



Agenda Item 9B
Approvals: _____
City Manager JM
Dept. Head _____
Attorney _____
Finance _____

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: March 5, 2019

Department: City Manager
Prepared By: City Attorney

Subject: ORDINANCE ADDING SECTION 8.86.040 TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO ENFORCEMENT OF CAMPING ORDINANCES

Fiscal Impact: None. This item is required due to implement a federal appeals decision.

Background: In 2018, the City updated and modernized its municipal code regulations relating to camping on public property. Subsequently, the Ninth Circuit Court of Appeals issued a comprehensive ruling relating to the imposition of criminal penalties for sitting, sleeping, or lying on public property.

Discussion: This ordinance codifies the Ninth Circuit decision in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031, which held in part "that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter" (*Martin*, 902 F.3d at 1048).

Recommended

Action: STAFF RECOMMENDS THAT the City Council introduce Ordinance No. ____, titled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA ADDING SECTION 8.86.040 TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO ENFORCEMENT OF CAMPING ORDINANCES."

Attachments: Attachment 1. Ordinance adding Section 8.86.040.

Notification: Not applicable.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA ADDING SECTION 8.86.040 TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO ENFORCEMENT OF CAMPING ORDINANCES

WHEREAS, the City's climatic, topographical, circulation, seismic, geological, and wildland-urban interface conditions create an increased risk of fires;

WHEREAS, the California Department of Forestry and Fire Protection reports an average of 103 wildfires per year are ignited by illegal open fires, and, several fire departments in California have responded to such fires at, or caused by activities at, unauthorized camping;

WHEREAS, based on the above and other related findings, on February 20, 2018, the City Council adopted Ordinance No. 1650 to amend the San Clemente Municipal Code to add chapter 8.86, Camping, which prohibits camping upon public property, private open space, and fire risk areas;

WHEREAS, on September 4, 2018, the United States Court of Appeals, Ninth Circuit issued a decision in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031, which held in part "that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter" (*Martin*, 902 F.3d at 1048.);

WHEREAS, although it has and will be the City's practice to follow the *Martin* decision when implementing and enforcing San Clemente Municipal Code chapter 8.86, the City desires to amend chapter 8.86 to codify the above constitutional principal from the *Martin* decision;

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents.

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. RECITALS. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CODE AMENDMENT. Section 8.86.040, Enforcement, is hereby added to San Clemente Municipal Code to read as follows:

"8.86.040 - Enforcement.

Absent exigent circumstances relating to immediate threats to the public health, safety, or welfare, the provisions of this chapter will not be enforced against indigent homeless persons sitting, lying, or sleeping on public property when no alternative shelter is available in accordance with the holding in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031."

Section 3. EXISTING CODE PROVISIONS. All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 4. CEQA. The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

A. This ordinance is not "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment.

B. This Ordinance is exempt under Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

The City Council, therefore, directs that a Notice of Exemption for this ordinance be filed with the County Clerk of the County of Orange in accordance with State CEQA Guidelines.

Section 5. PUBLICATION. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code Section 36933.

Section 6. RECORDS. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

Section 7. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid

provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Clemente this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

APPROVED AS TO FORM:

City Attorney
City of San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the _____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY