

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

LADELLA WILLIAMS, SCOTT YELTON,  
SONJA GARCIA, ALONSO MAGALLANES,  
CHRISTINA GARCIA, RICKEY MAUK,  
SHERI GIBSON, and LANCE WILSON,

Plaintiffs,

v.

No. D-202-CV-2022-07562

CITY OF ALBUQUERQUE,

Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING IN PART PLAINTIFFS’  
MOTION FOR A PRELIMINARY INJUNCTION**

This matter comes before the Court upon Plaintiffs’ Emergency Motion for a Preliminary Injunction and their separate Memorandum in Support, both of which were filed on March 31, 2023 (together, the “Motion”). The Court has reviewed the Motion, Defendant’s April 24, 2023 response, and Plaintiffs’ May 12, 2023 reply. The Court also reviewed the attachments to the briefs and heard from the parties through their respective counsel at a hearing on the Motion on September 8, 2023. Being fully advised, and based upon the sufficiency of the evidence in the record, the Court finds that the Motion should be granted in part as set out in this Order.

1. Defendant, the City of Albuquerque (the “City”) is hereby enjoined from enforcing, or threatening to enforce as a means of seeking compliance with, any statutes and ordinances against involuntarily unhoused people<sup>1</sup> that prohibit a person’s presence in, or the presence of a

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<sup>1</sup> The terms “unhoused people” and “homeless people” are used interchangeably in this Order to mean people who live in the City of Albuquerque and who, for subjectively legitimate reasons (meaning legitimate from the perspective of the homeless person), have no fixed residence. *See, e.g.,* Amanda Abrams, *Is it OK to use the word ‘homeless’ – or should you say ‘unhoused’?*, THE GUARDIAN, July 20, 2023, 06.00 EDT, <https://www.theguardian.com/us-news/2023/jul/20/homeless-unhoused-houseless-term-history#:~:text=Around%202020%2C%20the%20use%20of,and%20scholars%20use%20it%20exclusively> (last visited September 21, 2023).

person's belongings on, outdoor public property *except* that the City may continue to enforce statutes and ordinances that would prohibit a homeless person from:

- (a) obstructing sidewalks (including ramps, stairways, and stairwells), driveways, medians, alleyways, public rights of way (including walkways, streets, roads, trails and other paths, bike lanes, and bike paths), parking lots, and other public roadways and walkways, when such obstructions pose an immediate threat to the safety of any person *and* the City documents and makes a written record of its findings of the immediate threat to the safety of any person; and
- (b) occupying any property of any public school.

2. The City is further enjoined from seizing any unabandoned property belonging to a homeless person that is not contraband or is otherwise unlawful to possess without:

- (a) having first received a validly executed warrant authorizing the seizure, or
- (b) satisfying a legally-recognized exception to the warrant requirement such that the seizure is lawful (*see, e.g., State v. Gutierrez, 2004-NMCA-081, ¶ 6, 136 N.M. 18* (recognizing exceptions to the warrant requirement)), or
- (c) providing written notice to the homeless person to whom the property belongs that the specific property will be seized *and* providing a pre-deprivation hearing on the merits of the proposed seizure at least 72 hours prior to the proposed seizure.

3. The City is further enjoined from destroying any unabandoned property belonging to a homeless person without first adhering to the seizure provisions set out above in paragraph number 2 *and* without providing a post-deprivation notice and hearing regarding the property's destruction, which shall include a reasonable opportunity to reclaim the property.

4. This preliminary injunction does not enjoin the City from enforcing any statutes, ordinances, or other laws affecting private property, or the rights of others to enforce their rights with respect to private property.

5. This preliminary injunction does not enjoin the City from enforcing any statutes or ordinances concerning any other criminal acts of unhoused people (meaning those apart from prohibiting a person's presence in, or the presence of a person's belongings on, outdoor public property). If, for example, a police officer has reasonable suspicion of criminal activity taking place by an unhoused person on outdoor public property (e.g., an outdoor fire that is prohibited by law, the destruction of public property, the possession of stolen property, or the unlawful possession or use of a weapon), that police officer is not enjoined from taking lawful action to investigate those circumstances and to enforce those other criminal statutes or ordinances.

