relief at 5-6, attached as Exhibit 5; Affidavit of Acting Chief of Police Jon Murad ¶¶ 5-6, attached as Exhibit 6; Affidavit of Chief Engineer for the Burlington Fire Department Steven A. Locke ¶ 4; attached as Exhibit 7. The individual arrested for methamphetamine distribution was “was part of a larger network using the Sears Lane site.” Murad Aff. ¶ 5. The Police Department also had evidence of stolen bicycles and a process to strip them for parts. Id. ¶ 6. They have also found multiple stolen vehicles at the Sears Lane encampment. Id. ¶ 7.

“As a result of the threat [from the air rifle,] the City’s fire and ambulance services have requested a police escort every time they go to the site.” Locke Aff. ¶ 4. Unfortunately, the residents of McKenzie House and McKenzie House Families do not have the access that the Fire Department has to the Burlington Police Department. They cannot call for a police escort every time they walk to school or go outside to play. Therefore, the long list of safety issues violates the requirement for providing a safe environment in the CDO.

In addition, from aesthetic perspective, the Shelter Pods would create an undue adverse perspective. “The Residential High Density (RH) district is intended primarily for high density attached multi-family residential development. Development is intended to be intense with high lot coverage, large buildings, and buildings placed close together. Parking is intended to be hidden either behind or underneath structures.” Emphasis added. The Shelter Pods are, in several aspects, the exact opposite of what is intended in the Residential High Density (RH) district. Where the CDO calls for “large buildings”, the Project is proposing exceedingly small structures. Where the CDO is calling for multi-family residential development, the Project presents several individual housing units.

Although the Shelter Pods do not fit neatly into any one use (as defined in the CDO), they, at least in appearance, most closely resemble single-family dwellings or mobile homes. Notably, both mobile homes and single-family dwellings (with a few exceptions) are prohibited in this zoning district.

In connection with 3.5.6(a)(3), the Project will result in an undue adverse effect to nuisance impacts including noise greater than typically generated by other permitted uses in the same zoning district. Consistent with this description, the CDO prohibits noisier residential uses, such as dormitories and fraternities/sororities in this zoning district. As documented by the Application, which notes that the Project would constitute “will operate 24 hours a day,” the Project will result in an undue adverse effect to nuisance impacts including noise greater than typically generated by other permitted uses in the same zoning district. The Project will also result in unfavorable odors from cigarette and marijuana smoke. Threats of violence and creating a drug distribution network in the neighborhood are nuisances that are not allowed under the zoning regulations.
IV. THE PROJECT MUST BE ANALYZED UNDER THE MAJOR IMPACT REVIEW STANDARDS, WHICH, TO DATE, HAVE NOT BEEN ADDRESSED.

Pursuant to Section 3.5.2(b) of the CDO, “Major Impact Review shall be required for the approval of all development involving . . . “[c]reation of twenty-five (25) or more dwelling units” in the Residential High Density (RH) zoning district.

The City has largely failed to address the standard for Major Impact Review. Section 3.5.6(b) provides at least 12 different standards. (See, e.g., demonstrating that the Project “[n]ot place an unreasonable burden on the City’s ability to provide municipal services” or “Be in substantial conformance with the City’s municipal development plan and all incorporated plans”).

The evidence in the record shows that the City cannot meet these standards. For example, the evidence provided by the McKenzie House shows that there will be an unreasonable burden on the City’s ability to provide educational services. See Section 3.5.6(b)(6). The City fails to address this factor entirely. The McKenzie House evidence also shows that the application creates “unsafe conditions” on the “streets” and “bikeways.” Section 3.5.6(b)(5). The City again makes no effort to address this criteria. In fact, the City makes no effort to address most of the criteria. The City should comply with its own zoning regulations.

V. UPON THE END OF THE PROJECT, THE CITY PROPERTY WILL BE PERMITTED NON-CONFORMING USE.

Currently, the City Property is used as a parking lot, which is a prohibited use pursuant to the CDO use table. Therefore, the City Property is a “Nonconforming Use,” defined as “[a]n existing use of land or building that does not conform to the current use or density regulations for the district in which such use of land or building exists as set forth in Appendix A - Use Table.”

Pursuant to Section 5.3.4.(b), “[a] nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer.”

The Application states that the Project may be used for as many as 36 months. If the City Property ceases being used as a parking lot for more than twelve (12) months, the City Property will not be in compliance with the CDO if it reverts to becoming a parking lot again, because the Nonconforming Use, which currently is allowed, will be “discontinued” as a matter of law. Therefore, if and when the City Property ceases being used for the Project, it could likely not resume its existing use as a parking lot.
Burlington Development Review Board

May 16, 2022
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Very truly yours,

GRAVEL & SHEA PC

Matthew B. Byrne

MBB:lbb
Exhibit 1
DECLARATION OF CHELSEA DUGGAN

I, Chelsea Duggan, state:

1. I am a resident of McKenzie House Families.

2. I am the mother of a wonderful 12 year old boy. We live in the apartment that is closest to the proposed Shelter Pod shelter. My son's bedroom window looks out onto the parking lot where the City proposes to build the Shelter Pod development.

3. I am extremely worried and nervous about the proposal that is going to be right next door to our home. We live in a quiet neighborhood. I am concerned that the noise that the development generates will wake my son up. He currently goes to bed around 8:30 or 9:00 p.m. because he has to be up early to go to school. Noise from a 24 hour shelter will disrupt his routine and affect his learning.

4. The presence of a shelter will also affect his current routine for getting to and from school. We had made progress in giving him more independence in his routine. I will now have to take extra precautions to make sure he is not a victim and he will lose some of the independence that he gained.

5. I do not want my son to look out his window and see drug use occurring. I am also concerned about the effect that cigarette or marijuana smoke will have on him. We will now have to keep his window shut at all times. Unfortunately, I will not be able to keep him away from all of the negative effects of active drug use when it is right next door.

6. The presence of the Shelter Pod development will also impact our ability to move around our neighborhood. We will have to limit the times that we can go out, including not going out at night. It will limit our ability to take our dog for a walk.

7. I am also concerned that the shelter pod development
will impact the ability of our extended family to visit. My sister is handicapped. She currently uses the parking lot when she comes to visit with her two kids. The shelter pod development will make her visits more difficult and less safe.

8. I also fear the effects that the shelter pod development will have on my neighbors. I know that there are other families with children in the neighborhood. Some of the younger kids walk to school. There are also high school students that walk to the high school that is downtown.

9. There was been no outreach from the city about this development. I have contacted the mayor about my concerns and have not heard back. I have not heard what plans the city has for supervising this development.

Chelsea Duggan
DECLARATION OF BARI KUHL

I, Bari Kuhl, state:
1. I am a resident of McKenzie House.
2. I have an Autoimmune Condition, called MCAS or Mast Cell Activation Syndrome. I am unable to eat many foods and stress exacerbates the condition. I also have Multiple Chemical Sensitivities, which, here in Vermont is considered a Disability. All of this is what will make life more stressful and miserable than usual for me if the Pod Village is placed here.
3. There will undoubtedly be cigarette and pot smoke produced by the inhabitants. If only a part of them smoke at once, the smell will make me really sick, exacerbate my condition, and give me a migraine. It will no doubt last for as long as they are there and awake. I have trouble now even when people pass by outside or smoke near the building, it comes into my window, even though I am on the 3rd floor. I even get smoke sometimes from people across the street.
4. I quite often have to close my window in the warmer months. With the Pods, I will most likely never be able to open it, and walking outside or sitting outside on the grounds here, will be impossible. I will have to hold my nose until I get away.
5. I am also concerned about Covid. I steer clear of crowds. But the Village will be one huge crowd living there. What if someone gets Covid and it spreads. It will be on my doorstep, which it has not been so far. I’m 74 yrs old. This worries me terribly already. Once I contract a virus, and they are not even Covid, it stays for weeks, even months, seeming to be gone, but then it reappears. I get worn down by it and vulnerable to another virus.
6. I know there are others who live at McKenzie House who have other disabilities. People who use wheelchairs are
particularly vulnerable to being victimized. People with Post Traumatic Stress Disorder or who have prior drug and alcohol abuse may be trigger by the people who live in the Pods.

7. Noise. I covet quiet. I cannot handle noise of any kind. There is no way 30+ people are going to be quiet, unless they are Monks (wish they were). The residents there will hangout mostly outside of the Pods unless the weather is bad. They will be talking all the time, sometimes shouting, perhaps even fighting and arguing. Sound carries just as much as smoke. It will be like having a large party right next door, 24/7, 365 days/yr. I personally, will have to wear ear plugs. I am ultra-sensitive to noise. There most likely will also be music played. I don’t expect these people to be respectful of us, their neighbors, or any of our other neighbors. Thankfully, and gratefully, we now have a very quiet neighborhood, and I think I can say we all cherish it and don’t want it to change.

8. Crowds. When I go food shopping I walk about 3 or 4 blocks to City Market. There are very few people that I encounter along the way. If this goes through, I will have to fight my way through bunches of people, bad enough, but made worse by the fact that I will not feel comfortable being around them. I am from NYC, the Bronx, to be exact, and even there, I never had crowds of people in whatever neighborhood I was living in.

9. This Pod Village is going to destroy our neighborhood, which is a lovely, quiet place with nice, respectful people. This Pod Village belongs in a non-residential area, with space around it. What is planned is basically going to be a Ghetto that is dropped into our lovely cohesive neighborhood. There is no thought being given to how it fits in or the synergy of it all. It will be intrusive and vulgar for us all.

10. Crime and drugs. I, and most of the women and even men, living here, are prime targets for muggers. Old and unable to fight back or run. I, myself, have almost been mugged several times, in this area, and the Pods aren’t even here yet. I, also worry about drug use. The inhabitants can easily take drugs before they enter the property, or what’s to stop them from doing it inside their pods?! I don’t think there will be searches, unfortunately. Undoubtedly, they will come onto our property to drug up, or bum cigarettes, or who knows what. It’s going to be hell. It’s asking for big trouble. They will be able to drink...I am in shock by this! Put this in the backyard of the Planners of this, and let’s see how long it takes before they are freaking out. This
whole thing is beyond belief!!

