

**HOUSING, NEIGHBORHOOD SERVICES & REDEVELOPMENT POLICY
COMMITTEE**
February 3, 2022

Members Present: *Council Member, Chair Crystal Murillo*
Council Member, Vice-Chair Ruben Medina
Council Member, Juan Marcano

Others Present: Mattye Sisk, Emma King, Andrea Amonick, Angela Garcia, Bianca Lopez, Adrian Botham, Brandt Van Sickle, Charise Canales, Christina Amaran, Courtney Tassin, Daniel Kryzyzanowski, Jacquelyn Bayard, Jeannine Rustad, Jeff Hancock, Jessica Prosser, Karen Hancock, Lana Dalton, Mike Franks, Mindy Parnes, Omar Lyle, Roberto Venegas, Rochelle Nadeau, Sandra Youngman, Scott Campbell, Sharon Duwaik, Tim Joyce

WELCOME AND INTRODUCTIONS

Council Member Murillo welcomes everyone to the meeting.

MINUTES

No minutes to discuss.

ANNOUNCEMENTS

No announcements are made.

NEW ITEMS

2022 City of Aurora Point in Time Count

Summary of Issue and Discussion

Emma King, the Homeless Programs Liaison, presents this item.

Emma explains how the Point in Time (PIT) count is a count of sheltered and unsheltered people experiencing homelessness that HUD requires each Continuum of Care (CoC) nationwide to conduct in the last ten days of January each year. Emma's presentation focuses on the unsheltered count. PIT establishes the dimensions of the problem of homelessness and helps the city make decisions and track progress toward the goal of ending homelessness.

PIT is typically completed on a Monday night for three to five hours where teams go out and conduct surveys of every individual they find experiencing unsheltered homelessness. Given COVID precautions, this year's PIT was an observational or tally count that had teams drive around the Aurora area and observe individuals experiencing homelessness. Seventeen teams observed people the morning of January 25. Since it was only observational, they could not tell how many people were inside a tent or RV. The goal was to observe the location of the shelter and what type of structure it was. The six days following the PIT count, teams collected survey data to gather demographic information from the individuals experiencing unsheltered homelessness.

Emma shows the tracts map broken down by where each team's area was. Teams that were farther away from the city center had larger areas because there are less individuals in those areas. Those areas were also assigned to teams with more experienced outreach workers since they would know where people tend to camp and hide out. The dots on the map indicate encampments or vehicles that had been reported to Access Aurora prior to PIT.

Emma explains the initial numbers of what was observed. There were 209 observations made and 98 surveys collected. 82 were people in cars or RVs, 52 were individuals not at camps, and 73 were in encampments. Although the teams talked to more people than the numbers suggest, many people declined to complete the survey. Demographic information will be pulled from surveys as well as from Arapahoe and Adams counties based on similar areas that were surveyed to help understand what population the city is working with.

Emma presented a few take-aways from the PIT observation count:

- Observation Count was more difficult
 - Emma recommends not doing the PIT this way again. If teams would have asked individuals to complete the surveys while the observation count was taking place, Emma believes more surveys would have been completed as they had more teams helping with the observation count than teams who helped with the surveys.
- Conflicting instructions made planning hard
 - The city was originally told they needed 95% of the observations to complete surveys which Emma says is impossible. It was lowered to 65% which was still high (~134 surveys), especially with the time limit. The teams talked to over 65% of the observed individuals, but they did not all agree to complete the survey.
- Weather likely skewed the data somewhat
 - Snow falling very hard on Tuesday morning made observing individuals harder as tents and people were covered in snow.
- Write PIT assistance into future agreements with agencies
 - This would help get partner agencies to help with surveys.

Questions/Comments

CM Marcano questions what the practical use of the count is when there are factors making it less reliable than usual like inclement weather, lower rate of contact, and less visibly unhoused folks (in part because of the weather). He posits that when the weather is bad, individuals will take any shelter they can get, even if they normally wouldn't feel safe for whatever reason going to a shelter. CM Marcano asks how this data will be used knowing the results are skewed and atypical this year. Emma responds that this could happen any year with the weather. In general, the count is going off of the numbers in HMIS of people accessing services, contacts they are getting through outreach, and the Access Aurora complaints which allows for more accurate numbers. PIT is meant to be a snapshot, but it does provide all the necessary information. HUD tells the city to do it this way to get information, but not all information that is needed can be acquired this way. Extrapolating some data from Arapahoe County and Adams County will help the data as well.

CM Marcano asks how they can ask someone at HUD for a better methodology for PIT counts. He says the current method seems unreliable in terms of the quality of information and observations, and asserts that there must be a better way to get the information. He asserts that part of the barrier in convincing individuals to participate is that the city needs better information to convince those who don't understand the breadth and depth of the problem. This is a way to convince individuals that the city needs to take more aggressive action. This information can help answer questions like how much housing the city needs to build, what the cost looks like, and what needs do these people really have. There are so many unhoused people in the city and the county, and better information will help make the case to all levels of government to get behind ending homelessness. CM Marcano asks how that can be done.