#### **Initial Findings of Fact**

A. There are more homeless people living in the City of Albuquerque ("Albuquerque") than there are available shelter beds for sleeping at night. A large number of homeless people in Albuquerque simply have no place to be at night except outside.

B. There are inadequate and insufficient indoor spaces for homeless people living in Albuquerque to be during the day. A large number of homeless people in Albuquerque simply have no place to be during the day except outside.

C. Everyone has to be someplace.

D. For most people who experience homelessness, it is not a static condition. Many people living in Albuquerque, including some of the named plaintiffs in this lawsuit, have experienced homelessness off-and-on for periods of time over a number of years.

E. The City has enforced, and has threatened to enforce, various ordinances and statutes criminalizing homeless persons' mere presence on outdoor public property and the presence of their belongings on outdoor public property when there are inadequate indoor spaces for homeless people living Albuquerque to be. The City has threatened punishment under these laws to force homeless people to move from one outdoor public space to another.

F. The City's improper enforcement of these statutes and ordinances often causes irreparable harm to the homeless people against whom they enforced. For example, arrests for these violations regularly result in missed court appearances and the resulting issuance of bench warrants for the homeless person's arrest for failure to appear. Also, a homeless person who is forced to relocate from one outdoor public space to another oftentimes loses personal belongings that are vital to that person's health and safety as a result of that forced relocation.

G. The City has seized and destroyed the property of homeless people, including property that homeless people need to live (e.g., tents, tarps, blankets, medication, identification, clothes, food, benefit cards, pets, bicycles, etc.) without a valid search warrant, without adequate pre-deprivation notice, or without an adequate opportunity to be heard prior to or after the seizure and before the destruction of the property. Many of these constitutionally inadequate seizures of the property of homeless people took place in 2023.

H. The City's seizure and destruction of the property of homeless people often causes irreparable harm to the homeless people whose property is unlawfully seized and unlawfully destroyed. Oftentimes, these seizures result in the destruction of property that the homeless person needs to live: shelter, medication, clothing, blankets, etc.

### **Initial Conclusions of Law**

1. This Court may enter class-wide injunctive relief before the certification of a class when the Court is satisfied that the potential harms to the putative class members and the improper conduct on the part of the City demonstrate that Plaintiffs, by themselves and on behalf of the putative class members, are entitled to equitable relief. *See, e.g., J.O.P. v. U.S. Dept. of Homeland Security*, 409 F.Supp.3d 367, 376 (D. Md. 2019) (“[C]ourts may enter class-wide injunctive relief before certification of a class.”).

2. Plaintiffs have established standing to bring this lawsuit on behalf of themselves and the following two putative classes: the “Criminal Enforcement Class” (*see* Complaint at ¶¶ 241 – 247), and the “Personal Property Class” (*see* Complaint at ¶¶ 248 – 254). Plaintiffs, on behalf of themselves and the members of these two putative classes, have alleged an injury in fact, a causal relationship between that injury and the City’s conduct, and a likelihood that those injuries may be redressed by a favorable decision from this Court. *See, e.g., ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 7, 144 N.M. 471 (outlining the elements necessary to establish standing).

3. In this way, Plaintiffs have demonstrated that their injuries and the injuries of the members of these two putative classes fall within the zone of interests that are protected by the constitution. *See, e.g., Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 19, 130 N.M. 368 (“To successfully assert standing, a plaintiff must also show that the injury alleged is within the zone of interests to be protected by a constitutional provision or statute.”).

4. More importantly, for purposes of standing, Plaintiffs here have shown at a minimum that there exists a “credible threat” of their criminal prosecution and the deprivation of their property without due process of law as a result of their mere presence on outdoor public

spaces when there are insufficient indoor spaces for them to be. Thus, they have standing to assert these claims. *See, e.g., American Civil Liberties Union of New Mexico v. City of Albuquerque*, 1999-NMSC-044, ¶ 9, 128 N.M. 315 (quoting the United States Supreme Court’s opinion in *Babbitt v. United Farm Workers Nat’l Union*, 422 U.S. 289, 298 (1979): “When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he [or she] should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.”).