11. If the Planners want this to be successful, they need to place this in a non-residential area. They used Madison, WI, as an example of these pods, but they are failing to understand why that works. It's on the outskirts of town, near an industrial park, with greenery and more space between the pods.

12. We, here, at McKenzie house, are Low-income Seniors, who have modest wishes for our remaining days of life. We ask only for Peace and Quiet, a Clean Environment around us that is Not Toxic or Polluted by Cigarette and Pot Smoke, and Safety and Security, in and around our dwelling. Our Landlord has worked hard to provide all these things for us. BUT, your proposal to inject a Pod Village, side by our side, as close as two peas in a pod, threatens to upend all of their efforts. Everything just mentioned, Peace and Quiet, a Clean and Non Toxic Environment, and Safety and Security will be jeopardized and lost if you install your Pod Village.

13. ALL YOU WILL BE DOING, IS CREATING ANOTHER PROBLEM FOR OUR LOVELY AND QUIET NEIGHBORHOOD, WHICH INCLUDES US...SENIORS AND DISABLED! ARE WE NOT ENTITLED TO HAVE SURROUNDINGS THAT WE CHERISH, AFTER WORKING HARD ALL OF OUR LIVES?!

14. We Seniors and Disabled, here, at McKenzie House implore you, to install your idea someplace else, so we can keep the small, modest comforts we have, for the few years that we have left. ARE YOU SO CRUEL, AND HEARTLESS, THAT YOU WOULD DENY THIS SMALL WISH TO US SENIORS AND DISABLED?! Would you do this to your own Grandmother?! PLEASE DON'T SOLVE YOUR PROBLEM ON THE BACKS OF SENIORS AND DISABLED!!

15. Please leave us our hard won peace and quiet!!

16. Sitting outside here, last night, listening to the birds and the quiet, my neighbor said, “You won’t hear the birds anymore, you know, when the Pod Village is here. The birds will go elsewhere.” …Sunday, May 8, 2022

Bari Kuhl
Exhibit 3
IN RE: ZP-22-199

51 ELMWOOD AVENUE

DECLARATION OF GAIL WELCH

I, Gail Welch, state:

1. I am a resident of McKenzie House. I have been a resident for the past five years.

2. I have worked in human services for 40 years. I have worked with people with mental illness and people with physical and developmental disabilities. I have worked in a variety of different settings including child care, hospice, and community mental health counseling.

3. I understand that the population for this project will include people with addiction problems, mental health issues, or both.

4. I am concerned about the safety and quality of life issues that the City’s proposal raises. The City has been unable to answer the question of whether individuals with chronic sexually predator behavior will be allowed into the shelter pod community.

5. The McKenzie House properties at 43 Elmwood Ave. provides housing for seniors, and people with disabilities as well as families with children. Three vulnerable groups.

6. I am concerned that the residents of the pod village who have mental health and or addiction issues or a history of criminal behavior may attempt to take advantage of the vulnerable populations at McKenzie House and McKenzie House Families. Property crime is also a concern.
7. I attended a meeting in April 2022 where the project was discussed. The City had no answers about whether curfews would exist. It also could not answer questions about who was going to manage the property and who would staff the property. Based on my experience, these sorts of details must be worked out in advance if the project is going to have any chance of success.

8. Based on my experience with the Phoenix House, which used to operate nearby, I know that noise and smoke from gatherings affects residents at McKenzie House. The Phoenix house residents would have conversations that were sometimes normal and sometimes animated. These conversations were noisy. With the amount of residents with the shelter pods projected at 30 to 35, the fact that they will be allowed to enter the shelter pods intoxicated, and the potential for fights or arguments, there is a strong likelihood that residents of McKenzie House will encounter loud and disruptive noise. The smoke is worrying because we have residents who have allergy issues. The Phoenix House had approximately 6 people living there. The density of population from the shelter pods is only going to make these type of problems more intense.

9. Based on my experience in the human services field, I am also concerned for children who live at McKenzie House Families and in the area. I am concerned that they could be at risk with active drug users living next door to them. I am concerned that they will see and hear dangerous behaviors like drug use or physical violence. I am also concerned that they will experience physical violence.
10. In addition to the children at McKenzie House Families, there are many students who live in the neighborhood. They often go out on a Friday or Saturday night. I have seen or heard them walk up Elmwood Avenue on their way home at 1 or 2 a.m. Sometimes they are compromised by alcohol. I know this by hearing them and observing them from my apartment. They would be an easy marks to be robbed or worse given their vulnerable state.

Gail Welch
Exhibit 4
BURLINGTON DEVELOPMENT REVIEW BOARD

IN RE:  
) 
) ZP-22-199 
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51 ELMWOOD AVENUE 
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DECLARATION OF TRUDY RICHMOND

I, Trudy Richmond, state:

1. I live at McKenzie House. I have been a resident for the past five years. It is a low income apartment building in Burlington with an address of 43 Elmwood Avenue. The property abuts the proposed site for the proposed shelter pod community at 51 Elmwood Avenue.

2. I am a retired mental health professional. I have worked in a number of places including in Jacksonville, Florida in emergency psychiatry in the crisis stabilization unit. In my line of work, I have worked with people with drug addiction and mental health issues.

3. I have concerns about the suitability of any wet shelter in this particular location. I also have concerns about the lack of preparation and details for the implementation of the wet shelter.

4. The area surrounding McKenzie House has already seen an increase in crime in the area. Within the last 12 months, McKenzie House residents have experienced the assault/mugging of one of our older female residents in the parking lot. There was female “shooting up” in our trash shed. “Sharps” have been found in our yard. Cars in our parking lot have been “checked out” by strange individuals.

5. While the details coming from the City are sparse, it appears that the City will construct this shelter for folks that cannot or will not comply with rules necessary to live
anywhere else. The low barrier nature of this shelter will allow for active drug and alcohol uses and folks with untreated mental illness to live there.

6. The City has been unwilling to answer whether habitual sexual offenders will be allowed to live there.

7. Despite my repeated requests to Brian Pine and the Mayor, no one has been able to tell us who will actually be managing the property or the needs of its residents. Nor is there any plan for managing the property or its residents. The lack of a publicly available plan raises serious concerns about the City’s ability to succeed in this venture.

8. As I understand it, there has been no study of the impacts of the low barrier shelter and day station on the neighborhood surrounding McKenzie House. I also recently learned that an additional 100 people are expected to visit the day station each day.

9. The people at McKenzie House are a very vulnerable population. The population that is likely to live in the low barrier shelter is frequently opportunistic. There is a very real possibility that the people at McKenzie House will be victimized.

10. I am not unfeeling toward the plight of the homeless but I think the location of this shelter is fraught with problems. The city should reconsider the other 9 sites it originally looked at and choose another site that would not put Burlington’s most vulnerable citizens in harm’s way.

Trudy Richmond
Exhibit 5
STATE OF VERMONT

SUPERIOR COURT CIVIL DIVISION
CHITTENDEN UNIT DOCKET NO. 21-CV-03247

GRUNDY, ALEXUS AND )
BARREDA, GREY, )
Plaintiffs, )
) v. )
) CITY OF BURLINGTON, VT, )
Defendant. )

OPPOSITION TO PLAINTIFF'S REQUEST FOR EMERGENCY RELIEF

NOW COMES the City of Burlington ("City"), by and through its attorneys, the
Office of City Attorney and Corporation Counsel, and hereby submits the following
Opposition to Plaintiff's Request for Emergency Relief in the above-captioned matter for the
Honorable Court’s consideration.

BACKGROUND

1. The City of Burlington’s Sheltering on Public Lands Policy

The City takes houselessness, public health, and public safety seriously. In November
of 2020, the City adopted a policy for sheltering on public lands. This policy was drafted in
consultation from the Vermont ACLU and seeks to balance each of these areas of concern.
The policy entitled “City of Burlington Sheltering on Public Lands: Outreach and Removal
Policy and Procedures,” (hereinafter the “Policy”) sets forth procedures for sheltering on
public lands in the City of Burlington and the removal of individuals found sheltering in areas
or under circumstances where such sheltering can or should not continue. See City’s Exhibit
A. It is important to note that the Policy, while of general applicability, does not outlaw
encampments on public lands or penalize individuals found camping on any public land.
Instead, it provides a series of standards and guidelines intended to address how the City will address such individuals when they are found. Just as the policy does not criminalize or penalize emergency sheltering on public lands, it is also not a permit or permission. It recognizes that circumstances may require individuals to shelter on public lands, and provides guidelines to connect those individuals with social services and, if necessary, to remove them from specific areas. Even if removed, an individual is not prohibited from finding other public land and is not fined or otherwise given punitive measures for the act of emergency sheltering.

The policy has three substantive and relevant sections regarding the removal of individuals that are found sheltering on public lands within the City.

The procedure for individuals encamped in areas where camping is specifically prohibited is found in Section II of the policy. Under this section, the City agrees to send in a Community Affairs Liaison and a uniformed officer to the site to provide information about available resources and notice that camping in the area is prohibited and the warning that if they continue camping beyond a specified date that tickets, no trespass orders, and legal process will follow.

For areas where camping is not specifically prohibited, Section III, B. applies. In such cases, there has to be a determination by a City Department that one of eight criteria have occurred and warrant the removal of the individuals and the encampment. These criteria include the following:

a. Risks to health or safety related to living conditions;

b. Risks to the site’s ecology;
c. The nature, quantity, and location of any structures on the site, as structures generally will be removed from public property, although temporary tents or lean-tos that are kept in good condition may not require removal;
d. The amount and nature of the possessions or materials on the site, such as trash, furniture, or large numbers of bags may warrant removal;
e. Interference with the ability of others to use the property;
f. Inconsistency with the intended public use of the site;
g. Repeated or serious legal or criminal violations at the site; and
h. Other severe or pervasive issues may warrant removal.