Lana Dalton, the Homelessness Program Manager, shares that in the past, agencies receiving city funding have not been required to enter information into HMIS. This year, that requirement was added to the homeless services agreements. The city hopes to put together a white paper on the state

of homelessness in Aurora based on the information being entered into HMIS by these partners. Although there are flaws to this approach, the hope is to gain a more comprehensive picture of what is happening in the city and obtain more accurate data. This is a proactive approach the city is taking since trying to change HUD can take some time.

Jessica Prosser, the Director of Housing and Community Services, adds that the reason PIT has been done in January is because HUD expects people to seek shelter and come in for services. She says that the homelessness statistics from ten years ago in Aurora are more of a reality where people came in on a cold night to seek services. The reality now is not everyone is coming into the shelter and there is not enough space. She notes that Jefferson County did a weeklong summer count four years ago to see if it would be different to map people out in the summer. If the city wants to consider different data points throughout the year, it would take resources, but it could be done. The city also did not have the large magnet events this year because of COVID. It makes it much easier to count people when they have incentives to come in and get warm so they can be counted. Hopefully next year the city will have the magnet events and have a better count. It is an ongoing data mining exercise to come up with the answer of how many people are experiencing homelessness in Aurora, how many are in shelter, and how many are unsheltered. Requiring data reports and quarterly reports is going to be important to be able to have better answers by the end of 2022.

CM Murillo expresses interest in exploring an additional count to help get better data to compare and asks how to advance that conversation. Emma responds that MDHI talked about that in 2021 since the city was not able to do a PIT count. She says the city could bring it up with MDHI again or possibly do it on their own by picking a date for a PIT count in the summer.

CM Murillo says it would be helpful to get more data and perhaps a more accurate picture. CM Murillo asks if they can give direction in this committee to explore those options moving forward. CM Marcano and CM Medina agree on moving forward to explore options for an additional PIT count.

CM Medina asks what the interaction was when the teams talked to people who were unhoused and why did they not want to take the surveys. CM Medina asks if there was apprehension with people coming into the encampments. Emma responds that she wouldn't say it was apprehension. She completed surveys every day and most people were receptive to talking to the team. However, some people said things like "I don't have time for a survey right now" or "I'm about to go to work" or "I don't want you to have that information about me." It seemed like many people were disillusioned about receiving services or were previously burned by unmet promises. Others have been on the streets for so long that they don't think anything will change and don't want to waste time filling out a survey. Some people would initially agree, but then would change their mind when they were asked a question they were not comfortable answering.

CM Medina asks if he could join the teams to help with these communications and surveys. He suggests that maybe he could get some funding sources to help incentivize participation and get ideas or solutions the city may not have thought of. CM Medina says he would be happy to coordinate that and not utilize city funds, but rather use outside sources to pay people to participate in the surveys for maybe three or four counts to gather information. Participants might be able to provide solutions to the PIT itself and share their thoughts on when would be the best time for it to happen and what would be more conducive for them to take surveys. Emma mentions that the teams did have items like socks, which are popular for people living outside, and she provided donuts to some individuals which did help incentivize survey participation.

Emma shares that Council received invitations to participate in the PIT, but they would not have

been able to speak to people since it was only the observational count. She responds that they would love to have CM Medina participate and she thinks it would be great to have council members see firsthand how people are living. It would give more buy-in with the community as well. Emma comments that if CM Medina would like to schedule magnet events or work with people directly, they can work on that. CM Medina says he would be happy to help in any way.

CM Murillo thanks CM Medina for the offer and suggests the HoRNS committee participate in the PIT if the city can move forward with doing a count in the summer.

Outcome - This item was informational only and no action was taken. The committee suggests exploring additional PIT counts.

Code Enforcement Overview and Enforcement Process

Summary of Issue and Discussion

Sandra Youngman, the Code Enforcement Manager, presents this item.

Sandra explains that the mission statement of Code Enforcement is: “To be a proactive link between the City and residents by fostering a spirit of self-reliance and promoting a positive physical image in Aurora’s neighborhoods.”

Sandra lists some of the Code Enforcement Duties that are done throughout the year which include:

- Zoning Code
- Snow Removal
- General Inspections
- Housing Complaints
- Occupancy
- Systematic Multifamily Housing Inspections
- Sign Code Enforcement
- Commercial Properties Site Plans
- Ordinance Proposal/Amendment
- Advise and Consultation
- Enforcement of Chapter 62 (Nuisance Ordinance)
- Mobile Home Enforcement
- Garage Sales
- Solid Waste, Trash, and Debris
- Landscaping
- Sidewalk Obstructions (ex: frozen water on sidewalk; vegetation)

Sandra discusses systematic multifamily housing inspections which are completed from September to April. During these inspections, Code Enforcement officers go into apartment complexes on a regular basis, between one to five years, and inspect each unit for minimum life safety. This includes things like plumbing problems, tripping hazards, functional appliances and smoke detectors. If the complex is in great shape, the inspections will be completed at longer intervals of time (i.e. every three-five years). If the complex has a lot of issues, the inspections will be completed more frequently, such as every year or every other year. The hotels and motels on East Colfax Avenue are inspected on a yearly basis. Due to COVID, housing inspections did not occur in 2020. Starting in 2021, Code Enforcement is inspecting 10% of the units in a complex. Code Enforcement has a checklist to check for in each unit. In addition to these inspections, they also do complaint-based housing inspections. These are initiated at the request of the tenant and usually address specific issues.

