No. 20-55522

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANET GARCIA, et al.,
Plaintiffs and Appellees,
v.

CITY OF LOS ANGELES
Defendant and Appellant.

Appeal from the United States District Court
for the Central District of California
Case No. 2:19-cv-06182-DSF-PLA
Hon. Dale S. Fischer

APPELLANT'S OPENING BRIEF

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INTRODUCTION

There are thousands of unhoused people for whom sidewalks and other public spaces in the City of Los Angeles have become living spaces of last resort. Unhoused people do not forfeit their right to own personal property because they've lost their homes. But the City's public areas cannot simultaneously accommodate the needs of the public at large *and* function as storage spaces for all sizes, types, or amounts of personal property that people may want to keep in them.

No one disputes that the City can regulate what a person may store in its public areas. So—subject to exceptions for things like tents, wheelchairs, and operable bicycles—the City prohibits the storage in public areas of items that are too large to fit in a 60-gallon container with the lid closed. Los Angeles Municipal Code Section 56.11(3)(i) prohibits anyone from using its public areas to store such "Bulky Items," which the City removes from those spaces when it encounters them. Several unhoused Angelenos and advocacy organizations sued the City over its enforcement of that prohibition, claiming (in relevant part) that it violates both the Fourth Amendment's warrant requirement and the Fourteenth Amendment's Due Process Clause on

its face. The district court agreed, and preliminarily enjoined the City from enforcing Section 56.11(3)(i) in its entirety. The City then brought this appeal.

Let there be no confusion: The problem of homelessness in Los Angeles is a tragedy of historic proportions. No one relishes the notion of taking things from people who have very little to begin with. And while it would be difficult to disagree that large items accumulating on the City's streets are a problem—they *are* a problem—people can certainly disagree in good faith about whether the policy embodied by Section 56.11(3)(i) is the best way to solve that problem.

But disagreement about whether Section 56.11(3)(i) is good policy is one thing; disagreement about whether it is constitutional is another. The City violates neither the Fourth Amendment's warrant requirement nor the Fourteenth Amendment's Due Process Clause by removing a Bulky Item from a public area where someone has stored it. The district court was wrong to conclude otherwise.

First, as a matter of law, it cannot be that the Fourth Amendment requires the City to get a warrant before removing a Bulky Item from a sidewalk any more than the Fourth Amendment requires (for example)

a municipality to get a warrant before towing a car that someone leaves parked on the same sidewalk. The Fourth Amendment imposes no such requirement in either case, because in both cases the government is functioning as a community caretaker, not a criminal investigator.

Nor does the Fourteenth Amendment's Due Process Clause require the City to give a Bulky Item's owner any more notice before removing a Bulky Item than the owner of the sidewalk-parked car gets before his or her car is towed away. And even if due process requires more notice before removing a Bulky Item from a public area in *some* circumstances, it does not require more notice in *all* circumstances. Yet it is the latter proposition that must be true in order to find, as the district court did, that Section 56.11(3)(i) violates the Fourteenth Amendment on its face.

Admittedly, what the City does with Bulky Items after seizing them presents a different question. After removing Bulky Items from its public areas, Section 56.11(3)(i) allows the City summarily to discard them. Due process, however, generally requires that the owner of property of more than de minimis value must have a chance to be heard before being deprived permanently of that property. That is why

municipalities cannot summarily destroy the cars they tow. Section 56.11(3)(i) thus might provide insufficient process before the destruction of Bulky Items. The district court found as much, at any rate.

There is no need to address that finding now, though, because regardless whether the district court was right to enjoin the City from summarily disposing of Bulky Items, it was wrong to enjoin the City from seizing Bulky Items. The district court declined even to analyze those two functions separately, which casts its error into even sharper relief—because Section 56.11 contains a severability clause. If Section 56.11(3)(i)'s language allowing for the summary destruction of Bulky Items is constitutionally dubious, the severability clause obliged the district court to excise it—while preserving the constitutionally sound language permitting the removal of Bulky Items. It was a mistake of law for the district court not to do so.

This Court should fix the error. It should vacate the injunction and remand with instructions for the district court enter to an order recognizing that the Constitution allows the City to enforce Section 56.11(3)(i) to remove Bulky Items from public areas, even if it may not summarily discard those items.

JURISDICTIONAL STATEMENT

Because this action includes federal claims made under 42 U.S.C. § 1983, the district court had subject-matter jurisdiction over it pursuant to 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1367(a). The district court entered a preliminary injunction against the City of Los Angeles on April 13, 2020. The City filed a timely notice of appeal on May 12, 2020. Fed. R. App. P. 4(a)(1). This Court has jurisdiction over the City's appeal pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE CASE

A. As the accumulation of personal property overwhelms its public areas, the City of Los Angeles's Municipal Code Section 56.11 limits the amount and type of personal property that can be stored in those areas.

The deplorable reality is that there are a great many Angelenos who have been forced to live on the streets by circumstances that are well beyond the scope of this litigation. With the people living in the City's public areas goes their personal property. (*E.g.*, 2 ER 194.) So the City enacted an ordinance "to balance the needs of the public at large to access clean and sanitary public areas" with "the needs of the individuals, who have no other alternatives for the storage of personal property, to retain access to a limited amount of personal property in public areas." L.A. Mun. Code § 56.11(1).

In line with its purpose, Section 56.11 simultaneously does two things: (1) it permits the storage of certain types and quantities of personal property in public areas, and (2) it prohibits the storage of other types or quantities of personal property in public areas.[1]

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[1] Section 56.11 defines many terms, including e.g., "Personal Property." To avoid excessive capitalization in the text, this brief capitalizes terms only when reference to a defined term is particularly critical.

So, for example, a person cannot store personal property, unattended, in a public area—someone must be around to assert ownership over it. *Id.* § 56.11(3)(a). With between 24- and 72-hours' advance warning, the City will remove any such property that it encounters, and leave notice of where it can be claimed. *Id.* (Stored items may be discarded if unclaimed for 90 days. *Id.* § 56.11(5).) Likewise, a person cannot store in a public area more private property than would fit in a 60-gallon container with the lid closed, whether or not he or she is around to assert ownership of that property. *Id.* § 56.11(3)(b). The City removes and stores that property, too, subject to the same notice provisions as is unattended property. *Id.*

Then there are things that the City removes and stores without any advance notice. For example, no notice is required to remove property that causes a violation of the Americans with Disabilities Act by obstructing a public area, *id.* § 56.11(3)(d), or property stored "within ten feet of any operational and utilizable entrance, exit, driveway, or loading dock," *id.* § 56.11(3)(e). There are also some things that the City removes and discards immediately, including items that pose an "immediate threat to the health or safety of the public." *Id.*

§ 56.11(3)(g). That includes, for example, things contaminated with urine and feces, or combustible materials. (*See, e.g.*, 3 ER 372 [hazardous items removed by quantity].)

And—critically for this case—Section 56.11 also directs that "[w]ithout prior notice, the City may remove and may discard any Bulky Item," regardless of whether it's attended or not, unless the Bulky Item is designed to be used as a shelter. *Id.* § 56.11(3)(i). If it is designed to be used as a shelter, the Bulky Item will not be removed without 24- to 72-hours' notice, though the ordinance still empowers the City immediately to discard it upon removal. *Id.*

What is a Bulky Item? Section 56.11 defines it as "any item, with the exception of a constructed Tent, operational bicycle, or operational walker, crutch or wheelchair, that is too large to fit into a 60-gallon container with the lid closed, including, but not limited to, a shed, structure, mattress, couch, chair, other furniture or appliance." *Id.* § 56.11(2)(c). The definition excludes "[a] container with a volume of no more than 60 gallons used by an individual to hold his or her Personal Property." *Id.*

Why measure a Bulky Item's size against a 60-gallon container with a lid? One reason is that facilities in the City in which homeless people can store personal property hold that property in 60-gallon containers with lids. (Req. for Judicial Notice at 11–12.)[2] Another reason is that when items are removed from the City's public areas, it is the City's Bureau of Sanitation does it. L.A. Mun. Code § 56.11(11). In Sanitation's argot—and as defined by both federal and state regulations—bulky items are "large items of solid waste such as household appliances, furniture, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal solid wastes collection, processing, or disposal methods." (3 ER 212 ¶ 41.) A normal household solid waste container is also a 60-gallon container with a lid. L.A. Mun. Code § 66.48(A). Something that doesn't fit in such a container thus "complicates" normal handling, and is therefore bulky.

For all of the conduct that it prohibits, Section 56.11 prescribes no criminal punishment for storing things where they cannot be. The only

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[2] The City filed a request for judicial notice along with this brief.

criminal penalties it carries apply to someone who interferes with the City's attempts to enforce the ordinance's various prohibitions. *Id.* § 56.11(10).

In addition to its substantive provisions, and also critically for the purposes of this case, Section 56.11 has a severability clause. It provides that "[i]f any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance." *Id.* § 56.11(12). Further, the City Council "would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional." *Id.*

B. Several unhoused Angelenos, an organization that advocates on behalf of the homeless, and a group of disgruntled taxpayers sue the City for damages and to enjoin its enforcement of various parts of Section 56.11.

A group of several unhoused Angelenos sued the City to enjoin enforcement of various parts of Section 56.11. (Second Am. Compl.

[Doc. No. 43] ¶¶ 23, 27, 29, 31, 34, 36.) They were joined in the suit by Ktown for All—"an unincorporated membership organization" created "to form connections between housed and unhoused residents of Koreatown"—and the Association for Responsible and Equitable Spending—"a membership organization comprised of taxpayers in Los Angeles that was founded to ensure that their tax dollars are used to promote responsible public spending." (*Id.* ¶¶ 38, 44.)[3]

The individual Plaintiffs in the case each alleged various injuries caused by the City's enforcement of Section 56.11. The allegations ranged from having cleaning supplies removed and discarded as a health and safety hazard (*id.* ¶ 132) to having chairs removed and discarded as Bulky Items (*id.* ¶ 200) to having tents and blankets discarded (*id.* ¶ 163).

