



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: December 17, 2019

Agenda Item 8-B

**Approvals:**

City Manager [Signature]

Dept. Head \_\_\_\_\_

Attorney \_\_\_\_\_

Finance \_\_\_\_\_

**Department:** City Manager and City Attorney

**Prepared By:** James Makshanoff, City Manager  
Scott C. Smith, City Attorney

**Subject:** *INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.86 OF THE SAN CLEMENTE MUNICIPAL CODE (RELATING TO PUBLIC CAMPING) IN ITS ENTIRETY, REPEALING ORDINANCES NOS. 1673, 1674, AND 1675, AND FINDING THE ORDINANCE EXEMPT FROM CEQA (IN CONNECTION WITH CLOSURE OF PICO TRANSITIONAL CAMP AND THE RESTORATION OF THE CITY-WIDE CAMPING BAN WHERE ALTERNATIVE SHELTER, HOTEL VOUCHERS, OR ORDINARY CAMPGROUND OPPORTUNITIES ARE MADE AVAILABLE)*

**Fiscal Impact:** Direct savings from closing the Pico transitional campsite will be approximately \$30,000 monthly, which will be offset by the costs of transportation, placement, relocation, hotel vouchers, and campground expenses offered to persons who would otherwise be found in violation of the Municipal Code. This amount should not exceed \$10,000 per month. The costs of locating and operating a transitional camp on an alternative site will be addressed, analyzed, and funded through future separate action of the Council.

**Background:** The City has made significant efforts to address the serious threats to the health, safety, and welfare relating to the causes and effects of homelessness. This effort included adoption of ordinances relating to a State-certified emergency shelter housing element overlay, a 2018 ordinance relating to fire hazards arising from camping in public and private open space, a 2019 ordinance codifying the Ninth Circuit decision in *Martin v. Boise*, and urgency ordinances containing findings of exigent circumstances requiring enforcement of the City's anti-camping ordinances and designating a single area of City property at the City's public works yard on Avenida Pico where transitional camping would be permitted. This ordinance and the urgency ordinance adopted by the City Council on December 10, 2019, have the same content, except that that the urgency ordinance includes findings of urgency.

**Discussion:** As discussed in prior agenda reports, San Clemente has faced increasing problems arising from the prevalence of homelessness in California and the health and safety risks facing persons suffering from homelessness. The City noted a significant increase in its homeless population concurrently with the unavailability of County-provided shelter beds that had for many years been available to all indigent and homeless persons. Since that occurred, no

replacement shelters or regular funding source for permanent replacement shelters has been made available to the City.

San Clemente Municipal Code Chapter 8.86 contains various provisions relating to camping in public places, certain private open space, and high fire hazard areas. Section 8.86.040 provides that those prohibitions will not be enforced against indigent persons camping in public places when no alternative shelter is available. This limitation on enforcement does not apply when the City finds that exigent circumstances relating to immediate threats to the public health, safety, and welfare so dictate. In May and June 2019, the City Council considered and adopted ordinances containing findings of exigent circumstances requiring enforcement of the City's anti-camping ordinances, and also designating the City's public works yard on Avenida Pico, on an urgency and temporary basis, as the sole location within the City where transitional camping is permitted. The purpose of the ordinances was to apply and enforce the laws necessary to alleviate the urgency nuisance conditions, lawlessness, and environmental hazards identified above.

Since the City designated its public works yard on Avenida Pico as the sole permitted location for transitional camping, the City has continued to experience issues impacting the health and welfare of the community with respect to homelessness. However, notwithstanding these issues, through support and intervention by the City, the County, the Sheriff, and charitable institutions, the City has made significant progress toward reducing the number of persons experiencing homelessness in the City. As a result, the number of individuals regularly camping at the Avenida Pico transitional campground has decreased to fewer than five.

During this interim, the City has worked aggressively with the County, the Sheriff, and the City's non-profit partners to (1) explore locations and funding sources for permanent shelter beds for persons in San Clemente experiencing homelessness, (2) find potential locations for the City's establishment of a long-term transitional camp, if necessary, (3) provide hotel vouchers or campsite vouchers for persons experiencing homelessness in San Clemente, and (4) connect persons experiencing homelessness with transitional housing, family or charitable housing sources, and other assistance. Continued operation of the Avenida Pico campground would have cost the City approximately \$30,000 per month. Given that high cost of operation and small number of individuals regularly camping at the Avenida Pico transitional camp, the City has determined that its resources to assist individuals experiencing the effects of homelessness can be better allocated towards other uses.