**Additional Conclusions of Law Regarding  
The Criminal Enforcement Class: Cruel and Unusual Punishment for  
Occupying Outdoor Public Spaces**

5. “[T]he Eighth Amendment [to the United States Constitution] prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006) *vacated as moot* 505 F.3d 1006 (9th Cir. 2007).

6. While the City is not constitutionally obligated to provide housing for homeless people, it cannot punish the mere presence of homeless people and their belongings in outdoor public spaces when there are inadequate indoor spaces for them to be. *See, e.g., Parker v. Municipal Judge of City of Las Vegas*, 427 P.2d 642, 644 (Nev. 1967) (“It simply is not a crime to be unemployed, without funds, and in a public place.”).

7. Indeed, “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019).

8. Thus, punishing a homeless person's innocent behavior of merely existing in outdoor public spaces when there is insufficient shelter within the City of Albuquerque violates the Eighth Amendment's prohibition on cruel and unusual punishment.

9. For identical reasons, the City cannot threaten to arrest, cite, or otherwise punish unhoused people for their mere presence in outdoor public spaces in order to forcibly move them from one outdoor public place to another. Those threats of prosecution also criminalize otherwise innocent behavior. *See, e.g., Martin*, 920 F.3d at 617 (“[J]ust as the state may not criminalize the state of being homeless in public places, the state may not criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.” (internal quotation marks omitted)).

10. “As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the eighth amendment—sleeping, eating and other innocent conduct.” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992) (concluding that the city's conduct there “violates the eighth amendment ban against cruel and unusual punishment”).

11. The City's enforcement, and its threats of enforcement, of various ordinances and statutes criminalizing homeless persons' mere presence on outdoor public property and the presence of their belongings on outdoor public property, when there are inadequate indoor spaces for homeless people living in Albuquerque to be, violates the Eighth Amendment's prohibition against cruel and unusual punishment.

12. Because this Court concludes that the City's conduct with respect to the Criminal Enforcement Class violates the Eighth Amendment of the United States Constitution, the Court

need not address Plaintiffs’ identical claim under Article II, Section 13 of the New Mexico Constitution (the State’s cruel and unusual punishment clause). *See State v. Gomez*, 1997-NMSC-006, ¶¶ 19 – 22, 122 N.M. 777 (formally adopting the interstitial approach to constitutional interpretation in which “the court asks first whether the right being asserted is protected under the federal constitution. If it is, then the state constitutional claim is not reached. If it is not, then the state constitution is examined”).

**Additional Conclusions of Law Regarding  
The Personal Property Class: Unlawful Seizure & Destruction of Unabandoned Property  
Without Due Process of Law**

**A. Unlawful Seizure**

13. Article II, Section 10 of the New Mexico Constitution provides that “[t]he people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures . . . .”

14. This provision “guarantee[s] that people will not be subjected to unreasonable searches and seizures.” *State v. Bomboy*, 2008-NMSC-029, ¶ 9, 144 N.M. 151. “The search aspect protects expectations of privacy, while the seizure aspect protects notions of possession.” *Id.*

15. Thus, a “seizure” occurs when the government deprives a person of (i.e., takes) their property. *State v. Benally*, 2016-NMSC-010, ¶ 11, 368 P.3d 403. However, a seizure also occurs when the government “meaningfully interferes” with a person’s possession of their property; a seizure may be nothing more than a “brief detention of [the person’s] personal effects.” *Id.*

16. A person’s property may be seized even when the property is in a public space. *See, e.g., Soldal v. Cook County, Ill.*, 506 U.S. 56, 68 (1992) (“[A]n officer who happens to come across an individual’s property in a public area could seize it only if Fourth Amendment standards



[precluding unreasonable seizures] are satisfied—for example, if the items are evidence of a crime or contraband.”).

17. This is so because “a reasonable expectation of privacy [*e.g.*, a desire to keep the property private] is not required to trigger Fourth Amendment protection against seizures.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027 (9th Cir. 2012). Rather, both the State and Federal Constitutions protect against “unreasonable interferences” with a person’s possession of, and interest in, their property, regardless of whether the property was intended to be kept private.