Sandra explains the two different types of enforcement. Pro-active enforcement is where an officer in the field they are assigned to sees a violation, writes a notice, and addresses it with that property owner. Complaint-based enforcement is where individuals initiate the request and Code Enforcement works with the property owner to correct the violations. Complaints can be filed through Access Aurora, the PUBLIC STUFF app, at neighborhood meetings, and interactions with Code Enforcement Officers, both in-person and over the phone. Code Enforcement also receives referrals from the Aurora Police Department (APD) and the Community Engagement Coordinators. Access Aurora complaints can be submitted anonymously and the reporting party provides the address and information on what the concern is.

Sandra details each step of the enforcement process. The complaint is logged into the system for tracking and assigned to the area code officer. The officer will then perform the inspection. If it is a complaint, they try to inspect within 48 hours as that is a performance measure. If a violation is found, a Notice of Violation is issued. If it is a rental property, the Notice will also be given to the property owner. The typical time frame is 7-10 days and the reinspection will occur after that time frame.

If the property is not in compliance, further enforcement action will be taken which could be an extension or a final Notice given with a certain number of days to come into compliance. If nothing is being done to correct the problem, Code Enforcement can issue a summons into municipal court as a criminal charge. The fine can be up to \$2,650 and may carry jail time. Code Enforcement can also have the city contractor abate the property and invoice the property owner for reimbursement.

Sandra explains and show example photos of frequent complaints which include:

- Weeds/trash/debris
- Outdoor storage (ex: washer/dryers, refrigerators, mattresses left outside)
 - Not something that necessarily would be abated so the owner or tenant might be issued a summons, depending on who is causing the issue
- Unlawful vehicles/auto repair (ex: inoperable vehicles that have a flat tire or are not licensed)
 - Code Enforcement does not address issues that are in the public street, only private property violations
- Landscaping (ex: bare soil, visible tarp)
 - Code Enforcement works with the Aurora Water department on water wise planting
- Parking surfaces/driveways/parking on landscape
 - Can issue a notice to cease parking on landscape and move the vehicle to the driveway
 - Fence issues (ex: placement, materials, design, height)
- Trash can placement
- Exterior maintenance

Sandra shares that Code Enforcement can't enforce what color the owner decides to paint their house unless the HOA has restrictions.

Questions/Comments

CM Murillo asks if the multifamily inspections are related to any warrant of habitability laws, what the criteria are for livability, and who sets that criteria. Sandra responds that the Code Enforcement ordinance focuses on minimal life safety. The issues being looked at are things like smoke detectors, plumbing, leaks, mold, and tripping hazards.

CM Marcano asks what kind of protection tenants have from retaliation from their landlords if they make a complaint. CM Marcano explains that he recently submitted a complaint for some Spanish speaking individuals with very limited English and they were concerned about retaliation from the

landlord. Sandra explains that Code Enforcement must be able to go into the units to see the issues going on. Sandra says she does not know what to say about protection for the tenant because it's an issue between them and the property owner. She explains that is why Code Enforcement likes to do the housing inspections because they go into units indiscriminately, not based on something someone said was happening. Sandra says there is nothing she can do to protect tenant's other than to get them a proper living space.

CM Marcano asks is there an analogous process that other jurisdictions do that the city could implement to provide tenants who have tried to work with their landlord, but always get the run around, some kind of protection from eviction or non-renewal as retaliation by the landlord. CM Marcano asks if this is something the city could potentially do. Jessica responds that by having a blanket approach across the city, the landlords are equally held accountable. The city is trying to prevent the need for a tenant to have to come to Code Enforcement by proactively looking at it. In those scenarios, the city does have a mediator under contract and that can be offered with multilingual services associated with it so that is not a barrier. The city's landlord recruiter that works with certain families associated with certain funding sources also performs mediation for tenants on their behalf. If the situation goes beyond mediation because it starts to escalate or it goes beyond something related to a housing inspection of habitability, the city would refer the tenant to Colorado Legal Services.

CM Murillo asks if roaches or bugs would be considered. CM Murillo asks if city staff determine the minimum life or safety requirements, and if pest would fall within habitability or life safety. Sandra responds that infestations are something Code Enforcement would respond to. There is a booklet that Code Enforcement uses which lists all the violations and is given to property owners and managers before an inspection. The booklet lists all the criteria the city is looking for and infestation is one of those. Sandra will provide the councilmembers the booklet. CM Murillo states that having the booklet would be helpful as she has received several code complaints so knowing the city's standards would help in fielding those calls.

