

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RITA ACOSTA, et al.,
Plaintiffs,
v.
CITY OF SALINAS,
Defendant.

Case No. [15-cv-05415 NC](#)

**ORDER DENYING PLAINTIFFS’
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Re: Dkt. No. 72

In this putative class action, Plaintiffs move for a temporary restraining order to enjoin the City of Salinas from enforcing City Ordinance 2567 and Resolution 20908 authorizing the City to conduct cleanup sweeps of a homeless encampment in its Chinatown neighborhood. The Court DENIES Plaintiffs’ motion for a temporary restraining order with prejudice because Plaintiffs have not shown a threat of immediate and irreparable injury to themselves in the absence of an injunction.

I. FACTUAL HISTORY

This motion is about Ordinance 2567, which empowers the City of Salinas to conduct a cleanup of its Chinatown neighborhood pursuant to the administrative procedures outlined in Resolution 20908 on March 29, 2016. Ordinance 2567 is a successor to Ordinance 2564, which was the subject of Plaintiffs’ complaint and contained many of the same provisions and regulations. The City has attached Ordinance 2567 at docket number 36-1 and Resolution 20908 at docket number 36-2. Ordinance 2567 was passed by the Salinas City Counsel with the “intent of preventing the misappropriation of City property for personal use and the proliferation of encampments on public property
Case No. [15-cv-05415 NC](#)

1 that have a significant adverse effect on public health, safety, and welfare and impede or
2 entirely obstruct access by emergency responders when responding to emergencies.” Dkt.
3 No. 36-1 at 2. Ordinance 2567 states that “[n]o person shall fail to remove personal
4 property stored on City Property by the date of scheduled removal provided on the written
5 notice posted in accordance with the Administrative Procedure” in Resolution 20908. Dkt.
6 No. 36-1 at 6. It authorizes the City to store or dispose of personal property which is not
7 removed by the date of the scheduled removal posted in the notice. *Id.*

8 Resolution 20908’s Administrative Procedure “requires outreach to affected
9 individuals, referral of individuals to supportive services, reasonable advance notice to
10 affected individuals of the deadlines by which they are to remove their personal property
11 from public property, the City’s storage of personal property that has been removed by the
12 City-established deadline, and an exception to permit the temporary use of tents, sleeping
13 bags, and the like overnight between 6:00 p.m. and 6:00 a.m. the next morning.” Dkt. No.
14 36-2 at 5.

15 The “reasonable advance notice” includes a requirement that the City post notices
16 with information, stated in both English and Spanish, including:

- 17 1. The title “Notice of Clean-Up;”
- 18 2. The posting date;
- 19 3. A general description of the personal property to be removed
and the location from which the personal property will be
removed;
- 20 4. A statement that the personal property on the job site is
currently being stored in violation of the Salinas City Code;
- 21 5. The location where the removed personal property will be
stored, if not removed by the deadline listed in the notice;
- 22 6. Dates of scheduled removal of personal property (can be a
range of dates);
- 23 7. Starting time of the first day of the cleanup;
- 24 8. A statement that personal property found at the site and not
removed by its owner will be stored by the City for 90-days
and that if such personal property is not recovered within that
period it will be deemed abandoned and that the personal
property will be destroyed.
- 25 9. Storage bags will be provided prior to the removal or
personal property for storage upon request; and
- 26 10. Homeless Service Provider Hotline to call (to be
27 considered by the County and Coalition of Homeless Service
Providers- if or when this becomes available).

28 Dkt. No. 36-2 at 8. These notices must be posted at least fifteen days prior to any

1 proposed cleanup, “absent circumstances at the site requiring shorter notice or where the
2 individual has previously received notice under this procedure and had personal property
3 removed and has reestablished the encampment at the same or other location.” *Id.*

4 In addition to its notice requirement, the Administrative Procedure in Resolution
5 20908 requires the City to provide “bags and tags” both before and during the cleanup.
6 Pre-cleanup, “[b]ags and tags will be handed out to individuals present at the site to assist
7 them with the storage of their personal property.” Dkt. No. 36-2 at 8. Then, on the day of
8 the cleanup, “[o]nce again, bags and tags will be provided to individuals to help them sort
9 and remove their personal items in the event they remain on-site. They are also able to
10 contact the Homeless Services Hotline or City staff on-site who will be available to answer
11 questions about the cleanup.” *Id.*

12 Plaintiffs are “seven homeless individuals living in the City of Salinas” who have
13 filed a Complaint alleging that their personal property has been seized and destroyed or
14 will be seized and destroyed by the City in violation of their constitutional rights. Dkt. No.
15 1 at ¶ 11. The named Plaintiffs are Rita Acosta, Van Gresham, Cherie Hernandez, William
16 Silas, Bessie Taylor, Joseph Blains, and John Lerma. *Id.* at ¶¶ 16–22. Plaintiffs have not
17 received class certification.