18. Simply put, the government cannot seize a person’s property just because that person is in a public space with their property. More is required for a seizure to be lawful.

19. The ultimate test to determine the constitutionality of any seizure and/or destruction of homeless persons’ unabandoned property is one of reasonableness. *See, e.g., State v. Ketelson*, 2011-NMSC-023, ¶ 20, 150 N.M. 137. “[R]easonableness depends on the balance between the public interest and the individual’s interest in freedom from police intrusion upon personal liberty.” *Id.*

20. Here, it is simply not reasonable for the City to seize the property of homeless people for the sole reason that they are living in outdoor public spaces, and it is even less reasonable that the City would not provide a process for those homeless persons to reclaim their property once it had been seized.

21. The City’s public interest is to maintain safe, clean, and healthy outdoor spaces. That much is clear, and that is a valid interest, to be sure. Yet, the interest of homeless people is to have what they need to survive and live in those outdoor spaces. On balance, ***and without any additional reasons other than the homeless person is living in an outdoor public space when***

*there are inadequate indoor spaces for them to be*, the City's interest is insufficient to allow for the seizure of homeless persons' property just because they are occupying public spaces.

22. In fact, the City has identified other possible ways to maintain safe, clean, and healthy outdoor public spaces where homeless people live without seizing their property. For example, the for about two years, the City cleaned the Coronado Park "encampment" every other week. *See, e.g.*, Exhibit F to the City's Response, Matt Whelan's Affidavit, at ¶¶ 18 – 20 (testifying that the City's Solid Waste department conducted bi-weekly clean-outs at Coronado Park for about two years prior to its closure). The propriety and sufficiency of those bi-weekly clean-ups is disputed by Plaintiffs. Nevertheless, they stand as a concrete example of possible actions that the City may take to keep outdoor public spaces safe and clean.

23. It is likewise unreasonable for the City to *permanently* deprive homeless people of their property solely because they are living in outdoor public spaces, without allowing them the opportunity reclaim that property after it has been seized. The City's primary interest supporting the destruction of homeless persons' property is the cost and effort it must expend in securing, identifying, transporting, storing, and providing a process for returning that property to the homeless person to whom it belongs. Again, the homeless persons' interest is to be free from the destruction of their property, much of which is vital to their health and safety, for the sole reason that they are living in outdoor public spaces when they have no other place to be.

24. On balance, the City's interests are again insufficient. By way of example, the City effectively conceded at the hearing on the Motion that they could not take and destroy a protestor's megaphone without providing that person an opportunity to object to its destruction, even if that protestor had clearly violated the City's laws prohibiting the obstruction of sidewalks, roadways,

and the like. It is equally unreasonable, if not more so, for the City to destroy the property of unhoused people that they need to survive.

25. By way of comparison, the City actually has other processes established by law to determine when property is abandoned and whether it should be destroyed. For example, a City ordinance mandate a process to determine when a vehicle has been abandoned in public. That process includes: (a) notice to the registered owner that the City has declared the vehicle abandoned, (b) an opportunity for the owner to request a hearing on that issue, and (c) an opportunity for the owner to claim the vehicle before it is destroyed. *See* R.O.A. § 8-5-2-3. Yet, the evidence here shows that the City does not afford those same protections to the unabandoned property of homeless people.

26. More importantly, perhaps, the City admitted at the hearing, and the City affirmatively states in its own “Encampment Policy,” that it is currently storing the personal belongings of many homeless people at any given time. Yet, the City is simply not providing that protection to the seizure and destruction of all homeless persons’ property at all times.

27. The Court therefore rejects the City’s argument that any process to provide all homeless persons a reasonable opportunity to reclaim their property that has been seized by the City is too expensive and too burdensome.

28. The reasonableness of the seizure also touches upon the issue of the abandonment of homeless persons’ property: namely, the question of when any person, including a homeless person, has abandoned their property in a public place such that the City is justified in taking it (that is, seizing it) and throwing it away without notice and an opportunity to be heard. Again, is simply not reasonable for the City to conclude that a person’s established “camp,” and the

belongings in and around the camp, have been abandoned because the person is not present or because the person has not moved their belongings to another public place as directed by the City.

