



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: December 21, 2021

Agenda Item 9A

Approvals: \_\_\_\_\_

City Manager GW

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

Attorney \_\_\_\_\_

Finance \_\_\_\_\_

**Department:** City Attorney  
Code Compliance

**Prepared By:** City Attorney

**Subject:** *CONSIDERATION OF AN ORDINANCE AMENDING TITLES 8 AND 12 OF THE SAN CLEMENTE MUNICIPAL CODE REGARDING SHOPPING CARTS AND PUBLICLY STORED PERSONAL PROPERTY AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT*

**Fiscal Impact:** Indeterminate. Direct costs to the City will depend on the volume of property encountered, removed, and/or impounded by enforcement personnel.

**Executive  
Summary:**

A near identical version of the attached Ordinance was introduced for first reading at the Council's December 7th meeting. Thereafter, staff discovered that the agenda packet for this item inadvertently included prior drafts of the agenda report and the Ordinance. Specifically, the agenda materials omitted some provisions regarding property blocking access to critical use areas and/or found within 15 feet of a *Martin v. City of Boise* campsite.

The following agenda report and attached Ordinance have been updated to include the inadvertently omitted provisions. For the Council's reference, Attachment 3 contains a redline that compares the updated agenda report and Ordinance with the December 7th versions of the same. To ensure that the City's personal property regulations include the omitted provisions, the City Attorney has advised that the Council re-introduce the Ordinance. The following is a near identical version of the December 7th agenda report, with minor refinements that are highlighted in the attached redline.

(Begins on following page)

**Background:** At its March 16, 2021 meeting, the City Council directed the Public Safety Committee and Joint Homeless Subcommittee to review and recommend amendments to the City's regulations on publicly stored personal property and unauthorized use of shopping carts. The committees' subsequent recommendations included: (1) prohibiting the unauthorized removal of shopping carts from the premises of businesses and (2) clarifying and enhancing the City's regulations governing publicly stored personal property. Thereafter, the Council directed the City Attorney to work with staff, the Orange County Sheriff's Department ("OCSD") and County Counsel to update and legally vet the committees' proposals. The Ordinance before the Council this evening (attached as Attachment 1) is the end result of these efforts.

**Discussion:** The Ordinance is organized into two parts, with the first addressing shopping carts and the second publicly stored property.

#### Shopping Carts

The unauthorized removal of shopping carts can lead to numerous adverse consequences, including increased operating expenses for impacted businesses as well as blight in the surrounding area. At the state level, the Business and Professions Code generally prohibits the unauthorized removal and possession of shopping carts. (See Bus. & Prof. Code, § 22435.2). City personnel, however, do not have the authority to enforce this state law; only OCSD can.

Cities may adopt ordinances that regulate shopping carts so long as the ordinance does not conflict with state law. (Bus. & Prof. Code, § 22435.8). Research by staff indicates that numerous neighboring cities have adopted such ordinances, including Dana Point (DPMC, § 11.95.010); the City of Orange (OMC, § 8.06.080), Santa Ana (SAMC, § 33-215) and Stanton (SMC, § 9.92.130). Each of these cities' ordinances prohibit, among other things, the unauthorized removal and possession of shopping carts.

The City's shopping cart regulations are provided in Chapter 8.60 of the SCMC. Currently, this chapter does not prohibit the unauthorized removal and possession of shopping carts. The attached Ordinance amends Chapter 8.60 to now prohibit (1) the removal of a shopping cart from the premises or parking area of a business without the written consent of the owner and (2) possession of a shopping cart that was unlawfully removed. Codifying these provisions will enable Code Enforcement officers and other City personnel to cite individuals who engage in such conduct.

### Publicly Stored Personal Property

Law enforcement and other City personnel routinely encounter unattended personal property that has been stored or abandoned on City property (which is sometimes, but not always, associated with camping). If unaddressed, the presence of personal property in public spaces can cause significant adverse health and safety impacts that include, but are not limited to, the following:

1. Property stored in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and destruction. Such consequences can lead to delayed emergency response times, interrupted utility service, and injuries to persons or property;
2. Property stored near critical driveways, loading docks and/or in a manner that obstructs (often heavily trafficked) public rights-of-way can likewise result in injuries to persons or property. Among other things, such injuries can be caused by persons having to traverse around obstructions and vehicles entering and exiting roadways; and
3. Storing property in public spaces also contributes to blight, can damage such property, and foster unsanitary conditions (e.g., accumulation of items infested with insects or vermin).

The City's current procedures for removing, storing, and disposing of unattended personal property are set forth in City Council Resolution No. 18-01, which was adopted on February 6, 2018 (Attachment 2). Council's desire was to have them consolidated, aligned with other property maintenance protocols (e.g., lost and found on sports fields and parks), and reviewed against current caselaw. The City Attorney and staff have worked to this end in coordination with County Counsel and the Sheriff to review, legally vet, and update these procedures. The attached Ordinance is the culmination of these efforts.

The updated procedures ("Procedures") will be added to Title 12 (Streets, Sidewalks, and Public Places) as a new Chapter 12.18. The Procedures incorporate a number of best practices, including elements of the consent decree entered into by the County and used by OCSD (in connection with enforcement in all areas of the County). The Procedures also reflect recent changes in the law, including the Ninth Circuit's September 2, 2021 decision in *Garcia v. City of Los Angeles* (which invalidated Los Angeles's procedures for removing bulky items stored on public property). Among other things, the Procedures will prohibit the storage of non-essential personal property on any land or easement that is owned, operated, or managed by the City.<sup>1</sup> The

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<sup>1</sup> "Essential" property includes tents, tarpaulins, bedding, blankets, sleeping bags, bicycles, trailers, carts, clothing, identification, medical papers or devices, medications, and personal items. "Non-essential" is all property that is not "essential" property.

Procedures establish distinct notice, storage, and retrieval protocols that apply depending on the type of property found and its location . An overview of the Procedures is provided in the table below. City and contract enforcement and maintenance staff will be trained accordingly.

Property <sup>2</sup>	24-Hr. Pre-Removal Notice?	Post-Removal Notice?	Storage for 90 days?	Retrieval?	Notes
Abandoned Property	No	No	No	No	Abandoned essential and non-essential personal property can be removed without notice and discarded immediately. <u>Abandoned property does not include property within a 15' radius of a location where an unhoused individual is camping.</u>
<u>Stored Property Within 15' of a Martin v. City of Boise Campsite</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Subject to specified health, safety, and welfare exceptions.</u>
<u>Stored Property Blocking Access to Critical Use Areas that Cannot Be Moved Aside</u> <sup>3,4</sup>	No	Yes	Yes	Yes	Same procedures apply regardless of whether property is essential, non-essential, or associated with camping.
Stored Essential Property (All Other Areas)	Yes	Yes	Yes	Yes	
Stored Non-Essential Property (All Other Areas)	No	Yes	Yes	Yes	

Lastly, in addition to the items profiled above, the Ordinance amends the City's camping regulations (contained in SCMC Chapter 8.86) to add a cross-reference to Chapter 12.18's Procedures.

**Environmental:** The Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the

<sup>2</sup> Type of personal property found on "City Property," which is property or easements that are owned, operated, or managed by the City.

<sup>3</sup> "Stored" property is property that has been put aside or accumulated for use when needed but *not* abandoned.

<sup>4</sup> "Critical Use Areas" include within 10 feet of driveways and loading docks or within 10 feet of bridges and train tracks.

Ordinance will not result in any construction or development, and it will not have any effect that would physically change the environment. The Ordinance therefore does not qualify as a project subject to CEQA.

