

San Francisco Bay Conservation and Development Commission

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October 2, 2020

TO: Commissioners and Alternates

FROM: Enforcement Committee Members

SUBJECT: Enforcement Committee’s Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist Order No. CDO2020.001.00; City of Oakland

(For Commission consideration on October 15, 2020)

Executive Summary

On September 17, 2020, the Commission considered the adoption of proposed Cease and Desist Order No. CCD2020.001.00 (Order), which was approved with revisions by the Enforcement Committee on August 13, 2020. At the September 17, 2020 meeting, instead of adopting the proposed revised Order, the Commission voted to remand it to the Enforcement Committee for consideration of additional revisions to establish defined dates within the next several months for clearing Union Point Park of encampments that are precluding the public from using the Park. The Order has now been revised following further negotiations with the City, and the Enforcement Committee is recommending that the Commission adopt proposed Cease and Desist Order No. CCD2020.001.00, as revised. The Order will require the City to clear encampments and vehicles that have reemerged outside of the designated Secondary Priority Area no later than November 15, 2020. The Order will also require that no later than February 12, 2021, the City must conduct a full encampment closure and relocate all individuals within the Park to alternate locations and begin restoring the Park.

Background on the Order Revisions

At the May 21, 2020 Commission meeting, Enforcement Committee Chair Scharff explained that the Enforcement Committee originally voted to approve Cease and Desist Order No. CCD2020.001.00, which was developed in negotiation with the City, at a public hearing on March 12, 2020. Shortly after the proposed Order was approved, the City determined that it was unable to meet the negotiated deadlines for clearing and restoring the Park due to the COVID-19 pandemic emergency, and the City requested that the deadlines be changed. Staff and the City then negotiated changes to the deadlines, and a revised proposed Order with new deadlines was approved by the Enforcement Committee following a noticed public hearing on April 22, 2020. This revised proposed Order was then scheduled for adoption by the Commission at the meeting on May 21, 2020. This Order would have required the City to clear Union Point Park of all encampments by September 1, 2020.

At the May 21, 2020 Commission meeting, Commissioner Scharff explained that the Enforcement Committee was aware that guidance from the Centers for Disease Control (CDC), as well as orders adopted by the local jurisdictions, recognize the potential that relocating



people experiencing homelessness can cause these individuals to disperse throughout the community and increase the potential for infectious disease to spread. Thus, the Enforcement Committee was recommending a measured approach to requiring the City to relocate individuals from the Park. The approach recommended by the Enforcement Committee would ensure that the conditions that precluded local communities from using the Park would not persist indefinitely and worsen, but this approach would also recognize the issues presented by the COVID-19 emergency and would extend the deadline for a full closure of the Park to September.

City staff also spoke at the Commission meeting on May 21, 2020, and they informed the Commission that rather than approving the revised proposed Order with the new deadlines, the City preferred that the Union Point Park matter be delayed for 90 days due to the uncertainties with the COVID-19 emergency situation. After some discussion, the Commission voted to remand the revised proposed Order back to the Enforcement Committee to allow for further discussion with City staff regarding the deadlines in the proposed Order and the provisions allowing for an extension of the deadlines where necessary to address the COVID-19 emergency and comply with local public health orders.

After the May 21, 2020 Commission meeting, BCDC staff and City staff met to discuss revisions to the proposed Order. The City developed a new proposed Encampment Closure and Restoration Plan for Union Point Park, with new deadlines for clearing encampments tied to the resolution of the COVID-19 emergency. The City's proposed Plan and the proposed Order developed to enforce the Plan tied the encampment closures to the occurrence of a "Triggering Event" which would signal the end of the COVID-19 emergency. The new revised Order, with the accompanying revised Plan, was then presented to the Enforcement Committee, and the Enforcement Committee voted to approve a revised proposed Order No. CCD2020.001.00 at a noticed public hearing on August 13, 2020.

The new revised Order was presented to the Commission for adoption at the September 17, 2020 Commission meeting. At the September 17, 2020 meeting, the Commission heard from a number of residents of the adjacent Union Point Marina. These residents described several recent incidents of crime and violence in the encampments, which the City staff acknowledged. The Commission was also presented with photographs showing that there were tents and vehicles in areas of the Park outside the area that the City designated for encampments in February. At the conclusion of the meeting, instead of adopting the proposed revised Order with encampment removal deadlines tied to the resolution of the COVID-19 emergency, the Commission voted to remand the proposed revised Order to the Enforcement Committee for consideration of additional revisions to establish defined dates for clearing Union Point Park of encampments.

The section below briefly summarizes the most recent Enforcement Committee proceeding on this matter and the Enforcement Committee's decision to adopt the Executive Director's Recommended Enforcement Decision and the revised proposed Order No. CCD2020.001.00 following the public hearing held on October 1, 2020.

Enforcement Committee Recommendation

At the Enforcement Committee hearing on October 1, 2020, BCDC staff described the changes to the proposed Order and the accompanying Encampment Closure and Park Restoration Plan. The Order now requires the City to conduct a partial encampment closure to address the reemergence of encampments outside of the established Secondary Priority Area by November 15, 2020. The City must also continue to monitor the area and provide monthly reports, with photographs, on the conditions in the Park and the efforts to keep the areas outside of the Secondary Priority area clear of encampments.

No later than February 12, 2021, the City must conduct an encampment closure of the remaining encampments in the established Secondary Priority Area. The proposed Order also includes revised deadlines for certain actions which are not tied to the need to clear the Park of encampments and keep it free of encampments in the future. No later than January 15, 2021, the City must submit a long-term encampment enforcement plan to ensure that the City will be able to keep the Park free of encampments. The proposed Order also requires that by September 1, 2021, the City will submit both a long-term maintenance plan and a comprehensive restoration plan for the Park.

The proposed Order also requires that by April 1, 2022, the City will restore the Park to a working condition consistent with the permit terms. If the City is unable to meet any of these deadlines, the Order includes provisions allowing for the City to request an extension.

After hearing from BCDC staff and the City, the Enforcement Committee voted to approve the revised Order, with the accompanying revised Plan, and to recommend that the Commission adopt the Order, as revised. The Executive Director's Recommended Enforcement Decision and the Enforcement Committee's proposed Cease and Desist Order, as amended, are attached to this memo as Exhibits A and B, respectively. The Index of Administrative Record in support of the findings in the Order and the documents cited therein are available to view online at <https://www.bcdc.ca.gov/enforcement/2020/0312-%20Union-Point-Park-Administrative-Record.htm>.