

BASIC & URGENT



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Realizing the Human Right to Water &
Sanitation for Californians Experiencing
Homelessness

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EJCW

Water Justice for All

Basic & Urgent

REALIZING THE HUMAN RIGHT TO WATER & SANITATION FOR CALIFORNIANS EXPERIENCING HOMELESSNESS

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This report is dedicated to the late Ana Vohryzek, an Environmental Law Clinic teaching fellow whose passion for protecting society's most vulnerable members continues to inspire us.

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EXECUTIVE SUMMARY

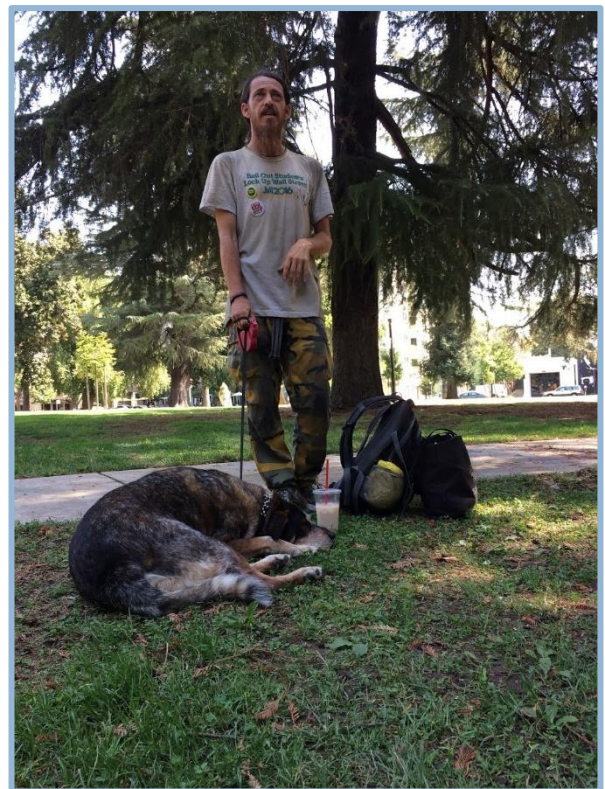
Introduction

James Lee Clark wakes up in Sacramento each day, ready to fight for social justice. As a knowledgeable, outspoken, and savvy homeless rights activist, Clark might spend his day organizing a protest or direct action, at a city council meeting, running a community dinner, or talking with a group of students from UC Berkeley's Environmental Law Clinic, as he did one day in September of 2017. But, before he gets to work each morning, Clark must first spend an hour walking across town to find a public restroom and a place to fill his reusable water bottle. Most Californians cannot fathom such a reality. But our shared humanity demands that we try.

Clark, along with at least 134,278 other people, is part of California's burgeoning population experiencing homelessness.¹ And because he is devoted to his dog, Cosmo, and is "relatively healthy, so I don't want to take up a shelter bed that could go to someone who's not,"² Clark is a member of the state's fastest-growing homeless population—the unsheltered.³

For those 91,642 Californians who spend nights on streets, in parks, or in vehicles,⁴ accessing toilets and clean water for drinking and bathing is a daily struggle—one that not only undermines their health, safety, and dignity, but violates their human right to these basic necessities.

This report, prepared by the University of California Berkeley Environmental Law Clinic (ELC) for use in advocacy efforts by the Environmental Justice Coalition for Water (EJCW): (1) examines the lack of access to water and toilets faced by California's unsheltered residents; (2) explores existing efforts towards, barriers to, and opportunities for ensuring such access; and (3) recommends minimum standards for access to water and sanitation by homeless Californians. It also proposes policy and programmatic interventions for achieving those standards.



James Lee Clark and his dog, Cosmo, in a Sacramento Park. February 2017. Photo Credit: Environmental Law Clinic, University of California at Berkeley.

Research Methodology

The findings and recommendations herein are informed by an extensive literature review of reports from federal, state, county, and local agencies, as well as relevant ordinances and policies, and media articles. They are also based on insights gained during interviews

1 The 2017 Annual Homeless Assessment Report (AHAR) to Congress. U.S. Department of Housing and Urban Development, p. 12. Available at, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

2 ELC Interview with James Lee Clark, homeless resident, advocate, and City Council candidate in Sacramento, California. September 15, 2017.

3 Id.

4 Id.

with about three dozen service providers, advocates, public officials, and—most importantly—people experiencing homelessness in Oakland, Berkeley, Sacramento, Los Angeles, and Santa Clara County, California; Portland, Oregon; and Seattle, Washington.

Report Format

The report's three main sections follow this executive summary.

The **Problem Overview** examines: what is driving what one source called an “explosion” in the number of Californians who are unsheltered; the stark reality of a severe shortfall between the number of affordable housing units needed and the number that will be available for the foreseeable future; the many problems associated with failing to ensure access to water and sanitation for homeless Californians, and how access to these basic needs compares with international minimum standards; and key barriers to progress.

The **Case Studies** on Berkeley, Oakland, and Sacramento offer: an inventory of publicly available potable water, toilets, and showers in the three cities; discussion of how unsheltered residents struggle to meet their basic water-related needs; and an examination of municipal, non-profit, and resident-driven efforts to connect people experiencing homelessness to water and sanitation.

Finally, based on the research conducted for this report, the **Recommendations** section offers six policies, programs, and actions that advocates can bring to State or municipal leaders responsible for upholding the human rights to water and sanitation for all Californians, particularly the State's most vulnerable unsheltered residents.

Key Findings

Finding 1

Water and sanitation are human rights under both international law and California's Assembly Bill (AB) 685, but the State (along with its counties and cities) is failing to guarantee unsheltered homeless residents those rights.

Finding 2

California has no minimum standards for access to water and sanitation and there is no enforcement mechanism to incentivize jurisdictions to comply with AB 685.

Finding 3

Unsheltered homeless residents face worse access to water and toilets than is required by international standards for refugee camps.

Finding 4

A tension between the “Housing First” approach to homelessness and the provision of immediate services to meet basic needs is perhaps the most important barrier to comprehensive action to ensure access to water and sanitation to persons experiencing homelessness in California. This tension must be acknowledged and addressed, because of the simple math problem that demand for low-income housing outstrips supply by at least 66%.

[Cities] are completely overwhelmed with the number of people living on the streets, and we all can't just sit around waiting for housing to be built. Even if it were being built in any kind of timely way, which it's not, we wouldn't catch up, and so we have to do something in the meantime [to provide for the basic needs of unsheltered persons].

— Laura Tannenbaum, City of Oakland Housing & Human Services

A Call to Action for Inclusive Solutions

The Introduction to this Executive Summary highlights a key barrier faced by legislators and civil servants tasked with ensuring that unsheltered Californians have access to water and sanitation: Unless they have lived experience of homelessness, decisionmakers, department directors, program managers, and service providers cannot fully fathom the daily reality of living without ready access to potable water, showers, and safe and clean restrooms. In order to plan and implement truly effective solutions, elected officials and program staff must visit unsheltered residents on the streets and in their encampments, and convene robust listening sessions during which people experiencing homelessness share their stories and convey their needs to those with the power to intervene. The authors endorse as essential a “Nothing about us without us”⁵ approach by all jurisdictions seeking to provide unsheltered Californians the ability to fulfill their human rights to water and sanitation.



Oakland City Council Member Lynette Gibson McElhaney (R) talks with a homeless resident at an encampment. Photo credit: Scott Morris, Hoodline, May 5, 2017.

Overview of Recommendations

Recommendation 1

Establish minimum State standards for access to water and sanitation and incentivize compliance.

Recommendation 2

Create municipal incentives for new developments to include publicly accessible drinking fountains and toilets.

⁵ The phrase “Nothing about us without us” arose in the United States in 1990 as a mantra for people with disabilities seeking to ensure that policies purporting to improve their circumstances were, in fact, informed and driven by people with disabilities. The phrase has come to be more broadly associated with the empowerment of vulnerable communities, and has been adopted by other movements including the environmental justice movement. See Wolf, Eli A. and Hums, Dr. Mary. Nothing About Us Without Us—Mantra for a Movement. Huffington Post. September 5, 2017. Available at https://www.huffingtonpost.com/entry/nothing-about-us-without-us-mantra-for-a-movement_us_59aea450e4b0c50640cd61cf.

Recommendation 3

Identify and pursue partnerships to expand non-encampment-tied services.

Recommendation 4

Ensure all public drinking fountains are operational, accessible, and remain in good repair.

Recommendation 5

Ensure all public toilets are operational, accessible, clean, safe, and in good repair.

Recommendation 6

Provide ongoing basic services (potable water, toilets, hand washing stations, showers) at all established encampments.



A person sleeps outside a closed public restroom in Sacramento. Photo credit: Lezlie Sterling, *The Sacramento Bee*. October 9, 2017

PROBLEM OVERVIEW

Homelessness is on the rise in California.

At least 134,278 people experienced homelessness in California in 2017,⁶ according to the Annual Homeless Assessment report to Congress, representing an increase of nearly 15 percent from the previous year.⁷ Such annual counts—made on a single night in January—are known to dramatically undercount homeless populations, especially those people who are “unsheltered” (meaning they sleep on streets, in cars, and in parks).⁸ At least 91,642 Californians were unsheltered in 2017.⁹

California’s housing stock of “very low-income” units meets only 1/3 of the demand.

The number of unsheltered persons has skyrocketed in the past several years in tandem with unprecedented increases in rental rates in California cities such as San Francisco, Oakland, and Berkeley. Lack of housing for “very low-income (VLI)” and “extremely low-income (ELI)” households—those earning 31-50% and 30% or less of Area Median Income (AMI), respectively¹⁰—has become a top headline in the Bay Area and southern California, while municipalities and the State struggle to find sustainable solutions. The number of people experiencing homelessness now dramatically exceeds both existing housing stock and emergency shelter capacity.

The California Department of Housing and Community Development reports a shortfall of 1.5 million housing units that are “affordable and available” for VLI and ELI households in the state, meaning that no more than 33 such rentals are available for every 100 VLI or ELI California households. For VLI households, the ratio is less than 20 units per 100 households. For ELI households, the shortfall is even more stark, with fewer than 15 units available per 100 households.¹¹

Those low-income units planned are likely to come slowly due to complications with funding sources. For example, according to Lara Tannenbaum, Acting Manager of the Community Housing Services Division of Oakland Housing & Human Services, the housing bonds set aside for extremely low-income housing are only for *building* the housing; decisionmakers are unlikely to approve building new units when no funds are currently allocated for operating and maintaining those units once they’re built.

This low-income housing gap exists within the broader housing market. McKinsey forecasts that California will need to construct 3.5 million housing units by 2025 to close its housing gap (for all housing).¹² At the same time, the housing shortage is leading to a shortage of skilled construction labor. As workers are priced out of

6 AHAR 2017, *supra* note 1, p. 12.

7 The 2016 Annual Homeless Assessment Report (AHAR) to Congress. U.S. Department of Housing and Urban Development, p. 12. Available at, <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>.

8 National Law Center on Homelessness and Poverty. Don’t Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America, 2017, p. 6. Available at, <https://www.nlchp.org/documents/HUD-PIT-report2017>.

9 AHAR 2017, *supra* note 1, p. 12.

10 California’s Housing Future: Challenges and Opportunities, Public Draft, Statewide Housing Assessment 2025. California Department of Housing and Community Development, p. 24, January 2017.

11 *Id.* p. 28.

12 Woetzel, Jonathan, et al. Closing California’s Housing Gap. McKinsey & Company, October 2016. Available at, <https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap>.

key building markets, this labor shortage has caused major construction delays, and made building new housing even more expensive.¹³

Given these trends, even as cities work to build more housing, public officials admit the demand—especially for deeply affordable housing units, which often face a particular set of funding complications¹⁴—will continue to outstrip the supply for the foreseeable future.¹⁵

Tension exists between a “Housing First” and a basic needs approach to homelessness.

