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 19 Capistrano, and City of San Clemente

20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

22 HOUSING IS A HUMAN RIGHT
 23 ORANGE COUNTY, et al.,

24 Plaintiffs,

25 v.

26 THE COUNTY OF ORANGE, et al.,

27 Defendants.

Case No. 8:19-cv-00388-PA
 Honorable Percy Anderson

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF
 MOTION OF DEFENDANTS CITY
 OF ALISO VIEJO, CITY OF SAN
 JUAN CAPISTRANO, AND CITY
 OF SAN CLEMENTE TO DISMISS
 THE AMENDED COMPLAINT**

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REQUEST FOR JUDICIAL NOTICE

PLEASE TAKE NOTICE that, under Federal Rule of Evidence 201, and in support of their Motion to Dismiss, defendants City of Aliso Viejo, City of San Juan Capistrano, and City of San Clemente respectfully request that the Court take Judicial Notice of the following public records, which are not subject to reasonable dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned:

1. San Clemente Municipal Code § 8.86.010, a true and correct copy of which is attached as Exhibit 1 hereto.
2. San Clemente Municipal Code § 8.86.040, a true and correct copy of which is attached as Exhibit 2 hereto.
3. San Clemente Ordinance No. 1673, a true and correct copy of which is attached as Exhibit 3 hereto.
4. San Clemente Municipal Code § 8.86.020, a true and correct copy of which is attached as Exhibit 4 hereto.

ARGUMENT

“A court shall take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b).

The Court may “take judicial notice of . . . undisputed matters of public record.” Wilbur v. Locke, 423 F.3d 1101, 1113 (9th Cir. 2005) (brackets omitted). The aforementioned documents are not reasonably subject to dispute—they are duly enacted municipal codes and ordinances of the City of San Clemente—and are thus the proper subject of judicial notice under the Federal Rules of Evidence.

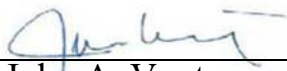
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CONCLUSION

For the foregoing reasons, defendants City of Aliso Viejo, City of San Juan Capistrano, and City of San Clemente respectfully request that, in connection with their Motion to Dismiss, the Court take judicial notice of Exhibits 1-4 hereto.

Dated: July 1, 2019

JONES DAY

By: 

John A. Vogt

Attorneys for Defendants
CITY OF ALISO VIEJO, CITY OF
SAN JUAN CAPISTRANO, AND
CITY OF SAN CLEMENTE

EXHIBIT 1

8.86.010 - Definitions.

For purposes of this chapter and this code, unless otherwise provided by this code, the following definitions apply:

"Camping" means to pitch or occupy camp facilities or to use camp paraphernalia;

"Camp facilities" include, but, are not limited to, tents, huts, or other temporary shelters.

"Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, non-City designated cooking facilities, or similar equipment.

Camping upon lands in the City . Except as otherwise provided by this code or by resolution of the City Council, it is unlawful any person to engage in camping:

- A. Upon any land or easement owned, operated, or managed by the City;
- B. Upon any land for which [Title 17](#), Zoning, the General Plan, or a specific plan designates as private open space and prohibits camping;
and
- C. Upon any land designated by the Fire Chief as a fire risk area. Fire risk areas include, but, are not limited to, areas in or near a very high fire hazard severity zone identified by the City or by the California Department of Forestry and Fire Protection, areas in or near a wildland-urban interface, and areas in or near to a heightened fire rating by the Orange County Fire Authority.

(Ord. No. [1650](#), § 3, 2-20-2018)

EXHIBIT 2

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.

(Ord. No. [1671](#), § 2, 3-19-2019)

EXHIBIT 3

ORDINANCE NO. 1674

AN ORDINANCE OF THE CITY OF SAN CLEMENTE FINDING THAT EXIGENT CIRCUMSTANCES RELATING TO IMMEDIATE THREATS TO THE PUBLIC HEALTH, SAFETY, AND WELFARE REQUIRE ENFORCEMENT OF THE PROVISIONS OF SAN CLEMENTE MUNICIPAL CODE CHAPTER 8.86 PROHIBITING CAMPING ON PUBLIC PROPERTY, EXCEPT AS PERMITTED HEREIN

WHEREAS, as of January 2015, the number of people experiencing homelessness in the United States was estimated at over 564,000, with twenty-one (21%) of such persons located in the State of California; and

WHEREAS, according to data provided by the Federal Department of Housing and Urban Development, California is home to four of the nation's top ten major metropolitan areas with the largest number of persons experiencing homelessness; and

WHEREAS, Orange County is experiencing similar conditions, with significant and increasing numbers of persons currently homeless/unsheltered in Orange County, living in areas not meant for human habitation such as public streets, public and private parking lots, abandoned buildings, vacant lots and open space areas, public infrastructure facilities, beaches and parks; and

WHEREAS, more than half of individuals experiencing homelessness residing in Orange County are "chronically homeless;" and

WHEREAS, the City of San Clemente's homelessness rates have increased along with those of the County at large; and

WHEREAS, San Clemente, along with every city in the region, has struggled to create solutions and has likewise been working with the County and other stakeholders to develop both temporary and permanent solutions to this regional crisis; and

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

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; and

WHEREAS, the City Council of the City of San Clemente desires to take action to address the incidents of homelessness and unsheltered persons residing within the City; and

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; and

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 restricted the enforceability of anti-camping ordinances under certain circumstances; and

WHEREAS, the City has been working actively to develop long-term solutions to the homelessness problem, in conjunction with the County and other stakeholders, to pursue the provision of emergency shelter services and transitional and long-term housing opportunities to address the underlying causes of homelessness, including petitioning the County of Orange to provide shelter and services to this highly impacted segment of its population; and

WHEREAS, the City has contracted with various non-profit service organizations to provide outreach, counseling, and other services to the people in San Clemente experiencing homelessness; and

WHEREAS, given the significant number of unsheltered persons in the City, the incidents of homeless encampments and related conditions are increasing across portions of the City within the public right of way, transportation centers, public parking lots, public infrastructure facilities, sidewalks, beaches and parks, and such conditions expose people experiencing homelessness to traffic hazards, both vehicular and rail-related, crime, risk of death and injury due to natural disasters such as landslides, floods, wild- and structural-fires, exposure to weather, lack of adequate sanitation and debris services, and other conditions detrimental to their health and safety; and

WHEREAS, the City hosts a major transportation facility at its North Beach Metrolink station, where passengers who must access the train platform and purchase rail tickets (sometimes before and after daylight) have expressed concern about their personal safety and uninvited encounters by persons camped at or near the train platform; and

WHEREAS, the City has received a grievance from a disabled person claiming that materials from an encampment at North Beach impeded his access to the sidewalk and connected facilities; and

WHEREAS, residents have frequently complained that they are deprived of use and enjoyment of public facilities and are often accosted, threatened, or verbally abused by occupants of these encampments; and

WHEREAS, occupants of these encampments have lacked privacy and quiet due to their adjacency to the railroad tracks and the San Clemente Beach Trail, and large numbers of residents, tourists, and visitors utilizing these facilities for recreation and transportation; and

WHEREAS, City facilities and their environs have been damaged by these encampments, including the grounds of the Ole Hanson Beach Club, an historic landmark built in 1928 and the subject of a recent \$5.6 million renovation, and the San Clemente Beach Trail; and

WHEREAS, public defecation and public urination and other unsanitary conditions at these and other public facilities, sometimes in close proximity to open public restrooms, create unsanitary conditions for the occupants of the encampment and visitors; and

WHEREAS, such conditions negatively impact the health and safety of the general public, the physical environment and public facilities of the City, by (1) interfering with access to electrical boxes and other utilities, which exposes these persons and the general public to risks, (2) limiting the ability of emergency responders to access and address issues of public safety, including the provision of such services to those persons experiencing homelessness, (3) exposing persons experiencing homeless to risks in coastal areas to risks from flooding, surf, and unstable soils conditions, (4) impairing access to transit and other public facilities for disabled persons, and (5) impeding the use and enjoyment of such facilities for their intended purpose; and

WHEREAS, the occupants of the North Beach encampment are often perceived to be in a state of confusion or disorientation, which in connection with the close proximity of their encampment to the railroad tracks, exposes such occupants to extreme risks and health hazards; and

WHEREAS, the City has noted damage to certain facilities, adjacent landscaping, and other public facilities as a result of homeless encampments on City property; and

WHEREAS, with the great increase in the number of tourists, vacationers, and visitors anticipated after Memorial Day, the City anticipates that these unsafe and unhealthy conditions and human conflict associated therewith will increase; and

WHEREAS, with the arrival of summer, the fire safety hazards associated with camping in open space and other wildland areas will increase significantly; and

WHEREAS, on March 19, 2019, the City adopted an ordinance in light of the *Martin* decision 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."; and

WHEREAS, the *Martin* decision recognized a city's ability to prohibit "sitting, lying, or sleeping outside at particular times or in particular locations" and to bar "the obstruction of public rights of way or the erection of certain structures;" and

WHEREAS, City Council finds that the conditions enumerated in the above recitals and those included in the May 21, 2019 City Council agenda report and related records accompanying this Ordinance, give rise to exigent circumstances under SCMC Section 8.86.040 and, therefore, pending the provision of emergency shelters in San Clemente, give rise to the need to (1) designate certain public property available to indigent homeless persons in the City as designated in Attachment 1 hereto, and (2) otherwise enforce the provisions of Chapter 8.86; and

WHEREAS, for the reasons enumerated above, the adoption and enactment of this ordinance is necessary for the avoidance of additional damage to public facilities, the preservation of the public health, safety, and the prevention of greater health, welfare, and safety risks to people in San Clemente experiencing homelessness and the general public.