Defendant’s Exhibit A at 3.

Following this determination by the City Department, the City is instructed to give notice of the intent to remove, the basis for the removal, and a list of transitional resources. This initial notice allows three business days for individuals to appeal the determination of removal to the Mayor. If the Mayor agrees with the basis for the removal, a second notice is given stating a date certain for removal. The policy then focuses on providing the individuals with contact with the City’s Community Affairs Liaison and to make efforts to connect the individuals with social services.

Regardless of whether camping is or is not prohibited, Section III, C, allows the City to act to remove encampments on an expedited basis where there are emergency or exigent circumstances. The terms “emergency and exigent” are not defined by the policy. Instead, the policy directs the City Attorney’s Office to be consulted and advise “whether the circumstances can warrant consideration of an emergency or exigent removal.” Id. at 4. This decision is, if possible, reviewed and approved by the Mayor. Again, the City is directed to
take all efforts to connect individuals with social services through City’s Community Affairs Liaison to the extent possible.

The remainder of the policy deals with the storage of personal items left behind by individuals following removal. These include a commitment to store personal items for up to 30 days following removal but re-states the City’s right to dispose of trash, hazardous materials, and unusable items. It is the City’s understanding that this section of the policy is not being challenged, and the City has taken actions in furtherance of this policy, including the rental of storage containers to be located at the Sears Lane site to provide storage for personal items.

2. The Specific Facts of the Present Removal

Sears Lane is located in the south end of the City and lies between Pine Street and the residential neighborhood known as Lakeside. The property is owned by the City of Burlington. Historically, individuals have sheltered and formed encampments at Sears Lane for a number of years. The City in response has periodically removed these individuals and the materials left behind. The current encampment at Sears Lane began this summer as a number of individuals began sheltering at the site and constructing shelters that range from tents and tarps to a multi-story structure with salvaged French doors and a woodstove. None of the encampments are permitted by the City and none of the encampments have basic services such as water and sewer. There are no utilities at the site, but certain individuals run generators or snake extension cords to outlets found at other properties.

The City has sought for the last few months to arrive at a sustainable solution for Sears Lane. The encampments are not safe or sanitary and would not be permitted on private
property anywhere in the City. The City has provided limited septic service in the form of rented port-a-toilets.

On October 13, 2021, two incidents changed the City’s approach to Sears Lane. First, the Burlington Police executed a search warrant on the site and found evidence of extensive methamphetamine distribution at the site. The Police also found several firearms, which were in the possession of a convicted felon in derogation of federal law.

Second, the Burlington Fire Department received a call an arrived at the site with first responders. They were then confronted by an individual with a rifle who threatened them. The first responders were able to safely leave the scene, but the individual with the rifle, which turned out to be an air rifle, was arrested. It is the City’s understanding that this individual was released and has returned to the site. As a result of the threat, the City’s fire and ambulance services have requested a police escort every time they go to the site. These additional steps means that the time to respond to an emergency call will be delayed with the potential for substantial delays if the limited on-duty police are engaged in another call. When time matters, the loss of these immediate emergency services means that it is significantly more dangerous to be on the site.

In addition to these two incidents, the City found, prior to issuing the October 14, 2021 Notice of Removal (Defendant’s Exhibit B), the following had occurred1:

1) The Burlington Fire Department found evidence of several unpermitted and unsafe, structures, at least one of which was multi-story.

2) The Burlington Fire Department found evidence of extensive use of portable generators running on a near-continuous basis as well as unapproved heating sources.

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1 The City is prepared to support these facts through testimony and has prepared witnesses from the Burlington Fire and Police Departments for Thursday’s proposed hearing to testify to each of these incidents.
Such use is not allowed and presents a significant fire and carbon monoxide danger. The evidence indicates that these generators are being used for heat, lights, and other temporary utilities that will only see more demand in the coming days.

3) The Burlington Fire Department came to the opinion that the site is a tinder box with the multiple gas powered mini-generators running continuously in poorly-vented and haphazardly-constructed sites. There is an immediate threat to public health from these devices, which only grow with each day.

4) The Burlington Police believe that the evidence shows that the individual arrested for distribution was part of a larger network using the Sears Lane site. The investigation is on-going and involves other individuals staying at or using the Sears Lane site.

5) The Burlington Police also found evidence that as yet unidentified individuals are using the Sears Lane site for processing stolen bicycles.

6) The Burlington Police and other Police Departments from the surrounding communities have found or received reports of multiple stolen vehicles being taken to the Sears Lane site.

While any one of these factors is sufficient to constitute an emergency or exigent circumstance, the City Attorney’s Office determined that the warrant, arrest, and evidence of extensive criminal coupled with the threats to City employees and first responders constituted emergency and exigent circumstances under Section III, C of the City’s policy. The Mayor concurred with this conclusion and directed the City to issue a Notice of Removal on October 14th that notified individuals sheltering at the site that they had until the close of business on October 19th to remove from the property. (Def. Ex. B.) This notice gave the individuals at the site three business days. On Monday, October 18, the Mayor agreed to extend this
removal, based on feedback, cooperation from individuals at the site and logistical challenges for post-removal storage facilities. The Mayor issued a second notice on October 18, 2021 extending the removal date to Tuesday, October 26, 2021. (Def. Ex. C.) Both notices were delivered to individuals at the site and posted throughout the site.

These removal actions were accompanied by work with the City’s Community Affairs Liaison who began visiting the site on a daily basis starting on October 14, 2021 to connect individuals with transition and housing resources, including motel vouchers. The City also partnered with several non-profit and community organizations to facilitate these transitions. (Def. Ex. D, Mayor’s Press Release Summarizing Transitional Efforts and Partnerships) To date, over ten individuals at the site have elected to leave and accept housing through these programs. The Community Liaison Officer continues to visit the site and work with individuals at the site to connect them to these services.

The City recognizes that the decision to close the encampment has a substantial impact on the lives of a number of individuals. To that end, the City will continue to act consistent with the policy, seeking to connect individuals with social services and providing storage for personal items post-removal. The City has secured several storage containers that will be brought to the site for City staff to work with individuals to catalog and store items on site during the 30 days following the notice of removal. The City will allow individuals onto the Sears Lane site during day-time hours over the 30-day post-removal period to remove larger structures or items affixed to the land. The City is partnering with the Champlain Valley Office of Economic Opportunity (CVOEO) to offer a variety of transitional services from housing to transportation. (Def. Ex. E, CVOEO Flyer for Sears Lane.) The City has already provided dumpsters, equipment, and staff to support the disposal of abandoned items, trash,
hazardous materials, and any unusable items only as identified by the campers. The Vermont Department of Children and Family Services (DCF) has pledged emergency funding to provide direct assistance to individuals at Sears Lane in their transition to other housing.

LEGAL STANDARD

Plaintiffs’ present emergency motion is made under Rule 65(a), which allows the Court to issue a temporary restraining order “only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition.” V.R.C.P. 65(a). Given that the Court has already denied the Plaintiff’s initial motion, the Court’s allowance for the City to file a response moves this from an ex parte hearing to something more than an ex parte order and something less than the full preliminary injunction hearing scheduled for Thursday, October 28, 2021. See Rule 65, rptrs. n. (indicating that there are three types of preliminary injunctions; ex parte temporary restraining orders, preliminary injunctions, and permanent injunctions). Notwithstanding the notice and opportunity to respond, the Court should treat this motion the same as it would a temporary injunction motion. See 11C Wright & Miller, Fed. Prac. & Proc. § 2951 (3d ed. 2021) (“When the opposing party actually receives notice of the application for a restraining order, the procedure that is followed does not differ functionally from that on an application for a preliminary injunction and the proceeding is not subject to any special requirements.”).

The factors for a temporary restraining order mirror those of a preliminary injunction. Id. It should only be granted if the applicant can demonstrate a legal right to the relief sought, that he or she is in need of immediate relief to stop an irreparable injury or the destruction of a disputed property, and that the private harm alleged outweighs the public need for the City to
act. Id.; see also Committee to Save the Bishop's House, Inc. v. Medical Center Hospital of Vermont, Inc., 137 Vt. 142, 147–48 (1979) (reversal of preliminary injunction is appropriate where the applicant has not provided legally sufficient cause). As the Vermont Supreme Court has articulated the elements of a preliminary injunction:

“A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). In each instance, we “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” Id. (quotation omitted). The movant bears the burden of establishing that the relevant factors call for imposition of a preliminary injunction. Id. at 20, 129 S.Ct. 365. The trial court here rightly identified the main factors guiding its review under Vermont law: (1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.3 In re J.G., 160 Vt. at 255 n.2, 627 A.2d at 365 n.2.

Taylor v. town of Cabot, 2017 VT 92, ¶ 19. For the reasons articulated in the next section, the Plaintiffs in the present action are not entitled to a temporary restraining order or a preliminary injunction.

ARGUMENT

1. Plaintiffs Are Not Tenants and Are Not Being Evicted

As a preliminary matter, Plaintiffs use the term “eviction,” which is not appropriate in the current situation. Plaintiffs are not tenants, and the City is not a landlord. Plaintiffs are individuals who have unilaterally chosen to seek shelter at the City’s Sears Lane property.
The City has not provided a residential unit, signed an agreement, or provided them with any habitation at the site. It has simply permitted the encampment. As such, the current encampment is exempt from the Vermont Residential Rental Act under 9 V.S.A. § 4452 (7), which excludes "transient residence in a campground." This term is defined to encompass "any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers." 9 V.S.A. § 4452(7). In this case, the Plaintiffs have set up their shelters on the Sears Lane property as temporary and seasonal shelter. Plaintiffs have no claim to either a rental relationship or property ownership. Instead, the Sears Lane property should be viewed under 9 V.S.A. § 4410, which allows for the immediate removal of individuals from a camping area when there is evidence that any of the rules or laws of the site have been violated.