18 Plaintiffs allege that, “[o]ver the past two years, their personal possessions [have
19 been] confiscated and presumably destroyed by [City] employees . . . as part of an ongoing
20 practice targeting the homeless in the city.” *Id.* Plaintiffs allege that the implementation
21 of Ordinance 2567 and Resolution 20908 “only augments the danger that the personal
22 property of the homeless residents of the City of Salinas will [be] seized” in violation of
23 federal and state law. *Id.* at ¶ 14.

24 Therefore, Plaintiffs move “for entry of a Temporary Restraining Order against the
25 enforcement of City of Salinas Ordinance No. 2567 . . . [to] enjoin the City from otherwise
26 seizing, storing, discarding or destroying property belonging to homeless persons and
27 forcibly dispersing the residents of this encampment into the streets where they are now
28 suffering lack of access to food, medical care, their possessions and shelter all of which

1 they had ready access to in the Chinatown area.” Dkt. No. 72 at 3.

2 The City conducted a cleanup sweep of the Chinatown neighborhood on the
3 morning of March 29, 2016. Dkt. No. 82 at 7. Neither Plaintiffs nor Defendant have
4 stated that there are more cleanup sweeps planned for the area, but Ordinance 2567 and
5 Resolution 20908 permit the City to continue planning and executing sweeps as needed to
6 clear personal property that is being stored on city property. *See* Dkt. No. 36-1.

7 **II. PROCEDURAL HISTORY**

8 This is the fourth motion by Plaintiffs to enjoin the City from conducting a cleanup
9 sweep of Chinatown.

10 Plaintiffs’ complaint, filed on November 24, 2015, included an ex parte application
11 for a temporary restraining order. Dkt. No. 1-12. The ex parte application sought to “bar
12 the City of Salinas . . . from seizing, storing and/or immediately and/or subsequently
13 destroying the personal property including so-called ‘bulky items’ belonging to homeless
14 individuals living without shelter in the City of Salinas” under Ordinance 2564. *Id.* at 8.
15 On November 25, 2015, Judge Koh denied Plaintiffs’ ex parte application because it
16 “fail[ed] to comply with the requirements of Federal Rule of Civil Procedure 65(b)(1) and
17 Civil Local Rule 5-1.” Dkt. No. 5 at 2.

18 Plaintiffs then moved for a preliminary injunction against Ordinance 2564 on
19 grounds of facial invalidity on December 22, 2015. Judge Koh denied the motion as moot
20 in light of the City’s action replacing Ordinance 2564 with Ordinance 2567, which no
21 longer contained the provisions that were challenged as unconstitutional in Plaintiffs’
22 motion. Dkt. No. 45 at 6.

23 On March 3, 2016, Judge Koh held a case management conference with the parties
24 and set an abridged briefing schedule for Plaintiffs to file an as-applied challenge to
25 Ordinance 2567 before the City’s scheduled implementation of Ordinance 2567 and
26 Resolution 20908 on March 23, 2016. Dkt. No. 53.

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1 The case was reassigned to this Court on March 9, 2016.¹ Plaintiffs filed a motion
2 for a temporary restraining order, which this Court denied on March 16, 2016, for failure
3 to allege an as-applied challenge to Ordinance 2567 as required by Judge Koh’s case
4 management order. Dkt. No. 70. This Court instructed Plaintiffs to confer with the City
5 before filing any additional motions challenging Ordinance 2567.

6 Currently before the Court is Plaintiffs’ fourth ex parte motion to enjoin the City
7 from conducting a Chinatown sweep, which Plaintiffs filed on March 25, 2016. Dkt. No.
8 72. Finding this matter suitable for decision without oral argument under Civil Local Rule
9 7-1(b), the Court vacated the hearing set for March 30, 2016.