CM Murillo asks if the city has ever shut down properties such as a home or business due to excessive code violations. Sandra asks to clarify if she is asking for single family or multi family. CM Murillo states that it was a broad question because she recognizes the different types of properties. Sandra states that currently Code Enforcement is working with APD regarding some multifamily units, specifically in North Aurora. If the property is a nuisance, Code Enforcement will work with APD on it. Code Enforcement would not shut them down, but they would issue a summons. There are high fines for multi-family or if the property is continually requiring a high response and/or jail. Code Enforcement has received both as the judge agreed with that and has given high fines of \$10,000 and some people have spent time in jail. It would be the same thing for single family and business if the property owner is not taking care of the property they can be issued into court and go through the court process.

CM Murillo asks if the councilmembers can receive a list of nuisance properties to help them to have a high-level understanding of businesses or homes in certain areas. Given that Council also receives complaints, she wants to see if there is overlap with the complaints they receive and the nuisance properties. Sandra will try to pull that information and she will talk with Code Enforcement Officers about where they are going most frequently. She notes that the Family Dollar on Colfax is one of the nuisance properties, but she will get more information to share with the councilmembers.

CM Marcano asks, with regards to the enforcement related to car maintenance and repair and based off the replacement of the engine block being outlawed, has the city effectively made it a violation for residents to do hobby car reconstruction. Sandra says the resident should do that within the

garage. Maintenance is permitted, but auto repair (such as pulling an engine) is not permitted. The Code Enforcement Officer would contact individuals working on their car, but they have never had that happen with respect to someone working on their vehicles as a hobby. Most likely the officer would tell them to move the car into the garage so it is not visible to the residents in the community since many complaints come from neighbors. CM Marcano comments that it is unfortunate that a resident must have a home with a garage as not every home in the city has that amenity available.

CM Medina discusses a situation that appears to be a civil issue between neighbors where one neighbor has been reporting the other for violations and they feel they are being discriminated against. CM Medina is meeting with a third party to gain more information and he will be submitting the council request since it will be a large submission, but he asks how it works if they are using Code Enforcement as a form of retribution. Sandra states that when Code Enforcement receives a complaint, the officer goes to the property to look and address the violation. They do try to work with residents and there is mediation that can be offered to help resolve the problem, but both parties must be willing to go to mediation.

Outcome – This item was informational only and no action was taken.

Homeless Encampment Abatement Update

Summary of Issue and Discussion

Lana Dalton, the Homelessness Program Manager, presents this item. Lana provides a brief overview of the encampment and abatement process. She presents the PIT count from the last five years as well as the number of requests relating to encampments and RV's. The city received 1,288 requests in 2020 and 2,278 in 2021. The program hired a new Homeless Liaison, Brandt VanSickle, who specializes in encampment-related requests for the city.

A large interdisciplinary team comprised of the city's legal team and a variety of internal departments meets weekly to review requests from Access Aurora and observations from other departments. For example, if a Code Enforcement Officer notices an encampment while in the field, that is information Sandra can bring to the team. They can discuss whose property it is, how the city can move forward, whether the encampment meets criteria, and what the timeframe is.

Lana discusses the different approaches for public property versus private property. With public property, if it is city property, the city would post a 72 hour notice, and have street outreach go out. If it is public property and it is CDOT, the city contacts CDOT and have them do the abatement. The city does have an IGA set up with CDOT and are going through the signature process. Eventually the city will be able to abate with CDOT, but they will still have to follow their policy of 7 days. The city does not have an IGA agreement with RTD or Denver Water as it relates to abatements. There is a different approach with each of the public property owners within the city. When citizens ask why the city can't just go clean up an encampment, they don't understand that there are a lot of factors in determining whether the city can make an abatement or not by determining if it's appropriate and whose responsibility it is.

If there are encampments at a private property, it falls on the private property owner to abate them. If they are unwilling or feel it is out of their scope, Code Enforcement will issue a citation and assist with abating the encampment. The bill of the abatement will go back to the private property owner. The policy the city currently has in place is for encampments, people sleeping "rough" in the community (does not include vehicles or campers, only structures people are putting together on public or private property to live in). This policy is strictly for encampments as the city does not have an abatement policy for RVs and campers. The city does have some protocols for deciding how to proceed with vehicles, RVs, and campers but there is no overarching policy for people

sleeping in vehicles. People report encampments by calling or going online to Access Aurora or by calling the respective department.

In 2021, the city conducted 79 abatements which does not include CODT or private property abatements. The total cost to the city was \$114,617.10. This figure does not include staff time.