The difference with a distinction here is that the exclusions from the Residential Rental Act are types of occupancy that do not include a grant of occupancy and possession. Unlike the tenant who occupies and possesses an apartment or rental house, the Plaintiffs here have no right to possess or occupy the City’s land. The City has provided no rental habitation. There has been no consideration, and the Plaintiffs have no right to occupy the property as a matter of right.

2. The City Has Complied with Its Policy

While 9 V.S.A. § 4410 would govern the nature of the City’s removal, the City has agreed to a more generous policy allowing for removal of individuals with notice. As the facts above demonstrate, the City has complied with Section III, C of the policy. Following
the finding of emergency and exigent circumstances, the City made a finding and acted in accord with the terms seeking to expedite the removal of individuals from the unsafe circumstances while taking the transitional and humanitarian considerations into account. The resulting balance was in full compliance with Section III, C, and the Policy leaves determination of compliance solely up to the City.

To the extent that the Court finds that the facts or circumstances do not fit the meaning of emergency or exigent despite the Policy’s grant to the City Attorney to make that determination, the facts show that the City has complied with Section III, B of the policy. Specifically, the City has provided an initial notice and three business days for residents to object as called for in Section II, B, 3. The Mayor has confirmed the basis for removal, which fit under the bases for removal, specifically categories of Section III, B of the policy, including: (a) risks to health and safety related to living conditions; (c) nature and quantity of structures; (d) amount and nature of possessions; (e) interference with other’s ability to use the property; (f) inconsistent with the public use of the site; (g) repeated and serious legal and criminal violations at the site; and (h) other severe and pervasive issues as called for in Sections II, B 1, 3, and 4. Further, the City has issued a second notice and extended the time of removal as called for in Section II, B 5.

3. *The City Has Provided Social Service Connections to Individuals*

As demonstrated by the facts above, the City has provided multiple social services to the individuals at the site. It has also arranged for storage of all personal items that individuals may leave behind or be unable to remove. These protections are consistent with the policy and protect the Plaintiff’s property from destructions.

4. *Plaintiffs Have No Legal Interest in Remaining on the Property.*
 Plaintiffs’ filing cites to no legal basis for remaining at the Sears Lane property. As argued above, there is no property interest or right that has been given to Plaintiffs. They are transient occupants, and as such, the City retains the right to remove them from the property. Plaintiffs cannot claim a legal basis for their nebulous claim of “due process.” Moreover, Plaintiff’s alleged injuries by removal can be remedied by a judgment on the merits. The present action by the City does not prevent Plaintiffs from seeking shelter on other public lands. To the extent that they must leave property behind, the City has committed to storing the personal property in conformance with the City’s policy. As Plaintiffs do not have a specific right to occupy or possess this specific parcel of City property, their general interest or right to seek shelter on public land will continue.

5. The City Has a Powerful Interest in Public Safety and Public Health

The City’s action in this situation were not taken lightly or without cause, the information of a substantial drug dealing operation, and the threats to EMT and Fire first responders are in tolerable on public lands. The situation at the site is unsafe and a threat to public health and safety. These are the primary interests for a local municipality. See 24 V.S.A. §§ 2001–2299k (outlining the general and specific police powers of a municipality to protect public health and public safety). The City has a significant interest in protecting individuals from such threats and ensuring that public lands do not degrade public health and public safety. To that end, the City has sought to end the encampment at Sears Lane. It is also why the City has worked with the individuals to help individuals transition to safe and stable housing and services.

In comparison, Plaintiff’s interests are in staying at this specific site for which they have no legal right. Removing them does not end their right to seek emergency shelter on
public lands, it only ends it at this particular site. Nothing in Vermont or federal law requires the City to preserve such a specific and unsupported interest.

CONCLUSION

For the foregoing reasons, the City requests that the Court deny the amended motion for temporary restraining order as a matter of fact and law.

Dated in Burlington, Vermont this 25th day of October, 2021.

CITY OF BURLINGTON

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CITY OF BURLINGTON

SHELTERING ON PUBLIC LANDS:
OUTREACH AND REMOVAL POLICY AND PROCEDURES

Section I – Purpose:

The City of Burlington is committed to supporting and maintaining a safe public environment for all residents and visitors of Burlington, both those who live in hard-wall-shelters and those who do not. To those ends, the City will take steps to ensure that individuals without hard-wall-shelters are provided with information on available resources and are given the assistance necessary to go through the Coordinated Entry process. The City also has an affirmative commitment to support the dignity of all people, including those without hard-wall shelters.

The City will try to ensure that individuals are not permitted to camp or set up residences in areas where camping is prohibited under Burlington’s Code of Ordinances or that are otherwise permanently posted, such as in the Urban Reserve. However, generally, an encampment that is on public property and not in a prohibited area and that does not present exigent circumstances will only be noticed for removal if certain criteria are met and outreach efforts are made consistent with the following policy and procedures.

Section II – Procedures for Areas Where Camping is Specifically Prohibited:

1. If the City learns of or receives a report of an active encampment on public property in a part of the City where camping is specifically prohibited through Burlington’s Code of Ordinances or permanent posting, the Community Affairs Liaison (for purposes of this policy, the term “Community Affairs Liaison” means the Community Affairs Liaison, their designee, or any City employee with appropriate training), and usually a uniformed police officer, shall attempt to make outreach to the encampment to provide information on available resources and written notice that camping in that area is prohibited and that if they continue camping in the specifically prohibited area beyond a specified date they may face ticketing, no trespass orders, other legal action, and removal of any remaining items not found to be refuse or hazardous.

2. The notice shall also briefly state the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how and when they may be reclaimed, and the Community Affairs Liaison’s contact information. The notice shall also provide contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, and information on other available community resources.

3. The Community Affairs Liaison shall ensure that each camping individual has been referred via receipt of the CCHA Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment.

4. If there is no individual at the site with whom to speak, the Community Affairs Liaison shall post or securely place the written notice as described above in #1 on or near any items.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
possible, the notice should be provided to campers in person. The Community Affairs Liaison will take and file photographs demonstrating where and when the notices were posted.

5. If the campers have not left or removed their property by the date/time specified, they may be ticketed if they have violated an ordinance, and/or they may receive a notice of trespass if one is warranted. The City will dispose of any trash and remove any property left at the site. City staff will ensure the Community Affairs Liaison has attempted outreach and notice before enforcing the no-camping rules in these areas.

Section III – Procedures for Areas Where Camping is not Specifically Prohibited:

Sub-Section A – Outreach:

1. If the City learns of or receives a report of an active encampment in a part of the City where camping is not specifically prohibited, the Community Affairs Liaison, or designee, shall attempt to make outreach to the encampment to provide contact information for the Community Affairs Liaison, contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, and information on other available resources. Generally, an appropriate City employee shall accompany the Community Affairs Liaison on this initial outreach attempt, and the use of a uniformed police officer should be limited.

2. If people are present during this initial outreach attempt, then appropriate social services agencies should be called and, if possible, immediately come to the encampment to provide additional information on available resources. The Community Affairs Liaison shall make sure that each camping individual has been referred via receipt of the CCHA Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment.

3. The Community Affairs Liaison should note where the encampment is located.

4. If no one is present during this initial outreach, then the Community Affairs Liaison should leave the Community Affairs Liaison’s contact information, contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, information about other available resources, and make additional outreach attempts as necessary. If people are present during a subsequent outreach attempt, then appropriate social services agencies should be called and, where possible, immediately come to the encampment to provide additional information on what resources are available.

5. The BPD, Community and Economic Development Office (CEDO) and appropriate social services agencies will make every effort to consult and make sure all appropriate social service organizations have been contacted, social service providers have visited the encampment to assist where possible, the individual(s) have been referred via receipt of the Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment, and efforts have been made to implement the City’s Housing First Policy. The process described in Sub-Section A will happen whether or not the City believes that removal may be necessary.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
Sub-Section B – Removal Criteria and Procedures:

1. If a City department determines that there is a reason to remove the items of individuals camping on public land based on one of the following criteria, that department should contact the City Attorney’s Office for an initial review. The criteria that serve as a basis for removal are as follows:
   a. Risks to health or safety related to living conditions;
   b. Risks to the site’s ecology;
   c. The nature, quantity, and location of any structures on the site, as structures generally will be removed from public property, although temporary tents or lean-tos that are kept in good condition may not require removal;
   d. The amount or nature of possessions or materials on the site, such as trash, furniture, or large numbers of bags, may warrant removal;
   e. Interference with the ability of others to use the property;
   f. Inconsistency with the intended public use of the site;
   g. Repeated or serious legal or criminal violations at the site; and
   h. Other severe or pervasive issues that may warrant removal.

2. The City Attorney’s Office will first identify the property owner. If the encampment is not on City property, then the BPD should contact the property owner and provide assistance as needed. If the City Attorney’s Office determines that the encampment is on City property, then the involved City department shall write a brief narrative describing the situation and reason(s) for removal in conjunction with other relevant City departments and the City Attorney’s Office. If appropriate, the City department(s) should collect and preserve photographic documentation necessary to support the determination of need for removal.

3. If the City Attorney advises that the items may be removed under the circumstances and in accordance with this policy, and the removal is not an emergency, the Community Affairs Liaison shall provide or post an initial notice at the site notifying the campers that the City is considering removing their items from the site and the reasons therefor, that the decision will be made within the next three workdays, and that they should contact the Community Affairs Liaison with any questions about or objections to the removal. The initial notice shall advise the campers of the reasons for the potential removal, with at least a sentence describing the reasons for the removal with reasonable particularity. Before that notice is posted, the department requesting removal will ensure that the Mayor’s Office has received a copy of the narrative justifying removal and the initial notice and will notify any other City department that may be affected by the potential removal. The Community Affairs Liaison will communicate with the Mayor’s Office if any questions or objections are received within the three-workday initial posting period.