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[3] Citations are to the Second Amended Complaint rather than to the pleadings that were at issue when Plaintiffs moved for a preliminary injunction. Plaintiffs amended their pleadings while their motion was pending, but the district court found that the amendment did not affect the motion. (1 ER 3–4 n.1.) After the City appealed, the district court dismissed the Second Amended Complaint in part, and directed Plaintiffs to file a Third Amended Complaint. (*See* 4 ER 514.) There is an ongoing dispute in the district court over the two associational Plaintiffs' standing to sue.

Ktown for All alleged both that its unhoused members were harmed by the enforcement of Section 56.11 and that it was harmed, itself, because it had to devote resources "that it could have spent on advocating for shelters and connecting with neighbors" on instead "identifying and counteracting the City's practices." (*Id.* ¶ 41.) The Association for Responsible and Equitable Spending alleged simply that its members advocate "against the use of their dollars to enforce illegal laws that harm vulnerable residents of the City;" the Association apparently believes that Section 56.11 is such an "illegal law." (*Id.* ¶ 44.)

These allegations purportedly give rise to five federal and two state law claims for relief. The two claims relevant to this appeal are the first—that on its face, Section 56.11(3)(i) violates the Fourth Amendment to the United States Constitution by allowing the warrantless seizure and destruction of Bulky Items—and the fourth—that on its face, Section 56.11(3)(i) violates the Fourteenth Amendment's Due Process Clause by failing to provide adequate process before a Bulky Item is seized and destroyed. (Second Am. Comp. ¶¶ 232–38, 255–58.) The individual Plaintiffs sought damages for their

claims; all Plaintiffs sought declaratory and injunctive relief barring the City from enforcing various portions of Section 56.11. (*Id.* at 60.)

C. Plaintiffs move to enjoin the City from enforcing Section 56.11(3)(i), which directs that the City "may remove" and "may discard" Bulky Items stored in public places.

Plaintiffs then moved to enjoin the City from enforcing Section 56.11(3)(i). (Prelim. Inj. Mot. [Doc. No. 38].) They supported their motion for a preliminary injunction with declarations:

Two homemade carts belonging to Plaintiff Marquis Ashley were seized and discarded as Bulky Items in Mr. Ashley's presence—and he is concerned that a new cart will also be seized and discarded. (4 ER 467–68 ¶¶ 10–11; 4 ER 471–72.) Plaintiff Pete Diocson Jr. had one dog kennel, and then another, removed and discarded as Bulky Items. (4 ER 487 ¶¶ 7, 12–15; 4 ER 491, 493.) Rachelle Bettega, an unhoused member of Plaintiff Ktown for All, had a bicycle that was missing a wheel discarded as a Bulky Item. (4 ER 504–05 ¶¶ 2, 6–7.) She is concerned that the City will seize and discard a stackable plastic stand in which she keeps various items. (4 ER 506 ¶ 13.) And various Ktown for All organizers witnessed the City's seizure and removal of Bulky

Items during a clean-up, of which they made a video recording. (4 ER 477–79; 4 ER 482; 4 ER 499 ¶¶ 8–9.) One of them noted that monitoring clean-ups, and replacing items that the City removes and discards during those clean-ups, taxes the organization's time and resources. (4 ER 500 ¶ 10.)

Based on that evidence, Plaintiffs argued that they had standing to seek an injunction that would prevent the City from enforcing Section 56.11(3)(i) as violating, on its face, both the Fourth Amendment's warrant requirement and the Fourteenth Amendment's Due Process Clause.[4]

As to the Fourth Amendment, Plaintiffs contended that they were likely to succeed on the merits of their claim because Section 56.11(3)(i) allows for the seizure of Bulky Items with no warrant, rendering it per se unconstitutional *unless*—according to Plaintiffs—"the seizure and summary destruction of property, solely based on the size of the item, is

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[4] Plaintiffs also raised a procedural due process claim under the California Constitution, but both Plaintiffs (Prelim. Inj. Mot. at 12 n.8) and the district court (1 ER 24 n.23) left Plaintiffs' due process argument to stand or fall based on Fourteenth Amendment case law alone.

reasonable." (Prelim. Inj. Mot. at 11.) They then asserted that "[t]he City cannot identify a warrant exception or constitutional principle that allows it to seize and immediately destroy property solely based on its size," and that the immediate destruction of a Bulky Item is therefore facially unreasonable. (*Id.* at 11–12.)

As to the Fourteenth Amendment, Plaintiffs pointed to authority that some form of hearing is required before a person's property interest is destroyed, and argued that Section 56.11(3)(i) allows the combined removal and destruction of Bulky Items stored in public areas without that procedural requisite. (*Id.* at 13.) Plaintiffs claimed that was tantamount to failing to provide any process whatsoever, and consequently that Section 56.11(3)(i) violates the Fourteenth Amendment on its face. (*Id.* at 14.)[5]

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[5] Only the first *Winter* factor—Plaintiffs' likelihood of success on the merits—is really at issue in this appeal. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). If this Court agrees that the district court got the law wrong in deciding Plaintiffs' likelihood of success on the merits, then the district court abused its discretion and its analysis of the other three factors is largely irrelevant. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc). For that reason, this brief does not summarize the district court filings' approach to the remaining *Winter* factors.

D. Despite the City's repeated contention that Section 56.11(3)(i)'s "may remove" language should be analyzed separately from its "may discard" language, the district court analyzes them together and enjoins the City from enforcing Section 56.11(3)(i) in its entirety.

The City opposed Plaintiffs' motion. In doing so, it observed that while "Plaintiffs speak of 'seizure and destruction' as one concept," they are actually "two events" that "must be analyzed separately." (Prelim. Inj. Opp'n [Doc. No. 42] at 15–16.) The City then stated, explicitly, that "the Court should evaluate the constitutionality of [Section 56.11(3)(i)'s] 'may remove' and 'may discard' separately." (*Id.* at 16.)

The City argued, as to the Fourth Amendment, that no warrant or individualized exception to the warrant requirement is necessary before it removes Bulky Items stored in public areas. (*Id.* at 12.) In fact, the City observed, "[t]he Supreme Court has expressly rejected that traditional formulation in a variety of contexts, particularly where, as here, 'a Fourth Amendment intrusion serves special governmental needs beyond the normal need for law enforcement' and 'it is impractical to require a warrant or some level of individualized suspicion in the particular context.'" (*Id.*)

Responding to Plaintiffs' Fourteenth Amendment argument, the City pointed out that it was Plaintiffs' burden to show that Section 56.11(3)(i) does not "adequately safeguard an individual's property interest" under "any set of conceivable circumstances." (*Id.* at 19.) The City then observed that due process is a flexible, circumstance-dependent concept, and that the type of process due could depend on the nature of the seized Bulky Item. (*Id.* at 20.) It also noted that the risk of erroneously depriving someone of something that isn't actually a Bulky Item is low, because the only factors that go in to that decision are whether the item fits in a 60-gallon container with the lid closed and whether it is in a public area. (*Id.* at 21.) And, it added, the administrative burden on the City of providing additional process would be significant. (*Id.* at 21–22.)

The district court issued a tentative order that effectively adopted Plaintiffs' positions across the board. (Tentative Order [Doc. No. 54].) Despite the City's argument that the removal and destruction of Bulky Items needed to be analyzed separately, the district court began its analysis with the statement that "Plaintiffs are likely to succeed on the merits of their claim that [Section 56.11(3)(i)] authorizes unreasonable

seizures in violation of the Fourth Amendment by permitting the seizure *and* immediate destruction of Bulky Items." (*Id.* at 10, italics added.) Throughout its tentative order, the district court continued to treat the removal and destruction of Bulky Items as a single question, which it answered repeatedly in Plaintiffs' favor.

For instance, in deciding whether the Section 56.11(3)(i) violates the Fourth Amendment on its face: "The question here is not whether the City can 'limit the size of items that a person can store in a finite public space,' but whether it can seize *and* destroy items because they are of a particular size. The answer to that question is no." (*Id.* at 11, italics added.) Or in deciding whether the ordinance violates the Fourteenth Amendment's Due Process Clause, again, on its face: "Because [Section 56.11(3)(i)] permits the City to remove *and* permanently destroy Bulky Items without any procedural safeguards whatever, Plaintiffs are likely to succeed on the merits of their due process claim." (*Id.* at 15, italics added.)

The district court did not, however, decide whether *either* the removal *or* the destruction of Bulky Items would violate the Fourth or Fourteenth Amendments. Because whether something can be removed

and whether it can be discarded are two different questions, the City objected in writing to the district court's order on (in part) the grounds that it "focuses on the destruction, rather than the removal, of Bulky Items." (Def.'s Objections to Tentative Order [Doc. No. 55] at 5.) The City argued, again and explicitly, that "removal and destruction are distinct concepts in the ordinance and the law," and, moreover, that Section 56.11 has a severability clause that requires the two be treated separately in analyzing Section 56.11(3)(i). (*Id.*) The district court's tentative order, however, only "notes that the ordinance contains a severance provision;" it "does not address whether both removal and destruction are unconstitutional in all circumstances, and if not, whether severance of the offending clause may be appropriate." (*Id.*)

The district court did not address this objection in its final order, which adopted its tentative order materially unchanged. The City appealed. (2 ER 36.)

ISSUES ON APPEAL

I. Does the Fourth Amendment's warrant requirement render Section 56.11(3)(i) unconstitutional on its face, or can the City remove Bulky Items stored in public areas pursuant to its function as a community caretaker?

II. Does the Fourteenth Amendment's Due Process Clause likewise or alternatively render Section 56.11(3)(i) unconstitutional on its face, or are there are least some cases in which the ordinance provides sufficient process for the City to remove Bulky Items stored in public areas?

III. Was the district court required by Section 56.11's severability clause to sever and analyze separately Section 56.11(3)(i)'s "may remove" language and its "may discard" language?

