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November 15, 2013

**Via U.S. Mail and E-Mail**

**Molly Stump, Esq.**  
**Office of the City Attorney**  
City Hall, 8th Floor  
250 Hamilton Avenue, Palo Alto, CA 94301  
city.attorney@cityofpaloalto.org

Re: Injunction to Prohibit Enforcement of Palo Alto's Vehicle Habitation Ordinance

Dear Ms. Stump:

I am an attorney representing James Russaw, Suzan Russaw, Fred Smith and other homeless vehicle dwellers ("Plaintiffs") in potential civil proceedings against the City of Palo Alto (the "City"), the City Council (the "Council"), the Palo Alto Police Department and Dennis Burns, in his official capacity as Chief of Police for the City (collectively, "Defendants") to prevent enforcement of the Vehicle Habitation Ordinance, Chapter 9.06 of Title 9 (Public Peace, Morals, and Safety) of the Palo Alto Municipal Code, as amended (the "VHO")<sup>1</sup> against them and other similarly-situated residents of Palo Alto.

- **Enactment of the VHO**

The VHO was enacted in August 2013 by the City to force homeless residents out of Palo Alto. The VHO prohibits use of a vehicle at anytime and anywhere in any public areas of Palo Alto for

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<sup>1</sup> City of Palo Alto's Vehicle Habitation Ordinance is Chapter 9.06 of Title 9 (Public Peace, Morals, and Safety) of the Palo Alto Municipal Code, amended to read as follows: "9.06.010 Human Habitation of Vehicles Prohibited. It is unlawful for any person to use, occupy, or permit the use or occupancy of, any vehicle for human habitation on or in any street, park, alley, public parking lot or other public way. The following uses are exempt from the provisions of this section: any mobile living unit used for human habitation allowed by another provision of this code or required procedure of the city; and guests of city residents for up to forty-eight consecutive hours when parked adjacent to the resident's dwelling. For purposes of this section, 'human habitation' means the use of a vehicle for a dwelling place, including but not limited to, sleeping, eating or resting, either single or in groups and 'vehicle' is defined as set forth in Section 670 of the California Vehicle Code, as amended.

human habitation, which includes “sleeping, eating, or resting” in one’s vehicle. A violation may result in misdemeanor criminal charges, punishable by a fine of up to \$1,000 or six months in jail.<sup>2</sup> The VHO makes it a crime for a person to live in his car, even if he has no other shelter available to him and even if his personal safety, as well as his mental and physical health, would be threatened or severely injured by not being able to live in his car (i.e., being forced to sleep on the ground, where not unlawful within Palo Alto).

The effect of the VHO is to cause a person who is otherwise lawfully living in his vehicle to leave or not enter Palo Alto, even if such person is otherwise law-abiding, for fear of being cited, arrested, convicted or fined under the VHO. Without a rental agreement or conventional home ownership, Palo Alto’s vehicle dwellers, including Plaintiffs, are effectively excluded from stopping on any Palo Alto streets and can be cited for performing innocent acts, including necessary acts of sleeping, eating or resting.

Enforcement of the VHO, which the City has stated will commence January 6, 2014, will cause the poorest and most vulnerable among us to lose the only protection that they have from exposure to the elements and to ensure some measure of personal safety. It cannot be disputed that sleeping in a vehicle affords better protection for homeless persons’ health and safety than living or sleeping outdoors on streets, sidewalks, benches, or the ground. This is true in particular where the vehicle dweller is disabled, chronically ill, or elderly, as is the case with several Plaintiffs.<sup>3</sup> Enforcement of the VHO will exacerbate serious health issues and disabilities prevalent among Plaintiffs, who will be forced out of their vehicles or Palo Alto altogether to avoid criminal liability.

- **The VHO is Overbroad and Serves No Legitimate Purpose**

In passing the VHO, the Council claimed that it was necessary to address the concerns expressed by neighbors of Cubberley Community Center (“Cubberley”), contending that “the presence of persons living in vehicles is a recurring issue for residents and business owners,”<sup>4</sup> without explaining how a blanket prohibition on “sleeping, eating or resting” in a vehicle anywhere and at anytime in Palo Alto was necessary or appropriate to prevent any “recurring issue” or to otherwise protect any legitimate City interest. Moreover, a few weeks after the City passed the VHO, it passed a separate law banning use of Cubberley and most other City-owned properties

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<sup>2</sup> See <http://www.paloaltoonline.com/news/2013/08/05/palo-alto-bans-vehicle-dwelling>

