

RESOLUTION 06-01-2020

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Board of Directors amend CCBA Rules of Operation & Procedure, article 2, sections 10, 11, and 12, to read as follows:

1 Article II

2 [Sections 1 through 9 remain unchanged.]

3 10. Manner of Submission: All resolutions, reports, ~~and~~ counterarguments, suggested
4 amendments, and statements of support, shall be submitted electronically in the form prescribed
5 by the Board and published on the CCBA website.

6 11. (a) Counterarguments: Counterarguments, which shall be defined as arguments
7 against the resolution, shall not exceed 500 words. Counterarguments must be received by the
8 Conference Chair and the Chair of Resolutions Committee no later than the date set for their
9 receipt as published at the time of the preceding regular meeting. Counterarguments may be filed
10 by any Association entitled to certify delegates to the Conference, ten members of the State Bar,
11 any Section of the State Bar, the Board of Directors of the CCBA, and any other party authorized
12 by the Board of Directors of the CCBA.

13 (b) Suggested Amendments: Suggested Amendments, which shall be defined as
14 suggestions to improve the resolution, shall not exceed 250 words. Suggested Amendments need
15 not be proposed language, but the ideas. They may include the idea(s) and the reasoning behind
16 it/them. Suggested Amendments must be received by the Conference Chair and the Chair of
17 Resolutions Committee no later than the date set for their receipt as published at the time of the
18 preceding regular meeting. Suggested Amendments may be filed by any Association entitled to
19 certify delegates to the Conference, ten members of the State Bar, any Section of the State Bar,
20 the Board of Directors of the CCBA, and any other party authorized by the Board of Directors of
21 the CCBA.

22 (c) Statements of Support: Statements of Support, which shall be defined as arguments
23 for the resolution, shall not exceed 150 words. Statements of Support shall only include insights
24 or arguments not mentioned in the proponent's statement of reasons. Statements of Support must
25 be received by the Conference Chair and the Chair of Resolutions Committee no later than the
26 date set for their receipt as published at the time of the preceding regular meeting. Statements of
27 Support may be filed by any Association entitled to certify delegates to the Conference, ten
28 members of the State Bar, any Section of the State Bar, the Board of Directors of the CCBA, and
29 any other party authorized by the Board of Directors of the CCBA.

30 12. Publication of Resolutions: As soon as possible after the Resolutions Committee files
31 its reports, ~~the~~ all ~~the~~ proposed resolutions, together with all counterarguments, suggested
32 amendments, statements of support, and the reports of the Resolutions Committee shall be posted
33 to the website. Electronic copies and paper copies of the resolutions, counterarguments and
34 report may also be made available for purchase at a cost and in a manner to be published to the
35 website.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Currently, the only official option delegations have to publish when it comes to other delegations' resolutions is a counterargument. Counterarguments are valuable, but not the only useful information that delegations can offer. Sometimes counterarguments involve suggested amendments, which are not really counterarguments but ideas on how to make the resolution better and should not have the same heading. Similarly, delegations cannot publish reasons to support a resolution that might have been overlooked by the proponent but might be valuable for other delegations to consider.

The Solution: This resolution allows delegations to submit suggested amendments and statements of support for resolutions, enabling them to submit other useful information for delegations to consider.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 06-02-2020

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Article 11 of the California Constitution, section 1 to read as follows:

1 SEC. 1.

2 (a) The State is divided into counties which are legal subdivisions of the State. The
3 Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary
4 change. Formation or consolidation requires approval by a majority of electors voting on the
5 question in each affected county. A boundary change requires approval by the governing body of
6 each affected county. No county seat shall be removed unless two-thirds of the qualified electors
7 of the county, voting on the proposition at a general election, shall vote in favor of such
8 removal. A proposition of removal shall not be submitted in the same county more than once in
9 four years.