4. If no objection is received within the three work days, or the Mayor determines that removal is warranted despite an objection, the Mayor shall make a determination, based on the narrative requesting removal and advice from the City Attorney, BPD, and other departments, whether to proceed with removal, and the Mayor’s Office shall notify the requesting department of the Mayor’s decision.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
5. Once the Mayor decides that an encampment can be removed from City property, the Community Affairs Liaison shall provide the encampment with a written notice to remove property by a specified date/time that explains that the City will remove any property remaining in the area on that specific date/time. The specified date/time shall, absent exigent circumstances or emergency, allow people a reasonable time to move, at least seven calendar days. The notice shall also briefly state the reasons for the removal, the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how they may be reclaimed, the hours and days of the week when items may be reclaimed, and the Community Affairs Liaison's contact information. The notice will be posted or securely placed on or near any campsite or items. If possible, the notice should be provided to campers in person. The Community Affairs Liaison will take photographs demonstrating where and when the notices were posted.

6. If the following steps have not been taken prior to posting of the notice, the BPD and CEDO shall solicit assistance from social service organizations to seek voluntary movement from those camping on the site prior to the date/time for removal. This assistance should include:

   a. Sending the Community Affairs Liaison (or designee) and appropriate social services agencies to engage with the campers.
   b. Confirming that relevant social service organizations are aware and engaged, and that opportunities for housing are offered if available. Ensuring that social services workers are available to work with campers to remove and, if possible, transport their items.

7. Before posting the notice, DPW and/or Parks shall confirm that there will be sufficient personnel and equipment necessary for the removal on the date/time included in the notice.

Sub-Section C. Emergencies or Exigent Circumstances

1. If a requesting department seeks immediate removal because of an emergency or exigent circumstances, the City Attorney's Office shall be consulted and shall advise whether the circumstances can warrant consideration of an emergency or exigent removal. Circumstances that may warrant emergency or exigent removal include, but are not limited to, any immediate health, safety, or ecological concern where significant harm has occurred or is likely to occur if the items are not removed immediately, or a current situation where the encampment is inhibiting the construction of a permitted project.

2. In an emergency or exigent circumstances, attempts should be made to receive direction from the Mayor's Office ahead of time, but if Mayor's Office direction cannot be received, the property may be moved to another location and trash, hazardous material, and unusable items may be discarded. Notice of the move shall be posted at the location for at least seven days after the move. If taken into storage, the notice of removal shall briefly state the reasons for the removal, the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how and when they may be reclaimed, and the Community Affairs Liaison's contact information. The notice will be posted or securely placed on or near any campsite or items. If posting of a notice before
removal is not possible, a post-removal notice with the information above shall be posted at the location for at least seven days after the removal.

Section IV – Removed Property

1. When the City removes an encampment, it will discard any item that reasonably appears, to the City employees conducting the removal, to be trash, presents a health or safety hazard, or will become a hazard during storage (for example, wet bedding materials).

2. Items that are not trash or hazardous will be tagged with the date, location of the removal, and any other available information related to the item owner. Such items include but are not limited to: radios, audio and video equipment, phones, bed rolls, tents, sleeping bags, tarps, canvas, mats, blankets, pillows, medication, personal papers, photographs, books, backpacks or other storage containers, clothing, towels, shoes, toiletries, clocks, bicycles, and eye glasses.

3. City employees may consolidate those items at the site for pick-up by the owner according to prior arrangement or will move them to a storage location for a period of thirty (30) days. Items not claimed within 30 days will be discarded.

4. The City will maintain a log or photos of removed items, catalogued by tag number, date, and location of removal.

Section V – Recovery of Stored Property:

1. People inquiring about lost, removed, or collected items should be referred to the Community Affairs Liaison.

2. The Community Affairs Liaison will work with people seeking to recover their items from City storage to arrange for delivery or pickup within a reasonable amount of time. If the person expresses an emergent health or safety need to recover their items, the Community Affairs Liaison will facilitate the recovery of their items as soon as possible.

3. To recover property, the person must describe the items with particularity. No identification is required to recover items, but a record of removed items will indicate who recovered the items.

Section VI - Limitations of Policy:

This policy is intended to address encampments where individuals without hard-wall-shelters are or recently have been living or sleeping. If a City employee discovers items on public property and there is no evidence that a person without hard-wall-shelter is currently or recently has been living or sleeping at that location, this policy shall not apply. Similarly, this policy does not address City policies on related topics such as trespasses on public land or regular removal of trash from public parks consistent with this policy.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
EMERGENCY AND EXIGENT NOTICE TO LEAVE AND REMOVE POSSESSIONS

The City of Burlington has decided to disband campsites in this area because the serious and repeated public safety issues that have arisen around criminal activity including, but not limited to controlled substances and distribution, illegal fire arms, threats to first responders and others in the area. The City also has decided to disband campsites in this area because of the substantial public health issues including, the erection of multi-level unpermitted structures, and continuous or frequent running of generators.

YOU MUST STOP CAMPING AND STORING BELONGINGS IN THIS AREA BY 5PM, OCTOBER 19, 2021.

CITY OF BURLINGTON EMPLOYEES WILL COLLECT AND STORE ANY ITEMS, INCLUDING CAMPING EQUIPMENT, LEFT ON THE PROPERTY AT THAT TIME AND SHALL HOLD THEM FOR 30 DAYS AT A CITY LOCATION TO BE DETERMINED. TRASH, HAZARDOUS MATERIAL, AND UNUSABLE ITEMS WILL BE DISCARDED AT THAT TIME.

FOLLOWING THE EXPIRATION OF THE 30 DAYS, THE CITY WILL DISPOSE OF ANY ITEMS, INCLUDING CAMPING EQUIPMENT, THAT REMAIN AFTER THAT TIME.

IF YOU DO NOT STOP CAMPING OR IF YOU RETURN TO CAMP AT THIS SPOT AFTER IT IS CLEANED UP, THE CITY MAY PURSUE LEGAL ACTION AGAINST YOU.

If you have questions or concerns, please contact the Community Affairs Liaison, Burlington Police Department (1 North Ave.), (802) 540-2393, Monday to Friday, 8:30 am to 5 pm.

Community Resources

Housing/Financial Assistance:
- CVOEO -255 South Champlain St – 660-3454
- Economic Services -119 Pearl St -1-800 479-6151

Shelter Options:
- COTS - 864-2613 ext 115
- ANew Place – 862-9879
- Safe Harbor Clinic – 860-4310

Medical/Dental Assistance:
- Safe Harbor Clinic – 860-4310

Food/Shower/Laundry:
- See reverse schedule
<table>
<thead>
<tr>
<th><strong>MEALS</strong></th>
<th>Breakfast, public welcome</th>
<th>Lunch, (daystation, for homeless only)</th>
<th>Dinner, Public Welcome</th>
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<tr>
<td>Monday</td>
<td>Food shelf 6:30 – 9:30</td>
<td>Daystation, 12:30-1:00</td>
<td>Salv. Army, 5-6 PM</td>
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<tr>
<td></td>
<td></td>
<td>Wellness Co-op 1:30-2:30</td>
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<tr>
<td>Tuesday</td>
<td>Food shelf 6:30 – 9:30</td>
<td>Daystation, 12:30-1:00</td>
<td>Salv. Army, 5-6 PM</td>
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And this monthly offering: 3rd Saturday at 6:00, **New Moon Café, Cherry Street**, watch for dates, they sometimes change, depending on holidays.

Food Shelf: 228 N. Winooski Ave. (intersection with N. Union)  
Salvation Army: 64 Main St. (corner of S. Champlain)  
Daystation: 95 North Ave, 862-5418  
First Congregational: 38 S. Winooski Ave

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<tr>
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**Laundry**  
COTS Daystation | With intake; Monday – Friday, generally from 10 am until about 3 pm.
REvised and extended notice to leave and remove possessions
Effective: October 18, 2021

The City of Burlington has decided to disband campsites in this area because the serious and repeated public safety issues that have arisen around criminal activity including, but not limited to controlled substances and distribution, illegal firearms, threats to first responders and others in the area. The City also has decided to disband campsites in this area because of the substantial public health issues including, the erection of multi-level unpermitted structures, and continuous or frequent running of generators.

You must stop camping and storing belongings in this area by 9 AM, Tuesday October 26, 2021.

(Please note, this new date supersedes any prior notices or dates to leave)

City of Burlington employees will collect and store any items, including camping equipment, left on the property at that time and shall hold them for 30 days at the Sears Lane property in storage containers. Trash, hazardous material, and unusable items will be discarded at that time.

Following the expiration of the 30 days, the city will dispose of any items, including camping equipment, that remain after that time.

A meeting to discuss the storage and removal of items will occur at the Sears Lane property on Thursday, October 21, 2021 with city staff.

If you do not stop camping or if you return to camp at this spot after it is cleaned up, the city may pursue legal action against you.

If you have questions or concerns, please contact the Community Affairs Liaison, Burlington Police Department (1 North Ave.), (802) 540-2393, Monday to Friday, 8:30 am to 5 pm.

Community Resources

Housing/Financial Assistance:
- CVOEO -255 South Champlain St – 660-3454
- Economic Services -119 Pearl St -1-800 479-6151

Shelter Options:
- COTS - 864-2613 ext 115
- ANew Place – 862-9879
- Safe Harbor Clinic – 860-4310

**Medical/Dental Assistance:**
- Safe Harbor Clinic – 860-4310

**Food/Shower/Laundry:**
- See reverse schedule

<table>
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<tr>
<th>MEALS</th>
<th>Breakfast, public welcome</th>
<th>Lunch, (daystation, for homeless only)</th>
<th>Dinner, Public Welcome</th>
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<td>Monday</td>
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<td>By Appointment only; Hours for calling and for showering are 9-11:30; try to plan for next day use. (802) 862-1151</td>
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Mayor Weinberger Announces Next Steps Regarding Sears Lane Encampment

Mayor Weinberger Announces Next Steps Regarding Sears Lane Encampment

Burlington, VT – Today, Mayor Weinberger announced next steps toward ending the unsafe living conditions at the Sears Lane encampment, and expanding short- and mid-term housing services in Burlington during this period of acute housing shortage.