Lana discusses the current shelter options which include the Salvation Army, Restoration Christian Fellowship, Comitis Crisis Center, and Emergency Cold Weather Overflow Shelter at the Aurora Day Resource Center (ADRC). Comitis is on a 30-day cycle to obtain a bed. The Emergency Cold Weather Overflow Shelter is only open on days when the weather is 20 degrees or below. The current policy requires that individuals have a sheltering option available to them on the day of the abatement in order for the abatement to occur. Even with the additional options, the city is still falling short of being able to provide sheltering options to individuals in the community who need it. This does not even count for individuals connected to potential abatements where the city would need additional shelter options.

Lana explains what constitutes as a shelter under HUD's definitions. The city receives federal dollars through HUD which have specific requirements for what is considered a shelter. Recently, the city was able to get pallet shelters, Comitis, and the ADRC deemed as temporary emergency shelter options. However, tents are not considered temporary shelter or structures by HUD so they are not reimbursable through those funding sources. With regards to hotel/motel vouchers, they must meet specific criteria as well with federal dollars. They can only be used when all other options are full. On cold weather nights, this is a frequent occurrence. Every single option must be full in order to trigger the hotel/motel voucher system to utilize the federal dollars associated with it.

Questions/Comments:

CM Murillo asks if pallet homes are considered in the tent category as non-reimbursable with HUD. Lana responds that HUD considers pallet homes temporary emergency shelter because of the heating and cooling that is provided as well as the wrap around services.

CM Murillo states that with a hotel or motel, the city is reimbursed for the cost. She asks what the city is reimbursed for a pallet shelter if the city already purchased the pallet shelter. Lana responds that the city can use federal dollars to purchase the pallet shelters. The wrap around services, such as case management and housing, are reimbursable because it is considered a temporary emergency shelter.

Jessica comments that for the city to abate an encampment, the policy requires the city to have shelter space. If there are several people in an encampment, it becomes more problematic to find a shelter option for them. For example, if there is an encampment with more than ten people, that encampment would stay until the city has assurance that there is an alternative place for the people to go. How many nights does the city have to have available for the people is another question regarding the abatements. This goes into question of how the city can use the hotel/motel vouchers because if everything is full and it is a cold night, maybe the hotel/motel vouchers could be utilized. Currently the city has been saying a couple of nights of provided shelter for those people abated encampments as this is not something seen in caselaw yet as it hasn't been tried. A couple of nights is the rule of thumb right not, but it is not included in the current policy of how many nights are required.

CM Marcano asks for clarity that for example if the city has five hotel vouchers for an encampment of five individuals so would that qualify for abatement under current policy and current legal precedent. CM Marcano asks if the city will move the people into a hotel for a few nights and then

they will be back out onto the street and if that is allowable for abatement. Jessica responds that yes; it is correct but that typically the city is not using the hotel motel voucher as it is not associated with a shelter option. If the city has a couple of pallet shelters open or beds open in Comitis that's more of the determining factor. In those cases, it is more successful because if there is a spot or a pallet the person can stay for a length of time to get what they need to get housed, get employed, and get services. With Comitis if it is an emergency cold weather night then it's a night or two while a bed at Comitis they can stay for 30 days. The preference is to make sure there is a shelter option with wraparound services versus putting someone in a hotel for a night or two where they do not have access to wraparound services.

Lana comments that half of the city's requests are related to people sleeping in cars or RVs. Lana explains the cities process with campers, cars and RV's as it a little separate from the current process of encampments. Campers and RV's can't be parked on the road for more than 5 days. If they are parked for more than 5 days, they can be removed by the city Streets Division. At that point, Park Aurora and APD get involved in the ticketing process. If it is determined that the vehicle can be towed, towing companies will complete the towing as directed by Park Aurora or APD where the vehicle will be taken to an impound lot. If people are living out of the vehicle/camper/RV, the towing companies will not tow it. At that point, they would ask APD to remove those individuals. However, APD is not interested in forcefully removing individuals from their only sheltering option available due to the use of force guidelines put out by HB 217. Therefore, the city does not have a solid alternative solution for individuals sleeping in RVs and cars at this time. The city does have one lot, but it does not accommodate RVs, so other lots are being looked for throughout the city.

CM Marcano asks which lot supports RVs. Lana responds that the city does not have a lot that supports RVs. The city only has a lot that supports cars, trucks, and vans.

CM Marcano asks if Restoration Christian Ministries ever repaved part of their lot to accommodate RVs like they described to Council last year. Lana responds that they had those discussions, but Restoration opted to pursue pallet shelters for now. They are willing to look at expansion down the line, but they did not want to do too much all at once.

CM Murillo comments that the city does not have a policy for the RV's which addresses the living in a vehicle scenario. She asks if there are best practices the city can pull from and whether it would be helpful to come up with a policy for those situations. Lana says there are some best practices and they have talked to people in the Los Angeles area who have worked with RV lots. The city has considered looking at other land areas where the lot could have access to dumping stations since that is where it gets tricky. The suggestion is for the city to potentially tap into other campgrounds, mobile home parks, or fairgrounds to send some of these vehicles. Lana thinks it would be helpful to have a policy, but not until the city has an alternative in place to assist individuals. With no alternative, they would just be moving people throughout the city which is not helpful.