Since adoption of the urgency ordinances earlier in 2019, the City and its governmental and non-profit partners have successfully provided outreach, transportation, and other resources to assist persons experiencing

homelessness in San Clemente to find adequate shelter. In the meantime, the City has initiated an effort to locate a more permanent location for the long-term operation of a transitional camp, if necessary. However, the City needs additional time to complete this effort. In the meantime, it is anticipated that the remainder of the City's homeless population can be directed to and provided permanent shelter, transitional housing, or safer campsites through the continued active intervention, facilitation, and support of the City and its partners.

The City has the legal authority to accomplish this. In litigation challenging the City's camping ordinance, a federal court recently acknowledged that the decision in *Martin v. City of Boise*, by its own terms, does not suggest that "a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside [and] even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible." The court in the above-referenced federal case held that under *Martin*, San Clemente "has no affirmative constitutional obligation to provide shelter to individuals experiencing homelessness" and that *Martin* "in no way dictate[s] to [cities] that [they] must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place."

With this assurance from the court and the City's strides in addressing these issues, the City can terminate the temporary use of the Avenida Pica public works yard for transitional camping. The City will continue to assist individuals experiencing the effects of homelessness in the City by, among other things, (1) providing counseling and facilitating transportation for said individuals to travel to the homes of friends, family, charitable, or other providers, (2) distributing hotel vouchers, where appropriate, (3) facilitating use of publically operated campgrounds designated for that purpose, and (4) identifying a long-term transitional campsite, subject to appropriate general plan and zoning compliance and environmental review.

These actions should not impair the City's ability to enforce its anti-camping laws in the meantime. Consistent with *Martin v. City of Boise* and San Clemente Municipal Code Section 8.86.040 (as revised by this ordinance), the City is able to enforce the public camping prohibitions of Chapter 8.86 by providing or confirming that persons violating those prohibitions have available (1) housing, and transportation thereto, provided by friends, family, charitable organizations, or other providers, (2) shelter in the form of hotel vouchers, and/or (3) paid access to a publically-owned campground.

The attached ordinance repeals the provisions of the Municipal Code designating the Pico transitional camp as an area where camping is permitted within City limits. By making available alternative means of shelter, such as hotel or campground vouchers, the City can enforce the camping prohibitions

of Chapter 8.86 throughout the City. Should the Council adopt the attached ordinance, camping would no longer be allowed at the public works yard on Avenida Pico.

Finally, the ordinance provides that in the event that the City's inability to arrange shelter or vouchers for shelter requires under *Martin v. Boise* that public camping be permitted, tents used for that camping may be erected only between the hours of 5 p.m. and 10 am. This provision of the ordinance is based upon the City's experience in operating the Pico transitional camp that dictated that these limitations on the erection of tents were necessary to provide for the safety of the camp's occupants. Structures with enclosed coverings constitute a danger to public safety in part because they prevent Orange County Sheriff's Department officers and other public safety personnel from observing all areas of and activities on the site, including illegal activities inside the enclosed structures (e.g., alcohol consumption, weapons violations, or drug use) and the aesthetic impacts of tents on adjacent properties.

Council adopted a related urgency ordinance on December 10, 2019. This ordinance has identical provisions provisions but will be subject to first and second reading and a 30-day effective date.

**Environmental  
Review:**

Staff recommends that the Council find that the ordinance is not subject to environmental review under the California Environmental Quality Act for at least two reasons.

First, the ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) ["An activity is not subject to CEQA if ... [t]he activity is not a project as defined in Section 15378.1.) Here, the ordinance is not a "project" within the meaning of Section 15378 because the ordinance has no potential "for resulting in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," as further discussed below. (State CEQA Guidelines, § 15378.)

Second, and in the an alternative, if the ordinance is a project, it is exempt under State CEQA Guidelines section 15061(b)(3), the common sense exemption, because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The ordinance will not result in any construction or development, it will not result in increased camping, and it will not result in an increase in the population of unsheltered individuals. To the contrary, the ordinance will protect the environment by protecting public property and decreasing the risk of wildfires.

The ordinance will require less than five individuals who regularly camp at the Avenida Pico transitional campground to cease their camping activity at that site; this will not result in any adverse significant impact on the environment. As noted above, these individuals already have the option to (1) receive counseling and transportation assistance to the homes of friends, family, charitable or other providers, (2) obtain shelter in the form of hotel vouchers, and/or (3) receive transportation facilitated by the City to publically-owned campgrounds.