10 **III. LEGAL STANDARD**

11 **A. Temporary Restraining Order**

12 Under Federal Rule of Civil Procedure 65, a district court may issue a temporary
13 restraining order to prevent “immediate and irreparable injury, loss, or damage [] to the
14 movant.” Fed. R. Civ. P. 65(b), (d).

15 The standard for issuing a temporary restraining order is identical to the standard
16 for issuing a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240
17 F.3d 832, 839 n.7 (9th Cir. 2001). Plaintiffs seeking a temporary restraining order must
18 establish:

- 19 (1) a likelihood of success on the merits;
20 (2) a likelihood of irreparable harm in the absence of the
21 restraining order;
22 (3) that the balance of equities tips in favor of issuing the
23 restraining order; and,
24 (4) that issuing the restraining order is in the public interest.

25 *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *DISH Network Corp. v.*
26 *F.C.C.*, 653 F.3d 771, 776 (9th Cir. 2011). The party seeking the injunction bears the
27 burden of proving the requisite elements. *Klein v. City of San Clemente*, 584 F.3d 1196,
28 1201 (9th Cir. 2009).

¹ Both Plaintiffs and the City have consented to the jurisdiction of a magistrate judge under
28 U.S.C. § 636(c). Dkt. Nos. 64, 65.

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B. As-Applied Constitutional Challenge

“An as applied challenge may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied, or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right.” *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1084 (1995).

IV. EX PARTE APPLICATION

Civil Local Rule 7-10 states that “a party may file an ex parte motion . . . only if a statute, Federal Rule, local rule or Standing Order authorizes the filing of an ex parte motion in the circumstances and the party has complied with the applicable provisions allowing the party to approach the Court on an ex parte basis.” Civil L.R. 7-10. In addition, any ex parte motion “must include a citation to the statute, rule or order which permits the use of an ex parte motion to obtain the relief sought.” *Id.*

Plaintiffs’ current ex parte motion fails to comply with Civil Local Rule 7-10.² The City at docket 82 has responded to Plaintiffs’ motion and has therefore had a chance to be heard on the motion. However, the City alleges that Plaintiffs did not give the City any prior notice before filing the motion. Dkt. No. 82 at 3. Judge Koh has denied multiple requests to file documents in this case because Plaintiffs failed to comply with Civil Local Rule 7-10. *See* Dkt. No. 59. When denying a motion for administrative relief because it failed to comply with Local Rule 7-10, Judge Koh stated, “During the March 3, 2016 case

² It also fails to comply with Local Civil Rule 65-1, which requires that an ex parte motion for a temporary restraining order be accompanied by a separate memorandum of points and authorities in support of the motion.

1 management conference, the Court emphasized that too many documents were being filed
2 on an ex parte basis in this action, and that, given the gravity of the issues presented, the
3 Court would like to hear from both parties going forward. The parties agreed with the
4 Court’s assessment. Accordingly, the Court again emphasizes that ex parte filings in this
5 action are strongly discouraged.” *Id.* (internal citations omitted).

6 Because the City has responded to Plaintiffs’ motion, it is not truly ex parte as both
7 parties have had the opportunity to be heard. *Granny Goose Inc. v. Teamsters*, 415 U.S.
8 423, 435 (1974) (noting Rule 65’s “stringent” requirements for granting a temporary
9 restraining order because there has not been “reasonable notice and an opportunity to be
10 heard [for] both sides of a dispute.”) However, Plaintiffs’ failure to provide the City with
11 notice of the motion violates the Court’s previous order. Plaintiffs are warned that future
12 ex parte filings will not be considered if they do not comply with the Local Rules and the
13 Court’s orders.

14 **V. DENIAL OF TEMPORARY RESTRAINING ORDER**

15 **C. Likelihood of Success On The Merits**

16 To prevail on their motion, Plaintiffs must make a showing that the application of
17 Ordinance 2567 as to them in specified circumstances violates the United States
18 Constitution. *Tobe*, 9 Cal.4th at 1084. To do so, Plaintiffs must provide specific facts to
19 show how the City’s implementation of Ordinance 2567 has denied them a protected right.
20 *Id.*

21 Other plaintiffs have succeeded in as-applied challenges to city ordinances where
22 they showed that the city failed to follow the procedural safeguards in the ordinance or
23 failed to provide sufficient notice to the plaintiffs before seizing property. For example, in
24 *Russell v. City and County of Honolulu*, No. 13-cv-00475 LEK (RLP), 2013 WL 6222714,
25 *6-*7, (D. Haw. Nov. 29, 2013), the district court denied a facial challenge to a Sidewalk
26 Nuisance Ordinance but found that the plaintiffs had demonstrated a likelihood of success
27 on the merits of their “as-applied” challenge and issued a preliminary injunction on that
28 basis. *Id.* at *14-*18. The court was concerned that the City and County of Honolulu had

1 not complied with the procedures set forth in the Sidewalk Nuisance Ordinance and had
2 not provided sufficient notice to individuals whose property was seized. *Id.* at *15.