10 (b) The Legislature shall provide for county powers, an elected county sheriff, an elected
11 district attorney, an elected public defender, an elected assessor, and an elected governing body
12 in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing
13 body shall prescribe by ordinance the compensation of its members, but the ordinance
14 prescribing such compensation shall be subject to referendum. The Legislature or the governing
15 body may provide for other officers whose compensation shall be prescribed by the governing
16 body. The governing body shall provide for the number, compensation, tenure, and appointment
17 of employees.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: 10 Members of the California Bar; Alicia M. Gámez, Dick Normington, Joachim Steinberg, Diana Passadori, James P. Lamping, James Brosnahan, Frank Z. Leidman, Dick Normington, Ciarán O'Sullivan, Jim Weixel, David Bigeleisen

STATEMENT OF REASONS

The Problem: The untimely and tragic death of Jeff Adachi left a void where a great, elected Public Defender once stood in San Francisco, but his passing uncovered the little-understood fact that San Francisco is the only county with an elected Public Defender in the State of California.

Those of us lucky enough to live in a county with an elected public defender understand the value of an outspoken public voice for the defense. The office of the district attorney is charged with enforcing the laws on behalf of "the people." The public defender is charged with protecting the freedoms of the people accused of a crime. Yet, only San Francisco's public defender has an elected office that advocates for the defense of the people.

Our legal system is adversarial. Democracy requires strong advocacy on both sides of criminal justice in and out of court. After generations of one-sided emphasis on enforcement, we are now reaping the sour rewards of too great a reliance on unchallenged

prosecution. Generations of implicit bias (if not outright racism) have led to habitual over-charging and an epidemic of over-incarceration.

In San Francisco, our elected public defender challenges those practices. Jeff Adachi's elected office gave him autonomy to pursue funding and equity. For example, when San Francisco's Crime Lab failed to disclose Brady violations, Jeff Adachi pressed for disclosure and thorough investigation. In the end, hundreds of convictions were thrown out.

Now, politicians regularly chart a political career through the office of the district attorney, but no parallel avenue exists for those seeking public office to advance through the office of the public defender. The result is an unbalanced political discourse skewed towards enforcement and away from rehabilitation and redemption. A political voice for the prosecution without an elected and vocal for the defense leads to disparities at every point in the system and impoverishes our democratic institutions.

An elected public defender is essential to enforce accountability from law enforcement, demand an adequate budget for the defense of the people when accused, and draw the public's attention to the role of the public defender in our civil society. (See generally, Benner, Laurence A., "The California Public Defender: Its Origins, Evolution and Decline" (2010). Faculty Scholarship. Paper 148. <http://scholarlycommons.law.cwsl.edu/fs/148>)

The Solution: Amending the California Constitution to provide for an elected public defender will foster for a balanced public discourse, provide a watchdog to guard against law enforcement excesses, ensure robust protection of the accused and the civil rights of the people, and restore public confidence in the institutions of criminal justice. An elected public defender is necessary for an independent advocate who will fight to ensure that every person accused and prosecuted will have a defense worthy of our constitution.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

IMPACT STATEMENT

This resolution would affect Government Code sections 27700-27712 regarding the office of public defender.

AUTHOR AND/OR PERMANENT CONTACT: Alicia M. Gamez, 220 Montgomery Street, Suite 1200, San Francisco, CA 94104, 415-341-8143, alicia@gamezlaw.com

RESPONSIBLE FLOOR DELEGATE: Alicia M. Gámez

RESOLUTION 06-03-2020

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Constitution article II, sections 8 and 9, and Elections Code section 9035, to read as follows:

1 Art. II, § 8

2 (a) The initiative is the power of the electors to propose statutes and amendments to the
3 Constitution and to adopt or reject them.

4 (b) An initiative measure may be proposed by presenting to the Secretary of State a
5 petition that sets forth the text of the proposed statute or amendment to the Constitution and is
6 certified to have been signed by electors equal in number to ~~5~~ 3.15 percent in the case of a
7 statute, and ~~8~~ 5 percent in the case of an amendment to the Constitution, of ~~the votes~~ all electors
8 in the State of California. ~~for all candidates for Governor at the last gubernatorial election.~~

9 (c) The Secretary of State shall then submit the measure at the next general election held
10 at least 131 days after it qualifies or at any special statewide election held prior to that general
11 election. The Governor may call a special statewide election for the measure.

12 (d) An initiative measure embracing more than one subject may not be submitted to the
13 electors or have any effect.

14 (e) An initiative measure may not include or exclude any political subdivision of the State
15 from the application or effect of its provisions based upon approval or disapproval of the
16 initiative measure, or based upon the casting of a specified percentage of votes in favor of the
17 measure, by the electors of that political subdivision.