Dangerous incidents at the site have included police and federal law enforcement partners executing a warrant (Press/search-warrant-sears-lane) following a month-long narcotics investigation and a camper pointing an assault-style airsoft gun (Press/simple-assault) (a replica pellet gun) at Burlington Fire personnel who were responding to a medical call. The Fire Department has also determined that some of the structures that have been erected illegally on the site pose a significant fire risk to occupants and other campers on the site. Following those incidents, Mayor Weinberger directed Burlington Police to issue a notice to leave and remove possessions by October 19 in accordance with the City of Burlington’s policy regarding sheltering on public lands. The City’s policy regarding sheltering on public lands was created in later 2019, following a long period of engagement with local advocates and the ACLU.

“I believe that homelessness in Burlington should be brief, and rare and my Administration has worked hard for many years to expand resources and services for the individuals living in chronic homelessness. For the past year these efforts have included an attempt to establish first a tiny home community and then a managed campsite at Sears Lane," said Mayor Miro Weinberger. "Unfortunately these efforts have not been supported by key partners and now, the encampment has become an immediate concern where significant harm has occurred and is likely to occur if the site continues. To
protect the health and safety of the campers, neighbors, and our first responders we must close this encampment. However, we will not stop fighting to bring needed support and resources to members of our community who are housing insecure.”

After work through the weekend and further engagement with campers at Sears Lane, the Vermont Department of Children and Families, and various local social service providers the City is announcing a number of updates:

- Since Thursday, many campers at the site have been working with the City in good faith to leave the encampment and some have requested an extension for leaving the site beyond October 19.
- The City will store the belongings of campers for up to 30 days by bringing storage containers to the site. These containers will be on-site no later than October 25.
- In response to these requests and the updated support plan, the Mayor has extended the deadline for campers to comply with this notice until October 26.
- At the City's request, the Vermont Department of Children and Family Services (DCF) has pledged emergency funding to provide direct assistance to Sears Lane residents in their transition to other housing. DCF is committed to working with the City, local nonprofits, and the Chittenden Homeless Alliance to ensure that people who have been living at Sears lane are supported in accessing a range of alternative housing options to meet their needs.
- DCF has confirmed that the Champlain Valley Office of Economic Opportunity (CVOEO) will provide direct street outreach services to the Sears Lane encampment. CVOEO is offering campers hotel assistance, transportation, and other housing assistance. CVOEO and the City's recently expanded Community Service Liaison team will work with Sears Lane clients to ensure a safe transition.
- On Thursday, October 21, City staff and community partners will meet with campers to discuss resource connection, explain the City's storage policy, and identify trash and abandoned items for removal.
- On Friday, October 22, the Department of Public Works and Department of Parks, Recreation, and Waterfront will be on-site to assist with the disposal and removal of items identified as abandoned or trash only.

**Background**

The City and key partners have dramatically expanded homeless services on Mayor Weinberger's watch, with key initiatives including:

- Opening the City's first low-barrier winter warming shelter in 2014, and the continuation of this program until 2020 when it was expanded to be a year-round facility (\[Press/\_anew-place-closes-on-purchase-of-champlain-inn-and-announces-plan-to-offer-temporary-low\].)
- The launch of the region's first "coordinated entry system" to better support individuals experiencing homelessness.
- The conversion of North Beach into a low-barrier, COVID-safe facility first with RVs and then with tents through the spring and summer of 2020.
While last week's issues created an immediate concern for the City and for the safety and health of individuals in the area, the site has had a number of growing concerns that the City has sought to resolve through expanded management at the site. Prior to the most recent incidents of criminal activity, the City team had also been working to protect public health and safety and to find a way for the City-owned land and Sears Lane to help address community housing needs. These efforts included:

- In October 2020, the City partnered with ANEW Place to secure grant funding from the Vermont Housing Conservation Board to build tiny homes at Sears Lane. The VHCB voted 5-3 against funding the City’s plan.

- In September 2021, after months of consultations with non-profit service providers, the City released a request for proposals seeking a non-profit partner to actively manage the site as a low-barrier campground. No local service providers responded to that request.

At the Mayor's direction, the City of Burlington's Community Economic Development (CEDO) is continuing to explore ways in which City properties can play a role in addressing the current, acute housing crisis.

###

Press Release Date:
10/18/2021

City Department:

Mayor’s Office
CVOEO Can Offer You Assistance with:

If you choose to leave Sears Lane, CVOEO can try to help you. Please contact us!

01 Hotels (anywhere!)

02 Transportation (anywhere!)

03 Trailers/Campers

04 Housing (No lease needed)

05 Lot Rent/Family Support

If you have ideas about where you might go next, let us know! We can be flexible. We want to get you where you want to go!
CITY OF BURLINGTON

SHELTERING ON PUBLIC LANDS:
OUTREACH AND REMOVAL POLICY AND PROCEDURES

Section I – Purpose:

The City of Burlington is committed to supporting and maintaining a safe public environment for all residents and visitors of Burlington, both those who live in hard-wall-shelters and those who do not. To those ends, the City will take steps to ensure that individuals without hard-wall-shelters are provided with information on available resources and are given the assistance necessary to go through the Coordinated Entry process. The City also has an affirmative commitment to support the dignity of all people, including those without hard-wall shelters.

The City will try to ensure that individuals are not permitted to camp or set up residences in areas where camping is prohibited under Burlington’s Code of Ordinances or that are otherwise permanently posted, such as in the Urban Reserve. However, generally, an encampment that is on public property and not in a prohibited area and that does not present exigent circumstances will only be noticed for removal if certain criteria are met and outreach efforts are made consistent with the following policy and procedures.

Section II – Procedures for Areas Where Camping is Specifically Prohibited:

1. If the City learns of or receives a report of an active encampment on public property in a part of the City where camping is specifically prohibited through Burlington’s Code of Ordinances or permanent posting, the Community Affairs Liaison (for purposes of this policy, the term “Community Affairs Liaison” means the Community Affairs Liaison, their designee, or any City employee with appropriate training), and usually a uniformed police officer, shall attempt to make outreach to the encampment to provide information on available resources and written notice that camping in that area is prohibited and that if they continue camping in the specifically prohibited area beyond a specified date they may face ticketing, no trespass orders, other legal action, and removal of any remaining items not found to be refuse or hazardous.

2. The notice shall also briefly state the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how and when they may be reclaimed, and the Community Affairs Liaison’s contact information. The notice shall also provide contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, and information on other available community resources.

3. The Community Affairs Liaison shall ensure that each camping individual has been referred via receipt of the CCHA Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment.

4. If there is no individual at the site with whom to speak, the Community Affairs Liaison shall post or securely place the written notice as described above in #1 on or near any items.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
possible, the notice should be provided to campers in person. The Community Affairs Liaison will take and file photographs demonstrating where and when the notices were posted.

5. If the campers have not left or removed their property by the date/time specified, they may be ticketed if they have violated an ordinance, and/or they may receive a notice of trespass if one is warranted. The City will dispose of any trash and remove any property left at the site. City staff will ensure the Community Affairs Liaison has attempted outreach and notice before enforcing the no-camping rules in these areas.

Section III – Procedures for Areas Where Camping is not Specifically Prohibited:

Sub-Section A – Outreach:

1. If the City learns of or receives a report of an active encampment in a part of the City where camping is not specifically prohibited, the Community Affairs Liaison, or designee, shall attempt to make outreach to the encampment to provide contact information for the Community Affairs Liaison, contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, and information on other available resources. Generally, an appropriate City employee shall accompany the Community Affairs Liaison on this initial outreach attempt, and the use of a uniformed police officer should be limited.

2. If people are present during this initial outreach attempt, then appropriate social services agencies should be called and, if possible, immediately come to the encampment to provide additional information on available resources. The Community Affairs Liaison shall make sure that each camping individual has been referred via receipt of the CCHA Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment.

3. The Community Affairs Liaison should note where the encampment is located.

4. If no one is present during this initial outreach, then the Community Affairs Liaison should leave the Community Affairs Liaison’s contact information, contact information for local social service organizations serving unsheltered residents, the Coordinated Entry Screening Form with instructions, information about other available resources, and make additional outreach attempts as necessary. If people are present during a subsequent outreach attempt, then appropriate social services agencies should be called and, where possible, immediately come to the encampment to provide additional information on what resources are available.

5. The BPD, Community and Economic Development Office (CEDO) and appropriate social services agencies will make every effort to consult and make sure all appropriate social service organizations have been contacted, social service providers have visited the encampment to assist where possible, the individual(s) have been referred via receipt of the Coordinated Entry Screening Form or begun the Coordinated Entry process, including the completion of the Coordinated Entry assessment, and efforts have been made to implement the City’s Housing First Policy. The process described in Sub-Section A will happen whether or not the City believes that removal may be necessary.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
Sub-Section B – Removal Criteria and Procedures:

1. If a City department determines that there is a reason to remove the items of individuals camping on public land based on one of the following criteria, that department should contact the City Attorney’s Office for an initial review. The criteria that serve as a basis for removal are as follows:
   a. Risks to health or safety related to living conditions;
   b. Risks to the site’s ecology;
   c. The nature, quantity, and location of any structures on the site, as structures generally will be removed from public property, although temporary tents or lean-tos that are kept in good condition may not require removal;
   d. The amount or nature of possessions or materials on the site, such as trash, furniture, or large numbers of bags, may warrant removal;
   e. Interference with the ability of others to use the property;
   f. Inconsistency with the intended public use of the site;
   g. Repeated or serious legal or criminal violations at the site; and
   h. Other severe or pervasive issues that may warrant removal.