IV. Based on Plaintiffs' evidence and argument, did the district court abuse its discretion by issuing as broad an injunction as it did?

STANDARD OF REVIEW

A district court's decision to enter a preliminary injunction is reviewed for an abuse of discretion. *Garcia v. Google, Inc.*, 786 F.3d 733, 739 (9th Cir. 2015) (en banc). That means its legal reasoning is reviewed de novo; a legal error is a per se abuse of discretion. *Mastro v. Rigby*, 764 F.3d 1090, 1097 (9th Cir. 2014); *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). The district court's application of the law to the facts is then reviewed deferentially, and is subject to reversal only if it "was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record." *Hinkson*, 585 F.3d at 1262 (internal quotation marks omitted).

A party seeking a preliminary injunction must have demonstrated four things: (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury in the absence of an injunction; (3) that the balance of equities tips in the moving party's favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The first factor is the most important; a failure to demonstrate a likelihood of success on the merits makes any showing on the remaining three factors irrelevant. *Google*, 786 F.3d at 740.

SUMMARY OF ARGUMENT

Both this Court's jurisprudence and the severability clause in Section 56.11 required the district court to consider separately the questions (1) whether it is unconstitutional to remove Bulky Items stored in public areas and (2) whether it is unconstitutional to summarily destroy Bulky Items stored in public areas. Those are two very different questions, and they probably have different answers.

The district court didn't treat them that way, leading it conclude that Plaintiffs have a likelihood of success on the merits under circumstances when they almost certainly do *not*—and thereby to issue an overbroad injunction.

For example, if the question is whether Section 56.11(3)(i) facially violates the Fourth Amendment's warrant requirement by allowing the City to remove Bulky Items from public areas, the answer is almost certainly "no:" The City's community caretaking function must allow the City, under at least some circumstances, to remove Bulky Items stored in public areas—just as the same function would permit the City to tow an illegally parked car without getting a warrant first.

Likewise, if the question is whether Section 56.11(3)(i) facially violates the Fourteenth Amendment's Due Process Clause by allowing the City to remove Bulky Items from public areas, the answer again is almost certainly "no:" The process due before a temporary deprivation of personal property is different than that due before its destruction, and likely varies depending on the nature of the property. It is exceedingly unlikely that Section 56.11(3)(i) provides insufficient process in *every* instance of removal, as was Plaintiffs' burden to demonstrate in bringing a facial challenge.

Consequently, whatever the constitutionality of summarily destroying Bulky Items, the district court was required at least to sever and preserve the portions of Section 56.11(3)(i) dealing with the removal of Bulky Items. Any resulting injunction should have been fashioned accordingly. The district court's failure to do that was reversible error. This Court should vacate the injunction and return it to the district court to fashion properly, anew.

ARGUMENT

I. Plaintiffs are unlikely to prevail on a facial Fourth Amendment challenge to the City's ability to remove Bulky Items from public areas.

A. The Fourth Amendment doesn't require officials to get warrants before performing the community caretaking function of removing private property from public places where it isn't supposed to be.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. That means the Fourth Amendment permits *reasonable* searches and seizures; indeed, "reasonableness is always the touchstone of Fourth Amendment analysis." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016). As a matter of shorthand, it's sometimes said that this amounts to the imposition of a warrant requirement—because whether a seizure is reasonable is *almost* always gauged by whether the officials conducting it have a warrant to do so. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *Sandoval v. Cnty. of Sonoma*, 912 F.3d 509, 515 (9th Cir. 2018).

Almost always. A warrant functions to vouchsafe the reasonableness of the seizure, but it's the reasonableness, not the

warrant, that's actually required. *McArthur*, 531 U.S. at 330; *Sandoval*, 912 F.3d at 515. Thus, "[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." *McArthur*, 531 U.S. at 330.

For example, stopping cars briefly at a sobriety checkpoint is a seizure, but it isn't one that requires the officers manning the checkpoint to get a warrant. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 450, 455 (1990). Or, if "animal workers in an urban setting confront an obviously diseased or ill animal living in foul conditions that may be causing or compounding the animal's suffering, whether a bird or a dog or a cat, those workers have the right to seize the animal without getting a warrant." *Recchia v. City of L.A. Dep't of Animal Servs.*, 889 F.3d 553, 559 (9th Cir. 2018).

And, as more than a few drivers learn, the police don't need to get a warrant to tow a car that's parked somewhere it shouldn't be. Their authority "to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."

South Dakota v. Opperman, 428 U.S. 364, 369 (1976). Police officers—or other government officials—do things like this in discharging a community caretaking function. *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005). They regularly seize things for reasons "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

This Court's community-caretaking jurisprudence has dealt almost totally with the impoundment of vehicles. *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1137–38 (9th Cir. 2019). That, however, is a function of the cases in which the community caretaking exception to the Fourth Amendment's warrant requirement is frequently asserted. It is not, in and of itself, a limitation on the exception's scope.

Nothing in law or logic limits the non-investigatory function of "[r]emoving" things that "impede[] traffic or threaten[] public safety and convenience" to removing cars from streets. *Opperman*, 428 U.S. at 369; *see, e.g.*, *Caniglia v. Strom*, 953 F.3d 112, 122, 130–33 (1st Cir. 2020) (without relying on either an exigent circumstances or emergency aid exception, seizing firearms from a house); *Vargas v. City*

of Philadelphia, 783 F.3d 962, 972 (3d Cir. 2015) (briefly seizing people "for a non-investigatory purpose and to protect" them "or the community at large"); *United States v. Miller*, 589 F.2d 1117, 1125 (1st Cir. 1978) (boarding an improperly moored, and seemingly abandoned, boat); *see also Carter v. Kirk*, 422 F. App'x 752, 752 (10th Cir. 2011) (seizing cattle with "a demonstrated propensity" for wandering). It would be strange to suggest, for example, that the Fourth Amendment distinguishes between the obstruction caused by construction materials left on the street for days and a car likewise left on the street for days. Or between a car obstructing automobile traffic by blocking the street and a car obstructing bicycle traffic by blocking a bicycle path.

Even a bicycle blocking pedestrian traffic could be removed in an act of community caretaking. S.F. Transp. Code § 8.1(a)(11); *see also* Seattle Mun. Code § 16.36.010(E) (police may immediately remove boats moored after expiration of a permit). Each of those things "impede[s] . . . public safety and convenience," *Opperman*, 428 U.S. at 369, and in no case would their removal be in the course of the "detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," *Cady*, 413 U.S. at 441.

B. Section 56.11(3)(i), to the extent it allows City officials to remove large items stored in public areas, does not violate the Fourth Amendment on its face.

There is no question that the City can, consistently with the Fourth Amendment, tow away cars left parked on its highways, streets, or alleyways for a long period of time. L.A. Mun. Code, § 80.77(a). So, too, can the City remove from its public areas items that (1) are being stored there, and (2) are "too large to fit into a 60-gallon container with the lid closed." L.A. Mun. Code §§ 56.11(2)(c), (2)(k), (2)(o), (3)(i). The district court erred in concluding that the City violates the Fourth Amendment when it does so.

It isn't difficult to explain the City's decision to enact a policy of removing Bulky Items stored in public areas, regardless of whether one agrees with it: Large things left in public areas tend to obstruct passage through those areas, or to monopolize space that is meant to be shared by the public as a whole. That's especially true as those things accumulate. (*E.g.*, 2 ER 42; 2 ER 64 ¶ 6; 2 ER 68; 2 ER 76; 2 ER 103; 2 ER 128, 131, 134, 139, 148, 154, 159, 169, 189, 191, 193, 196.) Faced with that problem, "[m]unicipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for

movement of people and property." *Schneider v. State*, 308 U.S. 147, 160 (1939). They may therefore prevent uses of their public areas that are "different in kind and extent from that enjoyed by the general public," and that "dispossess[] the general public" of those public areas. *St. Louis v. Western Union Tel. Co.*, 148 U.S. 92, 98–99 (1893); *see, e.g.*, L.A. Mun. Code § 56.08(a) (unlawful to allow a tree to obstruct a street or sidewalk); *id.* § 58.08(e)(1) (unlawful to maintain any obstacle that obstructs a street or sidewalk); *id.* § 56.12(1) (unlawful to place anything obstructive on a sidewalk without a permit).

While no one has a right to store private property in public areas, *Lavan v. City of L.A.*, 693 F.3d 1022, 1033 (9th Cir. 2012), the City nevertheless—and in recognition of a lamentable reality—allows for some items to be stored on its streets and sidewalks. But the City places limits on, among other things, the size of those items. When items exceeding those limits are stored in public areas, the City removes them. Just like the City's ability to tow cars parked where they shouldn't be, its ability to remove Bulky Items under Section 56.11(3)(i) is a straightforward exercise of the community caretaking function. *Opperman*, 428 U.S. at 369.

It is true that not every Bulky Item will, at any given moment, be obstructive. It is also true (for example) that not every long-dormant car will actually obstruct anything. Nonetheless, municipalities regularly enact ordinances that provide for towing those cars because of their tendency to cause obstructions. *E.g.*, Pasadena Mun. Code § 10.40.250; Portland City Code §§ 16.20.170, 16.30.210(A)(11); *see* Seattle Mun. Code §§ 11.14.268, 11.30.040(A)(8) (length of time a car is parked is an element that can, in conjunction with other factors like the car's state of repair, lead to towing). For the Fourth Amendment's sake, it doesn't matter whether *every* Bulky Item will *always* cause an obstruction. That is because "general . . . circumstances" can render an entire program of seizures reasonable (or not) for the Fourth Amendment's purposes. *McArthur*, 531 U.S. at 330; *see, e.g.*, *Sitz*, 496 U.S. at 450–55 (general circumstances render DUI checkpoints constitutional); *see generally City of Indianapolis v. Edmond*, 531 U.S. 32, 45–46 (2000) ("programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion").