One key barrier to realizing unsheltered persons’ rights to water and sanitation is the tension between a “Housing First” approach to homelessness and a more diversified approach that recognizes the necessity to address urgent unmet needs in the street. Advocates for California residents experiencing homelessness have for years struggled to persuade local governments to shift away from punishing homelessness through criminalization of many activities that stem from homelessness, and towards solving homelessness with a “Housing First” model. This comprehensive, humane, common-sense approach recognizes that *housing* is the solution to homelessness, and that the stability conferred by being housed not only enables people to meet basic needs associated with shelter, but to maximize the benefits of supportive services that may lead to, for example, improved mental health or employment.¹⁶

The scale of the new unsheltered population has caught service providers and decision-makers unprepared, however, and has complicated the political conversation around meeting immediate water-related needs. Unfortunately, as implemented, “Housing First” tends to mean that communities put all funds allocated for homeless services toward programs that directly help people move into housing, with none set aside for basic needs provision to unsheltered people more broadly. While focusing on permanent housing ultimately leads to permanent access to water and sanitation for those moved into housing, by interpreting Housing First as “Housing Only,” municipalities shirk their duty to ensure access to water and sanitation by residents who lack access to those essential basic needs because they are unsheltered.

Most cities aren’t doing this [providing potable water, temporary toilets, and wash stations] for fear it normalizes being on the street and discourages [public] action to move quickly on housing. So, there’s this push/pull: We find ourselves wanting to be the voice for basic human dignity and not wanting to make this [temporary solutions for unsheltered people] the status quo.¹⁷

--Sara Bedford, Director, Housing & Human Services, City of Oakland

13 Smith, Deonata. Welcome Home: Low Rental Vacancy Rates Have Spurred Industry Demand. CA23611, IBIS World for University of California Berkeley, March 2017.

14 ELC interview Robert Ratner, Housing Services Director for Alameda County Behavioral Health Care Services. October 19, 2017.

15 See, e.g., Gale Holland and Doug Smith, L.A. County homelessness jumps a ‘staggering’ 23% as need far outpaces housing, new count shows, Los Angeles Times, May 31, 2017. Available at, <http://www.latimes.com/local/lanow/la-me-ln-homeless-count-20170530-story.html>.

16 CSH. Dimensions of Quality Supportive Housing, 2013, p. 12. Available at, http://www.csh.org/wp-content/uploads/2013/07/CSH_Dimensions_of_Quality_Supportive_Housing_guidebook.pdf.

17 ELC Interview with Sara Bedford, Director, City of Oakland Housing & Human Services. October 31, 2017.

This failure is critical because California is everywhere facing a problem of basic math: as shown in Table 1 below, even under the most optimistic scenarios, new, very affordable housing will likely serve but a fraction of homeless residents in Berkeley, Oakland, and Sacramento, and only after a delay of many years. This means that the majority of the State's homeless residents will struggle daily to perform with dignity the basic bodily functions of hydration and excretion.

TABLE 1: PROGRESS ON VLI AND ELI HOUSING IN CALIFORNIA CITIES ¹⁸					
City	# of Unsheltered Residents	Planning Timeline	# VLI/ELI Units Required	# VLI/ELI Units Permitted as of June 1, 2018	% VLI/ELI Units Permitted as of June 1, 2018
Berkeley	664 ¹⁹	1/31/2015 to 1/31/2023	532	85	16%
Oakland	1902 ²⁰	1/31/2015 to 1/31/2023	2059	371	18%
Sacramento	1111 ²¹	10/31/2013 to 10/31/2020	3149	197	6.3%

The unresolved tension between the goals of Housing First and the realities of basic needs provision is perhaps the most important barrier to ensuring unsheltered Californians access to toilets and water for drinking and bathing, and it has led to what Bedford called “a crisis of health, safety and dignity for unsheltered...residents who are forced to live on streets and under freeways.”²²

Unsheltered residents suffer from lack of access to water & sanitation.

Even though housing is the solution to homelessness, improving access to water and sanitation is a critical interim solution for unsheltered Californians. According to the National Law Center on Homelessness and Poverty, lack of shelter often translates into lack of access to water and sanitation, because “[e]xisting infrastructure in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other

¹⁸ All figures, except “# of Unsheltered Residents,” sourced from California Department of Housing and Community Development Annual Progress Report Permit Table Summary, June 1, 2018. Available at, <http://www.hcd.ca.gov/community-development/housing-element/index.shtml>. NOTE: The calculations are based on self-reported Regional Housing Needs Allocations (RHNA).

¹⁹ City of Berkeley Homeless Point-in-Time (PIT) Count and Survey 2017, EveryOne Home, June 30, 2017. Available at, http://everyonehome.org/wp-content/uploads/2016/02/BERKELEY_5-Final-1.pdf.

²⁰ City of Oakland Homeless Point-in-Time (PIT) Count and Survey 2017, EveryOne Home, June 30, 2017. Available at, <http://everyonehome.org/wp-content/uploads/2016/02/City-of-Oakland-ES.pdf>.

²¹ City of Sacramento Homeless Point-in-Time (PIT) Count and Survey 2017. County of Sacramento, July 2017. Available at, http://www.saccounty.net/Homelessness/Documents/2017_SacPIT_Final.pdf.

²² Bedford, *supra* note 17.

basic services.”²³ For unsheltered homeless people, the struggle to find toilets and obtain drinking water can consume hours a day and require significant strategic planning and negotiation skills.²⁴

Lack of Access to Drinking Water

Lack of access to water causes serious health problems for individuals—dehydration, complications related to diabetes, and sometimes death. Homeless persons with underlying health conditions, disabilities, or other mental or physical challenges face the most serious risks. For example, Arthur Jey, an emergency room doctor in Sacramento’s Sutter Medical Center, reported that heat exhaustion and stroke often bring homeless people into the ER.²⁵ And in 2015, two people died from hypothermia/hyperthermia related to homelessness.²⁶ Women are also disproportionately affected by lack of access to water, particularly with regard to health problems related to menstrual hygiene and urinary tract infections caused by dehydration. These problems are additionally expensive for taxpayers, who must foot the bill for admissions to public emergency rooms and hospitals.

Lack of Access to Water for Bathing & Toilets

The right to sanitation is an integral part of the right to water.²⁷ Indeed, as the Alameda County Healthcare for the Homeless Project (ACHFHP) explains, “[f]or persons experiencing homelessness, access to hygiene facilities such as toilets and showers, is essential for human dignity and maintenance of personal and public health.”²⁸ Too often, such facilities are not available for California’s unsheltered homeless residents, and the consequences can be heartbreaking.

An ACHFHP client makes this point poignantly:

“I’m a woman. I like to wash myself. I like to smell clean. Living in a tent, I didn’t feel I was good enough for my husband or to be around my children. I didn’t want the world to see me.”²⁹

Lack of access to toilets forces people to relieve themselves publicly. Being left with no choice but to excrete in the open violates the dignity of people experiencing homelessness and leaves them vulnerable to attack.³⁰ Women in particular face an increased risk of sexual assault. In some communities, unsheltered residents risk

23 National Law Center on Homelessness and Poverty, et al., *Housing and Homelessness in the United States of America*, Submission to the Universal Periodic Review of the United States of America September 15, 2014), ¶ 23. Available at, http://www.nlchp.org/documents/UPR_Housing_Report_2014.

24 Clark, *supra* note 2.

25 *Id.*

26 Sacramento Regional Coalition to End Homelessness, *Sacramento County 2016 Homeless Deaths Report* (2016). Available at, https://docs.wixstatic.com/ugd/ee52bb_8cc49b7195a24254a1c7e96dd2378784.pdf.

27 AB 685 (Eng, 2012), codified at Cal. Water Code § 106.3 (“[E]very human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”).

28 Health Needs Assessment of Persons Experiencing Homelessness in Alameda County 2014-2015. Alameda County Healthcare for the Homeless Program. County of Alameda, 2015, p. 54.

29 Alameda County Healthcare for the Homeless Website, <http://www.achch.org/street-medicine.html>.

30 UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America*, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4, Aug. 2, 2011. Available at, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf (by Catarina de Albuquerque).

being cited or jailed for public urination, or even added to sex offender registries for indecent exposure.³¹ Again, taxpayers foot the bill for these law enforcement efforts that essentially serve to criminalize homelessness.

These sanitation access issues can be even greater for unsheltered Californians with disabilities or substance abuse issues. Recent data from the U.S. Department of Housing and Urban Development's (HUD) indicate that about 35% of California's unsheltered residents have severe mental illnesses, and about 24% have severe substance abuse issues.³² HUD's 2017 point-in-time homeless counts found that in Oakland, Berkeley, and Sacramento, the percentage of homeless residents with physical disabilities ranged from 25-33%. In addition, homeless communities are composed disproportionately of people of color, making them one of the state's most socially and economically vulnerable populations.

Open defecation and urination create public health hazards, such as fall 2017 outbreaks of Hepatitis A in San Diego, Los Angeles, and Santa Cruz County.³⁴ And although California's unsheltered residents comprise only about 0.003 percent of the state's population, they are disproportionately affected by Hepatitis A, as illustrated in Table 2.

In addition, according to state water regulators, high concentrations of E. coli bacteria (which lives in the digestive tracts of mammals, including humans) in the Lower American River correlate with the locations of three long-standing homeless encampments in Sacramento.³⁵

The serious problems caused by the lack of adequate access to water and sanitation all point to the urgent need for California's state and local governments to prioritize water and sanitation in crafting interim solutions for unsheltered homeless persons. In light of California's commitment to the human right to water, this need is also a legal obligation.

TABLE 2: HEPATITIS A'S DISPROPORTIONATE IMPACT ON HOMELESS CALIFORNIANS³³

Of Californians who in 2017...	% who were homeless
Were diagnosed with Hepatitis A	52%
Hospitalized with Hepatitis A	61%
Died from Hepatitis A	71%

³¹ Clark, *supra* note 2.

³² HUD 2017 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations. California. U.S. Department of Housing and Urban Development, January 27, 2017. Available at, https://www.hudexchange.info/resource/reportmanagement/published/CoC_PopSub_State_CA_2017.pdf.

³³ Morcelle, Madeline. Health Justice for People Experiencing Homelessness: Confronting the U.S. Public Sanitation and Hygiene Crisis. The Network for Public Health, June 2018.

³⁴ Karlamangla, Soumya. California's deadly Hepatitis A outbreak could last years, official says. The Los Angeles Times, October 5, 2017. Hepatitis A is a disease of the liver that is transmitted orally, primarily through contact with food or water contaminated with infected feces. According to the World Health Organization, the best way to combat Hepatitis A is by ensuring "adequate supplies of safe drinking water; proper disposal of sewage within communities; and personal hygiene practices such as regular hand-washing," all of which are largely unavailable to California's unsheltered population. See World Health Organization Hepatitis A Key Facts. Available at, <http://www.who.int/news-room/fact-sheets/detail/hepatitis-a>.

³⁵ Branan, Brad. Lower American River contains unsafe levels of E. coli. Are homeless camps to blame? The Sacramento Bee, August 27, 2017. Available at, <https://www.sacbee.com/news/investigations/the-public-eye/article169515922.html>. This article cites health officials as saying the E. coli bacteria "likely" comes from the homeless encampments, but no evidence of a direct causal link between the encampments and the bacteria was available as of this writing. E. coli is a bacterium "commonly found in the lower intestine of warm-blooded organisms. Most E.coli strains are harmless, but some can cause serious food poisoning." See World Health Organization, Hepatitis A Key Facts, available at <http://www.who.int/news-room/fact-sheets/detail/e-coli>.

Failure to provide access to water & sanitation violates human rights.