3 In *Russell*, the City and County had provided Summary Removal Notices to the
4 plaintiffs but the court found that the “Summary Removal Notices that [the plaintiffs]
5 received after the removal of their property . . . did not inform them that they could reclaim
6 their necessities without paying the fee and without a hearing, nor did the notices inform
7 them that they could seek a waiver of the fee from the hearings officer if the fee was
8 onerous for them.” *Id.* at *14.

9 The court concluded that the City’s enforcement of the Sidewalk Nuisance
10 Ordinance was likely unconstitutional as it was applied to the plaintiffs because of the
11 deficiencies in the Summary Removal Notices provided. *Id.* at *15.

12 In contrast, the temporary application presented here is more like the one denied in
13 *Martin v. City & Cty. of Honolulu*, No. 15-cv-00363 HG-KSC, 2015 WL 5826822, at *8
14 (D. Haw. Oct. 1, 2015). There, the district court found that homeless plaintiffs had not
15 presented enough information to justify the court granting a temporary restraining order.
16 *Martin*, No. 15-cv-00363 HG-KSC, 2015 WL 5826822 at *8. Here, as in *Martin*,
17 Plaintiffs have not shown that they have been deprived of their property by the City
18 without notice or procedure.

19 In fact, Plaintiffs’ submitted declarations are less substantive than the request
20 presented in *Martin*; here, no declarant states that his or her own property has been seized
21 or destroyed, or that the declarant saw evidence of harm to someone who is a party to the
22 case.

23 Instead, Plaintiffs’ motion makes broad statements about harm to third parties. It
24 alleges that “harm includes the dispersal of seriously mentally ill persons—including
25 persons at risk for suicide who had access to crisis intervention treatment by professionals
26 in Chinatown—such that their treaters cannot locate these clients at all. This harm
27 includes separation of homeless persons from sources of food previously provided . . . to
28 homeless persons in Chinatown.” Dkt. No. 72 at 2 (internal citations omitted). Plaintiffs’

1 motion goes on to describe the City’s alleged “seizure of vital items of personal property
2 from homeless persons who today were forced to dump necessities including blankets,
3 bedding, shoes and clothing into 96-gallon garbage cans that were then carted away by the
4 City.” *Id.*

5 However, the declarations attached to the motion fail to show imminent harm to any
6 party in the case. Only one of the declarations comes from a plaintiff in the case. Rita
7 Acosta’s declaration details her observations of the cleanup efforts on March 24, 2016.
8 Dkt. No. 73 at 1. She also disputes the need for the cleanup, stating that “[c]ontrary to
9 what the City said, the streets were never impassible, and the sidewalks in front of the
10 handful of open establishments that are there to serve the homeless . . . were clear and
11 unobstructed.” *Id.* at 2. Her dispute with Ordinance 2567 on its face is not applicable to
12 an as-applied challenge.

13 Moreover, the declaration of Don Reynolds in opposition to Plaintiffs’ ex parte
14 application states as follows: “Rita Acosta lives in a shelter and does not live in a tent or
15 other structure in the Chinatown area and is not otherwise living on the street or the
16 sidewalk. Rita Acosta is an employee of the shelter in which she resides.” Dkt. No. 86 at
17 2. Acosta’s declaration does not state any involvement in the sweep or contact with any
18 City official, or show that any of her personal possessions were seized or destroyed in the
19 sweep. Therefore, her declaration has not presented facts showing that she has or will
20 suffer injury by implementation of Ordinance 2567.

