

ORDINANCE NO. 1696

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE CALIFORNIA AMENDING SECTION
8.86.040 RELATED TO PERMISSIBLE HOURS FOR
ERECTION OF CAMPING FACILITIES IN
CIRCUMSTANCES WHERE PUBLIC CAMPING IS
PERMITTED**

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, the City has been working actively to develop short and 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, 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, 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, notwithstanding these issues, through support and intervention by the City, the County, the Sheriff, and charitable institutions, the City 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 designated Avenida Pico campground decreased to fewer than five; and

WHEREAS, given the high cost (\$30,000 monthly) and small number of individuals regularly camping at the Avenida Pico transitional camp, the City Council adopted Urgency Ordinance No. 1682 (on December 10, 2019) and Standard Ordinance No. 1689 (on January 21, 2020) which, among other things, repealed ordinance Nos. Nos. 1673, 1674, and 1675 and closed the Avenida Pico transitional campground; and

WHEREAS, upon closing the Avenida Pico transitional campground, the City has continued 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; and

WHEREAS, consistent with *Martin v. Boise* and San Clemente Municipal Code section 8.86.040, following the adoption of Urgency Ordinance No. 1682 and Standard Ordinance No. 1689, the City has enforced the public camping prohibitions of Chapter 8.86.040 only 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, Urgency Ordinance No. 1682 and Standard Ordinance No. 1689 amended section 8.86.040 to provide that tents may be erected only between the hours of 5 p.m. and 10:00 a.m.; and

WHEREAS, Urgency Ordinance No. 1682 and Standard Ordinance No. 1689, , the recitals of which are incorporated by reference into this ordinance, added the foregoing provision to SCMC section 8.86.040 based on the City's experience in operating the Pico transitional camp, which demonstrated that tents could only be erected between the hours of 5:00pm and 10:00 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 and activities on the site, including illegal activities inside the enclosed structured (e.g., alcohol consumption, weapons violations, or drug use); and

WHEREAS, certain lean-to's, huts, and other shelters not constituting "tents" present the same public health and safety risks as tents; and

WHEREAS, under SCMC section 8.86.010, "camp facilities" include, but are not limited to, tents, huts, or other man-made or organic temporary structures; and

WHEREAS, the City Council desires to bring to effect uniform enforcement of the time limits on the use of tents described above for all types of camp facilities;

WHEREAS, without this Ordinance, such circumstances would present a danger to the public health and safety as individuals could erect non-tent structures (e.g., huts or other man-made or organic temporary enclosed structures) between the hours of 10:00 a.m. and 5:00pm and engage in illegal activities (e.g., alcohol consumption, weapons violations, or drug use) out of view of Orange County Sheriff's Department Officers or other public safety personnel; and

WHEREAS, this ordinance's amendment to section 8.86.040 benefits the public health and safety of the City's residents as well as Orange County Sheriff's Department officers and other public safety personnel as it ensures that in circumstances where the City is compelled to allow public camping, all camping facilities – regardless of whether such facilities constitute a tent, hut, or other man-made or organic temporary structure – will only be erected between the hours of 5:00pm and 10:00 a.m. daily; and

WHEREAS, ensuring that Orange County Sheriff's Department officers and other public safety personnel have unobstructed views of areas and activities within the City will enable public safety personnel to prevent the occurrence of and cite individuals who engage in illegal activities between the hours of 10:00 a.m. and 5:00pm; and

WHEREAS, for the reasons enumerated above, the adoption of this ordinance is necessary for the preservation of public peace, health and safety and the preservation of greater health, welfare, and safety risks to people in San Clemente experiencing homelessness, the general public, and Orange County Sheriff's Department officers and other public safety personnel.

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: 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 because it has not 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 3: For purpose of this Ordinance, "Camp facilities" shall have the same meaning as provided in SCMC section 8.86.010 and include, but not be limited to, tents, huts, or other man-made or organic temporary structures.

Section 4: Section 8.86.040 of Title 8 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikeout~~):

"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~~ camp facilities may be erected only between the hours of 5:00 p.m. and 10:00 a.m., daily."

Section 5: The City Clerk shall certify 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: 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.

Section 7: 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 92673.

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. 1696 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