CM Murillo asks if Lana means alternative to the people living in their vehicle. Lana responds that she means going to a safe lot. The city does not currently have a safe parking lot for RVs or campers. If the city has a safe lot, individuals can be told they can't park in areas, but other options could be presented. Until something like that is available, a policy does not make much sense. CM Murillo states that she would think the safe parking space would be the policy. CM Murillo asks for more information on what Los Angeles does and on a policy for RVs that would include the safe parking space as a part of the policy. CM Marcano and CM Medina both agree they would be in support of that.

Jessica comments that they can bring more information, but notes that it is a voluntary movement

to a safe parking lot. If someone is living in a RV on a street in Aurora and they decline going to a lot, there is still the issue of the RV on the street and the challenges of towing. The safe lot provides another option, but it does not mean everybody will move to the lot.

CM Murillo asks if, during the exploration, they can discuss how other cities address that type of scenario since the city does not have a policy with that, or is the city kind of between a rock and a hard place at this point. Lana responds that the city is somewhat constrained and she invites the legal perspective to share what that looks like to provide some context to the issues the city is facing. Tim Joyce responds that with respect to RVs, the current law says if a recreational vehicle is parked on the street, it can only be there for 5 days. After that, it must move. The current law also says that if an RV is not lawful, does not have current plates, or is not legally operable, the police department will tow it even if it is occupied. To have an RV policy for homeless use, the city must have a place to put the RV (i.e. a safe parking lot or safe outdoor space). That condition must precede the creation of a policy. Once the city has a place to move RVs, just like the shelter option for an individual, the city needs to have a space for an RV to make that RV move. The city must have the prerequisite of having a safe parking lot or safe outdoor space for RVs. Once that is achieved, the city can develop a policy similar to encampments where they are notified that they need to move within 72 hours, but the space is necessary first.

CM Marcano asks where the 72 hour figure is coming from since his understanding is there is a federal precedent that the minimum time notice for an abatement of an encampment is 7 days. Tim responds that there is no case law dictating how long notice must be. The 7 day notice that Denver uses comes from a settlement from a lawsuit. Denver got sued on how they abate the camps. In that lawsuit, they settled it and Denver agreed to provide 72 hours' notice for large scale camp abatements. Denver got sued again because they were not following that policy. Denver has more than one policy. If a park is posted, they are going to clean it on that specific day and make everybody move. If there is a life threatening or safety issue or health issue, they will abate with 48 hours' notice and that is per the ruling by one of the guest circuit judges. There is no case law or constitutional requirement dictating how long the notice period must be. The only time period the judge in the Denver case took issue with was abating a camp the same day notice is posted. The judge did not feel that was adequate with the Denver situation. Denver does abatements much differently than Aurora. When Denver abates a camp, they put a fence around the entire property for safety issues. The fence can prevent a homeless person from entering the camp and retrieving their property which was the big issue around abating on the day of the notice. 72 hour notice is more than adequate. Oakland, California uses a 72 hour notice period and Boston, Massachusetts uses a 24 hour notice.

CM Murillo discusses the interconnectedness with safe outdoor spaces and a policy for these types of vehicles. CM Murillo asks that when this conversation is brought back, that the committee have a holistic conversation about what would need to happen in this area since the parcel line must come before the policy. CM Marcano supports having the conversation, but shares that this discussion is more relevant to the study session on February 7th, 2022 given the camping ban.

CM Murillo asks if the city can provide more information about the cost of abatement that Denver has experience and how the camping ban might impact the city's costs overall. Jessica responds that Denver, like Aurora, uses the same contractor for a lot of different things related to abatements. However, they were unable to give the city a specific number based on a line item that is only for abating things related to people experiencing homelessness. They abate from events and different things happening on city property, but the quote was in the multiple millions of dollars in general terms of abatements. Conversely, the city was very intentional about creating a specific org for the \$250,000 in the budget for 2022 so expenses can be tracked very specifically. The number Lana

provided earlier, around \$100,000, was from the city trying to cobble together funding that has been put out to the contractor Keesen's who does a lot of abatements from different departments. By the end of 2022, the goal is for the city to be able to say there is one org and this many abatements.

CM Murillo asks if the city has data on the effectiveness of the additional staff member that was recently hired to help with the bottleneck in terms of the complaints around homelessness, or it too soon to understand how the position is helping with the bottleneck. Jessica responds that Brandt VanSickle, the new staff member, has only been on for a few weeks. Lana adds that having him on the team has been a benefit, but he is still learning the ropes and they are still trying to wrap around the exact impact. Over time, they should be able to see the change and how quickly the city can respond to Council and Access Aurora requests. The other component of the additional staff member is the impact on other staff time so other team members aren't having to spend time organizing weekly meetings, visiting sites, taking pictures, etc. Having Brandt on the team will help free up capacity so staff can do what is actually in their job descriptions besides the encampments.