Against that backdrop, it is difficult to see how the district court concluded that Section 56.11(3)(i) likely violates the Fourth Amendment *on its face* by allowing for the removal of Bulky Items stored in public areas: The district court found that there are *no* circumstances under which the Fourth Amendment would allow the City constitutionally to rely on Section 56.11(3)(i) to remove Bulky Items. *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2450–51 (2015). That cannot possibly be correct. If it were, the City could not rely on Section 56.11(3)(i) to remove even a Bulky Item that is indisputably obstructing—not just tending to obstruct—the use of a public area.

This error can't be patched over simply by claiming a different provision of Section 56.11 will do the same job in a pinch. It doesn't solve the problem to say, for instance, that Section 56.11(3)(d)—which allows for the removal of items that obstruct access in violation of the Americans with Disabilities Act, and which Plaintiffs haven't challenged—will allow the City to remove any actual obstructions. There is, after all, no reason to assume that everything obstructive causes an ADA violation. Nor is there a reason to assume that the ADA is, or should be, the sole measure by which the City is allowed to decide

whether something placed in a public area is so large as to interfere with the public's use and enjoyment of that area.

Maybe the district court made the error that it did because it wasn't presented with *Cady* and *Opperman*, or told specifically that removing Bulky Items from public areas falls squarely within the City's community caretaking function. But the principle underlying those cases and the community caretaking function certainly *was* raised in the district court: The City argued that no warrant or individualized exception is necessary "where, as here, 'a Fourth Amendment intrusion serves special government needs beyond the normal need for law enforcement,'" and "'it is impractical to require a warrant or some individualized level of suspicion in the particular context.'" (Prelim. Inj. Opp'n at 12.) For that matter, the City's argument below was correct. Because whether it's by an exercise of the community caretaking function or a general application of the Fourth Amendment's rule of reasonableness, a program of removing private property from the public right of way—a place where a person has no right to store it—is not per se unconstitutional, as the district court concluded.

That said, it's unclear whether the district court *would* have ruled differently, even if presented squarely with *Cady* and *Opperman*. It essentially said that there were no circumstances under which its Fourth Amendment analysis would differ, writing that "whether the Court requires a warrant or an exception or employs a reasonableness balancing test, the result is the same—Plaintiffs are likely to succeed on their Fourth Amendment claim." (1 ER 19.)

Why was the district court so definite in that answer? Perhaps because it combined two separate questions, insisting on analyzing together whether the Fourth Amendment "permit[s] the seizure *and* immediate destruction of Bulky Items without a warrant or pursuant to a warrant exception or in a way otherwise consistent with the Supreme Court's precedents." (1 ER 15, emphasis added.) The community caretaking function—or maybe even the Fourth Amendment, generally—has nothing to do with the disposition of something after it's seized. *See Thompson v. Whitman*, 85 U.S. (18 Wall.) 457, 471 (1873) ("A seizure is a single act, not a continuous fact"). The community caretaking function bears only on the seizure itself. Asking, in one question, about the Fourth Amendment viability of both the seizure of a

Bulky Item and of its subsequent destruction was therefore bound to yield an error.

Which is why this Court has lately observed with some frequency that whether an item may be seized and what may be done with it afterwards are two distinct constitutional questions that must be analyzed separately. *See Brewster v. Beck*, 859 F.3d 1194, 1196–97 (9th Cir. 2017) (initial seizure and subsequent impoundment analyzed separately); *see also Jessop v. City of Fresno*, 936 F.3d 937, 943–44 (9th Cir. 2019) (M. Smith, J., specially concurring) (Fourth Amendment analysis should apply only to the initial seizure of property); *Sandoval*, 912 F.3d at 521–22 (Watford, J., concurring) (distinguishing the initial seizure of a car from its subsequent treatment). For that matter, the district court's own marginalia suggest that it realized it would reach a different conclusion if it separately analyzed (1) the seizure of Bulky Items and (2) the destruction of Bulky Items. (1 ER 16 n.15.) It just did not take the next step of actually performing those separate analyses.

Whatever the Constitution ultimately says of the City's ability to destroy Bulky Items stored in its public areas, it seems nigh-impossible to contend that the Fourth Amendment prohibits the City—under *every*

circumstance—from removing Bulky Items from public areas. Correspondingly, Plaintiffs did not show that they were likely to succeed on the merits of a facial Fourth Amendment challenge to the City's authority to remove Bulky Items from in public areas, and so were not entitled to a preliminary injunction on that basis. *Google*, 786 F.3d at 739.

II. Plaintiffs are unlikely prevail on a facial Fourteenth Amendment due process challenge to the City's ability to remove Bulky Items from public areas.

A. The Fourteenth Amendment's Due Process Clause generally doesn't require notice before performing community caretaking functions.

The Fourteenth Amendment's Due Process Clause also has something to say about a government's ability to seize property. To determine whether the property's owner received due process in a seizure, a court considers: (1) "the private interest that will be affected by" the seizure; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) the government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural

requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The typical, though not the only, formula by which a government addresses these due process concerns is to provide the property's owner with notice of the seizure and an opportunity to contest it. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *see Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("due process is flexible and calls for such procedural protections as the particular situation demands").

Consider, again, the familiar example of towing a car—because it is, in important respects, like removing a Bulky Item stored in a public area. Cars are ordinarily seen as valuable things; "[a] person's ability to make a living and his access to both the necessities and amenities of life may depend upon the availability of an automobile when needed." *Stypmann v. City & Cnty. of S.F.*, 557 F.2d 1338, 1342–43 (9th Cir. 1977). Unsurprisingly, "due process protections apply to the detention of private automobiles." *Id.* at 1342. But that leaves the question of "the particular process that is due" when a car is towed. *Id.*

Given the circumstances under which cars are ordinarily towed, due process doesn't require the procedural protection of a hearing

beforehand. *City of Los Angeles v. David*, 538 U.S. 715, 719 (2003); *Soffer v. City of Costa Mesa*, 798 F.2d 361, 363 (9th Cir. 1986). Nor does due process necessarily require notice to be given before towing a car. *Scofield v. City of Hillsborough*, 862 F.2d 759, 762–764 (9th Cir. 1988) (citing *Sutton v. City of Milwaukee*, 672 F.2d 644 (7th Cir. 1982)). That is because the relative cost to a government of providing notice sometimes outweighs the incremental benefit of an additional procedural safeguard. *See, e.g.*, *Lawton v. Steele*, 152 U.S. 133, 141 (1894) (no judicial proceedings necessary before allowing any person who finds an unlawful $15-fishing net to destroy it; the proceedings would cost more than a net's value).

For example, though it's a "close" call, notice is required before towing a car from the parking lot of a hotel where its owner lives—if the problem with the car is that it's parked in a public place but registered as non-operational. *Clement v. City of Glendale*, 518 F.3d 1090, 1094, 1095–96 (9th Cir. 2008). The burden to the government of providing pre-towing notice to the owner in those circumstances is modest. *Id.* at 1095.

But notice is generally *not* required when officials exercise the community caretaking function to tow a car, as the circumstances that justify community caretaking also usually make it impractical to give pre-towing notice: The entire point is to remove an obstruction or potential obstruction expeditiously from the public right of way. *Miranda*, 429 F.3d at 867; *see Sutton*, 672 F.2d at 646 (recognizing that the particular illegal-parking circumstances that warrant a tow are best decided by state and local officials). Even where notice isn't required before a car's seizure, though, due process entitles the owner of the towed car to a post-seizure hearing to contest the tow. *Draper v. Coombs*, 792 F.2d 915, 923 (9th Cir. 1986); *see Zinermon v. Burch*, 494 U.S. 113, 128 (1990) ("In some circumstances . . . a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process").

The same basic framework applies not just to cars, but to any property with more than de minimis value—regardless of whose property it is. *Fuentes v. Shevin*, 407 U.S. 67, 90 n.21 (1972); *Lavan*, 693 F.3d at 1032.

B. The removal of Bulky Items under Section 56.11(3)(i) does not, on its face, violate the Fourteenth Amendment's Due Process Clause.

The district court made the same mistake in applying the *Mathews* framework that it did in conducting its Fourth Amendment analysis: It failed to distinguish between the removal of property and its disposal, effectively asking only whether the City provided sufficient process before "permanently destroy[ing]" a Bulky Item. (1 ER 24.) But, again, moving something is different from destroying that thing. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982) (nature of requisite process depends on "the length of finality of the deprivation"); *Schneider v. Cnty. of San Diego*, 28 F.3d 89, 92 (9th Cir. 1994) (due process principles apply "with particular force" when a "deprivation is permanent"). It is doubtful that anyone would contend otherwise.

Thus, whatever might ultimately be said of the process due before the City can discard a Bulky Item that is stored in its public areas, it is not the same as the process due before the City can remove such an item. The district court did not apply the well-worn *Mathews* criteria to analyze the removal of a Bulky Item from a public area, never mind to determine whether Section 56.11(3)(i) *always* provides insufficient

process before a Bulky Item is removed. *United States v. Salerno*, 481 U.S. 739, 751–52 (1987). If the district court had applied the *Mathews* factors, it would have had to consider the following:

First, there is the nature of the private interest that would be affected by a Bulky Item's removal. That depends on the nature of the Bulky Item, but Section 56.11 removes from its ambit certain large items that are likely to prove essential, i.e., constructed tents, operational bicycles or walkers, and crutches or wheelchairs. L.A. Mun. Code § 56.11(2)(c). For while any seizure of property warrants due process protections—so long as the property has greater than a de minimis value—there is a difference between removing someone's shelter, on the one hand, and removing a broken decorative umbrella (2 ER 185–87), a pile of dismantled bicycles (2 ER 193), large couches (2 ER 127–28), a sidewalk-bound canoe (2 ER 192), or a jacuzzi (2 ER 105 ¶ 3), on the other hand. *See* L.A. Mun. Code § 56.11(3)(i) (additional notice is provided before removing a Bulky Item used as a shelter); *compare Clement*, 518 F.3d at 1094 ("close call" whether towing a car that is registered as non-operational car requires notice, given the diminished property interest in a car that cannot be driven publicly)

with Lone Star Sec. & Video v. City of L.A., 584 F.3d 1232, 1238–39 (9th Cir. 2009) (no notice required before towing trailers that are both frequently illegally parked and used for advertising, rather than transportation).