Access to water is an international human right,³⁶ officially recognized in California through Assembly Bill 685, which states, “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”³⁷ Although everyone should be able to enjoy this right equally,³⁸ it has gone unfulfilled for many of the (at least) 134,278 Californians experiencing homelessness³⁹ because they are overlooked or in some cases, overtly discriminated against.⁴⁰

The human rights to water and sanitation require the availability of water and sanitation for human needs, regardless of circumstances. According to the United Nations Committee on Economic, Social, and Cultural Rights’ definition of the human right to water, “[t]he water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.”⁴¹ The Committee goes on to direct States to use World Health Organization (WHO) guidelines (see section starting on p. 7 on international standards) to determine the quantity of water that should be available for each person.⁴²

Implicit in California's commitment to the human right to water is the understanding that everyone should enjoy the right equally, without discrimination.⁴³ This principle of non-discrimination is a fundamental part of human rights law that must be observed in California's efforts to implement its commitment to the human right to water.⁴⁴ Even as California takes important steps to fulfill its AB 685 commitments, the State must also recognize and rectify the many inequalities in the degree to which differently situated groups enjoy the right. The exclusion of people experiencing homelessness from access to a minimum amount of water for drinking, hygiene, and sanitation may be the most glaring and urgent example of this failure.

36 United Nations General Assembly, Resolution: The human right to water and sanitation, 2010 (A/RES/64/292). Available at, <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/RES/64/292&Lang=E&Type=DOC>. For a more detailed discussion of the international framework on the human rights to water and sanitation, See Human Rights Advocates, *The Human Right to Water – An Imperative*, available at <http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/The-Human-Right-to-Water-An-Imperative.pdf>.

37 AB 685, *supra* note 27.

38 *The Human Right to Water Bill in California: An Implementation Framework for State Agencies*. UC Berkeley International Human Rights Law Clinic, May 2013, p. 8. Available at, https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf.

39 AHAR 206, *supra* note 7, p. 12.

40 UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 79, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011). Available at, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf (by Catarina de Albuquerque) (finding that Sacramento shut off public water fountains near homeless encampments in an effort to discourage their presence). See also Food & Water Watch, *Our Right to Water*, May 2012, p. 7. Available at, <http://documents.foodandwaterwatch.org/doc/OurRighttoWater.pdf>; Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination. August 2014, pp. 19-21. Available at, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf.

41 U.N. Committee on Econ., Soc., & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), para. 12(a). Available at, [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

42 *Id.* For a more thorough discussion of basic water requirements, See P.H. Gleick, “Basic water requirements for human activities: meeting basic needs,” *Water International* (1996), 21, pp. 83-92. Available at, http://pacinst.org/app/uploads/2012/10/basic_water_requirements-1996.pdf.

43 AB 685, *supra* note 27.

44 *The Human Right to Water Bill in California*, *supra* note 38.

Homeless Californians' access to water & sanitation fails to meet international minimum standards.

The human rights to water and sanitation require the availability of water and sanitation for human needs, regardless of circumstances, and set minimum standards for such availability. Research for this report revealed that California cities are failing to meet these minimum standards.

Water for Drinking and Hygiene

WORLD HEALTH ORGANIZATION (WHO) STANDARDS

According to the United Nations' Committee on Economic, Social, and Cultural Rights in its definition of the human right to water, "[t]he water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene."⁴⁵ The Committee goes on to direct States to use the WHO guidelines to determine the quantity of water that should be available for each person.⁴⁶ According to these guidelines, the average person needs reliable access to between 50-100 liters per capita per day to promote health and meet all basic personal and domestic needs.⁴⁷

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) STANDARDS

The UNHCR has endorsed the Sphere standards for humanitarian assistance, which specify minimum standards for access to water, sanitation, and hygiene during humanitarian emergencies.⁴⁸ These standards require that each household have at least 15 liters of water per person per day for drinking, cooking, and personal hygiene.⁴⁹ The Sphere standards also specify that "[t]he maximum distance from any household to the nearest water point [should be no more than] 500 meters[.]" and that no one should have to wait in line for more than 30 minutes to access a water source.⁵⁰

However, the UNHCR guidelines for planned refugee camps—which, like short-term emergency shelter for homeless persons, are designed to be temporary—provide a more relevant standard for the provision of water and sanitation to homeless encampments. Under these standards, every person should have access to 20 liters of water per day.⁵¹ The refugee camp standards require one water tap per 80 persons and that

45 U.N. Committee on Econ., Soc., & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th Sess., 2002, U.N. Doc. E/C.12/2002/11, January 20, 2003, ¶ 12(a). Available at, [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

46 Id. For a more thorough discussion of basic water requirements, See Gleick, *supra* note 42.

47 World Health Organization, J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors?," WHO/SDE/WSH/03.02. 2002. Available

at, http://www.who.int/water_sanitation_health/diseases/WSH0302.pdf. However, these recommendations should be tailored to the specific situation of certain categories of individuals, including children, pregnant women, and those living in arid areas.

48 See United Nations High Commissioner for Refugees, Emergency Sanitation Standard. Available at, <https://emergency.unhcr.org/entry/33015/emergency-sanitation-standard>.

49 The Sphere Project, Humanitarian Charter and Minimum Standards in Humanitarian Response (2011), p. 97. Available at, <https://cms.emergency.unhcr.org/documents/11982/32968/The+Sphere+Handbook/3340c549-6c14-4743-8c60-99882a3db8cf>.
50 Id.

51 United Nations High Commissioner for Refugees, Camp Planning Standards (planned settlements). Available at, <https://emergency.unhcr.org/entry/45582/camp-planning-standards-planned-settlements>.

“[n]o dwelling should be further than a few minutes’ walk from a water distribution point,” specifying 200 meters as the maximum distance.⁵² Additionally, there should be one shower available per 50 persons.⁵³

Toilets

UNHCR STANDARDS

The UNHCR standards for planned or long-term refugee camps measure the adequacy of access to sanitation by both the number of available toilets relative to population and the distance any person must travel to access a toilet. Under the refugee camp standards, there should be at least one toilet for every 20 persons during the emergency phase (with the goal being one per household as people move into more permanent shelter), and no person should be dwelling further than 50 meters from a toilet.⁵⁴

For California to apply the promise of AB 685 to the situation of persons experiencing homelessness, the State of California and its cities and counties must commit to achieving at least these minimum standards for water and sanitation.⁵⁵

State and Federal inaction burdens cities and counties.

Although AB 685 establishes a human right to water and sanitation for all Californians, the bill offers neither standards nor guidance to help municipalities guarantee water access by residents—unsheltered or otherwise. It also lacks any enforcement or funding mechanism to induce or support jurisdictions to take action.

Like its cities and counties, the State of California’s approach to dealing with homelessness is based on the Housing First philosophy.⁵⁶ The State Legislature has repeatedly refused to pass either a homeless person’s right-to-rest law⁵⁷ or a homeless person’s bill of rights, which could have required community health clinics to include a hygiene and sanitation station accessible to homeless persons.⁵⁸ The lone exception (AB 1995, which requires community colleges with shower facilities to allow enrolled homeless students to use them),⁵⁹ although laudable, has limited reach.

⁵² Id.

⁵³ Id.

⁵⁴ United Nations High Commissioner for Refugees, Camp Planning Standards (planned settlements). Available at, <https://emergency.unhcr.org/entry/45582/camp-planning-standards-planned-settlements>.

⁵⁵ Id; See also Los Angeles Central Providers Collaborative, Skid Row Community Residents and Partners, “No Place to Go” (June 29, 2017), pp. 8, 25. Available at, http://www.innercitylaw.org/wp-content/uploads/2017/10/170911_No-Place-To-Go-September-Update.pdf.

⁵⁶ Examples of proposed legislation includes SB 3, a housing bond to invest in existing state housing programs, AB 74, establishing Housing for a Healthy California Program to create supportive housing opportunities, and AB 73, allowing cities and counties to create special “districts” where developments could be more easily approved. Although these proposed acts do not specifically address homeless people, legislation to improve access to and maintenance of affordable housing could still help.

⁵⁷ This bill would have afforded persons experiencing homelessness the right to use public spaces without discrimination based on their housing status. The legislation did not pass in the Senate, where it was introduced in 2016, but organizers with the Western Regional Advocacy Project (WRAP) affirm that the fight for the right to rest will continue.

⁵⁸ It is noteworthy that unsuccessful efforts from 2012 onward to pass a California homeless persons’ “bill-of-rights” have also not prioritized a guarantee of access to water and sanitation. Language guaranteeing such access was edited out of AB 5 (2012, Ammiano) before it died (Available at, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB5) and no such language appeared in SB 608 (Liu, 2015), a proposed “Right to Rest” bill for homeless Californians. (https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB608).

⁵⁹ Williams, Das. AB 1995: Community Colleges: homeless students: access to shower facilities. California State Assembly, September 21, 2016.

Although a recently passed bill⁶⁰ allows California cities that declare a shelter crisis to bypass some of the regulations needed to establish shelters, and releases them from certain liabilities, the ordinance does not directly address access to water and sanitation by unsheltered residents of such cities.

At the Federal level, several agencies, including HUD, the Department of Health and Human Services (HHS), and the U.S. Interagency Council on Homelessness (USICH), set policies and implement programs to address the high rates of homelessness and the challenges that people experiencing homelessness face in the United States. While HUD and HHS provide services and funding at a larger scale, USICH was specifically founded in 1987 to coordinate federal efforts to prevent and end homelessness in the U.S.⁶¹ The goals of USICH include ending veteran homelessness by 2015, all chronic homelessness by 2017, and homelessness for children, families, and youth by 2020. In its Opening Doors policy, USICH laid out its plan to accomplish these goals by increasing access to stable and affordable housing, improving health and stability, and retooling the Homeless Crisis Response System.⁶² Even leaving aside the present political vulnerability of these programs, they do not specifically address access to water and sanitation for the unsheltered. Thus, leadership on these issues must come from the state and local level.

Conclusion

Unsheltered residents in California have less access to potable water, showers, and toilets than is required by minimum standards for refugee camps under international law. Efforts to improve access are hampered by a perception that providing for the basic needs of unsheltered people undermines efforts to move these residents into permanent housing, by sapping financial and human resources allocated for low-income housing, and eroding public support for housing by normalizing homelessness.



Residents in an Oakland encampment. Photo Credit: Santiago Mejia, *The San Francisco Chronicle*. October 9, 2017.

But continuing adherence to the belief that providing for basic needs and building housing are mutually exclusive—particularly when demand for low-income housing will outstrip supply for the foreseeable future—represents a dangerous risk to public health; a failure to protect the health, well-being, and dignity of the most vulnerable Californians; and a violation of basic human rights guaranteed by both International and State law.

⁶⁰ Ting, Phil. AB 932: Shelter Crisis: homeless shelters. California State Assembly, October 14, 2017.

⁶¹ U.S. Interagency Council on Homelessness. About USICH. Available at, <https://www.usich.gov/about-usich>.

⁶² United States Interagency Council on Homelessness. Opening Doors: Federal Strategic Plan to End Homelessness. 2015. Available at, https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

CASE STUDIES

Introduction

From September to December 2017, members of the Environmental Law clinic conducted case studies in Berkeley, Oakland, and Sacramento in order to understand: (1) how homeless residents of those three California cities access—or do not access—water and sanitation; (2) what public facilities exist in each community and those facilities' state of repair; (3) any specific measures each city has taken to improve such access; and (4) barriers to improving access for unsheltered residents to these basic needs. This section reports the findings of the case research.

Case Overviews

Water for Drinking

PUBLIC DRINKING FOUNTAINS

While Berkeley, Oakland, and Sacramento all have some number of public drinking fountains, research revealed that these fountains are often unclean, not working, not accessible for people with disabilities or those wishing to fill water bottles, and not located in areas where homeless residents sleep or congregate.