In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt from CEQA under State CEQA Guidelines section 15061(b)(3), which exempts projects from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Thus, even if the Ordinance could result in some physical change in the environment, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

**Recommendation:**

1. Find that the Ordinance is not subject to the requirements of CEQA for the following reasons:
  - a. The Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and
  - b. The Ordinance is exempt under State CEQA Guidelines Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.
2. Introduce for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING TITLES 8 AND 12 OF THE SAN CLEMENTE MUNICIPAL CODE REGARDING SHOPPING CARTS, CRITICAL INFRASTRUCTURE AND PUBLIC STORAGE OF PERSONAL PROPERTY AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
3. Repeal City Council Resolution No. 18-01

**Attachments:**

1. Proposed Ordinance
2. City Council Resolution No. 18-01
3. Ordinance and Agenda Report Redline

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
SAN CLEMENTE, CALIFORNIA AMENDING  
TITLES 8 AND 12 OF THE SAN CLEMENTE  
MUNICIPAL CODE REGARDING SHOPPING  
CARTS, CRITICAL INFRASTRUCTURE AND  
PUBLIC STORAGE OF PERSONAL PROPERTY  
AND FINDING THE ORDINANCE NOT SUBJECT  
TO THE CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

**WHEREAS**, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic, or aesthetic considerations; and

**WHEREAS**, the City Council finds that shopping carts that are removed from local businesses can increase operating expenses for such businesses and contribute to blight in the City; and

**WHEREAS**, Section 22435.2 of the California Business and Professions Code prohibits, among other things, the unauthorized removal and possession of shopping carts; and

**WHEREAS**, Section 22435.8 of the Business and Professions Code authorizes municipalities to enact ordinances that regulate or prohibit the removal of shopping carts except to the extent that any provision of such an ordinance "expressly conflicts" with Business and Professions section 22435 et seq.; and

**WHEREAS**, numerous cities have adopted local regulations prohibiting the unauthorized removal and possession of shopping carts, including Dana Point (DPMC, § 11.95.010), the City of Orange (OMC, § 8.06.080), Santa Ana (SAMC, § 33-215) and Stanton (SMC, § 9.92.130); and

**WHEREAS**, Chapter 8.60 of the San Clemente Municipal Code ("SCMC") contains the City's regulations governing shopping carts; and

**WHEREAS**, Chapter 8.60 does not currently prohibit the unauthorized removal and possession of shopping carts; and

**WHEREAS**, this Ordinance amends Chapter 8.60 to prohibit such activities; and

**WHEREAS**, various infrastructure within the City is critical to the protection of public health, safety, and welfare. Such infrastructure includes, but is not limited to, fire stations, hospitals, public utilities, electrical wires, natural gas pipes, and water resources; and

**WHEREAS**, the placement or storage of personal property in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and/or destruction. Such consequences can result in substantial adverse public health and safety impacts, including delayed emergency response times, interrupted utility service, and injuries to persons or property; and

**WHEREAS**, to avoid such consequences, this Ordinance amends Title 12 (Streets, Sidewalks, and Public Places) of the SCMC to add a new Chapter 12.18, entitled "Critical Infrastructure and Public Storage of Personal Property." Subject to limited exceptions, Chapter 12.18 regulates the storage of personal property on any land or easement that is owned or operated by the City; and

**WHEREAS**, Chapter 12.18 includes procedures governing the circumstances under which City personnel and law enforcement (collectively "Enforcement Personnel") may remove property left in such areas; and

**WHEREAS**, Chapter 12.18 requires Enforcement Personnel to comply with distinct notice, storage, and retrieval procedures that apply depending on the type of property found and its location (e.g., within 10 feet of critical infrastructure); and

**WHEREAS**, this Ordinance reflects the City Council's desire to protect public property and the health, safety, and welfare of the City's businesses, residents, and visitors in manner that includes adequate procedural safeguards governing the removal and storage of personal property; and

**WHEREAS**, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**Section 1. Incorporation of Recitals.** The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

**Section 2. CEQA.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could

potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the Ordinance will not result in any construction or development, and it will not have any effect that would physically change the environment. The Ordinance therefore does not qualify as a project subject to CEQA.

In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt from CEQA under State CEQA Guidelines section 15061(b)(3), which exempts projects from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Thus, even if the Ordinance could result in some physical change in the environment, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

**Section 3. Code Amendment.** Section 8.60.030 is hereby added to Chapter 8.60 of the San Clemente Municipal Code and shall read in its entirety as follows:

**"Section 8.60.030 - Unauthorized Removal or Possession of Shopping Carts.**

It is unlawful to do any of the following acts if a shopping cart has a permanently affixed sign as provided in Section 8.60.010:

A. Removal. No person shall remove any shopping cart from the premises or parking area of any business establishment without the written consent of the owner.