2. The City Attorney’s Office will first identify the property owner. If the encampment is not on City property, then the BPD should contact the property owner and provide assistance as needed. If the City Attorney’s Office determines that the encampment is on City property, then the involved City department shall write a brief narrative describing the situation and reason(s) for removal in conjunction with other relevant City departments and the City Attorney’s Office. If appropriate, the City department(s) should collect and preserve photographic documentation necessary to support the determination of need for removal.

3. If the City Attorney advises that the items may be removed under the circumstances and in accordance with this policy, and the removal is not an emergency, the Community Affairs Liaison shall provide or post an initial notice at the site notifying the campers that the City is considering removing their items from the site and the reasons therefor, that the decision will be made within the next three workdays, and that they should contact the Community Affairs Liaison with any questions about or objections to the removal. The initial notice shall advise the campers of the reasons for the potential removal, with at least a sentence describing the reasons for the removal with reasonable particularity. Before that notice is posted, the department requesting removal will ensure that the Mayor’s Office has received a copy of the narrative justifying removal and the initial notice and will notify any other City department that may be affected by the potential removal. The Community Affairs Liaison will communicate with the Mayor’s Office if any questions or objections are received within the three-workday initial posting period.

4. If no objection is received within the three work days, or the Mayor determines that removal is warranted despite an objection, the Mayor shall make a determination, based on the narrative requesting removal and advice from the City Attorney, BPD, and other departments, whether to proceed with removal, and the Mayor’s Office shall notify the requesting department of the Mayor’s decision.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
5. Once the Mayor decides that an encampment can be removed from City property, the Community Affairs Liaison shall provide the encampment with a written notice to remove property by a specified date/time that explains that the City will remove any property remaining in the area on that specific date/time. The specified date/time shall, absent exigent circumstances or emergency, allow people a reasonable time to move, at least seven calendar days. The notice shall also briefly state the reasons for the removal, the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how they may be reclaimed, the hours and days of the week when items may be reclaimed, and the Community Affairs Liaison’s contact information. The notice will be posted or securely placed on or near any campsite or items. If possible, the notice should be provided to campers in person. The Community Affairs Liaison will take photographs demonstrating where and when the notices were posted.

6. If the following steps have not been taken prior to posting of the notice, the BPD and CEDO shall solicit assistance from social service organizations to seek voluntary movement from those camping on the site prior to the date/time for removal. This assistance should include:

a. Sending the Community Affairs Liaison (or designee) and appropriate social services agencies to engage with the campers.
b. Confirming that relevant social service organizations are aware and engaged, and that opportunities for housing are offered if available. Ensuring that social services workers are available to work with campers to remove and, if possible, transport their items.

7. Before posting the notice, DPW and/or Parks shall confirm that there will be sufficient personnel and equipment necessary for the removal on the date/time included in the notice.

Sub-Section C. Emergencies or Exigent Circumstances

1. If a requesting department seeks immediate removal because of an emergency or exigent circumstances, the City Attorney’s Office shall be consulted and shall advise whether the circumstances can warrant consideration of an emergency or exigent removal. Circumstances that may warrant emergency or exigent removal include, but are not limited to, any immediate health, safety, or ecological concern where significant harm has occurred or is likely to occur if the items are not removed immediately, or a current situation where the encampment is inhibiting the construction of a permitted project,

2. In an emergency or exigent circumstances, attempts should be made to receive direction from the Mayor’s Office ahead of time, but if Mayor’s Office direction cannot be received, the property may be moved to another location and trash, hazardous material, and unusable items may be discarded. Notice of the move shall be posted at the location for at least seven days after the move. If taken into storage, the notice of removal shall briefly state the reasons for the removal, the agency responsible for the clean-up, that remaining items will be stored for at least thirty days and if unclaimed within that time will be disposed of, the location and address where the collected items will be stored and how and when they may be reclaimed, and the Community Affairs Liaison’s contact information. The notice will be posted or securely placed on or near any campsite or items. If posting of a notice before
removal is not possible, a post-removal notice with the information above shall be posted at the location for at least seven days after the removal.

Section IV – Removed Property

1. When the City removes an encampment, it will discard any item that reasonably appears, to the City employees conducting the removal, to be trash, presents a health or safety hazard, or will become a hazard during storage (for example, wet bedding materials).

2. Items that are not trash or hazardous will be tagged with the date, location of the removal, and any other available information related to the item owner. Such items include but are not limited to: radios, audio and video equipment, phones, bed rolls, tents, sleeping bags, tarps, canvas, mats, blankets, pillows, medication, personal papers, photographs, books, backpacks or other storage containers, clothing, towels, shoes, toiletries, clocks, bicycles, and eye glasses.

3. City employees may consolidate those items at the site for pick-up by the owner according to prior arrangement or will move them to a storage location for a period of thirty (30) days. Items not claimed within 30 days will be discarded.

4. The City will maintain a log or photos of removed items, catalogued by tag number, date, and location of removal.

Section V – Recovery of Stored Property:

1. People inquiring about lost, removed, or collected items should be referred to the Community Affairs Liaison.

2. The Community Affairs Liaison will work with people seeking to recover their items from City storage to arrange for delivery or pickup within a reasonable amount of time. If the person expresses an emergent health or safety need to recover their items, the Community Affairs Liaison will facilitate the recovery of their items as soon as possible.

3. To recover property, the person must describe the items with particularity. No identification is required to recover items, but a record of removed items will indicate who recovered the items.

Section VI - Limitations of Policy:

This policy is intended to address encampments where individuals without hard-wall-shelters are or recently have been living or sleeping. If a City employee discovers items on public property and there is no evidence that a person without hard-wall-shelter is currently or recently has been living or sleeping at that location, this policy shall not apply. Similarly, this policy does not address City policies on related topics such as trespasses on public land or regular removal of trash from public parks consistent with this policy.

11/26/19 version settled with ACLU at mediation; for Public Safety Committee review
EMERGENCY AND EXIGENT NOTICE TO LEAVE AND REMOVE POSSESSIONS

The City of Burlington has decided to disband campsites in this area because the serious and repeated public safety issues that have arisen around criminal activity including, but not limited to controlled substances and distribution, illegal fire arms, threats to first responders and others in the area. The City also has decided to disband campsites in this area because of the substantial public health issues including, the erection of multi-level unpermitted structures, and continuous or frequent running of generators.

YOU MUST STOP CAMPING AND STORING BELONGINGS IN THIS AREA BY **5PM, OCTOBER 19, 2021.**

CITY OF BURLINGTON EMPLOYEES WILL COLLECT AND STORE ANY ITEMS, INCLUDING CAMPING EQUIPMENT, LEFT ON THE PROPERTY AT THAT TIME AND SHALL HOLD THEM FOR 30 DAYS AT A CITY LOCATION TO BE DETERMINED. TRASH, HAZARDOUS MATERIAL, AND UNUSABLE ITEMS WILL BE DISCARDED AT THAT TIME.

FOLLOWING THE EXPIRATION OF THE 30 DAYS, THE CITY WILL DISPOSE OF ANY ITEMS, INCLUDING CAMPING EQUIPMENT, THAT REMAIN AFTER THAT TIME.

IF YOU DO NOT STOP CAMPING OR IF YOU RETURN TO CAMP AT THIS SPOT AFTER IT IS CLEANED UP, THE CITY MAY PURSUE LEGAL ACTION AGAINST YOU.

If you have questions or concerns, please contact the Community Affairs Liaison, Burlington Police Department (1 North Ave.), (802) 540-2393, Monday to Friday, 8:30 am to 5 pm.

Community Resources

**Housing/Financial Assistance:**
- CVOEO - 255 South Champlain St – 660-3454
- Economic Services - 119 Pearl St - 1-800 479-6151

**Shelter Options:**
- COTS - 864-2613 ext 115
- ANew Place - 862-9879
- Safe Harbor Clinic – 860-4310

**Medical/Dental Assistance:**
- Safe Harbor Clinic – 860-4310

**Food/Shower/Laundry:**
- See reverse schedule
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And this monthly offering: 3rd Saturday at 6:00, New Moon Café, Cherry Street, watch for dates, they sometimes change, depending on holidays.

Food Shelf: 228 N. Winooski Ave. (intersection with N. Union)  
Salvation Army: 64 Main St. (corner of S. Champlain)  
Daystation: 95 North Ave, 862-5418  
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### Laundry

| Laundry | COTS Daystation | With intake; Monday – Friday, generally from 10 am until about 3 pm. |
REVISED AND EXTENDED NOTICE TO LEAVE AND REMOVE POSSESSIONS

Effective: October 18, 2021

The City of Burlington has decided to disband campsites in this area because the serious and repeated public safety issues that have arisen around criminal activity including, but not limited to controlled substances and distribution, illegal firearms, threats to first responders and others in the area. The City also has decided to disband campsites in this area because of the substantial public health issues including, the erection of multi-level unpermitted structures, and continuous or frequent running of generators.

YOU MUST STOP CAMPING AND STORING BELONGINGS IN THIS AREA BY 9 AM, TUESDAY OCTOBER 26, 2021.

(Please note, this new date supersedes any prior notices or dates to leave)

CITY OF BURLINGTON EMPLOYEES WILL COLLECT AND STORE ANY ITEMS, INCLUDING CAMPING EQUIPMENT, LEFT ON THE PROPERTY AT THAT TIME AND SHALL HOLD THEM FOR 30 DAYS AT THE SEARS LANE PROPERTY IN STORAGE CONTAINERS. TRASH, HAZARDOUS MATERIAL, AND UNUSABLE ITEMS WILL BE DISCARDED AT THAT TIME.

FOLLOWING THE EXPIRATION OF THE 30 DAYS, THE CITY WILL DISPOSE OF ANY ITEMS, INCLUDING CAMPING EQUIPMENT, THAT REMAIN AFTER THAT TIME.

