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Public Law Update – Governor Issues Executive Order to State Agencies Regarding Homeless Encampments

On July 25th, 2024, Governor Gavin Newsom signed Executive Order N-1-24 ("Executive Order" or "Order") into law, ordering state agencies and departments to adopt and prioritize enforcing policies affecting the dismantling of homeless encampments.

In issuing this directive on state agencies, Governor Newsom directs state agencies to adopt policies generally consistent with the California Department of Transportation's ("CalTrans") Maintenance Policy Directive 10001-R1. Governor Newsom also sets forth five components which "shall" be included in policies of such state agencies. The first is to, whenever feasible, provide a site assessment to determine whether an encampment presents an imminent threat to life, health, safety or infrastructure. This assessment is used to determine whether exigent circumstances require immediate removal of the encampment.

Second, if it is determined that exigent circumstances exist, state entities are ordered to provide "as much advance notice to vacate as reasonable under the circumstances." Where exigent circumstances are not found, agencies and departments are ordered to post a notice to vacate at least 48 hours prior to initiating removal.

Next, agencies are ordered to include requirements in their policies which require them to contact service providers to request their assistance for providing resources to people living at the encampment. Once dismantling has occurred, entities are ordered to maintain systems for collecting, labeling, and storing property of persons living in each encampment, excluding items which present a health and safety hazard, for at least 60 days.

While the Governor's Executive Order does not compel local governments to implement these policies, it encourages the adoption of policies consistent with the Order.

Governor Newsom's Executive Order follows the United States Supreme Court decision in *City of Grants Pass v. Johnson*, (*Grants Pass)*, which determined that criminal punishment for ordinances prohibiting camping was not a violation of the 8th Amendment's cruel and unusual punishment clause. *Grants Pass* provides protection for

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municipalities to pursue taking greater control over their public spaces and enforcement of camping ordinances. As highlighted in the Supreme Court's *Grants Pass* decision, however, cities may continue facing legal challenges regarding their approach to dismantling encampments where the unhoused community may seek to reside. For more information on *Grants Pass*, please read this e-blast or watch this webinar.

Attorneys at Burke regularly advise clients on legal matters related to this topic.

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