18 (f) An initiative measure may not contain alternative or cumulative provisions wherein
19 one or more of those provisions would become law depending upon the casting of a specified
20 percentage of votes for or against the measure.

21

22 Art. II, § 9

23 (a) The referendum is the power of the electors to approve or reject statutes or parts of
24 statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or
25 appropriations for usual current expenses of the State.

26 (b) A referendum measure may be proposed by presenting to the Secretary of State,
27 within 90 days after the enactment date of the statute, a petition certified to have been signed by
28 electors equal in number to ~~5~~ 3.15 percent of all electors in the State of California ~~the votes for~~
29 ~~all candidates for Governor at the last gubernatorial election~~, asking that the statute or part of it
30 be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on
31 or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar
32 year of the biennium of the legislative session, and in the possession of the Governor after that
33 date, the petition may not be presented on or after January 1 next following the enactment date
34 unless a copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of
35 Section 10 of Article II before January 1.

36 (c) The Secretary of State shall then submit the measure at the next general election held
37 at least 31 days after it qualifies or at a special statewide election held prior to that general
38 election. The Governor may call a special statewide election for the measure.

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§ 9035

An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by registered voters equal in number to 5 3.15 percent in the case of a statute, and 8 5 percent in the case of an amendment to the Constitution, of the total registered voters in the State of California ~~for all candidates for President Governor at the last presidential gubernatorial election~~ preceding the issuance of the circulating title and summary for the initiative measure by the Attorney General.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Associations

STATEMENT OF REASONS

The Problem: The required number of signatures to qualify initiatives and referenda for the ballot has fluctuated dramatically. Most recently, 2014 saw a record low requirement of 3.3% of registered voters for constitutional amendments, and 2.1% for statutes and referenda. Even though the total registered voters had increased since the previous calculation, the total requirement went down over 200,000 for amendments and almost 140,000 for statutes and referenda. That was due to the 2014 gubernatorial election having the lowest percentage of turnout in a regularly-scheduled election in California at least since 1914, even lower than the 2002 election of Gray Davis vs. Bill Simon, despite 2.5 million more registered voters. After 2018 had the highest percentage turnout in a mid-term election since 1982 (John Cox, 2018 runner-up, received more votes than Jerry Brown did in 2014), the signature requirements shot up to 5.1% of registered voters for amendments and 3.2% for statutes and referenda. Those requirements are actually only a little higher than the historical average.

This fluctuation in signature requirements is unnecessary and preventable. The pool of available signatories is the number of registered voters, so the requirement ought to be a set percentage of that rather than how many of them actually voted in the last gubernatorial election. Furthermore, although we have not experienced this yet, we may end up with two candidates for Governor of the same party due to the top-two primary, just like we have for the U.S. Senate the last two times. If that happens, the signature requirements are likely to drop significantly due to many members of the party not represented skipping that race. That can be demonstrated with the last election, in which the gubernatorial election had over 1.3 million more voters than the Senate election.

The Solution: Since the initiative process was enacted in California, the median signature requirements relative to registered voters have been ~5.03% of registered voters for amendments and ~3.15% for statutes and referenda. Taking those historical figures, this resolution makes the requirement a consistent 5% of registered voters for constitutional amendments, and 3.15% for statutes and referenda. Some years would mean less than otherwise, and some would mean more, but it would be much more consistent and predictable. The signature requirements would be a little less right now with this in effect, and the vast dropoff in 2014 and any significant drop-offs

or increases in the future would be prevented unless the total registered voters drastically changes.

IMPACT STATEMENT

This resolution may require additional statutory changes. Other statutes that mention the signature requirement as a % of gubernatorial votes might need changing.

CURRENT OR PRIOR RELATED LEGISLATION

None known

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 06-04-2020

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code sections 52.80, 52.81, 52.82, 52.83, 52.84, and 53.85, to read as follows:

1 § 52.80

2 There is created a Homeless Person’s Bill of Rights to guarantee that the rights, privacy
3 and property of persons experiencing homeless are adequately safeguarded and protected under
4 the laws of this state. The rights afforded persons experiencing homelessness to ensure that their
5 person, privacy and property are safeguarded and protected, as set forth in subsection Sections
6 52.82 and 52.83 below, are available only insofar as they are implemented in accordance with
7 other parts of the general statutes, state rules and regulations, federal law, the state Constitution
8 and the United States Constitution.