Second, as far as notice is concerned, all Angelenos have notice that they cannot store in public areas items that exceed the size of a 60-gallon container with its lid closed. The ordinance itself tells them that much, just as the existence of a 72-hour parking limit provides the requisite notice that a car can't be left in one place for more than three days. *United States v. Locke*, 471 U.S. 84, 108 (1985); *Lone Star Sec. & Video*, 584 F.3d at 1237; *see, e.g.*, *Sackman v. City of L.A.*, 677 F. App'x 365, 366 (9th Cir. 2017) (ordinance itself provides requisite notice of 72-hour parking limit before towing).

Additionally, there are signs posted permanently in some parts of the City to give further notice, (3 ER 213 ¶ 45; *e.g.*, 3 ER 461), and the City regularly provides advance notice with temporary signs before it cleans up a public area (*e.g.*, 3 ER 250, 266, 306, 378, 379). On top of that, if the owners of Bulky Items are present when their items are seized, the owners' presence gives them notice of the City's action: They

know what was taken and by whom, and can ask for an explanation of why (*e.g.*, 4 ER 487 ¶ 12). *See City of W. Covina v. Perkins*, 525 U.S. 234, 241 (1999) (notice of seizure provided so that the property's owner has a "means of ascertaining who was responsible for the loss"); *see, e.g.*, *Lone Star Sec. & Video*, 584 F.3d at 1239 (no need for notice; "[w]hen a trailer disappears, Lone Star knows that it has been towed").

Every seizure at issue in these preliminary injunction proceedings was of an attended item—and most were made during street clean-ups of which notice was posted well in advance. (*See* 4 ER 467 ¶¶ 8–9 [Mr. Ashley was present for clean-up, but "did not see" notices]; 3 ER 208 ¶¶ 28–29 [notice posted two days in advance of the clean-up Mr. Ashley referenced]; 3 ER 379 [a notice posted before the same clean-up]; 4 ER 487 ¶ 8 [Mr. Diocson was present for the clean-up, and had seen posted notices in advance]; 4 ER 504–05 ¶¶ 5–7 [Ms. Bettega present for the clean-up].) Consequently, assuming for argument's sake that Section 56.11(3)(i) itself doesn't provide everyone with adequate notice that Bulky Items will be removed from public areas, at least some Bulky Item owners have notice when their items are removed. *Cf. Lone Star*

Sec. & Video, 584 F.3d at 1239 (owner of seized property may be on sufficient notice even if not given individualized, pre-removal notice).

Third, there is the question what would be gained by additional procedural protections, and at what cost to the City. Additional protections typically justify themselves, and add value in excess of their cost, when there is a high risk that an ordinance will be applied erroneously without them. *Scofield*, 862 F.2d at 764; *Sutton*, 672 F.2d at 646. There is little risk of erroneous deprivation here, because the City must ascertain only (1) whether an item is being stored in a public area; and (2) whether the item would fit in a 60-gallon container with the lid closed. Section 56.11 even lists examples of common Bulky Items, like mattresses, couches, and chairs. L.A. Mun. Code § 56.11(2)(c). And if the analysis is only of the risk of erroneous removal, rather than the risk of erroneous destruction, the balance tips further against requiring additional pre-removal process. *Cf. Gilbert v. Homar*, 520 U.S. 924, 932–34 (1997) (distinguishing between suspended from a job and being fired from it in deciding what pre-deprivation process is due).

This was how the district court should have treated the due process question in the first instance. Plaintiffs should have given it the evidence and argument necessary to do so. Instead, Plaintiffs treated the seizure and destruction of Bulky Items together (Prelim. Inj. Mot. at 13–14), argued that the destruction was accomplished without any process at all (*id.*), and then—when the City pointed out the constitutional difference between seizure and destruction—Plaintiffs devoted all of a footnote to shifting the burden improperly to the City to "articulate[] a constitutionally permissible justification for either seizing *or* destroying items based solely on their size" (Prelim. Inj. Reply [Doc. No. 48] at 6 n.8).

No. To demonstrate the required likelihood of success on the merits, the burden was Plaintiffs' to show that: (1) in *every* instance (2) Section 56.11(3)(i) does *not* provide the requisite procedural safeguards—this is not a substantive due process challenge—for either (3) seizing or (4) subsequently destroying Bulky Items. *See Salerno*, 481 U.S. at 745 (burden is on the party bringing a facial challenge to show "that no set of circumstances exists under which" the challenged measure would be constitutional); *Google*, 786 F.3d at 740 (burden is

always on the party seeking a preliminary injunction to prove likelihood of success on the merits).

Meanwhile, the district court appeared at least to recognize that removing and discarding an item are two different things, requiring different quanta of process. But it subsequently declined, again, to perform the separate analyses. That is, the district court implicitly recognized a distinction between the removal and destruction of items when it observed that various unchallenged provisions of Section 56.11 allow for the no-notice removal of items stored in public areas. (1 ER 30.) For instance, there has been no challenge to the City's ability to remove items stored "within ten feet of any operational and utilizable entrance, exit, driveway or loading dock." L.A. Mun. Code § 56.11(3)(e). The district court then stated that by enjoining the City from applying the Bulky Items provision *in its entirety*, it was "merely requir[ing] the City to treat Bulky Items like every other item stored in public areas, permitting removal in a number of circumstances, including when items are unattended, blocking the sidewalk, or a threat to health and safety." (1 ER 30.)

The district court did not accurately describe its own order, which certainly does not require the City "to treat Bulky Items like every other item stored in public areas." An injunction requiring the City to treat Bulky Items like items blocking a loading dock, for example, would not bar the City from removing Bulky Items without notice—as the district court's injunction does. Such an injunction would instead allow the City to remove, but prevent the City from destroying, Bulky Items without providing further process. *That* is the outcome a separate analysis of removal and destruction might have yielded. And if the district court intended to do as it said, and to conform the City's ability to handle Bulky Items to its ability to handle other kinds of obstructive items, *that* is the injunction it should have entered.

III. A presumption in favor of severability meant that the district court should have considered the portion of Section 56.11(3)(i) that allows the City *to remove* Bulky Items separately from that which allows the City *to discard* those items.

The district court's error in failing to evaluate the constitutionality of the seizure of Bulky Items separately from their summary destruction is compounded by the fact that Section 56.11's severability clause commanded those separate analyses. *Sam Francis*

Found. v. Christies, Inc., 784 F.3d 1320, 1327 (9th Cir. 2015) (en banc); *see Ayotte v. Planned Parenthood*, 546 U.S. 320, 328 (2000) ("when confronting a constitutional flaw in a statute, we try to limit the solution to the problem"). "[C]ourts must respect the laws made by legislatures and, therefore, should avoid nullifying an entire statute when only a portion is"—arguably—"invalid." *Vivid Entm't, LLC v. Fielding*, 774 F.3d 566, 573–74 (9th Cir. 2014). "The need for deference and restraint in severing a state or local enactment is all the more acute because of our respect for federalism and local control." *Id.* at 574.

In deciding whether to sever one provision from another, the district court should have looked first for a severability clause; if one exists, there is a presumption that an ordinance's terms are severable. *Sam Francis Found.*, 784 F.3d at 1326. Section 56.11 has a severability clause. L.A. Mun. Code § 56.11(12). That provision allows a court to sever not just "any subsection," of the ordinance, but also "any sentence, clause or phrase" that is "for any reason held to be invalid or unconstitutional." L.A. Mun. Code § 56.11(12). The City Council thus expressly indicated that a court could strike from Section 56.11(3)(i) the

phrases "and may discard" or "may discard" while retaining the phrase "may remove."

Moreover, if a court struck the "discard" phrases from Section 56.11(3)(i), the ordinance would still make sense—"grammatically, functionally, and volitionally." *Sam Francis Found.*, 784 F.3d at 1325 (internal quotation marks omitted). With the "discard" phrases excised, Section 56.11(3)(i) still works grammatically: "Without prior notice, the City may remove . . . any Bulky Item . . . . For any Bulky Item that is designed to be used as a shelter . . . with pre-removal notice . . . the City may remove . . . the Bulky Item . . . . If the Bulky Item violates subsection 3.(d)-(h) herein, even if it is designed to be used as a shelter, without prior notice, the City may remove . . . the Bulky Item." L.A. Mun. Code § 56.11(3)(i).[6]

Likewise, the provision is still functional. It "has a reduced scope, of course," but "it is complete, has coherent functionality, and does not

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[6] Removing the "discard" phrase from the last sentence of Section 56.11(3)(i) doesn't prevent the City from discarding Bulky Items that are both used as shelters *and* are either health and safety hazards *or* contraband; Sections 56.11(3)(g) and (h) themselves do the work of allowing those items to be discarded summarily.

conflict with any of the [Section's] other provisions." *Sam Francis Found.*, 784 F.3d at 1326.

And it is still volitionally sensible, too—that is to say, the City Council likely would have adopted Section 56.11(3)(i) even without the "discard" phrases. The best evidence of whether the City Council would have done so is that the ordinance's severability provision says as much: "The City Council hereby declares that it would have adopted this section, and each sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional." L.A. Mun. Code § 56.11(12); *see Sam Francis Found.*, 784 F.3d at 1327 (that a legislature said "expressly" that it would have enacted a measure without a severed provision is "perhaps" the "most telling[]" evidence it would have done so).

The only countervailing evidence of whether Section 56.11(3)(i) would make sense volitionally without the "discard" phrases is the fact that the City lacks capacity to store Bulky Items. (3 ER 215 ¶ 50.) This means that the City will likely be forced, at least temporarily, to cease removing Bulky Items qua Bulky Items—even under a properly drawn,

narrower injunction. But there is a difference between having to stop enforcing a statutory provision as a matter of resource allocation, which can change based on all kinds of circumstances, and having to stop enforcing it as a matter of the provision's constitutionality.