Berkeley's approximately 60 municipal drinking fountains are clustered around the UC Berkeley campus, in the recreation areas in the Berkeley Hills, and at the Berkeley Marina, with only a few located in Downtown (1-2), South (5), and West Berkeley (3), the primary areas in which homeless residents camp or congregate.⁶³ Of these fountains, just over half are "public" (accessible at all times); the rest are "semi-public" (accessible only during certain hours). A March 2016 inventory reports that about one-third of those fountains were unclean, with visible trash or debris in the basin. Less than half had a stream at least palm-height, which is necessary for users seeking to fill water bottles. Only one-third met the accessibility requirements of the Americans with Disabilities Act (ADA).⁶⁴

In Oakland, a consolidated inventory of publicly available water sources was not readily available from the City. However, the WeTap⁶⁵ mobile app, which maps public drinking fountains and tracks their state of repair, indicates a dearth of fountains in Oakland. Further, of the 40 fountains WeTap maps, only one appears to be located in City Council District 3,⁶⁶ which includes West Oakland and parts of Downtown, where over 54% of Oakland's homeless residents camp.⁶⁷ The authors of this report were unable to obtain from the City of Oakland information about any barriers associated with installing new permanent public drinking fountains or repairing existing ones.

63 WeTap mobile app for Berkeley, California. Available at, <http://wetap.org/>.

64 Dylan Avery, Drinking Water Fountain Inventory, UC Berkeley Dep't of Public Health, March 8, 2106. Available at, https://www.cityofberkeley.info/.../2016-03-08_Item_WS_02_Public_Access_to_Drinking_Water_-_Pres.aspx.

65 WeTap mobile app for Oakland, California. Available at, <http://wetap.org/>.

66 WeTap Berkeley, *supra* note 63.

67 Hedin, Mark. Oakland weighs shifting homeless camp into housing. East Bay Times. December 1, 2016.

Of the City of Sacramento's 171 public water fountains, 40% were broken, leaking, or clogged during a recent study period.⁶⁸ Midtown and Downtown Sacramento, where many homeless residents spend days and nights, feature no water fountains whatsoever.⁶⁹ As of August 2017, the City had no plans to build new fountains.⁷⁰

TABLE 3: PUBLIC DRINKING FOUNTAINS IN BERKELEY, OAKLAND & SACRAMENTO

City	# of Fountains	State of Repair/Cleanliness	Accessibility	Location of Fountains
Berkeley	60 ⁷¹	33% unclean (trash or debris in the fountain) ⁷²	Usable with water bottle ⁷³ <1/2; ADA-compliant ~1/3; Time: Many only during certain hours	Primarily in recreation areas in Berkeley Hills or Marina; Only 5 in S. Berkeley, 3 in W. Berkeley, 1-2 Downtown. ⁷⁴
Oakland	40 ⁷⁵	Unknown	Unknown	Mostly in recreation areas in Oakland Hills; Only 1 in Downtown/West Oakland where 54% of homeless people rest or camp. ⁷⁶
Sacramento	171 ⁷⁷	40% broken, leaking or clogged ⁷⁸	Unknown	None in Midtown or Downtown where many homeless people rest or camp.

THE STRUGGLE TO ACCESS POTABLE WATER

In May 2017, Mike Wilmarth, a longtime resident of a homeless encampment on Wood Street in West Oakland, told *Bay Area News Group* that “obtaining fresh running water is his biggest challenge.”⁷⁹

Wilmarth's experience is not unique.

When asked how he would characterize access to potable water by homeless Oakland residents, Bobby Qui, who spent the majority of his life on the streets until about two years ago, said, “It's not there! They buy

68 Mott, Michael. Fountain of truth: Sacramento leaves drinking water scarce as homeless population grows larger and summer gets hotter. *Sacramento News and Review*, August 10, 2017. Available at, <https://www.newsreview.com/sacramento/fountain-of-truth-sacramento-leaves/content?oid=24807846>.

69 Id.

70 Id.

71 Avery, *supra* note 64.

72 Id.

73 To be water-bottle accessible, a water fountain's stream must be at least palm height.

74 WeTap Berkeley, *supra* note 63.

75 WeTap Oakland, *supra* note 65.

76 Counted points on Oakland map in WeTap mobile app.

77 Mott, *supra* note 68.

78 Id.

79 Drummond, Tammerlin. Homeless War Zone: Oakland Officials Under Fire to Stop Crisis. *San Jose Mercury News*, May 24, 2017.

bottled water. They save the bottle and refill it in a bathroom. People are filling water containers from hoses in people's front yards and taking them back to encampments. But that's causing complaints."⁸⁰

One such resident, P, said he knew of no working drinking fountains in Downtown Oakland—and certainly none near where he camps in West Oakland. So, he's built relationships:

"I've gotten friendly with the neighbors around and I have my gallon jugs. I fill them at nearby houses."⁸¹ —P, a homeless West Oakland resident

James Lee Clark, a vocal advocate for homeless Sacramento residents like him, said it can take up to two hours to find a potable water source.⁸² In addition, he said, because there are so few working water fountains, people try to find spigots attached to businesses or homes, and often carry pliers in order to remove caps intended to block public use. He once observed someone drinking from a gutter because they had become so desperate. Other Sacramento residents have also reported having to drink from gutters, and even from the Sacramento River.⁸³

"[Homeless] people are very concerned," said Qui. "Especially during a heat wave—people get heatstroke."

According to David Modersbach at Alameda County Health Care for the Homeless, an average of 20 emergency room and outpatient clinic visits by homeless persons in the County are recorded as being related to dehydration each year.⁸⁴

Qui collaborates with his wife, Needa Bee, who has also "been homeless a couple of times," to fill this gap in water access by distributing bottled water to encampments. During an August 2017 heat wave, The Village—



A Sacramento man hands a bottle of water to a homeless Sacramento resident. Photo credit: Timon Barkley, *American River Current*. April 20, 2016.

a community-led initiative co-founded by Bee to help establish a more permanent encampment for sober homeless residents— "did a call-out on our Facebook page asking people to gather water. People just did it. It worked. We visited some of the encampments and heard that they were being saturated by water. The people in the encampments were touched that people were even thinking about them."⁸⁵

Peter Dunlap, an Oakland Public Works employee who leads crews that clean homeless encampments, said he often sees donated bottled water at camps he visits. Such donations are common in Berkeley, as well as in Sacramento, where some local advocates

80 ELC Interview with Bobby Qui, The Village. October 27, 2107.

81 ELC interview with P, an unsheltered Oakland resident. October 14, 2017.

82 Clark, *supra* note 2.

83 Mott, *supra* note 68.

84 Modersbach, David. Email to ELC. November 30, 2017.

85 ELC Interview with Needa Bee, co-founder, Feed the Homeless & The Village. October 27, 2017.

distribute bottles of water to homeless people. One local resident places bins filled with ice and bottled water in Sacramento's public parks.⁸⁶ He calls the bins "water oasis stations."⁸⁷

Non-profit organizations also play a role in distributing bottled water to unsheltered residents. Loaves & Fishes in Sacramento distributes more than 3,300 donated water bottles per month during the summer.⁸⁸ Operation Dignity helps provide water to homeless residents in Oakland. Under contract with the City of Oakland, the 24-year-old non-profit organization, which specializes in serving homeless veterans, operates a mobile street outreach team that each month "distributes over 1000 units" of "essential survival supplies," which sometimes include bottled water, to people in encampments in Oakland (as well as in neighboring Alameda).^{89, 90} How much water the organization is able to supply depends entirely on what donations arrive in a given week or month.

While such grassroots water deliveries are testament to many residents' generosity and concern for the plight of their unsheltered neighbors, and can help save the lives of some unsheltered residents affiliated with established encampments, they are a woefully inadequate solution. Even leaving aside the considerable bottle waste they generate and the high unit cost of the water provided,⁹¹ grassroots deliveries are uneven; are unable to reach unsheltered residents whose habits are less consistent; and are not near the scale required to meet the ongoing, daily need for potable water among California's homeless residents.

Toilets

PUBLIC TOILETS BY THE NUMBERS

Although information on public toilet availability in the study jurisdictions is incomplete and conflicting, it is clear that access to public toilets is also extremely limited in Berkeley, Oakland, and Sacramento.

An item on the Berkeley City Council consent calendar in 2016 reported that of the City's 25 parks, ten (10) have permanent public restrooms that are always available, four (4) have permanent public restrooms that are available for limited hours, three (3) have portable toilets, and eight (8) have no public restrooms available.⁹² Existing permanent public restrooms may be unclean, and many do not receive proper maintenance.⁹³ The City further reported in July 2017 that there are only 30 existing public restrooms in Berkeley and the hours and availability vary based on day of the week and location. Additionally, the public restrooms in parks are not equitably distributed, with few in West and South Berkeley, where the majority of the homeless population lives. Most public restrooms in Berkeley are in recreation areas, primarily in North Berkeley, the Berkeley Hills, or around the UC Berkeley campus.

⁸⁶ Mott, *supra* note 68.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Operation Dignity website, <https://operationdignity.org/our-programs/>.

⁹⁰ ELC Interview with Katie Derrig, Development Director, Operation Dignity. November 1, 2017.

⁹¹ For example, the water provided at Sacramento's "water oasis stations" costs \$10 for 72 bottles of water, greatly exceeding the cost of piped water. Mott, *supra* note 68.

⁹² Item for Consent Calendar, re Public Restrooms in City Parks, Councilmember Jesse Arreguin, Feb. 23, 2016.

⁹³ "Proper maintenance" was not defined by the Parks and Waterfront Department of Berkeley, but was a term used by then Councilmember Jesse Arreguin in a recommendation to the mayor. He declared: "they (the public restrooms) may be in poor condition and need to be upgraded or maintained more frequently." Public Restrooms in City Parks. Parks and Waterfront also reported the insufficient budget for "maintenance". Raguso, Emile, Berkeley to spend millions to fix up James Kenney Park, *Berkeleyside*, April 7, 2015. Available at, <http://www.berkeleyside.com/2015/04/07/berkeley-to-spend-millions-to-fix-up-james-kenney-park/>.

Basic & Urgent

City-maintained public restrooms are in the Berkeley Public Library, with branches in Downtown, South, and North Berkeley. The Downtown and South Berkeley branches are the most accessible to the large portion of the homeless population that lives in these areas, but may still not be easily walkable from well-populated encampments, such as the “Here/There” encampment on Adeline Street. Furthermore, the North and South branches are only open from 10:00 a.m. to 6:00 p.m. and are closed on Sundays; the Downtown branch has similar hours. Other public structures include the City Center building and the Telegraph-Channing and Center Street parking garages; the latter are open from 8:00 a.m.-10:00 p.m., and the restrooms are only accessible during those hours. The UC Berkeley campus maintains restrooms which are open to the public, but many buildings, including residence halls and student recreational facilities do not allow non-students to use them. Most campus buildings are also not accessible throughout the night.

Oakland does not publish an inventory of publicly available toilets, but a local open-source website allows users to upload and maintain a list, which at the time of this writing included only about 30 public restrooms in the city.⁹⁴ The ACHFHP’s Needs Assessment found that not only were public restrooms sorely lacking in Oakland, but that, as matter of policy, the City locks all public toilets at night.⁹⁵

Access to public toilets is similarly limited in Sacramento. Fall 2017 research found that the City had locked many restrooms in its public parks over concerns of vandalism, clogging, “illicit activities,” and violent crime.⁹⁶ This is consistent with April 2016 figures indicating that 12 city park restrooms were permanently closed to the general public, an additional eight were open only during the day, while still others were temporarily closed for “renovations.”⁹⁷ However, a March 2018 report found 83 public restrooms in Sacramento, with 28 open at all times and 55 open during limited hours.⁹⁸

According to the Sacramento Bee, the City’s Central Library has become “the most reliably available public facilit[y] for homeless people in downtown Sacramento.”⁹⁹ The library is, of course,



Sign posted on a “public” restroom in a Sacramento City Park. February 2017.
Photo Credit: Environmental Law Clinic, University of California at Berkeley.