9
10 § 52. 81

11 For purposes of this part, the following definitions shall apply:

12 (a) “Adequate and accessible housing” means, at a minimum, living space:

13 (1) Where a person has both the right to reside and keep belongings on an ongoing,
14 long term basis at any time of day or night;

15 (2) That meets living standards commonly acceptable to society, and includes safety
16 from other individuals, the elements, and exposure to disease or filth, room to move about,
17 storage space for belongings, the ability to maintain current household composition,
18 accommodation for physical or mental limitations, and access to hygiene facilities; and

19 (3) That is accessible to the individual who is or will be living in that space, including
20 that the individual must not be barred due to criminal background, treatment status, ability to
21 show identification, household composition, physical or mental limitations, substance use
22 disorder, or otherwise.

23 (b) “Hazardous condition” means a condition that creates an imminent public health or
24 safety harm. The public health or safety harm must be created by the presence of
25 a specific condition and not a generalized harm common to all who are unsheltered.

26 (c) “Homeless person(s)” and “person(s) experiencing homelessness” mean those
27 individuals or members of families who lack a fixed, regular, and adequate nighttime residence,
28 including people defined as homeless using the criteria established in the Homeless Emergency
29 Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

30 (d) “Impoundment” means any action by the municipality to remove or tow a vehicle
31 used as a residence without the express approval of the vehicle’s owner.

32 (e) “Municipality” means any local jurisdiction and any of its contractors, agents,
33 employees or partners.

34 (f) “Outdoor living space” means any outdoor public space that homeless individual(s)
35 use to live or sleep in, as evidenced by the presence of a sleeping bag, shelter, tarp, tent,
36 bed, cardboard, metal sheeting, furniture, or other objects demonstrating an intent to live in the
37 location for one or more days, whether or not continuously.

38 (g) “Personal property” means any item which an individual owns and which might have
39 value or use to that individual, regardless of whether the item is left unattended for temporary
40 periods of time or whether it has monetary value. This does not include weapons other than
41 knives, contraband, items which pose an obvious health or safety risk, or are clearly
42 contaminated in a way which a reasonable person would conclude the items should not be stored
43 with other property. Personal property includes non-rigid materials used for shelter, such as tents
44 and tarps, but does not include building materials, such as wood products, metal, or rigid plastics

45 (h) “Public space” means any property that is owned by a government entity or any
46 property upon which there is an easement for public use and that is held open to the public,
47 including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation
48 facilities and services, public buildings, shopping centers, and parks.

49 (i) “Qualified outreach program” means a social service program with
50 adequate oversight, training, and clinical supervision to conduct sufficient individualized
51 outreach, and that the municipality contracts with or provides. Such programs shall have an
52 established record of providing sustained, equitable, person-centered care, and staff providing
53 services shall have training in the following areas: working with people with behavioral health
54 issues including substance use disorder, mental disorders, or both; trauma-informed care,
55 including people who have experienced or are experiencing gender- and gender-identity-based
56 violence and violence based on sexuality; outreach, assessment, and engagement; harm reduction
57 practices (including but not limited to safe needle exchange, use, and disposal, carrying and
58 dispensing Narcan, informing individuals of rights (Good Samaritan Law) and treatment options
59 (Buprenorphine and Methadone); cultural competence; confidentiality and grievance procedures;
60 and may include peer coaches that include adequate oversight and clinical supervision.

61 (j) “Removal” means action to remove people, camps, structures, or personal
62 property located at outdoor living spaces.

63 (k) “Rest” means the state of not moving, holding certain postures that include, but are
64 not limited to, sitting, standing, leaning, kneeling, squatting, sleeping, or lying.

65 (l) “Sufficient individualized outreach” means individualized, person-centered
66 outreach that responds to the unique needs of each person. Sufficient outreach involves:

67 (m) Making an individual assessment of each affected individual, which includes, but is not
68 limited to, considerations of household composition; disability; mental illness or other mental or
69 emotional capacity limitations; substance use or treatment status; geographic needs, such as
70 proximity to personal support, healthcare, employment and other geographic considerations; and
71 ongoing support needs;

72 (1) Identifying and offering adequate and accessible housing, if available, based on this
73 individual assessment; and

74 (2) If an offer is accepted, providing assistance with both the administrative and logistical
75 aspects of moving into the identified adequate and accessible housing.