CM Murillo asks if there is a scope of duties for the new position that can be shared. She explains that the rationale for the request was due to concerns about the high volume of requests and the subsequent response. Lana responds that she can provide the committee with the job description for the new position. CM Murillo asks how the impact of the position will be evaluated. Lana responds that they plan to analyze the timeframes for response before and after Brandt started. She says that prior to hiring the new position, street outreach was taking at least two weeks to get out to encampments. With the addition of a new staff member, the department is looking at whether that helps speed up the response, particularly to community members that submit requests as well as Council requests. They are also looking into whether the city can expedite some requests and mitigate some of the observed safety issues to maintain a safe community. There are sometimes safety issues with encampments, such as fire, and the encampment needs to be abated quickly, but staff capacity did not allow this to occur. CM Murillo asks if the committee will be able to have a better understanding of how the position supports the increased response or responds quick to some of these requests.

CM Murillo asks what threshold the city would need to meet in order for it to be enforceable. Jessica responds that there is a threshold in the current policy and is what Lana is speaking to in terms of going out, assessing the site, coming back to the weekly meeting and making a determination if an abatement is appropriate. The current business policy memorandum ("BPM") clearly lays out what a health and safety concern is and includes a lot of criteria and definitions. She notes that it will be an important piece to consider how the policy and ordinance work together if the ordinance is implemented.

CM Murillo states that she would like more information on the legal aspect of the camping ban as the city's current capacity exists. CM Murillo asks if that ordinance as written is implemented, how would it impact the city's policy around the legal enforceability. Tim responds that, in his opinion, what is proposed for the unauthorized encampment ban ordinance is enforceable. It would work in conjunction with the current BPM. The BPM specifies the criteria for abatement whereas the ordinance does not. The ordinance says if it is an unauthorized camp, it shall be abated if the notice requirements are met and if there is a shelter option. The BPM specifies exactly what criteria constitutes grounds for abating a camp. With regards to public health and public safety, there is a counterpart law which prohibits such things. The city can abate a camp when there is an open flame or evidence that fires have been used. Propane and butane tanks are prohibited by the fire code. Human waste being present violates health codes. There is always a counterpart in the public safety and public health issues that violate the law. Another part of the definition of an "unauthorized camp" is any camp that violates the law. Parks and Recreation permits camping only in designated

areas and any camp outside a designated area is prohibited by their rules and regulations. The ordinance says if any camp violates any sort of regulation, it can be abated. If someone parks where camping is not specifically authorized by Parks and Recreation, that camp can be abated.

CM Murillo asks if something is already a violation of city law, is it something the city can already address. She asks if the city needs a camping ban ordinance to address it. Tim responds that yes, the city should have the proposed ordinance. CM Murillo clarifies that she's asking if the city can already enforce the laws without the ordinance. Tim responds that currently, Parks and Recreation has a rule that people cannot camp where it is not authorized. Parks and Recreation would like to be able to inform the people camping where it is not authorized to move, but the case law for these types of camps requires the camp be provided notice, the people camping be given an opportunity to move, and a place for the individuals to move to. The current law does not provide for the shelter and notice requirement to allow a person in an unauthorized camp to move.

CM Murillo expresses confusion because she heard from staff that they do provide notice, but Tim says that is not currently enforced which is conflicting information. CM Marcano adds that he has been addressing camps on private and public property since before the current protocols existed and this has never been an issue for the city to enforce. CM Marcano says he does not understand why the city needs an ordinance to do this if it is something they have been doing for years. Tim responds that prior to lawsuits about abating unauthorized camps, there was no issue about needing to provide notice or needing an option of a place for those people in such a camp to move to. Before the lawsuits, it was sufficient for the city to use Parks and Recreation's ordinances. The BPM says notice needs to be provided and a shelter option needs to be available. The ordinance is required because the city is now prohibiting camps on private property and when a private property right is infringed upon, it must be in the form of an ordinance.

CM Murillo asks Tim if his opinion is that the city needs a camping ban. Tim responds that if the city infringes upon a private property right or if there is a punishment that can be imposed for violating something that is prohibited, it needs to be in the form of an ordinance. He says that yes, there needs to be an ordinance.

CM Marcano comments that in the past, pre-COVID when the city was dealing with camps on private property, the individuals in the camp would get served with a notice of trespassing. The people were notified that they would be moved within a certain amount of time and if they didn't comply, law enforcement would get involved. Typically, that was enough to get the individuals to move. CM Marcano asks if it's fair to frame this that since the city was already able to do this, it seems the key difference is there is now a punishment (or at least the opportunity for punishment) and that is where the ordinance comes in. Tim responds no. He says that the proposed ordinance makes it a criminal violation to have an unauthorized camp on private property, and once the city infringes upon a private property right, it needs to be in the form of an ordinance.

CM Marcano asks if trespassing is criminal or civil. Tim responds that the ordinance specifies that the act of camping on a property is prohibited, not just a trespass, and therefore needs to be in the form of an ordinance when it is on private property.