21 Similarly, the other attached declarations do not satisfy Rule 65’s requirement to
22 show that any plaintiff has suffered an irreparable injury as a result of an unconstitutional
23 application of Ordinance 2567. Tony Castillo, another declarant, is a business owner who
24 resides in Salinas and provides food to homeless persons living in the Chinatown area.
25 Dkt. No. 74. Castillo is not homeless, does not reside in Chinatown, and would not be
26 subject to the ordinance. *Id.* at 1. Castillo states that “[s]ince the City announced
27 implementation of the plan to bulldoze the Chinatown camp two weeks ago, the number of
28 homeless persons I am able to feed has dropped from approximately 105 to about 75. I

1 learned that many of those who were previously able to obtain food from me in Chinatown
2 fled the area fearful of losing their tents, shelter and possessions.” *Id.* at 2. Castillo
3 believes that “[w]ith the destruction of this camp and the scattering of homeless persons
4 onto the streets, underpasses and other areas across the city, it will be extremely difficult if
5 not impossible for me to find and feed the men, women and children I have been able to
6 assist in Chinatown.” *Id.* However, this declaration does not describe the unlawful seizure
7 of any property owned by a named plaintiff or other homeless person. It does not state that
8 the City did not provide notice; in fact, Castillo’s declaration describes homeless
9 individuals reacting to the notices posted in the weeks prior to the cleanup. It also does not
10 describe City officials seizing and destroying personal property without providing “bags
11 and tags” as required by Resolution 20908. *See* Dkt. No. 36-2 at 8.

12 Likewise, Plaintiffs’ attorney Anthony Prince’s declaration fails to demonstrate an
13 injury in fact to any plaintiff sufficient for the issuance of a temporary restraining order.
14 Dkt. No. 76. The majority of Prince’s declaration consists of statements from Dr. Paul
15 Wright, who filed a separate declaration stating the facts with personal knowledge. *Id.* at
16 1-2. The remainder of Prince’s declaration consists of other statements alleged to have
17 been made by Jill Allen, a homeless services provider in the Chinatown area, and a
18 description of Prince’s efforts to communicate with Defendants about Plaintiffs’ intent to
19 file the instant motion. *Id.* at 2-3.

20 In addition to his declaration stating his efforts to communicate with Defendants,
21 Prince attaches at docket 80 an image of a message stating, “This is to inform you that
22 today Plaintiffs will be filing an Ex Parte Application for a Temporary Restraining Order
23 to halt the Chinatown sweeps.” Dkt. No. 80 at 1. However, the message is not dated and it
24 is not clear that the message is an email or that it was received by the City. The City states
25 that it did not receive notice of Plaintiffs’ motion before it was filed. *See* Dkt. No. 82 at 2.

26 The declaration by Dr. Paul Wright contains no facts or evidence to demonstrate
27 any impact on any of the named plaintiffs. Dkt. No. 81. Dr. Wright describes his inability
28 to locate patients in the weeks leading up to the sweeps and his concerns regarding

1 unidentified individuals’ psychiatric condition. The harm alleged in Dr. Wright’s
2 declaration is a general fear of dispersal of mentally ill persons. Because he is not
3 describing harm to any plaintiff, his declaration does not provide grounds to issue a
4 temporary restraining order.

5 The declarations attached to Plaintiffs’ reply to the City’s response to the motion
6 are equally unpersuasive. Miriam Smith’s declaration states that she is a “longtime
7 community activist who has provided support and assistance to the homeless in Salinas for
8 many years.” Dkt. No. 88-1 at 1. Smith states that she was present during the “recent
9 destruction of the Chinatown homeless encampment” and that the City’s declarations
10 describing the sweep are untrue. *Id.* at 1-2. Smith states that she heard police yelling
11 “You have two minutes to get out,” and observed “most of the homeless” unable to store
12 “much of anything in the 96-gallon garbage cans that the city provided.” *Id.* at 2. She also
13 states that homeless individuals told her that most of their possessions were destroyed in
14 the sweep and that they were told that they could not store possessions such as tents and
15 small pieces of furniture. *Id.* Smith states that a woman named Antonia Rodriguez “had a
16 mental breakdown and was taken to Natividad Hospital when the City seized and
17 destroyed her possessions.” *Id.*

18 However, Smith’s declaration does not state that she observed City workers failing
19 to hand out the 96-gallon containers for people to put their personal possessions in, or a
20 sweep with no prior notice in violation of the terms of Resolution 20908. As such, her
21 declaration does not provide grounds for an as-applied challenge because it does not show
22 that the City’s implementation violated the administrative protections of Ordinance 2567
23 and Resolution 20908. *Martin*, No. 15-cv-00363 HG-KSC, 2015 WL 5826822 at *8.