In short, this ordinance has no potential to result in a direct, or reasonably foreseeable indirect, physical change in the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Staff recommends that the City Council direct that a Notice of Exemption for these ordinance be filed with the County Clerk of the County of Orange.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Introduce Ordinance No. \_\_\_\_ entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING CHAPTER 8.86 OF THE SAN CLEMENTE MUNICIPAL CODE (RELATING TO PUBLIC CAMPING) IN ITS ENTIRETY, REPEALING ORDINANCES NOS. 1673, 1674, AND 1675, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"

**Attachments:** 1) Ordinance No. \_\_\_\_\_ entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING CHAPTER 8.86 OF THE SAN CLEMENTE MUNICIPAL CODE (RELATING TO PUBLIC CAMPING) IN ITS ENTIRETY, REPEALING ORDINANCES NOS. 1673, 1674, AND 1675, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"

2) Ordinances Nos. 1673, 1674, and 1675

**Notification:** None

ATTACHMENT 1

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING CHAPTER 8.86 OF THE SAN CLEMENTE MUNICIPAL CODE (RELATING TO PUBLIC CAMPING) IN ITS ENTIRETY, REPEALING ORDINANCES NOS. 1673, 1674, AND 1675, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, as of January 2015, the number of people experiencing homelessness in the United States was estimated at over 564,000, with twenty-one percent (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 the 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 Orange 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 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**, 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 immediate 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**, in light of the *Martin* decision, on March 19, 2019, the City adopted an ordinance adding Section 8.86.040 to the SCMC providing that "[a]bsent 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**, in litigation challenging the City's camping ordinance, a federal court recently acknowledged that the decision in *Martin v. City of Boise*, by its own terms, does not suggest that "a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside [and] even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible;" and

**WHEREAS**, the court in the above-referenced federal case held that under *Martin*, San Clemente "has no affirmative constitutional obligation to provide shelter to individuals experiencing homelessness" and that *Martin* "in no way dictate[s] to [cities] that [they] must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place;" and

**WHEREAS**, SCMC Section 8.86.040 currently bars enforcement of the Code's public camping prohibition where individuals lack alternative shelter, except where, upon a finding of exigent circumstances, the City makes certain City property available for transitional camping for persons suffering the effects of homelessness (hereinafter "transitional camping"); and



**WHEREAS**, against this backdrop, on May 21, 2019, and June 4, 2019, the City Council considered and adopted Ordinance Nos. 1673 [Urgency Ordinance] and 1674 [Standard Ordinance], which: (1) contained findings of exigent circumstances requiring enforcement of the City's anti-camping ordinances and (2) designated one piece of City property at the City's public works yard on Avenida Pico where transitional camping is permitted; and

**WHEREAS**, the City Council adopted Ordinance Nos. 1673 and 1674 because, among other things:

- a) Numerous passengers at the City's major transportation facility at the coastal North Beach Metrolink station expressed concern about their personal safety and uninvited encounters by persons camped at or near the train platform; and
- b) The City 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
- c) Residents complained that they were being deprived of use and enjoyment of coastal public facilities by virtue of being accosted, threatened, or verbally abused by occupants of encampments; and
- d) Occupants of various encampments 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 coastal facilities for recreation and transportation; and
- e) Coastal City facilities and their environs were damaged by these encampments, including the grounds of the Ole Hanson Beach Club, a historic landmark built in 1928 and the subject of a recent \$5.6 million renovation, and the San Clemente Beach Trail; and
- f) 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
- g) Such conditions negatively impact the health and safety of the general public, the physical environment and public facilities of the City, by, among other things: (1) 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, (2) exposing persons experiencing homelessness to risks in coastal areas from flooding, surf, and unstable soil conditions, (3) impairing access to transit and other public facilities for disabled persons, and (4) impeding the use and enjoyment of such facilities for their intended purpose; and



- h) The occupants of the North Beach encampment were 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, exposed such occupants to extreme risks and health hazards; and

**WHEREAS**, following the City's designation of its public works yard on Avenida Pico as the sole location in the City where transitional camping is permitted, the City has continued to experience issues impacting the health and welfare of the community with respect to homelessness in the City;

**WHEREAS**, notwithstanding these issues, through support and intervention by the City, the County, the Sheriff, and charitable institutions, the City has made significant progress toward reducing the number of persons experiencing homelessness in the City to the point that as of December 3, 2019, the number of individuals regularly camping at the Avenida Pico campground has decreased to fewer than five; and

**WHEREAS**, during this interim, the City has worked aggressively with the County, the Sheriff, and the City's non-profit partners to (1) explore locations and funding sources for permanent shelter beds for persons in San Clemente experiencing homelessness, (2) find potential locations for the City's establishment of a long-term transitional camp, if necessary, (3) provide hotel vouchers or campsite vouchers for persons experiencing homelessness in San Clemente, and (4) connect persons experiencing homelessness with transitional housing, family or charitable housing sources, and other assistance; and

**WHEREAS**, continuing to operate the Avenida Pico campground costs the City approximately \$30,000 per month; and

**WHEREAS**, given that high cost of operation and small number of individuals regularly camping at the Avenida Pico transitional camp, City resources to assist individuals experiencing the effects of homelessness can be better allocated towards other uses; and

**WHEREAS**, given the foregoing, the City Council desires to close the Avenida Pico public works yard to transitional camping; and

**WHEREAS**, among other things, the City will continue to assist individuals experiencing the effects of homelessness in the City by (1) providing counseling and facilitating transportation for said individuals to travel to the homes of friends, family, charitable, or other providers, (2) distributing hotel vouchers where appropriate; (3) facilitating use of publically operated campgrounds designated for that purpose, and (4) identifying a long-term transitional campsite, subject to appropriate general plan and zoning compliance and environmental review.