With every factor thus supporting the presumption of severability, it is a mystery that the district court did not appear even to consider severing the ordinance's "discard" phrases. It was also an error of law.

IV. Plaintiffs did not satisfy the first prerequisite for getting the injunction that they got. The district court abused its discretion in entering it.

Federal courts should be especially cautious about the breadth of injunctions they enter against government entities seeking to enforce duly enacted laws. *Vivid Entm't*, 774 F.3d at 574. To get an injunction barring the City both from removing and from discarding Bulky Items stored in public areas, Plaintiffs were required first to demonstrate a likelihood of success on their claims that *both* removing *and* summarily destroying those items *always* violates either the Fourth or Fourteenth Amendment (or both). Whatever Plaintiffs demonstrated as to the summary destruction of Bulky Items, it should by now be clear that they failed to demonstrate a likelihood of success on their facial

challenges to the constitutionality of removing Bulky Items from public areas.

Plaintiffs' failure to meet this, the first *Winter* factor, is by itself sufficient to show that issuing such a broad injunction was an abuse of the district court's discretion. *Google*, 786 F.3d at 740. It also suggests other problems with the district court's analysis of the other *Winter* factors. For instance, there is—or should be—a significant difference in the balance of equities supporting the injunction (or not supporting the injunction) depending on whether the harm to Plaintiffs is the removal of Bulky Items or the summary destruction of Bulky Items. (*See* 1 ER 26, 30 [framing and balancing the harm to Plaintiffs in the context of permanent deprivation of belongings].) That is true of harm both to the individual Plaintiffs and to Ktown for All—since it is "the *destruction* of people's belongings" that resulted in it having to devote organizational resources "to replace more items for their neighbors than they would otherwise have to replace." (Prelim. Inj. Mot. at 17, italics added.)

In the end, had the district court separately considered the two constitutional questions at issue here, it could have made a narrower

constitutional ruling and crafted a narrower injunction—one addressing only the summary destruction of Bulky Items. The broad injunction that the district court entered instead should be vacated with instructions to issue an order that preserves the City's ability to seize Bulky Items under Section 56.11(3)(i).

CONCLUSION

This Court should vacate the district court's injunction and remand with instructions that it enjoin the City at most from summarily destroying (1) Bulky Items of (2) greater than de minimis value that (3) are seized pursuant to Section 56.11(3)(i). The remainder of the district court's injunction, addressing the ordinance's interference-with-enforcement provision and the City's ability to post notices of the ordinance's applicability, should be modified accordingly.

Respectfully submitted,

Dated: June 26, 2020

CITY OF LOS ANGELES

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s/ Jonathan H. Eisenman
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM

L.A. Municipal Code Sections

SEC. 56.08. SIDEWALKS – STREETS – OBSTRUCTIONS.

(a) No person owning, leasing, occupying, having charge or control of any lot or premises, shall allow, keep or maintain any tree, bush or vegetation growing upon any lot or premises abutting any street or sidewalk or upon any street or sidewalk so that the limbs, twigs, leaves or parts of such tree, bush or vegetation interfere with or obstruct the free passage of pedestrians or vehicles along or upon said streets or sidewalks.

(b) Trees or bushes greater than fifteen feet in height growing in or upon any premises or sidewalk shall be deemed to interfere with and obstruct the free passage of pedestrians or vehicles upon said streets and sidewalks within the meaning of this section unless the lower limbs, twigs or leaves of such trees or bushes are kept removed at all times so as to have a minimum clearance of:

1. 13 feet 6 inches over that portion of State highways and major streets improved, designed or ordinarily used for vehicular traffic;

2. 11 feet over that portion of local streets improved, designed, or ordinarily used for vehicular traffic;

3. 9 feet over the sidewalk and parkway area of all streets. **(Amended by Ord. No. 106,987, Eff. 3/24/56.)**

(c) No person having charge or control of any lot or premises shall allow any soil, rubbish, trash, garden refuse, tree trimmings, ashes, tin cans or other waste or refuse to remain upon any sidewalk, parkway, or in or upon any street abutting on or adjacent to such lot or premises, or which will interfere with or obstruct the free passage of pedestrians or vehicles along any such street, sidewalk or parkway. **(Amended by Ord. No. 123,979, Eff. 4/20/63.)**

(d) No person having charge or control of any lot, building, or premises, shall clean or sweep any dirt, rubbish or refuse from any sidewalk into the street; provided that nothing contained in this section shall prevent such person from cleaning or sweeping any dirt, rubbish, or refuse from any sidewalk and disposing of the same on or in said lot, building or premises, where such disposition does not create a nuisance and is not prohibited by any other ordinance. **(Amended by Ord. No. 148,466, Eff. 7/29/76.)**

(e) **(Amended by Ord. No. 128,577, Eff. 11/14/64.)**

1. No person having charge or control of any lot or premises, either as owner, lessee, tenant, builder, contractor, housemover, or otherwise, shall construct,

deposit or maintain any structure, building, rock, brick, broken concrete, stepping stones, sprinkler heads or any obstacle of any nature whatsoever in or upon any street, sidewalk or parkway abutting on or adjacent to such lot or premises or which will interfere with the free passage of pedestrians or vehicles along such street, sidewalk or parkway.

2. The provisions of this section shall not apply to sprinkler heads or bricks in tree wells which are properly maintained on grade with the surface of the sidewalk or parkway in which they are located.

3. The Board of Public Works may grant deviations or modifications of this subsection, upon written application therefor, so as to permit the installation and maintenance of bricks, stepping stones and similar walking surfaces in parkways, on grade with the surface thereof, whenever it is determined that the following conditions exist:

a. That the deviation or modification requested arises from unusual or extraordinary physical conditions, and is necessary to permit the proper and lawful development and use of the applicant's property;

b. That the granting of the deviation or modification requested will not be contrary to the public safety, convenience, and general welfare;

c. That the granting of the deviation or modification will not adversely affect the rights of adjacent property owners or tenants.

(f) No person shall excavate on any land sufficiently close to the property line to endanger any adjoining street, sidewalk, alley, or other public property, without supporting and protecting such street, sidewalk, alley, or other public property from settling, cracking, or other damage which might result from such excavation.

(g) Any person having charge or control of any lot or premises who violates the provisions of Subsections (a) or (c) shall be subject to administrative penalties as set forth in Subsection (h). **(Added by Ord. No. 182,778, Eff. 12/16/13.)**

(h) The first violation of Subsections (a) or (c) in a calendar year is subject to a warning or an administrative monetary penalty not to exceed $50.00. Subsequent violations in the same calendar year will result in a second penalty not to exceed $100.00 for the second violation after receiving the initial $50.00 penalty. The penalty for the third administrative violation in a calendar year is $150.00. More than three administrative fines in one calendar year shall result in the violation being prosecuted as a misdemeanor and the violator shall be subject

to all penalties applicable to criminal violations. The Bureau of Street Services is authorized to assess a processing fee established by the Board of Public Works for all citations with an administrative monetary penalty. All non-criminal enforcement actions are subject to the administrative hearing process as mandated by California Government Code Section 53069.4. **(Added by Ord. No. 182,778, Eff. 12/16/13.)**

(i) Any person who receives a written notice or administrative monetary penalty pursuant to this section may request an administrative review of the accuracy of the determination or the propriety of any fine issued by filing a written notice of appeal with the Board of Public Works no later than 30 days after receipt of a written notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any supporting documentation, including copies of all photos, statements and other documents that the appellant wishes to be considered in connection with the appeal. The appeal shall be heard by the Board of Public Works. The Board of Public Works shall conduct a publicly noticed hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the Board of Public Works, and shall give the appellant at least 10 days prior written notice of the date of the hearing. The Board of Public Works may sustain, rescind, or modify the written notice or fine, as applicable. The Board of Public Works shall have the power to waive any portion of the fine in a manner consistent with its decision. The decision of the Board of Public Works shall be final and effective on the date the decision is rendered. **(Added by Ord. No. 182,778, Eff. 12/16/13.)**

An Ordinance prohibiting obstruction of streets or sidewalks is valid.
In re Bodkin (1948), 86 Cal. App. 2d 208.

The public is entitled to free and unobstructed use of entire streets and sidewalks for purposes of travel subject only to reasonable and proper control of the municipality.
People v. Amdur (1954) 123 Cal. App. 2d Supp. 951.

SEC. 56.11. STORAGE OF PERSONAL PROPERTY.

(Amended by Ord. No. 184,182, Eff. 4/11/16.)

1. **Declaration of Legislative Intent - Purpose.** The City enacts this section to balance the needs of the residents and public at large to access clean and sanitary public areas consistent with the intended uses for the public areas with the needs of the individuals, who have no other alternatives for the storage of personal property, to retain access to a limited amount of personal property in public areas. On the one hand, the unauthorized use of public areas for the storage of unlimited amounts of personal property interferes with the rights of other members of the public to use public areas for their intended purposes and can create a public health or safety

hazard that adversely affects those who use public areas. On the other hand, the City's large and vulnerable homeless population needs access to a manageable amount of essential property for their personal use and well-being. This section attempts to balance the needs of all of the City's residents.

2. **Definitions.** The definitions contained in this subsection shall govern the construction, meaning and application of words and phrases used in this section.

(a) "**Alley**" means any Highway having a Roadway not exceeding 25 feet in width which is primarily for access to the rear or side entrances of abutting property.

(b) "**Bikeway**" means all facilities that provide primarily for, and promote, bicycle travel.

(c) "**Bulky Item**" means any item, with the exception of a constructed Tent, operational bicycle or operational walker, crutch or wheelchair, that is too large to fit into a 60-gallon container with the lid closed, including, but not limited to, a shed, structure, mattress, couch, chair, other furniture or appliance. A container with a volume of no more than 60 gallons used by an individual to hold his or her Personal Property shall not in itself be considered a Bulky Item.

