

**ORDINANCE NO. 1699**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE AMENDING 8.12.090 OF THE SAN CLEMENTE MUNICIPAL CODE TO INCLUDE VIOLATIONS OF PUBLIC HEALTH ORDERS AS CITABLE OFFENSES AND AMENDING SECTION 9.24.030 TO PROHIBIT TRESPASS ON PUBLIC PROPERTY**

**WHEREAS**, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus, abbreviated COVID-19 ("COVID-19"); and

**WHEREAS**, on March 4, 2020, and March 19, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple stage agencies and departments, and to help the state prepare for broader spread of COVID-19, and on March 18, 2020, the Orange County Health Officer issued Amended Health Order and Guidance, and on March 13, 2020, the President of the United States declared a state of national emergency; and

**WHEREAS**, on March 17, 2020, the City Council of the City of San Clemente proclaimed the existence of a local emergency; and

**WHEREAS**, Section 8.12.090 of Chapter 8.12 of Title 8 of the San Clemente Municipal Code provides that it shall be unlawful for any person during an emergency to do any act forbidden by lawful rules or regulations issued pursuant to that chapter, if such act is of such a nature to give or be likely to imperil the lives or property of inhabitants of this City or to prevent, hinder, or delay the defense or protection thereof; and

**WHEREAS**, this amendment to Section 8.12.090 will make it clear that violations of state, or local health orders are citable offenses; and

**WHEREAS**, for the reasons enumerated above, the adoption and enactment of this ordinance is immediately 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.

**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.** Section 8.12.090 of the Clemente Municipal Code is hereby amended to read as follows:

"8.12.090 - Prohibited acts.

It shall be unlawful for any person during an emergency:

A. To willfully obstruct, hinder or delay any member of the Emergency Services Organization in the enforcement of any lawful rules or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him or her by virtue of this chapter;

B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy, to imperil the lives or property of inhabitants of this City or to prevent, hinder or delay the defense or protection thereof, or to violate any state, county, or local health order;

C. To wear, carry or display, without authority, any means of identification specified by the emergency services agency of the state."

**Section 3.** San Clemente Municipal Code Section 9.24.030 is hereby amended to read as follows:

~~"9.24.030 - Trespass Upon Private Property Prohibited~~

A. No person shall remain upon any public or private property not open to the public or upon business premises, after being requested to leave by the owner, owner's agent, lessee, person in lawful possession, or by a peace officer acting at the request of the owner, owner's agent, lessee or person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, owner's agent, lessee or person in lawful possession.

1. The owner, owner's agent, lessee or person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested; or
2. A single written request for a peace officer's assistance may be made (1) to cover a limited period of time not to exceed 30 days and identified by specific dates during which there is a fire hazard or the owner, owner's agent, lessee or person in lawful possession is absent from the property or business premises, or (2) for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed.. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession.

B. No person shall enter upon ~~business~~ premises for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business, use or occupation carried on by the owner of the land, the owner's agent, or by the person in lawful possession.

C. No person shall enter or remain upon posted ~~private~~ property without the permission, expressed or implied, of the owner, owner's agent, lessee or person in lawful possession of such posted property or premises.

D. No person shall willfully enter or remain in, on or across any public property, building or other facility or structure owned or controlled by the city after having been ordered not to enter or remain on such property, either by posting of the premises or upon receipt of a written or oral order from an authorized city representative, including the city manager, assistant city manager, city attorney, department director or any peace officer or other enforcement officer. Any order to enter or remain on city property may be limited to certain times (e.g., days or hours) as the authorized city representative shall find reasonably necessary for the conduct of city business and affairs, for the protection or preservation of the public peace, health and safety, or to avoid personal injury or property damage."

**Section 4.** 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 5.** 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 ay have a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3).). In particular, the City's adoption of this Ordinance merely empowers code enforcement officers during the COVID-19 crisis. This Ordinance does not authorize the construction of any project or any other activity that could potentially cause a significant effect on the environment.

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 immediate enactment of this ordinance is

immediately necessary to avoid additional damage to public facilities, preserve health and safety, and prevent damage to life, health, and property.

**Section 6.** 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.

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 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