<http://paloalto.patch.com/groups/politics-and-elections/p/palo-alto-approves-ban-on-vehicle-dwelling>

<sup>3</sup> Plaintiff James Russaw is 84 years old and receiving regular kidney dialysis and his wife, Plaintiff Suzan Claire Russaw, is 68 years old. See [http://www.mercurynews.com/ci\\_23698525/coalition-forms-oppose-palo-alto-ban-vehicle-dwelling](http://www.mercurynews.com/ci_23698525/coalition-forms-oppose-palo-alto-ban-vehicle-dwelling)

<sup>4</sup> See City of Palo Alto City Council Staff Report dated August 5, 2013 <http://www.cityofpaloalto.org/civicax/filebank/documents/35333>

and facilities between 10:30 p.m. and sunrise and that law went into effect on October 10, 2013.<sup>5</sup> Thus, the homeless have been forced to leave Cubberley and other similar public sites and facilities in Palo Alto during conventional hours of sleeping (i.e., between 10:30 p.m. and sunrise). Taken together, it is clear that these two laws target the “presence”—the very existence of homeless persons—within Palo Alto. There is no legitimate basis for the City to effectively exile homeless persons, such as Plaintiffs, from Palo Alto.

Despite representations made by the City to the contrary prior to passage of the VHO,<sup>6</sup> most neighboring cities do not criminalize vehicle habitation. Rather, there are parking restrictions at certain times and places that are subject to a penalty of payment of a parking ticket—not a misdemeanor conviction that carries the potential for incarceration. Some, like the cities of Mountain View and Menlo Park, ban vehicle habitation in residential areas only.<sup>7</sup> Neither East Palo Alto nor Portola Valley has any laws restricting vehicle habitation or parking for the purpose of sleeping or resting. Cities across our nation have come up with restrictions that may be directed at homeless residents, but include exceptions so as to avoid punishing homeless residents for involuntary acts necessary to human survival, such as the acts of resting or sleeping.<sup>8</sup> The VHO, on the other hand, is one of the most punitive ordinances in the area and it

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<sup>5</sup> See: [http://www.mercurynews.com/breaking-news/ci\\_23858394/palo-alto-committee-backs-ordinance-oust-homeless-from#](http://www.mercurynews.com/breaking-news/ci_23858394/palo-alto-committee-backs-ordinance-oust-homeless-from#)

<sup>6</sup> See City of Palo Alto City Council Staff Report dated August 5, 2013  
<http://www.cityofpaloalto.org/civicax/filebank/documents/35333>

<sup>7</sup> The city of Los Altos ordinance is representative of other neighboring cities’ ordinances: “No person shall stop, stand, or park a vehicle on any street for a period of time longer than thirty (30) minutes between the hours of 2:00 a.m. and 6:00 a.m. of any day if notice thereof is posted in the block.” A violation would result in a parking ticket—not a misdemeanor conviction that carries the potential for incarceration. Vehicle dwellers may park anywhere in the city at any other time of day. The city of Mountain View bans vehicle habitation, but only in residential areas of the city.<sup>7</sup> Similarly, the city of Menlo Park passed the following law, punishable by a parking citation: “No person shall stop, stand or park a vehicle at any time between the hours of two a.m. and five a.m. upon those certain streets or portions thereof located within a residential zone or located within three hundred feet (300’) of a residential zone. Physicians engaged in professional calls, persons engaged in governmental duties or emergency activities are exempt from this provision.

<sup>8</sup> For example, Las Vegas prohibits standing or lying in a public way only when it obstructs pedestrian or vehicular traffic. See, e.g., Las Vegas, Nev., Mun.Code § 10.47.020 (2005) (“It is unlawful to intentionally obstruct pedestrian or vehicular traffic....”). Others, such as Portland, prohibit “camping” in or upon any public property or public right of way. See, e.g., Portland, Or., Mun.Code §§ 14A.50.020, .030 (2006) (prohibiting obstruction of public sidewalks in a designated area or camping on public property). Still others contain safe harbor provisions such as limiting the hours of enforcement. See, e.g., Seattle, Wash., Mun.Code § 15.48.040 (2005) (“No person shall sit or lie down upon a public sidewalk ... during the hours between seven (7:00) a.m. and nine (9:00) p.m. in the following zones....”); Tucson, Ariz., Mun.Code § 11–36.2(a) (2005) (same, except prohibition extended to 10:00 p.m.); Houston, Tex., Mun.Code § 40–352(a) (2006) (same, except prohibition extended to 11:00 p.m.). Other cities include as a required element sitting, lying, or sleeping in clearly defined and limited zones. See, e.g., Philadelphia, Pa., Mun.Code § 10–611(1)(b)–(c), (2)(g)–(h) (2005) (prohibiting sitting or lying in certain designated zones only); Reno, Nev., Mun.Code § 8.12.015(b) (2005) (similar); Seattle, Wash., Mun.Code § 15.48.040 (similar).