29. Another important consideration in the analysis of the reasonableness of the City's actions in seizing and destroying homeless persons' property is whether the government has unreasonably interfered with a person's possession of the person's property without due process of law. *See Lavan*, 693 F.3d at 1030 ("Here, by seizing and destroying [homeless persons'] unabandoned legal papers, shelters, and personal effects, the City meaningfully interfered with [their] possessory interests in that property. No more is necessary to trigger the Fourth Amendment's reasonableness requirement.").

30. The facts set out above and in the record demonstrate the City has seized and destroyed homeless persons' property without adequate legal process. Thus, following *Lavan*, the Court concludes that City's actions in taking and destroying homeless persons' property are not consistent with the City's obligation to provide each person whose property is taken adequate notice of the intended seizure (including the legal justification supporting the seizure), a pre-deprivation merits hearing on that issue, and then a post-deprivation opportunity to reclaim that property.

31. Finally, the Court notes that the City is not really arguing that it may simply take and destroy homeless persons' unabandoned belongings without satisfying constitutional due process requirements. Rather, it is arguing that it does not in fact do that, or at least that it doesn't do that anymore. The Court again disagrees based upon the facts set out above and in the record, which demonstrate that homeless people have been permanently deprived of their unabandoned, personal belongings without sufficient notice (i.e., notice setting out the legal reasons supporting

the seizure), and a pre- and post-deprivation hearing or other opportunity to claim their property and have it returned to them.

**B. The Encampment Policy**

32. In support of its argument that it provides homeless people sufficient process to keep and/or reclaim their property, the City points to its “Policy for Responding to Encampments on Public Property” (the “Encampment Policy”). This Policy includes, among other things, notice of at least 72 hours prior to the closure of any “encampment” by the City, as well as notice of where the “Personal Property” and “Special Personal Property” (as those terms are defined in that Policy) may be stored and claimed. *See* Exhibit D to the Response at pages 8 – 9.

33. Yet, the Encampment Policy nonetheless allows for the City to destroy at least some homeless persons’ items of personal property when the City, in its sole discretion, does not have the capacity to store them. *Id.* at 8, Section VI.E (“The City will not attempt to collect or store, and may instead immediately remove and dispose of, Personal Property that exceeds any story limits established by the City.”). *See also id.* at Section 10 (Section IX.C.iv.) and 11 (Section IX.D.iii).

34. And, the evidence in the record shows that the City has in fact destroyed homeless persons’ property without storing it as the Encampment Policy provides. Thus, the Encampment Policy may provide no actual or constructive notice to a homeless person that the person’s property will be destroyed, and it most certainly provides no opportunity for a homeless person to reclaim property that the City already threw away.

35. More importantly, though, although the Encampment Policy applies by its own terms to a singular tent or other structure used as a dwelling on outdoor public property, the evidence in the record shows that the City has not applied the notice and storage provisions of Encampment Policy in many situations involving the relocation of just a few homeless people

from one outdoor public place to another. The Encampment Policy is not being applied consistently and is therefore insufficient as a matter of law.

36. The City points to the sheer size and volume of some of the property of homeless people in support of its argument that it simply cannot store their belongings: many shopping carts full of “stuff,” stacks of wooden pallets, a make-shift hot tub filled with water at Coronado Park, bicycle parts, and the like. This may be true, but the City points to no legal authority that allows it to destroy a person’s property without due process of law because of its size. Indeed, the City stores abandoned vehicles while it attempts to provide notice to the registered owner. *See* R.O.A. § 8-5-2-3. Those vehicles are presumably larger and at least as difficult to move and store as the unabandoned possessions of a single homeless person.