76 (n) “Unsafe location” means a public space that poses imminent danger of harm to
77 individuals residing in that location or to the general public. The danger of harm must be created
78 by the existence of the specific outdoor living space at that particular location and not
79 generalized danger of harm common to all who are unsheltered. Unsafe locations include, but are
80 not limited to, rights-of-way in industrial areas actively used for transporting people or goods
81 and for providing ingress and egress to real property.

82 (o) “Unsuitable location” means a public space that has a specific public use that is
83 substantially impeded as a result of an outdoor living space in that location. Improved areas of

84 Municipality parks, including restored natural areas or natural areas actively undergoing
85 restoration, and public sidewalks in front of houses and dwelling units are per se unsuitable.

86
87 § 52.82.

88 (a) Each homeless person in this state has the right to:

89 (1) Free movement without restraint;

90 (2) Have equal opportunities for employment;

91 (3) Receive emergency medical care;

92 (4) Register to vote and to vote;

93 (5) Have personal information protected;

94 (6) Have a reasonable expectation of privacy in his or her personal property; and

95 (7) Receive equal treatment by state and municipal agencies.

96 (b) Each municipality shall conspicuously post in the usual location for municipal
97 notices a notice entitled "HOMELESS PERSON'S BILL OF RIGHTS" that contains the text set
98 forth in subsection (a) of this section. Each municipality shall make copies of such notice
99 available to members of the public upon request.

100
101 § 52.83.

102 (a) It is the intent of the Legislature that this section be interpreted broadly so as to
103 prohibit policies or practices that are discriminatory in either their purpose or effect.

104 (b) Persons experiencing homelessness shall be permitted to use public space in the ways
105 described in this section at any time that the public space is open to the public without
106 discrimination based upon their housing status, and without being subject to criminal, civil, or
107 administrative penalties. Permitted use of the public space include, but are not limited to, all of
108 the following:

109 (1) Free movement without restraint.

110 (2) Sleeping or resting, and protecting oneself from the elements while sleeping or
111 resting in a non-obstructive manner.

112 (3) Eating, sharing, accepting, or giving food.

113 (4) Praying, meditating, worshiping, or practicing religion.

114 (c) Nothing in this section shall prevent law enforcement from enforcing laws to protect
115 the right of people to use the sidewalk pursuant to the Americans with Disabilities Act of
116 1990 (42 U.S.C. Sec. 12101 et seq.).

117 (d) Nothing in this section shall prevent law enforcement from enforcing the Penal Code,
118 except subdivision (e) of Section 647 of the Penal Code, so far as it prohibits rest.

119
120 § 52.84.

121 (a) A municipality may respond appropriately to emergency situations such as fires,
122 crimes, or medical crises as it normally would with outdoor living spaces. However, except as
123 specified in (b) the municipality may undertake a removal or impoundment action only when the
124 municipality has satisfied the following conditions:

125 (1) Adequate and accessible housing is available beginning at least 5 days before the time
126 of removal or impoundment, to all individuals whose persons, personal possessions and/or
127 vehicles are being removed or impounded.

128 (2) The affected individuals have been engaged with sufficient outreach over a period of
129 not less than 5 days, to allow those interested to move voluntarily to adequate and accessible

130 housing. Sufficient outreach involves, at a minimum: (1) making an individual assessment of
131 each affected individual, which includes, but is not limited to, considerations of household
132 composition; disability; pets, service and support animals, mental illness or other mental or
133 emotional capacity limitations; substance use or treatment status; geographic needs, such as
134 proximately to personal support, healthcare, employment and other geographic considerations;
135 and ongoing support needs; (2) identifying and offering adequate and accessible housing based
136 on this individual assessment; and (3) if an offer is accepted, providing assistance with both the
137 administrative and logistical aspects of moving into the identified adequate and accessible
138 housing.