has the effect of criminalizing the status of homelessness. The VHO therefore violates the rights of vehicle dwellers in Palo Alto, including Plaintiffs, under the U.S. Constitution, California Constitution and other applicable federal and state law. The VHO also runs afoul of the principle articulated by the court in *Parker v. Municipal Judge*, 427 P.2d 642, 644 (1967), that “[i]t is simply not a crime to be unemployed, without funds, and in a public place. To punish the unfortunate for this circumstance debases society.”

- **There Is Insufficient Conventional Housing in Palo Alto and the County of Santa Clara for Palo Alto’s Vehicle Dwellers**

The City passed the VHO knowing that there are no conventional housing alternatives for Palo Alto’s vehicle dwellers. The City has repeatedly publicly acknowledged that it lacks sufficient facilities to provide shelter to the homeless persons within its borders, including homeless persons living in their vehicles.<sup>9</sup> The number of homeless persons without shelter in Santa Clara County currently exceeds 5,000 and the number of homeless persons without shelter in Palo Alto is 157. All of the vehicle dwellers, including Plaintiffs, are on multiple waiting lists for shelters, affordable or senior housing.<sup>10</sup> The fact of Plaintiffs’ vehicle habitation is a health and safety necessity—not a lifestyle choice. At a recent City public meeting, Council Member Greg Schmid noted that 75% of homeless persons in Santa Clara County are unsheltered, compared to 56% in San Mateo County and 52% in San Francisco County. He stated that, “We have to ask Santa Clara County, why are we not doing better?”<sup>11</sup> This admission by the City of a lack of alternatives to vehicle habitation by homeless residents, such as Plaintiffs, demonstrates that the City passed the VHO with deliberate indifference and reckless disregard for the health and safety of its residents who dwell in vehicles, such as Plaintiffs, as a last, reasonable resort where there are simply no conventional housing alternatives in Palo Alto or the entire County of Santa Clara.

- **Plaintiffs Will Demonstrate That They Are Entitled to Injunctive Relief**

Plaintiffs will suffer irreparable harm if the VHO is enforced against them, including without limitation exacerbation of serious health issues and disabilities. Without limiting the claims that will be asserted by Plaintiffs and remedies sought against the Defendants, Plaintiffs will demonstrate that the VHO violates Plaintiffs’ fundamental right to travel under the U.S. Constitution, right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution, rights under the Fourteenth Amendment to the U.S. Constitution and other

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<sup>9</sup> See: <https://www.cityofpaloalto.org/civicax/filebank/documents/36006>

City of Palo Alto’s current assessment that there is considerable “unmet need” for the homeless in our city and conclusions: The Santa Clara County 2013 Homeless Census and Survey indicates a county-wide population of 7,613 homeless persons, of which 74% are unsheltered – with 157 unsheltered persons known to be in the City as of 2013. Thus, there is a shortage of shelter in the county for more than 5,000 persons.

<sup>10</sup> See, e.g., [http://www.mercurynews.com/ci\\_23698525](http://www.mercurynews.com/ci_23698525)

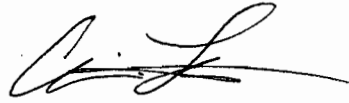
<sup>11</sup> <http://www.paloaltoonline.com/news/2013/10/08/palo-alto-proceeds-cautiously-on-tackling-homelessness>

Molly Stump  
November 15, 2013  
Page 5

protections under other applicable federal law, the California Constitution and applicable state law. We will also seek attorney fees and expenses available under applicable law.

In the spirit of attempting to resolve this matter outside of court, I and my co-counsel King & Spalding LLP request a meeting with you at your earliest convenience and in no event later than December 5, 2013. Should you fail to meet with us by December 5, 2013, we will proceed with filing a complaint in court against Defendants on behalf of Plaintiffs.

Sincerely,

A handwritten signature in black ink, appearing to read "Carrie LeRoy", with a long horizontal flourish extending to the right.

Carrie LeRoy