24 Jessica Marie Medina states in her declaration that she is a part time worker at “Ord
25 [sic] Commissary in Seaside, C.A.” who volunteers at the Salinas foodbank. Dkt. No. 89
26 at 1. However, she does not declare that she is homeless. She does not identify any ties
27 with any of the named plaintiffs or describe any harm to them. The only person whose
28 name she mentions in her declaration is someone named Diane whose recreational vehicle,

1 in which Diane lives, was towed. Ordinance 2567 does not apply to persons living in their
2 recreational vehicles. Medina states that she saw City officials handing out storage bins
3 but that they ran out of bins before all the homeless individuals received two bins to put
4 their possessions in. *Id.* at 4. However, she does not identify any specific person who did
5 not get the allotted storage bins or describe misconduct by City officials that would
6 provide grounds for an as-applied challenge on the basis that the City was not following
7 the notice requirements of Ordinance 2567 and Resolution 20908.

8 In fact, the City officials' declarations submitted with its response to the motion
9 establish that the City has enforced the ordinance consistent with the procedural
10 protections built into Ordinance 2567 and Resolution 20908. Dkt. No. 84. This is unlike
11 *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012) because there, the City of Los
12 Angeles did not dispute the plaintiffs' allegations and admitted that it had a policy and
13 practice of seizing and destroying homeless persons' possessions when they had not been
14 abandoned. *Lavan*, 693 F.3d at 1025. The City of Los Angeles also conceded that it did
15 not provide any notice or an opportunity to be heard to the plaintiffs either before or after
16 seizing their property. *Id.* at 1032.

17 In contrast, the City here states that it has provided notice and followed the
18 procedural safeguards in Resolution 20908. Greg Knowles, the Assistant Redevelopment
19 Project Manager for the City, has submitted a declaration attesting to the process by which
20 the City conducted the cleanup. Dkt. No. 86 at 2. Knowles states that City work crews
21 and crews from the City's contractor, Smith & Enright, provided 96-gallon storage bins to
22 individuals to store their personal property and that no one was charged for the storage
23 bins. *Id.* at 2.

24 Knowles declares that "City workers and Smith & Enright crews went tent-by-tent
25 to ensure no individuals were present in the tents before the area was cleaned up and to
26 ensure that the individuals had removed all their personal property they wanted to keep and
27 to have the City store and ensure that before the cleanup occurred the individual indicated
28 their intent to abandon whatever remained at their campsite." *Id.* He goes on, "[i]n those

1 circumstances where no individual was identified with a particular campsite, the personal
2 property at that campsite was removed by Smith & Enright and stored consistent with the
3 ordinance and Administrative Procedure.” *Id.*

4 In addition to the storage bins provided by the City, “personal property items
5 removed by the City and too large to be placed into a storage bin are being stored at 312
6 East Alisal Street, property under the control of the City.” *Id.* Finally, the storage bins
7 “and other property are being stored in a covered area and are behind a locked gate to
8 prevent their being stolen or lost.” *Id.* The City therefore has presented evidence that it
9 has observed the procedural requirements of Ordinance 2567 and the Administrative
10 Procedure in Resolution 20908, most notably the notice requirement and the requirement
11 to provide individuals with “bags and tags” to store their personal property so it is not
12 destroyed. *See* Dkt. No. 36-2 at 8.

13 Therefore, the Court finds that Plaintiffs have not satisfied their burden to show a
14 high likelihood of success on the merits.

15 **D. Likelihood of Irreparable Harm**

16 Plaintiffs seeking a temporary restraining order must demonstrate that irreparable
17 injury is likely in the absence of a restraining order. *Alliance for the Wild Rockies v.*
18 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

19 Plaintiffs have not established a likelihood of irreparable harm in the absence of a
20 temporary restraining order. The City has represented that it complies with the procedures
21 set forth in the Ordinance and Administrative Procedure and does not seize and
22 immediately destroy personal property. Dkt. No. 84. For the same reasons that the
23 Plaintiffs’ declarations fail to show a high likelihood of success on the merits, they fail to
24 demonstrate the threat of personal irreparable injury.