**C. Procedural Due Process**

37. Turning now to the process that the City must afford homeless people before seizing and destroying their property, Article II, Section 18 of the New Mexico Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]”

38. With respect to administrative proceedings such as those conducted by the City, the Court determines what process is due under Article II, Section 18 by balancing three factors: (1) identifying what the person will be deprived of by the government’s actions (e.g., what property interest or property right will be taken); (2) assessing the risk that the person will be improperly deprived of that property interest if the government does not provide more process or more procedural safeguards; and (3) weighing the government’s interests (financial, administrative, etc.) in avoiding the additional process or procedure, e.g., are those additional safeguards too burdensome, too expensive, etc.? *See, e.g., In re Comm’n Investigation into 1997 Earnings of U.S. West Communications, Inc.*, 1999-NMSC-016, ¶ 26, 127 N.M. 254 (adopting the

factors set out by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

39. Generally, the government must provide notice and an opportunity to be meaningfully heard before seizing a person's property. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) ("For more than a century[,], the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." (internal quotation marks and citations omitted)).

40. Indeed, "[i]f the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." *Id.* at 81.

41. The evidence in the record demonstrates that the City does not have a uniform and equally-applicable process to provide homeless people meaningful notice that their property will be seized and destroyed. At best, the evidence shows that the City has, at times, provided at least some process, but at other times it has provided essentially no process at all. This is especially true with respect to the destruction of homeless persons' personal property.

42. In sum, homeless people, just like people with homes, have a right against unreasonable seizures of their unabandoned property, even if that property is left in outdoor public spaces. *See, e.g., Lavan*, 693 F.3d at 1032 ("Because homeless persons' unabandoned possessions are 'property' within the meaning of the Fourteenth Amendment, the City must comport with the requirements of the Fourteenth Amendment's due process clause if it wishes to take and destroy them.").<sup>2</sup>

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<sup>2</sup> This does not mean, and this Court does not conclude, that all people – housed and unhoused – have a constitutionally-protected interest in their possessions when they leave them unattended in public. To the contrary, the

43. And lastly, for purposes of the Personal Property Class, the Court concludes that even if the City had complied with the constitutional prohibition against unreasonable *seizures* (and the evidence shows it has not), principles of constitutional due process require the City “to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.” *Id.* The City simply is not doing this for some number of homeless people living in Albuquerque. Thus, injunctive relief is appropriate.

### **Injunctive Relief Against the City is Appropriate**

44. To obtain a preliminary injunction, Plaintiffs must show: (1) they will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the City; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood that Plaintiffs will prevail on the merits. *See, e.g., La Balbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314

45. Irreparable Injury: As set out in the factual findings, above, the actions of the City in seizing, and in many cases destroying, the property of homeless people causes them irreparable harm. They need their belongings to attempt to provide the most basic human need: shelter.

46. Threatened Injury to Homeless People as Compared to Damage to the City. As set out above, the City’s primary interests are (a) maintaining clean, healthy, and safe outdoor public spaces, and (b) minimizing the cost and burden to the City in doing so.

- a. With respect to the first of these interests (maintaining clean and safe outdoor spaces), nothing in this preliminary injunction prevents the City from taking

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sole inquiry here is whether the City has provided a meaningful notice and an opportunity to be heard to these Plaintiffs and the members of two putative classes of homeless people before seizing and destroying their personal possessions. It has not.



lawful actions to do exactly that. The City is free to undertake any lawful actions to maintain clean, safe, and healthy outdoor spaces.

- b. With respect to the second of these interests (minimizing the cost and burden of complying with this preliminary injunction), the Court concludes that the cost associated with the City's burden to comply with the fundamental constitutional principles of due process of law do not outweigh the injuries to homeless people living in outdoor public spaces. This is especially true when the City has both sought to provide the very protections set out in this injunction for some, but not all, homeless people, and the City provides these very same protections to housed people all the time.

47. Balancing the Public's Interest in the Injunctive Relief Sought by Plaintiffs. As part of any injunction, the Court must balance the equities and the interests of the parties, including the interests of third parties (here, the public), to fashion a remedy that is tailored to address the wrongful conduct. *See, e.g., Wild Horse Observers Ass'n, Inc. v. N.M. Livestock Board*, 2022-NMCA-061, ¶ 33, 519 P.3d 74.

48. In balancing these harms – those of the members of the putative classes of homeless people as compared to those of the public, in general – and solely for purpose of fashioning a suitable preliminary injunction, the Court concludes that the presence of homeless people in outdoor public places cannot place themselves or others at risk of immediate harm, even if there are inadequate indoor places for homeless people to be.