B. Possession. No person shall have in his or her possession any shopping cart that has been removed from the premises or parking area of any business establishment without the written consent of the owner.

C. This section shall not apply to shopping carts removed as authorized in writing by the owner or retailer for the purpose of repair, maintenance, or disposal."

**Section 4. Code Amendment.** Chapter 12.18 is hereby added to Title 12 of the San Clemente Municipal Code and shall read in its entirety as follows:



## **"Chapter 12.18 – Public Storage of Personal Property**

### **Section 12.18.010 – Purpose**

This Chapter is intended to protect the public health, safety, and welfare by preventing injuries to persons and property. This Chapter is also intended to ensure that certain locations within the City remain accessible to the public as well as City and public safety personnel. Meaningful protection of such interests includes, among other things, regulations governing public storage of personal property. Left unregulated, the storage of personal property in public spaces can cause significant adverse health and safety impacts, including the following:

A. Property stored in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and destruction. Such consequences can lead to delayed emergency response times, interrupted utility service, and injuries to persons or property.

B. Property stored near critical driveways, loading docks and/or in a manner that obstructs (often heavily trafficked) public rights-of-way can likewise result in injuries to persons or property. Among other things, such injuries can be caused by persons having to traverse around obstructions and vehicles entering and exiting roadways.

C. Storing property in public spaces also contributes to blight, can damage such property, and foster unsanitary conditions (e.g., accumulation of items infested with insects or vermin).

### **Section 12.18.020 – Definitions**

"Abandoned personal property" means unattended, but not stored, personal property that by its condition of damage, deterioration, disrepair, non-use, obsolescence or location causes any reasonable person to conclude that the owner has permanently relinquished all right, title, claim and possession thereto. In determining whether property is abandoned, enforcement personnel shall, erring on the side of caution, evaluate the facts and circumstances surrounding the item(s), including whether the personal property is unattended and lacks objective signs of abandonment. Examples of objective signs of abandonment include, but are not limited to, items located in gutters, placed adjacent to trash receptacles, an empty and/or broken tent sitting by itself on a sidewalk with no other belongings, or a bag of clothes that is open and strewn across a sidewalk. Notwithstanding the foregoing, personal property covered by Section 12.18.040 (B)(1) (Property Associated with Camping) shall not be considered abandoned.

"Business Hours" means the hours that City Hall for the City is open to the public for business.

"City" means the City of San Clemente, California.

"City property" means property or easement that is owned, operated, or managed by the City.

"Critical use area" means any of the following areas of City property:

1. Within 10 feet of any operational or utilizable entrance, exit, driveway, service area, or loading dock, or within, on, or obstructing, any stairway, passageway, hallway, or corridor leading to such areas.
2. Within 10 feet of critical infrastructure.
3. Within 5 feet of any parking space, whether delineated with space markings or otherwise.
4. Any area upon a sidewalk or other public right-of-way that the Americans with Disabilities Act of 1990 (as amended from time to time) requires to be clear of obstructions for purposes of pedestrian and disabled pedestrian traffic.

"Critical infrastructure" means fire or law enforcement stations; hospitals; structures, such as antennas, bridges, train tracks, or drainage systems; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water resources. Critical infrastructure also includes real property or a facility, whether privately or publicly owned, that the City Manager or designee designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.

"Enforcement personnel" means the Orange County Fire Authority, the Orange County Sheriff's Department and employees of the City's Code Compliance, Park Ranger, and Marine Safety Divisions. Enforcement personnel also includes employees designated by the City Manager as having authority to enforce this Chapter.

"Essential personal property" means tents, tarpaulins, bedding, blankets, sleeping bags, bicycles, trailers, carts, clothing, identification, medical papers or devices, medications, personal items (e.g., photographs and documents) and items necessary to acquire assistance for, or achieve, instrumental activities of daily living. Essential personal property does not include any items intended for

commercial purposes, such as items, consumable or otherwise, for sale, trade, barter, or in consideration of donations.