A meeting to discuss the storage and removal of items will occur at the Sears Lane property on Thursday, October 21, 2021 with city staff.

IF YOU DO NOT STOP CAMPING OR IF YOU RETURN TO CAMP AT THIS SPOT AFTER IT IS CLEANED UP, THE CITY MAY PURSUE LEGAL ACTION AGAINST YOU.

If you have questions or concerns, please contact the Community Affairs Liaison, Burlington Police Department (1 North Ave.), (802) 540-2393, Monday to Friday, 8:30 am to 5 pm.

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Mayor Weinberger Announces Next Steps Regarding Sears Lane Encampment

Mayor Weinberger Announces Next Steps Regarding Sears Lane Encampment

Burlington, VT – Today, Mayor Weinberger announced next steps toward ending the unsafe living conditions at the Sears Lane encampment, and expanding short- and mid-term housing services in Burlington during this period of acute housing shortage.

Dangerous incidents at the site have included police and federal law enforcement partners executing a warrant (/Press/search-warrant-sears-lane) following a month-long narcotics investigation and a camper pointing an assault-style airsoft gun (/Press/simple-assault) (a replica pellet gun) at Burlington Fire personnel who were responding to a medical call. The Fire Department has also determined that some of the structures that have been erected illegally on the site pose a significant fire risk to occupants and other campers on the site. Following those incidents, Mayor Weinberger directed Burlington Police to issue a notice to leave and remove possessions by October 19 in accordance with the City of Burlington’s policy regarding sheltering on public lands. The City’s policy regarding sheltering on public lands was created in later 2019, following a long period of engagement with local advocates and the ACLU.

"I believe that homelessness in Burlington should be brief, and rare and my Administration has worked hard for many years to expand resources and services for the individuals living in chronic homelessness. For the past year these efforts have included an attempt to establish first a tiny home community and then a managed campsite at Sears Lane," said Mayor Miro Weinberger. "Unfortunately these efforts have not been supported by key partners and now, the encampment has become an immediate concern where significant harm has occurred and is likely to occur if the site continues. To
protect the health and safety of the campers, neighbors, and our first responders we must close this encampment. However, we will not stop fighting to bring needed support and resources to members of our community who are housing insecure.”

After work through the weekend and further engagement with campers at Sears Lane, the Vermont Department of Children and Families, and various local social service providers the City is announcing a number of updates:

- Since Thursday, many campers at the site have been working with the City in good faith to leave the encampment and some have requested an extension for leaving the site beyond October 19.
- The City will store the belongings of campers for up to 30 days by bringing storage containers to the site. These containers will be on-site no later than October 25.
- In response to these requests and the updated support plan, the Mayor has extended the deadline for campers to comply with this notice until October 26.
- At the City’s request, the Vermont Department of Children and Family Services (DCF) has pledged emergency funding to provide direct assistance to Sears Lane residents in their transition to other housing. DCF is committed to working with the City, local nonprofits, and the Chittenden Homeless Alliance to ensure that people who have been living at Sears lane are supported in accessing a range of alternative housing options to meet their needs.
- DCF has confirmed that the Champlain Valley Office of Economic Opportunity (CVOEO) will provide direct street outreach services to the Sears Lane encampment. CVOEO is offering campers hotel assistance, transportation, and other housing assistance. CVOEO and the City’s recently expanded Community Service Liaison team will work with Sears Lane clients to ensure a safe transition.
- On Thursday, October 21, City staff and community partners will meet with campers to discuss resource connection, explain the City’s storage policy, and identify trash and abandoned items for removal.
- On Friday, October 22, the Department of Public Works and Department of Parks, Recreation, and Waterfront will be on-site to assist with the disposal and removal of items identified as abandoned or trash only.

Background

The City and key partners have dramatically expanded homeless services on Mayor Weinberger’s watch, with key initiatives including:

- Opening the City’s first low-barrier winter warming shelter in 2014, and the continuation of this program until 2020 when it was expanded to be a year-round facility (/Press/anew-place-closes-on-purchase-of-champlain-inn-and-announces-plan-to-offer-temporary-low).
- The launch of the region’s first “coordinated entry system” to better support individuals experiencing homelessness.
- The conversion of North Beach into a low-barrier, COVID-safe facility first with RVs and then with tents through the spring and summer of 2020.
While last week's issues created an immediate concern for the City and for the safety and health of individuals in the area, the site has had a number of growing concerns that the City has sought to resolve through expanded management at the site. Prior to the most recent incidents of criminal activity, the City team had also been working to protect public health and safety and to find a way for the City-owned land and Sears Lane to help address community housing needs. These efforts included:

- In October 2020, the City partnered with ANEW Place to secure grant funding from the Vermont Housing Conservation Board to build tiny homes at Sears Lane. The VHCB voted 5-3 against funding the City’s plan.

- In September 2021, after months of consultations with non-profit service providers, the City released a request for proposals seeking a non-profit partner to actively manage the site as a low-barrier campground. No local service providers responded to that request.

At the Mayor’s direction, the City of Burlington's Community Economic Development (CEDO) is continuing to explore ways in which City properties can play a role in addressing the current, acute housing crisis.

###

Press Release Date:
10/18/2021

City Department:

Mayor's Office
CVOEO Can Offer You Assistance with:

If you choose to leave Sears Lane, CVOEO can try to help you. Please contact us!

Adam - 802-829-5379
Taylor - 802-233-8946
Todd - 802-238-9100

01 HOTELS (ANYWHERE!)
02 TRANSPORTATION (ANYWHERE!)
03 TRAILERS/CAMPERS
04 HOUSING (NO LEASE NEEDED)
05 LOT RENT/FAMILY SUPPORT

If you have ideas about where you might go next, let us know! We can be flexible. We want to get you where you want to go!
Exhibit 6
STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION

DOCKET NO. 21-CV-03247

GRUNDY, ALEXUS AND
BARREDA, GREY, )
    Plaintiffs, )
    )
v. )
CITY OF BURLINGTON, VT, )
    Defendant. )

AFFIDAVIT OF JON MURAD

I, Jon Murad, being first duly sworn, depose and say:

1. I am the Acting Chief of Police for the City of Burlington, Vermont. I have worked as a Burlington Police Officer for three years.

2. In my capacity as the Acting Chief of Police, I am aware of the City of Burlington’s Sheltering on Public Lands Policy adopted in November of 2020.

3. I am also aware of the encampment on Sears Lane.

4. On October 13, 2021, my Department executed a search warrant on the site and found evidence of extensive methamphetamine distribution at the site as well as several firearms, which were in the possession of a convicted felon in derogation of federal law.

5. It is our belief that the individual arrested for distribution was part of a larger network using the Sears Lane site. The investigation is on-going and involves other individuals staying at or using the Sears Lane site.
6. My Department and other Police Departments from the surrounding communities have recovered stolen bicycles at the Sears Lane site and have observed evidence of numerous bicycles being dismantled.

7. My Department and other Police Departments from the surrounding communities have received reports of or found multiple stolen vehicles at the Sears Lane site.

8. The foregoing is true to the best of my knowledge and belief.

DATED at Burlington, Vermont, this 25th day of October, 2021.

ATTEST:

[Signature]

Jon Murad, Acting Chief of Police
City of Burlington, Vermont

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 25th day of October, 2021 personally appeared Jon Murad and acknowledged that the above Affidavit executed by him is true and accurate to the best of his knowledge and belief.

Before me:

[Signature]

Notary Public
Commission Expires:
Commission #: ______________
STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 21-CV-03247

GRUNDY, ALEXUS AND
BARREDA, GREY,
Plaintiffs,

v.

CITY OF BURLINGTON, VT,
Defendant.

AFFIDAVIT OF STEVEN A. LOCKE

I, Steven A. Locke, being first duly sworn, depose and say:

1. I am the Chief Engineer for the Burlington Fire Department for the City of Burlington, Vermont. I have held this position since February 2016 and have been a professional Firefighter for a total of 29 years.

2. In my capacity as the Chief Engineer for the Burlington Fire Department, I am aware of the City of Burlington’s Sheltering on Public Lands Policy adopted in November of 2020.

3. I am also aware of the encampment on Sears Lane.

4. On October 13, 2021, my Department received a call and arrived at the Sears Lane site with first responders. They were then confronted by an individual with a rifle who threatened them. The first responders were able to safely leave the scene, but the individual with the rifle, which turned out to be an air rifle, was arrested. It is my understanding that this individual was released and has returned to the site. As a result of the threat, the City’s fire and
ambulance services have requested a police escort every time they go to the site. These additional steps means that the time to respond to an emergency call will be delayed with the potential for substantial delays if the limited on-duty police are engaged in another call. When time matters, the loss of these immediate emergency services means that it is significantly more dangerous to be on the site.

5. My Department has also found evidence of several unpermitted and unsafe structures at the site, at least one of which was multi-story.

6. My Department also found evidence of extensive use of portable generators running on a near-continuous basis as well as unapproved heating sources. Such use is not allowed and presents a significant fire and carbon monoxide danger. The evidence indicates that these generators are being used for heat, lights, and other temporary utilities that will only see more demand in the coming days.

7. My Department came to the opinion that the site is a tinder box with the multiple gas powered mini-generators running continuously in poorly-vented and haphazardly-constructed sites. There is an immediate threat to public health from these devices, which only grow with each day.

8. The foregoing is true to the best of my knowledge and belief.

DATED at Burlington, Vermont, this 25th day of October, 2021.

ATTEST:

Steven A. Locke, Chief Engineer,
Burlington Fire Department
STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 25th day of October, 2021 personally appeared Steven A. Locke and acknowledged that the above Affidavit executed by him is true and accurate to the best of his knowledge and belief.

Before me: 

Notary Public
Commission Expires: 1/31/23
Commission #: 1576013711