139 (3) The Municipality has provided written notice meeting the following requirements:

140 (A) The specific date and time the removal or impound will take place, which must
141 not be fewer than seven (7) days from notice date;

142 (B) Explanation of the actions that will be taken during the removal or impoundment and
143 how loss of personal property can be avoided;

144 (C) Information about where personal property will be safeguarded if seized during
145 the removal or impoundment and how it can be retrieved after removal or impoundment;

146 (D) Contact information for the outreach organizations that will work with that site as
147 specified in subsection (2) above; and

148 (E) A statement that adequate and accessible housing is available for all affected
149 individuals.

150 (F) Notice must be provided in languages likely to be spoken by impacted individuals,
151 and through methods capable of being understood by persons with physical and mental
152 disabilities.

153 (G) Notice must be posted in a conspicuous location at the relevant outdoor living space
154 or on the relevant vehicle, as well as affixed to all tents and structures used for shelter at that
155 location.

156 (b) If an outdoor living space or a vehicle used as a residence is in an unsafe or unsuitable
157 location, or creates or contains a hazardous condition, the municipality may undertake a removal
158 or impoundment action if conducted in accordance with the procedures set forth in this Section.

159 (1) Prior to conducting removal or impoundment actions based on unsafe or unsuitable
160 locations, the municipality must do the following:

161 (A) The municipality must inform all individuals staying at such location the reasons that
162 it is unsafe or unsuitable at least 72 hours prior to any removal or impoundment.

163 (B) The municipality must identify and make available a nearby, alternative location to
164 camp or park that is safe and suitable to all affected individuals.

165 (C) The municipality must conduct sufficient individualized outreach.

166 (2) Prior to conducting removal or impoundment actions based on hazardous conditions,
167 the municipality must do the following:

168 (A) Provide access to basic garbage, sanitation, and harm reduction services as dictated
169 by the nature of the hazardous condition, for at least 72 hours.

170 (B) Make reasonable efforts to identify the likely source of the hazardous condition and
171 take action against only those responsible for creating the hazardous condition.

172 (C) Provide a meaningful opportunity to cure the hazardous condition, including:

173 (i) An effective cure notice of the specific conditions that create the hazardous
174 condition and information on how that condition can be remedied; and

175 (ii) Provision of necessary items, such as garbage bags and bins, cleaning supplies, rodent
176 traps, intravenous needle receptacles, and/or portable toilets, among others, that would allow the
177 individuals to cure the hazardous condition. The municipality must allow individuals at least 72
178 hours to cure the hazardous condition before posting notice of removal or impoundment, and
179 shall not conduct removal or impoundment if the hazardous conditions have been cured.

180 (D) The municipality must conduct direct outreach through site visits to: (a) inform all
181 affected individuals prior to or during the cure period that the location has a hazardous condition
182 and the actions needed to cure that condition; and (b) inform all affected individuals whether the
183 hazardous condition has been remedied after the cure period, and if not, why not.

184 (3) Prior to removal or impoundment, the municipality must provide written
185 notice meeting the following requirements:

186 (A) The specific date and time the removal or impound will take place;

187 (i) The removal or impound may not take place fewer than 72 hours from the date of
188 notice in the case of unsafe or unsuitable location;

189 (ii) The removal or impound may not take place fewer than five (5) days from the date of
190 notice in the case of a hazardous condition

191 (B) Explanation of how the location of the outdoor living space or vehicle is unsafe
192 and/or unsuitable, or the hazardous condition has not been remedied;

193 (C) Explanation of the actions that will be taken during the removal or impoundment and
194 how loss of personal property can be avoided;

195 (D) Information about where personal property will be safeguarded if seized during the
196 removal or impoundment and how it can be retrieved after removal or impoundment;

197 (E) Clear directions to the alternative location, which must be accessible to public transit.
198 If public transit is needed to reach the alternative location, municipalities shall provide a means
199 of transportation to said alternative location. Means of transportation shall include, but not be
200 limited to no cost public transit, shuttle service, taxi and/or ride sharing service.

201 (F) Contact information for the outreach organizations that will work with that site as
202 described in subsection (4) below; and

203 (G) If available, a statement that adequate and accessible housing is available for all
204 affected individual;

205 (H) Notice must be provided in languages likely to be spoken by impacted individuals,
206 and through methods capable of being understood by persons with physical and mental
207 disabilities.