(d) "**City Employee**" means any full or part-time employee of the City of Los Angeles or a contractor retained by the City for the purpose of implementing this Section.

(e) "**Essential Personal Property**" means any and all Personal Property that cumulatively is less than two cubic feet in volume, which, by way of example, is the amount of property capable of being carried within a backpack.

(f) "**Excess Personal Property**" means any and all Personal Property that cumulatively exceeds the amount of property that could fit in a 60-gallon container with the lid closed.

(g) "**Highway**" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

(h) "**Parkway**" means the area of the Street between the back of the curb and the Sidewalk that typically is planted and landscaped.

(i) "**Person**" means any individual.

(j) "**Personal Property**" means any tangible property, and includes, but is not limited to, goods, materials, merchandise, Tents, tarpaulins, bedding, sleeping bags, hammocks, personal items such as household items, luggage, backpacks, clothing, documents and medication.

(k) "**Public Area**" or "**Public Areas**" means all property that is owned, managed or maintained by the City, except property under the jurisdiction of the Department of Recreation and Parks which is governed by Los Angeles Municipal Code Section 63.44, and shall include, but not be limited to, any Street, medial strip, space, ground, building or structure.

(l) "**Roadway**" means that portion of a Highway improved, designed or ordinarily used for vehicular travel.

(m) "**Sidewalk**" means that portion of a Highway, other than the Roadway, set apart by curbs, barriers, markings or other delineation, for pedestrian travel.

(n) "**Storage Facility**" means any facility, whether operated by a public, non-profit or private provider, which allows and has capacity for voluntary storage, free of charge, for a homeless person to store Personal Property up to the equivalent of the amount of property that would fit into a single 60-gallon container with the lid closed.

(o) "**Store**", "**Stored**", "**Storing**" or "**Storage**" means to put Personal Property aside or accumulate for use when needed, to put for safekeeping, and/or to place or leave in a Public Area. Moving Personal Property to another location in a Public Area or returning Personal Property to the same block on a daily or regular basis shall be considered Storing and shall not be considered to be removing the Personal Property from a Public Area. This definition shall not include any Personal Property that, pursuant to statute, ordinance, permit, regulation or other authorization by the City or state, is Stored with the permission of the City or state on real property that is owned or controlled by the City.

(p) "**Street**" includes every Highway, avenue, lane, Alley, court, place, square, Sidewalk, Parkway, curbs, Bikeway or other public way in this City which has been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

(q) "**Tent**" means a collapsible shelter made of fabric such as nylon or canvas or a tarp stretched and sustained by supports, which is not open on all sides and which hinders an unobstructed view behind or into the area surrounded by the fabric. In order

to qualify as a Tent for purposes of this subsection, a Tent, when deconstructed, must be able to fit within a 60-gallon container with the lid closed.

(r) "**Unattended**" means no Person is present with the Personal Property who asserts or claims ownership over the Personal Property. Conversely, property is considered "**Attended**" if a Person is present with the Personal Property and the Person claims ownership over the Personal Property.

3. **Regulation and Impoundment of Stored Personal Property; Discard of Certain Stored Personal Property.**

(a) No Person shall Store any Unattended Personal Property in a Public Area. With pre-removal notice as specified in Subsection 4.(a), the City may impound any Unattended Personal Property in a Public Area, regardless of volume. Post-removal notice shall be provided as set forth in Subsection 4.(b), below.

(b) No Person shall Store any Attended Excess Personal Property in a Public Area. With pre-removal notice as specified in Subsection 4.(a), the City may impound any Attended Excess Personal Property Stored in a Public Area. Post-removal notice shall be provided as set forth in Subsection 4.(b), below.

(c) No Person shall Store any Personal Property in a Public Area in such a manner as to obstruct City operations, including a Street or Sidewalk maintenance or cleaning. Without prior notice, the City may temporarily move Personal Property, whether Attended or Unattended, which is obstructing City operations in a Public Area, including a Street or Sidewalk maintenance or cleaning, during the time necessary to conduct the City operations. The City also may impound Personal Property that is obstructing City operations in a Public Area, pursuant to Subsection 3.(a) or 3.(b).

(d) No Person shall Store any Personal Property in a Public Area in such a manner that it does not allow for passage as required by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time (ADA). Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or Unattended, Stored in a Public Area in such a manner that it does not allow for passage as required by the ADA. Post-removal notice shall be provided as set forth in Subsection 4.(b), below.

(e) No Person shall Store any Personal Property within ten feet of any operational and utilizable entrance, exit, driveway or loading dock. Without prior notice, the City may move and may immediately impound any Personal Property, whether

Attended or Unattended, Stored in a Public Area within ten feet of any operational and utilizable entrance, exit, driveway or loading dock. Post-removal notice shall be provided as set forth in Subsection 4.(b), below.

(f) No Person shall Store in a Public Area that has a clearly posted closure time any Personal Property after the posted closure time. Without prior notice, the City may remove and impound Personal Property, whether Attended or Unattended, Stored in a Public Area that has a clearly posted closure time, provided the Personal Property is removed and impounded after the posted closure time. Post-removal notice shall be provided as set forth in Subsection 4.(b), below.

(g) No Person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended, constitutes an immediate threat to the health or safety of the public. Without prior notice, the City may remove and may discard any Personal Property Stored in a Public Area if the Personal Property poses an immediate threat to the health or safety of the public.

(h) No Person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended, constitutes an evidence of a crime or contraband. Without prior notice, the City may remove and may discard any Personal Property that constitutes evidence of a crime or contraband, as permissible by law.

(i) No Person shall Store any Bulky Item in a Public Area. Without prior notice, the City may remove and may discard any Bulky Item, whether Attended or Unattended, Stored in a Public Area unless the Bulky Item is designed to be used as a shelter. For any Bulky Item that is designed to be used as a shelter but does not constitute a Tent as defined in Subsection 2.(q), with pre-removal notice as specified in Subsection 4.(a), the City may remove and discard the Bulky Item, whether Attended or Unattended. If the Bulky Item violates Subsection 3.(d)-(h) herein, even if it is designed to be used as a shelter, without prior notice, the City may remove and discard the Bulky Item, whether Attended or Unattended.

(j) Upon the creation of any new Storage Facility, increased capacity at an Existing Storage Facility or subsidized transportation assistance to a Storage Facility, the Chief Administrative Officer shall report to the Council to inform the Council's consideration of whether to prohibit a Person from Storing more than Essential Personal Property in a Public Area in a specified radius from a Storage Facility, based upon the amount of the additional storage capacity and the accessibility thereto. In consideration of the CAO's report, the Council may, by resolution, prohibit a Person within a specified radius of a Storage Facility from Storing more than Essential Personal Property in a

Public Area.

4. **Notice.**

(a) **Pre-Removal Notice.** Pre-removal notice shall be deemed provided if a written notice is provided to the Person who is Storing or claims ownership of the Personal Property, or is posted conspicuously on or near the Personal Property and the actual removal commences no more than 72 hours after the pre-removal notice is posted. The written notice shall contain the following:

(1) A general description of the Personal Property to be removed.

(2) The location from which the Personal Property will be removed.

(3) The date and time the notice was posted.

(4) A statement that the Personal Property has been stored in violation of Section 56.11, Subsection 3.

(5) A statement that the Personal Property may be impounded if not removed from Public Areas within 24 hours.

(6) A statement that moving Personal Property to another location in a Public Area shall not be considered removal of Personal Property from a Public Area.

(7) The address where the removed Public Property will be located, including a telephone number and the internet website of the City through which a Person may receive information as to impounded Personal Property as well as information as to voluntary storage location(s).

(8) A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.

(b) **Post-Removal Notice.** Upon removal of Stored Personal Property, written notice shall be conspicuously posted in the area from which the Personal Property was removed. The written notice shall contain the following:

(1) A general description of the Personal Property removed.

(2) The date and approximate time the Personal Property was removed.

(3) A statement that the Personal Property was stored in a Public Area in violation of Section 56.11, Subsection 3.

(4) The address where the removed Personal Property will be located, including a telephone number and internet website of the City through which a Person may receive information as to impounded Personal Property.

(5) A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.

5. **Storage and Disposal.**

(a) Except as specified herein, the City shall move Personal Property to a place of storage.

(b) Except as specified herein, the City shall store impounded Personal Property for 90 days, after which time, if not claimed, it may be discarded. The City shall not be required to undertake any search for, or return, any impounded Personal Property stored for longer than 90 days.

(c) The City shall maintain a record of the date any impounded Personal Property was discarded.

6. **Repossession.** The owner of impounded Personal Property may repossess the Personal Property prior to its disposal upon submitting satisfactory proof of ownership. A Person may establish satisfactory proof of ownership by, among other methods, describing the location from and date when the Personal Property was impounded from a Public Area, and providing a reasonably specific and detailed description of the Personal Property. Valid, government-issued identification is not required to claim impounded Personal Property.

7. **Ban on Erection of Tent during Certain Daytime Hours.** No Person shall erect, configure or construct a Tent in any Public Area from 6:00 a.m. to 9:00 p.m. (except during rainfall or when the temperature is below 50 degrees Fahrenheit). A Person must take down, fold, deconstruct or put away any Tent erected, configured or constructed in any Public Area between the hours of 6:00 a.m. and 9:00 p.m. (except during rainfall or when the temperature is below 50 degrees Fahrenheit). Without prior notice, the City may deconstruct and may impound any Tent, whether Attended or Unattended, located in any Public Area in violation

of this subsection or in violation of Subsections 3.(c)-(h) hereof. The City shall provide post-removal notice for any impounded Tent, as set forth in Subsection 4.(b), herein.

8. **Ban on Attachments to Public and Private Property.**

(a) **Public Property.** No Person shall erect any barrier against or lay string or join any wires, ropes, chains or otherwise attach any Personal Property to any public property, including but not limited to, a building or portion or protrusion thereof, fence, bus shelter, trash can, mail box, pole, bench, news rack, sign, tree, bush, shrub or plant, without the City's prior written consent.