49. Thus, the City may, ***in compliance with the remaining provisions of this Order***, enforce statutes and ordinances against homeless people in Albuquerque when the homeless person obstructs public space in a manner that poses an immediate threat to the safety of any person

*and* the City documents and makes a written record of its findings of the immediate threat to the safety of any person.

50. The City may likewise enforce statutes and ordinances against homeless people in Albuquerque when a homeless person occupies any property of any public school.

51. Substantial Likelihood that Plaintiffs Will Prevail on the Merits. As set out in the conclusions of law, above, the Court concludes that there is a substantial likelihood that Plaintiffs will prevail on the merits of their cruel and unusual punishment, due process, and unlawful seizure claims.

**Order Granting Preliminary Injunction and Staying its Enforcement**

IT IS THEREFORE **ORDERED, ADJUDGED, and DECREED** as follows:

1. Defendant, the City of Albuquerque (the “City”) is hereby enjoined from enforcing, or threatening to enforce as a means of seeking compliance with, any statutes and ordinances against involuntarily unhoused people that prohibit a person’s presence in, or the presence of a person’s belongings on, outdoor, public property *except* that the City may continue to enforce statutes and ordinances that would prohibit a homeless person from:

(a) obstructing sidewalks (including ramps, stairways, and stairwells), driveways, medians, alleyways, public rights of way (including walkways, streets, roads, trails and other paths, bike lanes, and bike paths), parking lots, and other public roadways and walkways, when such obstructions pose an immediate threat to the safety of any person *and* the City documents and makes a written record of its findings of the immediate threat to the safety of any person; and

(b) occupying any property of any public school.

2. The City is further enjoined from seizing any unabandoned property belonging to a homeless person that is not contraband or is otherwise unlawful to possess without:

- (a) having first received a validly executed warrant authorizing the seizure, or
- (b) Satisfying a legally-recognized exception to the warrant requirement such that the seizure is lawful (*see, e.g., Gutierrez, 2004-NMCA-081, at ¶ 6, (recognizing exceptions to the warrant requirement)*), or
- (c) providing written notice to the homeless person to whom the property belongs that the specific property will be seized **and** providing a pre-deprivation hearing on the merits of the proposed seizure at least 72 hours prior to the proposed seizure.

3. The City is further enjoined from destroying any unabandoned property belonging to a homeless person without first adhering to the seizure provisions set out above in paragraph number 2 in the decretal provisions of this Order **and** without providing a post-deprivation notice and hearing regarding the property's destruction, which includes a reasonable opportunity to reclaim the property.

4. This preliminary injunction does not enjoin the City from enforcing any statutes, ordinances, or other laws affecting private property or the rights of others to enforce their rights with respect to private property.

5. This preliminary injunction does not enjoin the City from enforcing any statutes or ordinances concerning any other criminal acts of unhoused people (meaning those apart from prohibiting a person's presence in, or the presence of a person's belongings on, outdoor public property). If, for example, a police officer has reasonable suspicion of criminal activity taking place by an unhoused person on outdoor public property (e.g., an outdoor fire that is prohibited by law, the destruction of public property, the possession of stolen property, or the unlawful use of a

weapon), that police officer is not enjoined from taking lawful action to investigate those circumstances and to enforce those other criminal statutes or ordinances.

6. This Preliminary Injunction is hereby **STAYED** through midnight on October 31, 2023 and will become effective automatically at **12:01 a.m. on November 1, 2023**. The Court is staying the enforcement of the injunction in order to give the City ample time to comply with its provisions, to determine if there are other areas of outdoor public space that should be excluded from the injunction, and for any party to file any request for modification of the injunction into this case.

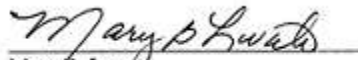
**IT IS SO ORDERED.**



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Joshua A. Allison  
District Court Judge

This certifies that a true and correct copy of this Order was served upon counsel of record through Odyssey.



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Mary B. Lovato  
TCAA to Division XXIII