208 (I) Notice must be posted in a conspicuous location at the relevant outdoor living space or
209 on the relevant vehicle, as well as affixed to all tents and structures used for shelter at that
210 location.

211 (4) Sufficient individualized outreach must involve, at a minimum, the following actions:

212 (A) Informing all affected individuals of the availability of the alternative location for the
213 outdoor living space or vehicle, or offering adequate and accessible housing; and

214 (B) Offering assistance with both the administrative and logistical aspects of moving into
215 the identified alternative location or adequate and accessible housing.

216 (c) During a removal or impoundment, the Municipality will safeguard all personal
217 property free of charge according to the following requirements:

218 (1) For individuals present at the time of the removal or impoundment who have accepted
219 the offer of an adequate and accessible housing but do not have the ability to transport their

220 personal property, the Municipality shall transport all personal property to the location of the
221 accepted housing the day of the removal or impoundment.

222 (2) For individuals absent at the time of the removal or impoundment, the Municipality
223 must document that those individuals had actual notice of the removal or impoundment.
224 document that those individuals had actual notice of the removal or impoundment.

225 (3) For individuals absent at the time of removal or impoundment, or present but who did
226 not accept the offer of adequate and accessible housing and do not have the ability to transport
227 their personal property, the Municipality will safeguard all personal property as follows:

228 (A) Personal property must be photographed and catalogued by location and with
229 identifying details of the personal property prior to being put into storage. Such information must
230 be searchable by computer or by calling a Municipality agent

231 (B) The location of the storage facility must be accessible by public transportation and
232 accessible to those with disabilities.

233 (C) Its operating hours must extend beyond normal business hours to accommodate
234 those who work or have other obligations during midweek during normal business hours.

235 (D) Photo identification shall not be required as a condition of retrieval;

236 (E) The Municipality must post notice for 90 days at the location of the removal or
237 impoundment with the location of the seized personal property and instructions for reclaiming
238 such personal property.

239 (F) After 90 days, the Municipality may dispose of any unclaimed personal items
240 provided all the above requirements have been met.

241
242 § 53.85.

243 (a) Any person whose rights have been violated pursuant to this part may enforce those
244 rights in a civil action.

245 (b) The court may award appropriate injunctive and declaratory relief, restitution for loss
246 of property or personal effects and belongings, actual damages, compensatory damages,
247 exemplary damages, statutory damages up to one thousand dollars (\$1,000) per violation, and
248 reasonable attorney's fees and costs to a prevailing party.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Existing laws do not provide a frame work for municipalities to support basic civil and human rights for people experiencing homelessness. Often conducted with little or no notice, forced dispersals or "sweeps" displace homeless people from public space, and often result in the loss or destruction of people's possessions, including identifying documents, medications, clothing and food. As such, with the loss of possessions, medications, and documents, forced dispersals perpetuate the cycle of homelessness. Lacking from state law is an outline for how to link homeless people to permanent housing opportunities, medical treatment and/or sanitation.

Several municipalities in California have offensive and anachronistic laws targeting homeless people. In September 2018, the Ninth Circuit in *Martin et al v City of Boise*, 902 F.3d

1031(9th Cir. 2018) held that these laws are “cruel and unusual” and constitute a violation of the Eighth Amendment. Judge Berzon wrote, “As long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter,” *Id.* at 1048. The US Supreme Court denied certiorari of *Martin* on December 16, 2019 and thus California municipalities must address the needs of homeless individuals where no indoor sleeping option is available.

The Solution: This resolution provides California municipalities with a framework to address homelessness in a rational and humane way. By protecting the due process rights of homeless persons to their personal property, this resolution breaks the cycle of homelessness by providing accountability and a means to deal with homelessness. By assessing a homeless individual’s needs based on the totality of their situation, including disability, substance use history, and housing availability; this resolution gives municipalities the tools needed to effectively address the root causes of homelessness. Municipalities still have the ultimate power to immediately deal with emergency situations and violations of the ADA. By providing an opportunity to cure hazardous conditions, this resolution permits homeless individuals and municipalities the opportunity to create safe and sanitary spaces. To ensure adherence, this resolution provides aggrieved individuals injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, fees and costs.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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