**WHEREAS**, consistent with *Martin v. City of Boise* and San Clemente Municipal Code Section 8.86.040 (as revised by this Ordinance), the City will hereafter enforce the public camping prohibitions of Chapter 8.86 by providing or confirming that persons violating those prohibitions have available: (1) transportation to and housing provided

by friends, family, charitable, or other providers, (2) shelter in the form of hotel vouchers, and/or (3) paid access to a publically owned campground; and

**WHEREAS**, in circumstances where *Martin v. Boise*, coupled with the City's potential inability to facilitate or provide housing or shelter, the City is compelled to allow public camping, this ordinance provides that tents may be erected only between the hours of 5 p.m. and 10 a.m.; and

**WHEREAS**, certain provisions of the ordinance are based upon the City's experience in operating the Pico transitional camp, which demonstrated that tents could only be erected in that camp between the hours of 5 p.m. and 10 a.m. in order to protect the safety of the camp's occupants. Structures with enclosed coverings constitute a danger to public safety in part because they prevent Orange County Sheriff's Department officers and other public safety personnel from observing all areas of and activities on the site, including illegal activities inside the enclosed structures (e.g., alcohol consumption, weapons violations, or drug use).

**WHEREAS**, homelessness continues to remain a dynamic and evolving issue within the City and surrounding region requiring coordinated efforts by the City, the State of California, the Federal Government, and non-profit/private sector partners; and

**WHEREAS**, the City Council finds that the conditions enumerated in the above recitals, the conditions described in the agenda report accompanying this ordinance, and the conditions included in the May 21, 2019 City Council agenda report and accompanying ordinances continue to give rise to emergency circumstances; and

**WHEREAS**, for the reasons enumerated above, the adoption and enactment of this ordinance is necessary for the avoidance of additional damage to the City's park facilities, the preservation of public health and 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: CEQA.** The City Council finds that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") for the following reasons:

- A. This Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) ["An activity is not subject to CEQA if ... [t]he activity is not a project as defined in Section 15378".]) Here, the Ordinance is not a "project" within the meaning of Section 15378 because the Ordinance has no potential "for resulting in a direct physical change in the environment, or a

reasonably foreseeable indirect physical change in the environment," as further discussed below. (State CEQA Guidelines, § 15378.)

- B. In the alternative, and if a project, this Ordinance is exempt under State CEQA Guidelines section 15061(b)(3), the common sense exemption, because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Notably, the Ordinance will not result in any construction or development, it will not result in increased camping, and it will not result in an increase in the population of unsheltered individuals. To the contrary, the Ordinance will protect the environment by protecting public property and decreasing the risk of wildfires.

The Ordinance will require less than five individuals who regularly camp at the Avenida Pico transitional campground to cease their camping activity at that site; this will not result in any adverse significant impact on the environment. As noted above, these individuals already have the option to (1) receive counseling and transportation assistance to the homes of friends, family, charitable or other providers, (2) obtain shelter in the form of hotel vouchers, and/or (3) receive transportation facilitated by the City to publically owned campgrounds.

In short, this Ordinance has no potential to result in a direct, or reasonably foreseeable indirect, physical change in the environment, and it can be seen with certainty that there is no possibility that the activity in question may 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 the State CEQA Guidelines.

**Section 3:** The City Council hereby repeals Urgency Ordinance No. 1673 (adopted May 21, 2019), Ordinance No. 1674 (adopted June 4, 2019), and Ordinance No. 1675 (adopted June 18, 2019).

**Section 4:** 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 8.86.010.

**Section 5:** Chapter 8.86 of the San Clemente Municipal Code is hereby amended in its entirety and restated to read as follows:

**"Section 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.

Section 8.86.020 – Camping: Locations Prohibited.

Except as otherwise provided by this code or by resolution of the City Council, it is unlawful for 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;
- 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.

Section 8.86.030 – Camping Procedures, 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 where camping is prohibited by Section 8.86.020 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.

Section 8.86.040 – Enforcement

- A. 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 or publically provided campsite is available in accordance with the holding in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031.
- B. In circumstances in which the provisions of this chapter will not be enforced pursuant to Subsection A of this section, tents may be erected only between the hours of 5 p.m. and 10 a.m., daily.

**Section 6:** 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 7:** 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 ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**Section 8:** 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 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of  
San Clemente, California

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

I, **JOANNE BAADÉ**, 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

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