(b) **Private Property.** No Person shall erect any barrier against or lay string or join any wires, ropes, chains or otherwise attach any Personal Property to any private property in such a manner as to create an obstruction on or across any Street or area where the public may travel.

(c) **Removal.** Without prior notice, the City may remove any barrier, string, wires, ropes, chains or other attachment of Personal Property, whether Attended or Unattended, to any public property, or to any private property which creates an obstruction to any Street or area where the public may travel.

9. **Illegal Dumping.** Nothing herein precludes the enforcement of any law prohibiting illegal dumping, including but not limited to California Penal Code Section 374.3, and Los Angeles Municipal Code Sections 41.14, 63.44 B.13. or 190.02, or any successor statutes proscribing Illegal dumping.

10. **Unlawful Conduct.** Los Angeles Municipal Code Section 11.00 shall not apply to violations of this section except as follows:

(a) No Person shall willfully resist, delay or obstruct a City employee from moving, removing, impounding or discarding Personal Property Stored in a Public Area in violation of Subsections 3.(a)-(h).

(b) No Person shall refuse to take down, fold, deconstruct or otherwise put away any Tent erected or configured between the hours of 6:00 a.m. and 9:00 p.m., in violation of Subsection 7., or willfully resist, delay or obstruct a City employee from taking down, folding, deconstructing, putting away, moving, removing, impounding or discarding the Tent, including by refusing to vacate or retreat from the Tent.

(c) No Person shall refuse to remove any barrier, string, wire, rope, chain or

other attachment that violates Subsection 8., or willfully resist, delay or obstruct a City employee from deconstructing, taking down, moving, removing, impounding or discarding the barrier, string, wire, rope, chain or other attachment, including by refusing to vacate or retreat from an obscured area created by the attachment.

(d) No Person shall willfully resist, delay or obstruct a City employee from removing or discarding a Bulky Item Stored in violation of Subsection 3.(i), including by refusing to vacate or retreat from within the Bulky Item or from an obscured area created by the Bulky Item.

(e) If Subsection 3.(j) becomes operative by resolution in any area of the City, no Person shall willfully resist, delay or obstruct a City employee from removing or impounding any Personal Property that exceeds the limit on Essential Personal Property.

(f) A violation of Subsection 9. prohibiting illegal dumping.

11. **Designated Administrative Agency.** The City's Department of Public Works, Bureau of Sanitation, is hereby charged with serving as the Designated Administrative Agency (DAA), for the purposes of this ordinance. The DAA shall promulgate rules, protocols and procedures for the implementation and enforcement of this ordinance, consistent with the provisions herein.

12. **Severability.** If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SEC. 66.48. EXTRA CAPACITY REFUSE COLLECTION FEE.
(Added by Ord. No. 170,868, Eff. 2/19/96.)

A. DECLARATION OF POLICY. It is hereby declared that in order for the City of Los Angeles to be prepared to respond to the needs of its citizens for adequate solid waste disposal alternatives in the future, it is necessary to recognize that there is currently limited landfill capacity for solid waste disposal within the greater Los Angeles area, that new landfills are difficult to site and permit, and that the State has imposed recycling and waste reduction requirements in order to reduce the total amount of solid waste going to landfill by 25% and 50% by 1995 and 2000, respectively. Therefore, the City must establish a clear policy to provide an

incentive for residents to reduce and to recycle the quantity of solid waste they generate. To accomplish this end, the City has developed a standard allowance for collection and management of refuse, yard trimmings, and horse manure which the City deems adequate to meet the requirements of the average dwelling unit as defined in Section 66.40. The City hereby declares that the standard allowance for a parcel with one dwelling unit shall be one 60-gallon black container for refuse and one 90-gallon green container for yard trimmings. The standard allowance for a parcel with more than one dwelling unit is one 60-gallon black container per dwelling unit and one 90-gallon green container for yard trimmings for the parcel. Additional capacity above and beyond this standard allowance may be made available for various fees as described in this Code. **(Amended by Ord. No. 174,699, Eff. 8/22/02.)**

B. CONTINUOUS EXTRA CAPACITY.

1. A $5.00 per month fee will be charged for each 30-gallon increment of extra refuse capacity made available to a dwelling unit by replacing the standard allowance 60-gallon black container with a single larger, 90-gallon black container or issuing additional 30, 60 or 90-gallon black containers.

Residents who qualify for the lifeline requirements as set forth in LAMC Section 21.1.12 shall receive the first 30 gallons of extra refuse capacity at no charge and additional capacity beyond the first 30 gallons at 50 % of the extra refuse capacity fee.

High Density Households who qualify under the Department of Water and Power (DWP) water rate program shall receive the first 30 gallons of extra capacity without charge if their household has 7 to 10 residents and shall receive the first 60 gallons of extra capacity without charge if their household has over 11 residents. Additional increments beyond those increments shall be charge at the regular fee.

2. A $5.00 per month fee will be charged for each 30-gallon increment of horse manure capacity requested by a resident for a dwelling unit. The City will issue specially marked 30, 60 or 90 gallon green containers for the limited purpose of horse manure pickup.

3. A $2.50 per month fee will be charged for each 30-gallon increment of extra yard trimmings capacity made available to a dwelling unit by replacing the standard allowance 60-gallon green container with a larger, 90-gallon green container or issuing additional 30, 60, or 90-gallon green containers. However, if a single-family dwelling unit is built on two or more residential lots, the dwelling unit shall be entitled to one additional 60-gallon green container at no extra charge from the City. In the event that a second dwelling unit is built on the site, each dwelling unit shall only be entitled to one

60-gallon green container at no charge and any additional capacity requested by either dwelling unit will be charged as set forth above. Yard trimmings shall be defined as wood waste, brush, grass clippings, plant and tree trimmings, leaves, Christmas trees and other organic material all of which must be free from inorganic material and food waste.

4. The fees described in Subdivisions 1, 2 and 3 of this section will be billed through the DWP bill on the line item generally titled Sanitation Equipment Charge where it will be added to the existing charges found thereon and deposited to the Sanitation Equipment Charge Special Revenue Fund. Larger, or extra containers, will be delivered to a dwelling unit at a resident's request, and will be recorded through the container serial number to the name of the person appearing on the DWP bill, or their designated agent, for each respective dwelling unit. The fee imposed by this article shall be a joint and several charge against the occupants and the owner of each dwelling unit subject to the charge. Residents may use this extra capacity once per week on their regular collection day. Failure to use all of the requested extra capacity will not relieve the resident from paying the monthly extra capacity fee. The fees will be collected as described in LAMC Sections 66.43, 66.44, 66.45, 66.46 and 66.47.

C. INTERMITTENT EXTRA CAPACITY. Residents of all dwelling units shall have the ability to purchase the right to have additional refuse, horse manure or yard trimmings collected by the City on a collection day to collection day basis. The resident requiring this additional intermittent capacity shall purchase from the City, at a cost of $2.00 per 30 gallons of additional capacity, a special tag to be placed on the additional materials for collection. The tags must be purchased in advance, in person at various locations throughout the City, or through the mail, and can be utilized only on the regular collection day. Each tag may be used only one time. **(Amended by Ord. No. 178,875, Eff. 7/23/07.)**

D. IMPLEMENTATION.

1. The Board shall have the power and duty, and is hereby directed to enforce all of the provisions of this article, except as otherwise set forth herein, and shall provide such rules and regulations as are consistent with the provisions of this article and as may be necessary or desirable to aid in the administration, including adjustments and enforcement of the extra capacity charge.

2. The Board or any of its authorized representative may make such inspections or investigations as said Board deems necessary at any reasonable time on any premises or lot for the purpose of determining the number, size, and type of automated collection containers.

E. EFFECTIVE DATE. The fees described in Subsections B and C will become effective starting 30 days after DWP notifies the Office of Finance **(Amended by Ord. No. 173,587, Eff. 12/7/00.)** that its billing system has been modified to include the Extra Capacity Fees.

F. FEE ADJUSTMENTS. The fees described herein shall be reviewed on a yearly basis to determine if any adjustments need to be made to cover changes in operating cost.

SEC. 80.77. REMOVAL OF PARKED CARS.
(Amended by Ord. No 151,833, Eff. 2/10/79, Oper. 2/25/79.)

(a) Police Officers and civilian employees of the Department of Transportation designated as Traffic Officers for purposes of this section are hereby authorized to remove from highways, streets or alleys within the City of Los Angeles to the nearest garage or other place of safety designated or maintained by the Police Department, any vehicle which has been parked or left standing on such highway, street or alley for 72 or more consecutive hours.

(b) Whenever a Police Officer or Traffic Officer removes a vehicle from a street or highway as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle or from the registration records of the California Department of Motor Vehicles the name and address of the owner thereof, such Police Officer or Traffic Officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal, the grounds thereof and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(c) Whenever a Police Officer or Traffic Officer removing a vehicle from a street or highway under this section does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of 120 hours, then and in that event the Police Officer or Traffic Officer shall immediately send or cause to be sent written report of such removal by mail to the Department of Motor Vehicles at Sacramento and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such report shall be made on a form furnished by such department and shall include a complete description of the vehicle the date, time and place from which removed, the grounds for such removal and the name of the garage or place where the vehicle is stored.

(d) Police Officers and Traffic Officers are hereby authorized to remove from streets

or highways within the City of Los Angeles to the nearest garage or other place of safety, or to a garage or other place of safety designated or maintained by the Police Department, any vehicle which has been parked or left standing in violation of an official sign prohibiting the stopping or parking of vehicles and giving notice that such vehicle may be removed.

(e) Whenever a vehicle is removed from the streets of the City and stored as authorized by Subsection (d) above, or is stored as permitted and provided for in California Vehicle Code Section 22852, the provisions for a post–storage hearing as set forth in said Vehicle Code section shall be implemented. **(Added by Ord. No. 164,041, Eff. 10/21/88.)**