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

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

Section 2. For purposes of this Ordinance, "Camping" shall mean to pitch or occupy "camp facilities" or to use "camp paraphernalia" as those terms are defined in SCMC Section 8.86.040.

Section 3. The City Council hereby finds pursuant to SCMC Section 8.86.040, that "exigent circumstances relating to immediate threats to the public health, safety, or welfare" require enforcement against all persons (including indigent homeless persons) of the provisions of SCMC Chapter 8.86 (prohibiting camping on public property), except that such enforcement shall not be brought against persons camping on public property designated for such purposes pursuant to Section 4 of this Ordinance.

Section 4. That the City property designated in Attachment 1 hereto is hereby made available as the sole public area in the City available for camping purposes by those persons experiencing homelessness or otherwise unable to obtain shelter.

Section 5. Under the direction of the City Manager, the City may adopt rules and regulations for the occupancy, use, and operation of the camping area and conduct therein and shall circulate and post said rules and regulations at the area.

Section 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 7. This ordinance is not subject to the California Environmental Quality Act ("CEQA"). An activity does not require environmental review under CEQA unless the activity has potential to cause a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3).) A project is thus exempt from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (State CEQA Guidelines, § 15061(b)(3).) Here, the City's adoption of this Ordinance is not subject to CEQA because there is no possibility that the adoption of this Ordinance may have a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3).) In particular, the City's adoption of this Ordinance merely designates certain vacant property as alternative shelter for the homeless and as the exclusive public property available to the homeless for camping purposes. This Ordinance does not authorize the construction of any project or any other activity that could potentially cause a significant effect on the environment.

Moreover, the City's adoption of the Ordinance is categorically exempt from CEQA under State CEQA Guidelines section 15304, which categorically exempts minor public alterations in the condition of land where the alteration does not involve the removal of healthy, mature, scenic trees. Here, adoption of this Ordinance provides for a minor alteration of public land by providing for use of certain vacant property owned by the City as alternative shelter for the homeless and as the exclusive public property available to the homeless for camping purposes. The adoption of this Ordinance will not result in any new construction and will not involve the removal of any trees.

Furthermore, the City's adoption of this Ordinance is statutorily exempt from CEQA as it constitutes a "specific action necessary to prevent or mitigate an emergency." (Pub. Res. Code, § 21980(b)(4); State CEQA Guidelines, § 15269.) Here, as discussed above, the adoption and enactment of this ordinance is necessary to avoid additional damage to public facilities, preserve public health and safety, and prevent damage to life, health, and property.

Section 8. 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.

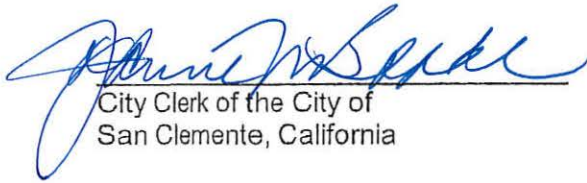
Ordinance No. 1674

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Section 9. 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, 910 Calle Negocio, San Clemente, CA 92672.

APPROVED AND ADOPTED this 4th day of June, 2019.

ATTEST:



City Clerk of the City of
San Clemente, California



Mayor Pro Tem of the City of San
Clemente, California

Ordinance No. 1674

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

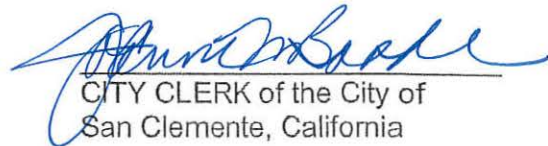
I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1674 having been regularly introduced at the meeting of May 21, 2019, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 4th day of June, 2019, and said ordinance was adopted by the following vote:

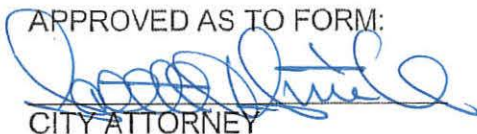
AYES: FERGUSON, HAMM, WARD, MAYOR PRO TEM BANE

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 11TH day of JUNE, 2019.


CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

Water Reclamation Plant Vacant Lot Temporary Campground Layout



EXHIBIT 4

8.86.020 - Removal and Recovery of Personal Property.

- A. Except as otherwise provided in this code or by resolution of the City Council, any personal property left for more than 24 hours upon any lands described in Section 8.86.020, Camping Upon Lands in the City, shall be considered abandoned and may be removed or impounded by the City or peace officers.
- B. Such property may be recovered by the persons who own or have rights to possess it in accordance with procedures established by the City Manager, or his or her designee, or with procedures of the law enforcement agency to which the property is taken by peace officers.

(Ord. No. [1650](#), § 3, 2-20-2018)