CM Murillo asks if someone is camping, are they already trespassing. Jessica clarifies that trespassing pertains to private property while the current BPM relates to public property. She also notes that the BPM says it must meet a health or safety concern in order to be abated. It does not say camping is illegal on properties where camping wouldn't normally be allowed, and it does not address that. It only addresses the health and safety concerns for when things are abated. The distinction that is different with the ordinance is that it says camping is not allowed and how the

city abates can fall back on the current BPM.

CM Murillo states that the committee has delineated the difference between the public and private property component. CM Murillo states that she has heard concerns about the ordinance potentially not being enforceable because the city does not have enough shelter beds. Jessica responds that that is a different enforceable part of the BPM. If the city is cognizant of following case law and best practices, the city would not abate an encampment unless there was a shelter option available. The city could abate a camp without a shelter option, but it would put the city at risk of legal or advocacy action related to not following best practices. The recommendation would be to follow the current policy which requires that a shelter option be available prior to abating a camp. Lana adds that the definitions in the BPM are an important component to ensure the city and staff know exactly why they are abating certain encampments based on safety or health risks that are listed in the BPM.

Tim comments that when the city confronts a person in a camp and offers them a shelter option, but they refuse to go, the number of spaces becomes irrelevant because they are not going anyway. Therefore, the city does not need to have a space for everyone if they refuse to go to a shelter option. CM Murillo states that there are many reasons why someone would not go to a current available option. She asks if the city expanded the pallet homes, would the reasons why the individual is not going to the shelter matter at all. Tim responds that no, they would not. If a shelter option is offered and someone refuses to go, regardless of the reason, the city has satisfied the requirements of the law. CM Murillo comments that it seems to be the bare minimum and does not feel like best practices in moving people out of homelessness into permanent supportive housing.

Jessica comments that is why the tent option is not an option as a shelter and hotels are less attractive because of the barriers. To create options for people who do not want to go to congregate shelters where there are wrap around services, they could say a “high-quality shelter option” or a “shelter option with wrap around services” to further define what the shelter option means.

CM Marcano asks if the Boise decision, where it was found that sweeping camps without having space for people to go was cruel and unusual punishment, changed and why it would be different for the city. Tim responds that the Boise decision still stands and says a shelter option needs to be available for everyone. In Denver, there was a case where someone was told to move, they did not move, and they were given a ticket. They appealed the conviction and the court said since they were offered shelter and refused to go, it was lawful for the person to be criminally cited. Tim takes that to mean if a person in a camp is offered an option and refuses to go to that option, whether or not there is space. CM Marcano interjects and asserts what they’re saying is they can lie to people and say there is space to give them a chance to say no, and then use that as a justification to sweep people. Tim responds that no, that is not how it will work. The city must have that shelter option available from the very beginning before providing notice.

CM Marcano asks how that intersects with the data that the city is exceptionally short on shelter options and those that exist, such as pallet shelters, are at capacity most of the time. He asks how it is enforceable. Tim responds that it goes back to the first premise where if the city does not have a shelter option, it cannot provide notice telling people to move and the camp cannot be abated. CM Marcano asks how it’s enforceable since they’re being told they don’t have shelter. Tim responds that if the city has a shelter option available for everyone in the camp, the city can provide notice and abate the camp. If the city does not have a shelter option available, the city can’t provide notice until there are sufficient shelter options available for people in that camp. CM Marcano comments that it is unenforceable until the city has the space.

Jessica adds that the city is abating camps currently with how the policy is and if the camp has a

few individuals, the city can find a few spaces. The concern is if the city will be abating either more often (i.e. more camps in the same week) or larger camps. It is enforceable now; the concern comes in for the amount of shelter if the city will increase the amount of abatements. CM Marcano comments that he understands and shares that same concern. CM Marcano theorizes that the camps will get larger, like what happened in Denver, where they started small, but got to a point where Denver could not do anything about them.

CM Murillo comments that all conversations about the camping ban should start off that this is not enforceable. At the next City Council meeting, staff should start with that premise and make it very clear that all of the nuance is irrelevant if the city does not have enough shelter beds to begin with. The city can't abate the camps if they start to increase the volume and the ordinance sounds like it will increase the volume and potential size of the encampments. If the city does not have the availability, all of this a moot point. The first premise of the conversation was not front and center.

Outcome – This item was informational only and no action was taken.

MISCELLANEOUS MATTERS FOR CONSIDERATION

2022 HORNS Meeting Agenda Items

CM Murillo shares that for future meeting agenda items that the committee members can respond to the email with any input they have for future agenda items.

Outcome – This item was informational only and no action was taken.

Updates from Community Members

There are no updates from community members.

Next meeting: Thursday, March 3, 2022 at 10 a.m.

Meeting adjourned: 11:48 a.m.

APPROVED: *Crystal Murillo* Mar 7, 2022
Crystal Murillo (Mar 7, 2022 10:27 MST)
Committee Chair, Crystal Murillo