⁹⁴ Oakland Wiki Public Restrooms List. Available at, https://localwiki.org/oakland/Public_Restrooms.

⁹⁵ ACHHP Needs Assessment, 2015, p. 55.

⁹⁶ Halcon, Emily. City Council Report: Options for Continuation of the Pit Stop Attended Restroom Program, 2017. Available at, http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=3917&meta_id=488469.

⁹⁷ Hosseini, Raheem F. Right to relief: Sacramento’s homeless residents and the civil rights battle for public toilet access, Sacramento News & Review, April 21, 2016. Available at, <https://www.newsreview.com/sacramento/right-to-relief-sacramentos-homeless/content?oid=20683090>.

⁹⁸ Update on Public Restrooms. Report to Sacramento City Council, March 20, 2018. Available at, http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4159&meta_id=517463.

⁹⁹ Chabria, Anita. With homeless using it as a bathroom, Central Library spends thousands on cleaning. The Sacramento Bee, May 18, 2017. Available at, <http://www.sacbee.com/news/local/article151666212.html>.

open only during the day. Likewise, in the River District of Sacramento, where approximately half of Sacramento's homeless population lives, there are hardly any publicly accessible toilets.¹⁰⁰

The City plans to build three new public restrooms by October 2018, the proposed locations of which do not appear to be in areas most frequented by homeless residents. It is unclear whether these new facilities are to be either permanent or open around the clock.¹⁰¹

Also in Sacramento, the non-profit organization Loaves and Fishes provides restroom access at its own facilities to about 600 people each day.¹⁰² The restrooms are regularly cleaned by staff and are supplied with donated toilet paper.¹⁰³ Joan Burke, Director of Advocacy at Loaves and Fishes, says the restroom facilities are its most critical service.¹⁰⁴

TABLE 4: PUBLIC TOILETS IN BERKELEY, OAKLAND & SACRAMENTO

City	# of Toilets	State of Repair/Cleanliness	Accessibility	Location of Toilets
Berkeley	~30 ¹⁰⁵	Likely to be unclean/improperly maintained. ¹⁰⁶	Only 10 available on a 24/7 basis. ¹⁰⁷	Primarily in recreation areas in Berkeley Hills and North Berkeley/UC Berkeley.
Oakland	~30 ¹⁰⁸	Unknown	Specifics unknown; all are closed at night. ¹⁰⁹	BART Stations, some urban parks and recreation areas. (Some geographic accessibility for unsheltered populations.) ¹¹⁰
Sacramento	83 ¹¹¹	~20% in poor state of repair at any given time. ¹¹²	28 - open 24/7 55 - hours vary ¹¹³	Few Downtown or in the City's River District, where homeless residents sleep and rest. ^{114, 115}

100 Kirk, Mimi. How Sacramento Rolled Out a Mobile Restroom for the Homeless. CityLab, 2016. Available at, <http://www.citylab.com/cityfixer/2016/12/why-sacramentos-toilets-for-the-homeless-succeeded/509375/>.

101 Update on Public Restrooms, supra note 98.

102 Hosseini, supra note 97.

103 Id.

104 Id.

105 Berkeley City Council Item for Consent Calendar, re Public Restrooms in City Parks, Councilmember Jesse Arreguin, Feb. 23, 2016.

106 Raguso, supra note 93.

107 Berkeley City Council. February 23, 2016.

108 Oakland Restrooms Wiki, supra note 94.

109 ACHHP Needs Assessment, supra note 28.

110 Oakland Restrooms Wiki, supra note 94.

111 Update on Public Restrooms, supra note 98.

112 Id.

113 Id.

114 Id.

115 Kirk, supra note 100.

THE STRUGGLE TO ACCESS TOILETS

Time spent locating restrooms can detract from other activities for unsheltered people. For example, James Lee Clark in Sacramento reported that before he can consider finding food, panhandling to earn cash, or doing advocacy work on behalf of his fellow homeless residents, he must spend the first part of his morning walking an hour or more to a distant restroom from the place he chooses to camp.

But, unsheltered people are often unable to locate a restroom when they need one. As the ACHFHP report notes:

In the absence of public toilets, homeless persons must attempt to use private businesses or are forced to defecate or urinate in public.¹¹⁶

Indeed, unsheltered people must often use streets, sidewalks, and trashcans out of necessity. A West Oakland homeless resident, P, said the only public restrooms he knew of in his area were at Oakland City Hall, which is only open during regular business hours. He said he makes use of restrooms in the café he visits to access the Internet most days. When those options aren't open or nearby, he said he usually relieves himself in a plastic bag and dumps it down a nearby storm drain or places it in a public trash bin.

Abundant documented and anecdotal evidence highlights an increase in human urine and fecal matter on sidewalks, doorsteps, parks, and elsewhere in Berkeley, Oakland, and Sacramento, along with other California cities. The severity of the need for increased sanitation services became manifest when Sacramento's River District opened a single temporary restroom facility comprising three toilets, intended to serve unsheltered residents of the area. Over the six-month period the toilets were in daytime operation (8:00 a.m. - 6:00 p.m. only¹¹⁷), they were used more than 20,000 times,¹¹⁸ and human waste surrounding a nearby service provider's facility dropped by 90%.¹¹⁹

Water for Bathing and Hygiene

PUBLIC SHOWERS BY THE NUMBERS

Public shower facilities are even rarer than toilets and drinking fountains in terms of number of facilities and hours of operation in Berkeley, Oakland, and Sacramento.

In all of Alameda County, which includes Berkeley and Oakland, the ACHCFP Needs Assessment found just six showers available for persons experiencing homelessness, only one of which, at St. Vincent de Paul, was both free of charge and open Monday through Friday.¹²⁰ Mr. Qui and Ms. Bee of The Village mentioned available

¹¹⁶ ACHCFP Needs Assessment, *supra* note 28, p.55.

¹¹⁷ Halcon, *supra* note 96.

¹¹⁸ Hosseini, Raheem F. & Smith, Jason. Going viral: If Hepatitis A outbreak reaches Sacramento, politicians could have themselves to blame. Sacramento News & Review, October 5, 2017. Available at, <https://www.newsreview.com/sacramento/going-viral-if-hepatitis-a/content?oid=25108410>.

¹¹⁹ Kirk, *supra* note 100.

¹²⁰ ACHCFP Needs Assessment, *supra* note 28, p. 55.

(fee-based) showers at the (public) Temescal Pool, as well as at St. Mary's Center, which provides services to homeless seniors.¹²¹ All of these facilities have limited hours of operation.

In Berkeley, Willard Pool offers a free drop-in, five-minute shower program that includes towels and soap.¹²² The program operates from 7:30 a.m. to 8:30 p.m. on weekdays and from 9:00 to 10:00 a.m. on weekends. Other public pools have showers that may not be accessible to unsheltered residents who are unable to pay the \$6 fee. UC Berkeley operates showers at its pools that are fee-based; these can provide a good option for unsheltered UC Berkeley students who have a student identification card, but are not available to the broader community.

In September 2017, the non-profit organization Project WeHOPE launched Dignity on Wheels, a mobile hygiene program offering free showers and laundry service two Fridays per month at the Love Center Ministries in East Oakland.¹²³

Operation Dignity distributes “hygiene kits” to unsheltered homeless residents. The kits consist of donated items such as sanitary wipes, toothbrushes, and soap.

In Sacramento, the non-profit organization Loaves and Fishes offers access to showers to hundreds of visitors per day.¹²⁴

Interim Measures to Improve Access to Water & Sanitation in Case Cities

As discussed in the “Problem Overview” above, the most important barrier to comprehensive action to ensure access to water and sanitation to persons experiencing homelessness in Berkeley, Oakland, and Sacramento is the perceived conflict between servicing basic needs and the rightfully dominant “Housing First” paradigm. While focusing on permanent housing ultimately leads to permanent access to water and sanitation for those moved into housing, it leaves unsheltered residents without access to those essential basic services. This section examines some of the efforts the studied cities have begun to take to increase access to toilets and water, even as they continue—and, in some cases struggle—to build adequate, long-term housing for unsheltered residents.

BERKELEY

Toilets

Although Berkeley has made clear that its model is Housing First, the city has made some small efforts to increase access to toilets for its homeless population.

One effort to increase access to sanitation directly has been to install public portable toilets. In response to advocacy by the groups Friends of Adeline and First They Came for the Homeless,¹²⁵ the Berkeley City Council in July 2017 directed the City Manager to develop a “Neighborhood Public Toilet Policy,” which

¹²¹ ELC Interview with Bee & Qui. October 27, 2017.

¹²² Shower Program, City of Berkeley: Parks, Rec, and Waterfront, https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_Recreation/AQUATICS%20Shower%20Program%20Information%20Sign%20rev%2011.10.15.pdf.

¹²³ Program flyer provided by Frank Foster, Operations Manager, City of Oakland Public Works.

¹²⁴ Hosseini, *supra* note 118.

¹²⁵ Friends of Adeline is a community group organized to support First They Came for the Homeless, which comprises the residents of the Here/There Encampment at Adeline Street and Martin Luther King, Jr. Way in South Berkeley.

would allow residents to obtain a permit for a neighborhood public toilet using an official petition. At the same meeting, in response to the aforementioned advocacy, the Council approved the placement of a port-a-potty on a city lot near the Here/There Encampment in South Berkeley.¹²⁶ This toilet, paid for and maintained by Friends of Adeline and installed by the City, was about a block away from Here/There at the corner of Martin Luther King, Jr. Way and Alcatraz. The intent was to provide to the long-established encampment a portable toilet that would also be accessible to passersby and nearby farmer's market customers.¹²⁷



The original portable toilet installed near the Here/There encampment in Berkeley in July 2017. Photo Credit: Tom Lochner, *East Bay Times*, August 9, 2017.

In interviews for this report, Here/There residents recognized the portable toilet as an improvement, but not without problems. By October 2017, residents of Here/There reported that the toilet was often unclean. Moreover, the City did not help to maintain it, which raised health concerns for members of the camp. Residents also believed it was located too far away to serve those among them with physical or mental disabilities that prevent them from walking the distance from the camp to the toilet. Members of the camp, along with the Berkeley Homeless Commission, submitted a recommendation to the City in early October 2017 to install a portable toilet directly at the Here/There camp that would be solely for the homeless community's use and under the control of the camp.¹²⁸ When the City rejected the

petition, Friends of Adeline petitioned for (and obtained) two portable toilets and a handwashing station on the sidewalk nearer to the camp. Residents interviewed for this report reported that keeping these facilities clean and sanitary was an ongoing challenge.

At the same time, Berkeley appears to have taken some actions that may undermine immediate, urgent efforts to increase access to water and sanitation. For example, at its October 3, 2017 meeting, the Berkeley City Council refused to approve sanctioning temporary encampments, which might make it easier for cities to provide basic services like water and toilets.¹²⁹ In addition, if the City had approved sanctioning encampments, it could have enabled residents of Here/There, and another South Berkeley encampment, both located on land owned Bay Area Rapid Transit (BART), to legally relocate to City land when BART evicted residents of the encampments in October 2017.¹³⁰

¹²⁶ Berkeley City Council Action Item. Companion Report to Port-a-Potties-for-the-Poor Tour, October 3, 2017.

¹²⁷ Nair, Atira. New bathroom for general public opens in South Berkeley. *The Daily Cal*, August 8, 2017. Available at, <http://www.dailycal.org/2017/08/08/new-bathroom-general-public-opens-south-berkeley/>.

¹²⁸ Berkeley City Council Action Item, *supra* note 126.