25 **E. Balance of Equities**

26 “To determine which way the balance of the hardships tips, a court must identify
27 the possible harm caused by the preliminary injunction against the possibility of the harm
28 caused by not issuing it.” *Univ. of Hawai’i Prof’l Assembly v. Cayetano*, 183 F.3d 1096,

1 1108 (9th Cir. 1999) (citing *Los Angeles Memorial Coliseum Comm’n v. NFL*, 634 F.2d
 2 1197, 1203 (9th Cir. 1980)). The Court recognizes that Plaintiffs have a compelling
 3 ownership interest in their personal property, especially “given the vulnerability of []
 4 homeless residents: For many of us, the loss of our personal effects may pose a minor
 5 inconvenience. However, the loss can be devastating for the homeless.” *Lavan*, 693 F.3d
 6 at 1032 (citing *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992))
 7 (internal citations and quotations omitted).

8 However, Ordinance 2567 and Resolution 20908 are not confronting a facial
 9 challenge. The City has presented declarations stating that it has followed Resolution
 10 20908’s procedures requiring notice and “bags and tags” provided for storage. As such,
 11 the balance of equities weighs in favor of denial of the temporary restraining order because
 12 the City of Salinas has an interest in enforcing its ordinances in order to prevent health and
 13 safety hazards and the blockage of public spaces and thoroughfares. *Martin*, No. CV 15-
 14 00363 HG-KSC, 2015 WL 5826822, at *8 (balance of equities weighed in favor of
 15 denying temporary restraining order because if granted, temporary restraining order would
 16 have prevented City of Honolulu’s ability to enforce its own ordinances, leading to
 17 obstructed sidewalks and public spaces as well as potential health and safety hazards).

18 Therefore, the balance of equities here, while involving important rights on both
 19 sides, weighs against Plaintiffs’ proposed temporary restraining order.

20 **F. Public Interest**

21 The Supreme Court has made clear the “the importance of assessing . . . the public
 22 interest in determining whether to grant a preliminary injunction” or temporary restraining
 23 order. *Winter*, 555 U.S. at 26. Here, the City proffers the public interest in having safe
 24 and unobstructed public spaces and thoroughfares, as well as preventing health and safety
 25 hazards to the general public as well as the homeless individuals living in the Chinatown
 26 encampment. Dkt. Nos. 17, 82. Plaintiffs do not explicitly address the public interest in
 27 their current motion, but make statements about the general societal harms threatened by
 28 the cleanup, including the stigmatization of homelessness. Plaintiffs also state that the

1 harms facing homeless persons in Salinas after the cleanup, including lack of access to
2 food, medical care, their possessions and shelter, are “not conditions endemic to the status
3 of being homeless: these are state-created dangers.” Dkt. No. 72 at 3.

4 Both stated public interests are weighty. However, because Plaintiffs have not
5 shown that, as-applied, Ordinance 2567 and Resolution 20908 abrogate their constitutional
6 rights, this factor tips in favor of denying the temporary restraining order.

7 **VI. CASE MANAGEMENT**

8 **A. Amended Complaint**

9 Plaintiffs were instructed to provide to the City a proposed amended complaint by
10 April 7, 2016. Dkt. 53 at 2. The City has until April 14, 2016, to respond to Plaintiffs as
11 to whether Defendant will stipulate to the filing of Plaintiffs’ proposed amended
12 complaint. If Defendant declines to so stipulate, Plaintiffs must file a motion for leave to
13 amend the complaint by April 21, 2016. However, in its response to Plaintiffs’ motion for
14 a temporary restraining order, the City stated that Plaintiffs had not provided a proposed
15 amended complaint as of March 29, 2016. Dkt. No. 82 at 3.

16 Plaintiffs have until April 21, 2016, to file a motion for leave to amend the
17 complaint, but they are warned that they must either show that they provided the City a
18 proposed amended complaint by April 7, 2016, or show good cause to amend given their
19 apparent failure to follow the procedure for the parties to agree on an amended complaint.

20 **VII. CONCLUSION**

21 For the reasons stated above, Plaintiffs’ request for a temporary restraining order to
22 enjoin the City from conducting the Chinatown cleanup sweep under Ordinance 2567 and
23 Resolution 20908 on March 29, 2016, is DENIED with prejudice.

24
25 **IT IS SO ORDERED.**

26
27 Dated: April 13, 2016


NATHANAEL M. COUSINS
United States Magistrate Judge