¹²⁹ The literature implies that sanctioning encampments (rather than dismantling them and forcing occupants to move) can provide a stable location enabling cities to reliably deliver water, toilets, and shower services. Since sanctioned encampments are still novel, there is no robust research into whether or to what extent sanctioned encampments guarantee access to water and sanitation by people experiencing homelessness.

¹³⁰ Lochner, Tom. Berkeley homeless camps: one site evicted, another stays. *The Mercury News*, October 25, 2017. Available at, <https://www.mercurynews.com/2017/10/25/police-clear-out-homeless-camp-near-bart-tracks/>.

Water for Drinking

Interviews and research for this report revealed that unsheltered Berkeley residents are seeing no specific action on the part of the City to increase access to drinking water.

Access through housing

Part of the problem is that the City of Berkeley is intently focused on large-scale solutions, such as The Pathways Project, which includes building a Center for Stability, Navigation, and Respite to provide a break from the streets; a Bridge Living Community, designed as a communal village for extended stay; and a “comprehensive, innovative, and meaningful” plan to house and serve Berkeley’s 1000 homeless.¹³¹ The City is also looking at longer-term housing, like tiny homes.¹³²

These larger solutions seem to overlook the homeless population’s needs and preferences. For instance, individuals experiencing homelessness in Berkeley did not have nearly as favorable a reaction toward the Pathways Project as do City leaders. In interviews for this report, Members of the Here/There encampment likened it to a “concentration camp,” noting that the plan would include a fenced in lot with guard towers, check in rules, and little freedom. Here/There residents did not believe the project would adequately respond to their needs, and they would prefer to see City funding put toward other uses, such as more toilets and handwashing stations throughout the City, and more staff to respond to immediate needs.

OAKLAND

During an unannounced visit to Oakland in January 2018, UN Special Rapporteur on Adequate housing Leilani Farha referred to the conditions under which the City’s unhoused residents were living as “systemic cruelty.”¹³³ But the slow pace at which the City of Oakland is building affordable housing could mean “[t]here is no relief in sight” for the city’s unsheltered residents, said David Modersbach of Alameda County Healthcare for the Homeless.

The reality is there’s not going to be 2,000 units for everyone on the streets anytime soon.¹³⁴ --Sara Bedford, Director, City of Oakland Housing & Human Services Department

Given that reality, Modersbach said the County and City have to find more “street-level” approaches to support people.

Lara Tannenbaum of City of Oakland Housing & Human Services agreed, saying she thought both City and County of Alameda elected officials have been experiencing the massive uptick in unsheltered residents as a

131 Courtright, Emma. Berkeley’s new progressive majority gets serious about homelessness solutions. East Bay Express, March 21, 2017. Available at, <https://www.eastbayexpress.com/oakland/berkeleys-new-progressive-majority-gets-serious-about-homelessness-solutions/Content?oid=5906279>.

132 In February, City Council voted unanimously to explore the possibility of building tiny housing units aimed at the homeless and those on very low income. See Taylor, Tracey. Berkeley moves forward on building micro-units for the homeless. Berkeleyside, February 16, 2017. Available at, <http://www.berkeleyside.com/2017/02/16/berkeley-moves-forward-on-building-micro-units-for-the-homeless>.

133 BondGraham, Darwin. United Nations Expert Describes Oakland and California’s Homeless Crisis as “Cruel.” East Bay Express, January 21, 2018. Available at, <https://www.eastbayexpress.com/SevenDays/archives/2018/01/21/united-nations-expert-describes-oakland-and-californias-homeless-crisis-as-cruel>.

134 Bedford, supra note 17.

tipping point—a pressure to respond to more immediate needs like water and sanitation while continuing work on the long-term response (housing).

Karen Boyd, a spokesperson for the City of Oakland, explains how complaint-driven policy-making could be causing the City to miss opportunities to address these basic needs, because the City is paralyzed by conflicting political pressures:

It's challenging. People who are unsheltered are living in difficult situations. But those impacts are being felt by people in the surrounding area, the residents, the businesses.¹³⁵

Toilets

With municipal efforts and resources focused on Housing First, impacts on the traditionally housed who live near encampments appear to be the squeaky wheel that gets the grease. For example, the City of Oakland cleans or picks up garbage from some established encampments, and has installed portable toilets in some as well. “It’s taken us all awhile,” said Tannenbaum, “to come around to the idea of putting port-a-potties out, but we’re now all fully there.”¹³⁶

Indeed, in response to a combination of public health concerns and quality-of-life complaints from traditionally housed residents, Community Housing Services for the first time in 2017 received funds from City Council to provide port-a-potties and hand washing stations at some existing encampments. In March 2017, a long-established encampment on Wood Street in West Oakland became the first to receive the services.¹³⁷ According to Tannenbaum and Bedford, the City contracts with a provider to place and service portable toilets and wash stations; as of February 2018, the contractor was serving fourteen encampments.^{138, 139}

As a policy advisor to one City Councilmember put it: “We’re all terrified of a Hepatitis A outbreak,”¹⁴⁰ similar to those in San Diego, Los Angeles, and Santa Cruz Counties during the fall of 2017.^{141, 142} In response, Oakland Mayor Libby Schaff requested money from the County to service more sites.¹⁴³

But, after inspecting Oakland’s encampments, UN Special Rapporteur Farha said these efforts were insufficient, citing as an example the Wood Street encampment, where just one port-a-potty was available for about 75 residents.¹⁴⁴

¹³⁵ Parr, Rebecca. Oakland Clears 2 Homeless Encampments Near Pill Hill. East Bay Times, August 31, 2017.

¹³⁶ ELC interview with Lara Tannenbaum, Acting Manager, Community Housing Services, City of Oakland Health & Human Services, October 31, 2017.

¹³⁷ Drummond, supra note 79.

¹³⁸ ELC Interview with Bedford & Tannenbaum. October 31, 2017.

¹³⁹ Oakland Homeless Advocacy Working Group Minutes, February 19, 2018.

¹⁴⁰ ELC interview with Alex Marqusee, Senior Policy Advisor to District 3 Oakland City Councilmember Lynette Gibson McElhaney. October 17, 2017.

¹⁴¹ Karlamangla, Soumya. California’s deadly Hepatitis A outbreak could last years, official says. The Los Angeles Times, October 5, 2017.

¹⁴² The virus spreads through oral contact with human feces. Washing hands with running water and soap—not sanitary wipes or hand sanitizer—is the most effective way to kill the virus. See Hepatitis A Questions and Answers for the Public. Centers for Disease Control and Prevention. Available at, <https://www.cdc.gov/hepatitis/hav/afaq.htm#E1>.

¹⁴³ Bedford, supra note 17.

¹⁴⁴ BondGraham, supra note 133.

The authors of this report were unable to access information on any City of Oakland plans to install more permanent public toilets or to repair and/or maintain existing facilities. A few interviewees expressed general concerns about public safety and cleanliness issues associated with operating public restrooms.

Water for Drinking

Even as the City works to increase the availability of toilets for unsheltered residents, the also-urgent but less visible issue of drinking water “doesn’t really come up,” said Alex Marqusee, policy advisor to Oakland City Councilmember Lynette Gibson McElhaney.¹⁴⁵ Presumably, this is because the absence of sufficient drinking water for the unhoused has comparatively minimal nuisance value to the City’s housed residents. Every Oakland and Alameda County staff member interviewed for this case study said that none of the interim measures in place or in the planning process explicitly include the provision of drinking water.

The City has contracted since 2001 with the non-profit organization Operation Dignity to provide “harm reduction” services to unsheltered Oakland residents.¹⁴⁶ According to Operation Dignity’s contract, these services include distributing “food, hygiene, blankets, and like items” to about 400 unsheltered residents per month. Potable water is not explicitly included under this contract.¹⁴⁷ However, Katie Derrig, Operation Dignity’s Development Director, confirmed the organization distributes bottled water as part of its “street outreach” efforts. Derrig said the amount distributed is inconsistent and depends on available donations.¹⁴⁸



Cases of bottled water donated during an eviction of an Oakland encampment. Photo Credit: Dave ID, IndyBay. May 28, 2018.

“We should be thinking more about drinking water as we move forward with our interventions.”¹⁴⁹ –Lara Tannenbaum, City of Oakland Housing & Human Services

The authors of this report were unable to obtain from the City of Oakland information about any barriers associated with installing new permanent public drinking fountains.

Accessing water and sanitation through short-term shelter

The City of Oakland is also developing a system for sanctioning certain encampments, and providing not only toilets and hand washing stations, but living structures, health services, and housing case management. To facilitate this process, the City Council on October 3, 2017 passed a shelter crisis ordinance that gives the City Administrator the authority to “suspend the provisions of state and local regulatory statutes, regulations, and

¹⁴⁵ Marqusee, *supra* note 140.

¹⁴⁶ Email from Lara Tannenbaum, Acting Manager, Community Housing Services, City of Oakland Health & Human Services. November 28, 2017.

¹⁴⁷ Operation Dignity Homeless Mobile Outreach Program 2017/2018 Contract. City of Oakland. August 30, 2017.

¹⁴⁸ ELC Interview with Katie Derrig, Development Director, Operation Dignity. November 1, 2017.

¹⁴⁹ Tannenbaum, *supra* note 136.

ordinances prescribing standards of housing, health, or safety as needed for the interim establishment of shelters for the homeless.”¹⁵⁰

Community Initiative: Oakland's Untapped Resource *The Promise of 'The Promised Land' Cut Short*

Oakland resident Needa Bee knows that housing is the permanent solution to ensuring access to water and sanitation by currently homeless residents. She believes it is the job of the City and County to work in haste to get people housed.

Formerly homeless, Bee also understands intimately how critical it is to ensure the unsheltered people she interacts with each day through her effort “Feed the People” have access to water and sanitation in safe, temporary encampments.

Bee thinks public agencies are ill equipped to provide those interim services. “It costs them too much money,” she says, and the “slow progress is really frustrating.” Bee wants the City to keep public resources focused primarily on building permanent affordable housing, and to sanction and support community-led efforts to provide interim housing and services. She says “The Promised Land,” an encampment development in 2017 by the “The Village”—a partnership between Feed the People and Asians for Black Lives—proves community-driven solutions can be quick and effective.

December 2016 brought some of the coldest, rainiest days Oakland's homeless community had seen in years. Bee and her daughter, who provide hot meals to homeless residents, saw people getting sick, near death, and in need of hospitalization. They decided to spring into action to find a piece of public land to occupy and create “The Promised Land,” a safe encampment with access to water, toilets, showers, and cooking facilities, for homeless persons in recovery from drug and alcohol addiction.

Bee and her collaborators selected Oakland's Marcus Garvey Park, and on January 19—“the night of the biggest storm in 2017”—they began setting up camp. They erected tiny homes (six in all), “cut the grass, cleaned the park, set up dump runs, tapped into the city's water line and set up a solar shower and cooking station, fixed the drinking fountain, and brought in a port-a-potty and hand-washing station.” Bee says they also cleaned and repaired the park's public restroom. Community members volunteered to provide security and wellness and recovery services at the camp, and to cook for its 16 sober residents. “People just showed up to help because it was an emergency,” says Bee.

The Promised Land was in place for 13 days, until the City of Oakland dismantled it at a cost of \$75,000.

The Village wants to continue to create these types of interim encampments. The City has granted one site to the group, which it accepted, even though residents will need to move off of it in Fall 2018.

Lara Tannenbaum, with Oakland Human Services, says the City is interested in ways to partner with The Village and other groups: “We want to be really open to how the community can help. It's not all government, and it's not all non-profit partners. We need the community.”

Sourced from interviews with Needa Bee, founder of The Village; and Lara Tannenbaum, of City of Oakland Housing & Human Services

According to a recent report, *Housing Oakland's Unhoused*, “the City of Oakland has developed pop-up interim housing sites with Tuff Shed shelters for single adults experiencing homelessness. Currently, Tuff Shed shelters for 40 individuals are located at two sites: 6th and Castro (on city-owned land) and 27th and Northgate (on land owned by CalTrans). Each site costs around \$200,000 to start-up and about \$600-700,000 to operate for a year. The start-up costs of each were donated, while the operating expenses (most of which go towards staffing the sites) are covered by City general funds. Each site is expected to be up for

¹⁵⁰ Ordinance No. 13456 C.M.S. Oakland City Council. City of Oakland, October 3, 2017.

at least two years. Each site also serves as an Outdoor Navigation Center, with social and supportive services delivered on-site by contracted non-profit service providers; Bay Area Community Services (BACS) delivers housing navigation services, while Operation Dignity (OD) conducts street outreach. The City is also exploring sites to implement safe parking lots for families experiencing homelessness and living out of their vehicles.”¹⁵¹

According to a staff report prepared for the Oakland City Council, “ideally sites [called ‘Safe Haven Outdoor Navigation Centers’] would have electrical access for lighting, potable water and/or a sewer connection.”¹⁵² However, none of the sites the City is considering [or has set up so far] has such connections, and potable water is listed only among nice-to-have, optional “amenities” at Navigation Centers.¹⁵³

Bedford made clear that these Navigation Centers are just “Band-Aids”: “I don’t want Safe Havens to become a permanent solution.”¹⁵⁴ She emphasized that even as her team continues to advocate for permanent housing, they’re also pushing for more facilities like the Henry Robinson/Housing Fast Services Network, a shelter that serves nearly 300 people per year (many with severe disabilities), more than 80% of whom move into permanent housing.¹⁵⁵ Bedford would like to see at least two more such centers in Oakland, which she believes would dramatically reduce the number of unsheltered people with inadequate access to water and sanitation.¹⁵⁶ The City estimates each center would cost \$2 million per year to operate, which does not include the cost of acquiring buildings to house the centers.¹⁵⁷

SACRAMENTO

Toilets

In June 2016, the City of Sacramento launched “The Pit Stop,” a six-month temporary restroom pilot program for people experiencing homelessness.¹⁵⁸ The facility was located in Sacramento’s River District, where, according to Council Member Jeff Harris, “at any given moment, there are around 500 homeless people.”¹⁵⁹ However, because the area is largely industrial, there are no public buildings and, therefore, no public restrooms.¹⁶⁰ This combination of a highly concentrated homeless population with limited bathroom access made the River District an ideal location for the temporary restrooms.¹⁶¹

The unit consisted of three stalls, one of which was ADA compliant, as well as sinks, a trash receptacle, sharps disposal, and pet waste bags.¹⁶² One of the hallmarks of the Pit Stop, which was modeled on a similar

¹⁵¹ Elhalaby, Rawan. Housing Oakland’s Unhoused. Dellums Institute for Social Justice. May 2018.

¹⁵² Daniel, Christine. Supplemental Report on Grant Agreement to Administer a Safe Haven Outdoor Navigation Center. City of Oakland. Agenda Report. October 19, 2017.

¹⁵³ Id.

¹⁵⁴ Bedford, supra note 17.

¹⁵⁵ Bedford, Sara. p. 10.

¹⁵⁶ Bedford, supra note 17.

¹⁵⁷ McDermid, Riley. Oakland Approves Plan to House Homeless in Tuff Sheds. San Francisco Business Times. October 7, 2017. Available at <https://www.bizjournals.com/sanfrancisco/news/2017/10/05/oakland-homeless-tuff-sheds.html?ana=twf>.

¹⁵⁸ Kirk, supra note 100.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Halcon, supra note 96.

¹⁶² Id.

program in San Francisco, was the quality of the facilities: they were “safe, clean, and comfortable,”¹⁶³ with lights, running water, and air conditioning.¹⁶⁴

Attendants were another key feature of the Pit Stop. Two paid monitors, usually people who had themselves experienced homelessness, staffed the facility from 8 a.m. to 6 p.m., seven days per week.¹⁶⁵ Their responsibilities included greeting customers, cleaning the restroom after each use, re-stocking supplies in the restroom, collecting usage data, informally surveying clients and recording feedback on their experiences, offering referrals to homeless outreach, police and other services as needed, and collecting trash from the block immediately surrounding the Pit Stop.¹⁶⁶

The City’s Parks Department transported the unit from its North Area Corporation Yard to the Pit Stop location by 8 a.m., and then back to the Yard at 6 p.m. each day.¹⁶⁷ Parks staff were also responsible for re-stocking and maintaining the facility.¹⁶⁸ In total, transportation and maintenance took up to two hours per day.¹⁶⁹

The City measured the success of the Pit Stop by two primary criteria: user rates and satisfaction, and mitigation of the impacts of homelessness on the surrounding community. In terms of user rates and satisfaction, the City concluded that “the value to the clients is clear.” The three toilets were used over 20,000 times in six months,¹⁷⁰ “almost all of the users of the facility were unsheltered people who stayed overnight in the River District,” and users of the facility almost unanimously reported great satisfaction.¹⁷¹

It was less clear whether the Pit Stop mitigated the impacts of homelessness on the surrounding community as effectively as the City had hoped.¹⁷² The City interviewed service providers and business owners and operators in the surrounding area and received mixed reviews.¹⁷³ While service providers all gave “very positive feedback and support,” local businesses were “more skeptical.”¹⁷⁴ Some complaints included that the toilets should be open 24 hours per day because waste was still accumulating in public areas overnight, and that, although human waste surrounding a nearby service provider’s facility dropped by 90%¹⁷⁵, the Pit Stop overall had not fostered “much of a change.”¹⁷⁶

The other problem with the Pit Stop was its price tag: budgeted to cost \$100,000 in total, it ultimately cost approximately \$175,000.¹⁷⁷ Councilmember Harris, who championed the Pit Stop pilot, ascribed the cost overruns to three primary causes: the City’s inability to find an outside contractor to operate the facility, which in turn led to unforeseen salary costs;¹⁷⁸ transportation and disposal of the waste, which cost \$50,000 over the six-month period;¹⁷⁹ and retrofitting one of the stalls to meet ADA requirements.¹⁸⁰ Because of the cost

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Kirk, *supra* note 100.

¹⁶⁶ Halcon, *supra* note 96.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ Hosseini and Smith, *supra* note 118.

¹⁷¹ Halcon, *supra* note 96.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Kirk, *supra* note 100.

¹⁷⁶ Id.

¹⁷⁷ Drew Bollea, Cost Will End Sacramento Homeless Restroom Program, For Now. CBS Sacramento, 2016. Available at, <http://sacramento.cbslocal.com/2016/11/01/cost-will-end-sacramento-homeless-restroom-program-for-now/>.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ Hosseini and Smith, *supra* note 118.

overruns and the lack of anticipated savings via mitigated community impacts, the City Council elected not to renew the Pit Stop contract.¹⁸¹

In response to the Pit Stop's costliness, Sacramento's Homeless Services Coordinator, Emily Halcon, recommended an alternative: placing monitors in existing permanent restroom facilities in high-demand areas of Sacramento.¹⁸² Doing so would provide most of the benefits of the Pit Stop—except serving the River



Sacramento's Pit Stop portable toilet project. Photo Credit: Carlos Eliason, City of Sacramento. Published on CityLab December 2, 2016.

District—while avoiding some of the primary cost drivers. Specifically, the restrooms would already be ADA compliant,¹⁸³ the City wouldn't have to transport waste each day, and there would be significantly lower preparation, maintenance, and clean-up costs.¹⁸⁴ In total, when compared with the Pit Stop, Halcon estimated that placing monitors at permanent restrooms would save the City as much as \$95,000 per year (it would cost \$185,000 annually, whereas reinstating the Pit Stop would cost \$140,000 for six months, even with cost-saving improvements to the facility).¹⁸⁵

Councilmember Harris heeded her advice and reported in October 2017 that he was “close to a deal with a state agency to contribute half the money to pay attendants to monitor the restrooms in the public library.”¹⁸⁶ The idea was still under consideration in March 2018 when the City conducted a comprehensive inventory of its restroom facilities, and committed to build three new ones, as well as to identify funding to keep the existing ones open and in working order.

Other organizations—primarily homeless services providers—grant access to restrooms. For example, Sacramento Loaves and Fishes offers access to restrooms and showers to some 600 daily visitors.¹⁸⁷ The restrooms are regularly cleaned by staff and are supplied with donated toilet paper.¹⁸⁸ Joan Burke, Director of Advocacy at Loaves and Fishes, says the restroom and shower facilities are the most critical services they offer.¹⁸⁹

¹⁸¹ Bollea, *supra* note 177.

¹⁸² Halcon, *supra* note 96.

¹⁸³ Hosseini and Smith, *supra* note 118.

¹⁸⁴ Halcon, *supra* note 96.

¹⁸⁵ *Id.*

¹⁸⁶ Hosseini and Smith, *supra* note 118.

¹⁸⁷ Hosseini, *supra* note 97.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

Water

According to an article in the Sacramento News and Review, the City is working on a long-term funding solution to repair some of the City's public water fountains, 40% of which are broken, leaking, or clogged.¹⁹⁰ But, the City has no plans to build any new water fountains, even though Midtown and Downtown Sacramento have no fountains whatsoever.¹⁹¹

Access to water and sanitation through short-term shelter

Sacramento City Council Member Allen Warren has proposed the creation of a "safe, sanitary, outreach-oriented camp" that would include restrooms, showers, dog kennels, storage space, housing experts, and medical treatment.¹⁹² Thus far, his proposal has failed to gain political support.¹⁹³ As of July 2017, four months after submission of the proposal, only one other Council Member had publicly endorsed the idea.¹⁹⁴

Conclusion

The foregoing case studies paint a bleak picture: Burgeoning populations of unsheltered residents of Berkeley, Oakland, and Sacramento are experiencing a dramatic and persistent lack of access to potable water, showers, and toilets. While officials in all three communities recognize the problem and have made some efforts to address it, the cities' actions have been slow, inadequate in scale, hampered by a false dichotomy between the Housing First philosophy and providing for basic needs, and most important, insufficiently informed by the lived experiences of people experiencing homelessness.

¹⁹⁰ Michael Mott, Water for the people, Sacramento News & Review, September 14, 2017, Available at, <https://www.newsreview.com/sacramento/water-for-the-people/content?oid=25007878>.

¹⁹¹ Id.

¹⁹² Scott Thomas Anderson, Deadly important: Assaults, deaths of homeless individuals underline Sacramento councilman's frustration, July 6, 2017. Available at, <https://www.newsreview.com/sacramento/deadly-important-assaults-deaths-of/content?oid=24602588>.

¹⁹³ Id.

¹⁹⁴ Id.

RECOMMENDATIONS

Recommendations

The recommendations below aim to directly increase unsheltered Californians' access to drinking water, toilets, and water for bathing and hygiene. They take into consideration current conditions in California cities outlined in this report, and are meant to address crisis conditions faced by homeless residents, even as cities and counties prioritize moving all residents into permanent housing.

However, in order to plan and implement truly effective solutions, elected officials and program staff must include unsheltered residents directly in these processes. They must visit people experiencing homelessness on the streets and in their encampments, and convene robust listening sessions during which people experiencing homelessness share their stories and convey their needs to those with the power to intervene. This report fully endorses as essential a “Nothing about us without us”¹⁹⁵ approach by all jurisdictions seeking to provide unsheltered Californians access to their human rights to water and sanitation.

Recommendation 1:

Establish minimum State standards for access to water and sanitation.

Although AB 685 provides for the human right to water and sanitation for all Californians, it neither defines such access, nor provides a means of enforcement. To remedy this oversight, the State of California should, through legislation, regulation, or by Executive Order of the Governor:

1. Define access to water for unsheltered Californians living in established encampments¹⁹⁶ based on the UNHCR minimum standards¹⁹⁷ for planned refugee camps as follows:
 - a. 20 liters (5.3 gallons) of water per person, per day;
 - b. One water tap for every 80 people (water could be piped in or dispensed from a fillable tank on-site) within 200 meters (219 yards) of dwelling (e.g. tent, tuff shed);
 - c. One on-site shower for every 50 people; and
 - d. At least one toilet for every 20 residents, no more than 50 meters (55 yards) from dwelling.
2. Induce jurisdictions to comply with the minimum standards by tying such compliance to eligibility for relevant State funds (e.g., those related to public health programs, housing and homelessness, public restroom attendants,¹⁹⁸ community development).

Recommendation 2:

Create municipal incentives for new developments to include publicly accessible drinking fountains and toilets.

In neighborhoods frequented by homeless residents, but with inadequate public water sources and restrooms, cities could develop incentives for building developers bidding on market-rate housing and office towers in those areas to include public facilities in proposed projects. For example, cities could streamline approval for such projects, add “points” to ranking systems for proposals that include public water, restroom, or shower facilities, or provide other forms of incentives, such as tax breaks.

¹⁹⁵ Supra note 5.

¹⁹⁶ Adopting this recommendation would effectively sanction all encampments by compelling cities to create plans to service them. It will be important to carefully define “established encampment.”

¹⁹⁷ United Nations High Commissioner for Refugees, Camp Planning Standards (planned settlements). Available at, <https://emergency.unhcr.org/entry/45582/camp-planning-standards-planned-settlements>.

¹⁹⁸ See Recommendation 4.

Recommendation 3:

Identify and pursue partnerships to expand non-encampment-tied services.

Unsheltered residents who do not live in established encampments may be more challenging to serve. Expanding the availability of locations that can provide for basic needs to more dispersed homeless residents can help fill gaps. As described above, Sacramento's nonprofit Loaves and Fishes provides basic water-related services that are not encampment-based. San Francisco Bay Area churches have offered their sites for portable showers, and health clinics may be able to offer shower, laundry, water, and restroom facilities. Seattle's Urban Rest Stop (see box below) is one successful model that has been running for almost 20 years.

A recent issue brief by the Network for Public Health Law describes a promising model from Europe: "Through Nette Toilette (Nice Toilet), a public-private partnership model, over 200 municipalities in Germany and Switzerland pay businesses between €30–100 (\$33–110) per month to make their toilets public. Bremen,

Seattle's "Urban Rest Stop" *A Respite in the City*

The Urban Rest Stop (URS), a program of Seattle's Low Income Housing Institute, has for two decades provided individuals and families experiencing homelessness a safe, friendly place to use restrooms, laundry facilities, and showers at no cost.

Using funds from the City of Seattle, the federal Department of Housing and Urban Development, and private donations from corporations and foundations, URS maintains restrooms for men and women, and provides washers and dryers, five private showers with sinks, toilets, mirrors, and shelf space for gear. The facility opens early (5:30 a.m.) so people can shower before work or use a restroom after a night on the streets. Shower times must be scheduled in person; washers and dryers are also scheduled, but can be reserved by phone.

URS maintains low overhead in part due to program manager Ronni Gilboa's relentless bargain hunting for all the supplies to stock toilets and showers and keep the washing machines humming. Gilboa is a veteran of social-service management. Her work is grounded in—in her words— "keeping people healthy, safe and alive."

The hygiene center is at street level, with 47 units of low-income, transitional housing above. Inside, clients read donated books and leaf through old *National Geographic* magazines while their clothes are washing; coveralls are provided for those who are laundering their only set of clothes.

URS is a byproduct of a court settlement after a bitter fight and three-year lawsuit that primarily involved public toilets for unsheltered people in the Glen Hotel on Third Avenue. One of the fiercest opponents of that 1990s battle, the Downtown Seattle Association ("DSA"), is now one of URS's proudest supporters.

DSA President Kate Joncas describes the hygiene center as "a valuable downtown asset and a good neighbor that has never drawn complaints." That assessment is confirmed by neighbor, Karen Tuff, who lives and works in The Cosmopolitan, a high-rise condominium residence across the street. A former Belltown resident, Tuff describes the Urban Rest Stop as tidy, well-run with no "ominous characters" who have ever made her, her employees or visiting family members uncomfortable.

Sourced from Interviews with DSA staff & UHS staff and supporters

Germany spends €150,000 (\$165,000) annually—€100 per month to each of 125 participating businesses—to maintain its public toilet network through *Nette Toilette*. An equivalent, exclusively city-run system would cost approximately €1.1 million (\$1.2 million) per year."¹⁹⁹

¹⁹⁹ Morcelle, *supra* note 33.

California cities and counties should explore and develop a variety of partnerships to improve access to water and sanitation for unsheltered residents.

Recommendation 4:

Ensure all public drinking fountains are operational, accessible, and remain in good repair.

Cities and counties should conduct an inventory of all public drinking fountains and:

1. Map their locations and publicize them;
2. Restore all of them to working order;
3. Ensure they are ADA accessible;
4. Ensure they are water bottle accessible, with either an at-least palm-height stream or (better) a specific water bottle refill function;²⁰⁰ and
5. Implement an at-least-weekly maintenance schedule.

Recommendation 5:

Ensure all public toilets are operational, accessible, clean, safe, and in good repair.

Cities and counties should conduct an inventory of all public toilets and:

1. Map their locations and publicize them;
2. Restore all of them to working order;
3. Keep them open at all times;
4. Ensure they are ADA accessible;
5. Implement a daily (or better) cleaning and maintenance schedule; and ideally
6. Staff them to improve safety.

Maintenance and cleaning tasks could be provided by hired restroom attendants who are presently or formerly homeless. A comprehensive audit of how to improve restroom access for Los Angeles' Skid Row population recommended that the City "hire and train bathroom attendants selected from the Skid Row community to provide round-the-clock security and referrals to food, shelter, showers, clothes washers and healthcare," and further suggests that attendants could be equipped with cellphones to report safety concerns or alert maintenance crews when repairs or supplies are needed.²⁰¹

Cities could reduce their costs by contracting with non-profit service providers to hire and manage these workers.

Recommendation 6:

Provide ongoing basic services (potable water, toilets, hand washing stations, showers) at all established encampments.

Municipalities should immediately add potable water service to all encampments at which they already provide port-a-potties and hand washing stations. The best approach would be to work with the local water utility to get water piped into the site. Portable water tanks can be a viable stop-gap measure. According to

200 At a local level, independent efforts to assess the locations and state of repair of public drinking fountains have occurred. See, for example, Avery, Dylan C. and Smith, Charlotte D. Access to public drinking water fountains in Berkeley, California: A geospatial analysis. BMC Public Health. 2018. However, municipalities should be funding, conducting and/or supervising such work, as well as publicizing the results on a regular basis through channels accessible to unsheltered residents.

201 Morcelle, supra note 33.

Basic & Urgent

an estimate from United Site Services of California, Inc., it costs \$850 to set up a 330-gallon potable water tank, and about \$90 per week to service it in Oakland.²⁰²

For unserviced camps, jurisdictions should establish services. For example, The Oakland Warehouse Coalition in February 2017 mapped established encampments in the City of Oakland,²⁰³ and received an estimate for port-a-potties, hand-washing stations, and potable water tanks for 27 encampments. The estimated cost per four weeks was \$20,295 (\$263,839 per year), with one-time set-up costs (across all 27 encampments) of \$24,650.²⁰⁴

For shower services, public agencies should, as a stop-gap measure, contract with providers like mobile shower and laundry providers like Lava Mae or Project WeHOPE's "Dignity on Wheels." (See box below.)²⁰⁵



Project WeHOPE's Dignity on Wheels mobile shower and laundry unit in San Mateo County, California. Photo Credit: San Mateo County Manager's Office

When Showers = Hope "Dignity on Wheels"

In 2016, East Palo Alto-based Project WeHOPE teamed up with the Downtown Streets Team and Trinity Church in Sunnyvale, California, to launch "Dignity on Wheels," a program that provides free roving showers and laundry service to homeless individuals. The program rolls out a mobile truck trailer outfitted with two showers (one wheelchair accessible) and a washer and dryer that can be used for free.

The project sprung from a \$200,000 anonymous donation. Tide and Downy donated laundry materials for one year, and Garden Court Hotel donated \$10,000 worth of new towels.¹ Paul Bains, a pastor as well as Project WeHOPE's founder and president, said that there has been significant interest in expanding the number of Dignity on Wheels stops, as well as the number of trucks. "We've met with 40 churches in San Jose that would like to host. The demand is much greater than what we can supply right now."¹

One "Dignity on Wheels" truck driver, Jimmy Cosey, used to be homeless. He said a shower can make all the difference to someone on the streets when it comes to searching for a job and getting cleaned up for an interview. "This is awesome; it's a wonderful feeling," he said.

Sourced from Interviews with Project WeHOPE Staff

202 United Site Services of California, Inc. Estimate No. 40813 to Oakland Warehouse Coalition, February 9, 2017. Obtained from David Modersbach at Alameda County Healthcare for the Homeless.

203 Google Map of established Oakland homeless encampments, prepared by Oakland Warehouse Coalition, <https://goo.gl/KrAdTg>.

204 United Site Services, supra note 202.

205 Cost estimates for these services were not available for this report.

CONCLUSION

Although international law and California AB 685 establish drinking water and sanitation as basic human rights, the State, its counties, and its cities are failing to ensure access to these most basic needs by people experiencing homelessness. At present, more than 91,000 unsheltered Californians lack reliable access to drinking water, toilets, and showers. This predicament undermines their health, well-being, and dignity; compromises public health more broadly; and impairs the quality of life for housed residents regularly exposed to human urine and excrement on sidewalks and doorsteps. The problem of access to water and sanitation will only become more acute as rents in California cities continue to rise, and the number of unsheltered residents further outstrips the number of available shelter beds and planned affordable housing units. Redressing this situation is a moral, practical, and legal imperative.

While permanent housing is the ultimate solution to ensuring reliable access to water and sanitation, and emphatically should be municipalities' goal with respect to every unsheltered resident, the pace at which cities are adding very-low and low-income housing units is dramatically misaligned with the demand for such units, such that tens of thousands of Californians will continue to be unsheltered for the foreseeable future. Therefore, it is incumbent on planners, service providers, and decisionmakers to break free from the current paradigm that holds as mutually exclusive the notions of moving people into permanent housing and providing for their immediate water and sanitation needs. This must be replaced with a holistic approach that ensures unsheltered Californians' access to water and sanitation meets at least the minimum standards recommended in this report, even as efforts to house people permanently continue and expand.

Although the recommendations herein can help guide advocates, community members, and public servants seeking to expand access to water and sanitation by their unsheltered neighbors, it is crucial that any interventions engage people experiencing homelessness directly and meaningfully in both the design and implementation of water and sanitation solutions.

Related—and fundamental—decisionmakers and service providers must become deeply inspired to solve water-access problems, which, particularly in the case of drinking water, can be largely invisible: although service providers and policy experts interviewed for this report were generally very aware that lack of



Members of Alameda County Health Care for the Homeless holding a listening session attended by nearly 50 homeless residents in December 2016. Photo credit: ACHCH website.

access to toilets was a significant problem for unsheltered people, quite a few admitted that they and their colleagues had not been thinking about access to drinking water for this population. Therefore, those seeking change must help decisionmakers access and listen to the stories of their unsheltered constituents. Hearing first-hand from people like James Lee Clark, an unsheltered resident of Sacramento quoted in this report, can help those with the power to act imagine what it would be like if finding water or a toilet was one of *their* biggest daily challenges. Increasing empathy for the lived experiences of unsheltered Californians can help transform a low-visibility problem into a priority in an instant, and spark robust action to uphold for our State's most vulnerable residents the human right to access water and sanitation.