“Instrumental activities of daily living” means activities a person engages in, on their own behalf, to achieve, or participate in, any of the following:

1. Getting into/out of bed or a chair
2. Toilet hygiene
3. Bathing or showering
4. Getting dressed
5. Personal hygiene
6. Eating
7. Walking/climbing stairs
8. Caring for others
9. Caring for pets
10. Child rearing
11. Communication management
12. Community mobility
13. Financial management
14. Health management and maintenance
15. Home establishment and maintenance
16. Meal preparation and cleanup
17. Religious observances
18. Safety procedures and emergency responses
19. Shopping

“Non-essential personal property” means all items other than essential personal property.

“Personal property” means any tangible property other than land that may be subject to ownership. Personal property includes essential and non-essential personal property.

“Public utilities” means any outdoor water, sewer, or electrical outlets or fixtures on government owned, maintained, or operated properties within the City that are not designated for public use.

“Sheriff” means any sworn personnel of the Orange County Sheriff’s Department.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location. Stored personal property does not include abandoned personal property.

“Stored personal property” means personal property, other than abandoned personal property, that is accompanied by signs of ownership, such as packing, stacking, or organizing.

“Unattended” means no person is present with the personal property who asserts or claims ownership of the personal property.

### **Section 12.18.030 – Prohibitions**

A. Prohibition. No person shall store any non-essential personal property on City property.

B. Exceptions. Subsection (A) shall not apply to any of the following:

1. Storing property in accordance with a City-issued permit.
2. Storing property as part of activities expressly authorized by the City.
3. Property storage by an employee of the City or any public utility or government agency in the course of their employment.

### **Section 12.18.040 – Removal, Storage, and Retrieval**

A. Abandoned Personal Property. Enforcement personnel may remove and immediately discard any abandoned essential and non-essential personal property located on City property without complying with the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4), (B)(5) and (B)(6) below. Notwithstanding the foregoing, any essential or non-essential personal property covered by subsection (B)(1) (Property Associated with Camping) shall not be considered abandoned.

B. Stored Personal Property. Enforcement personnel may remove unattended stored essential and non-essential personal property on City property subject to the following procedures:

1. Property Associated with Camping. Absent exigent circumstances relating to immediate threats to the public health, safety, or welfare and subject to subsection (B)(2) (Critical Use Areas) below, all essential and non-essential personal property located within a 15 foot radius of any location where an unhoused individual is camping in accordance with *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584 and Chapter 8.86 of the San Clemente Municipal Code shall not be considered abandoned and may be removed subject to the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(a), (B)(4)(b), (B)(5), and (B)(6) below.

2. Critical Use Areas. Essential and non-essential personal property, including property covered by subsection (B)(1) (Property Associated with Camping) above, that is blocking access to any critical use area and that cannot be moved aside may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(b), (B)(5) and (B)(6) below. If personal property can be moved aside so as to not block access to the critical use area, then such property shall be removed in accordance with subsections (B)(1) (Property Associated with Camping) or (B)(3) (All Other Areas), as applicable.

3. All Other Areas. Essential and non-essential personal property that is not covered by subsections (B)(1)(Property Associated With Camping) or (B)(2)(Critical Use Areas) may be removed in accordance with the following:

a. Essential Personal Property. Essential personal property may be removed subject to the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(a), (B)(4)(b), (B)(5), and (B)(6) below.

b. Non-Essential Personal Property. Non-essential personal property may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(b), (B)(5), and (B)(6) below.

4. Notice.

a. Pre-Removal Notice. In instances where pre-removal notice is required, such notice shall:

- i. Be posted no less than 24 hours prior to the removal.
- ii. Be posted at the site of the personal property.
- iii. Include the date and time by which the personal property must be moved.
- iv. Explain that the City will remove and impound the personal property if it is not moved from City property.

b. Post-Removal Notice. In instances where post-removal notice is required, such notice shall:

- i. Be posted immediately after the removal of personal property.
- ii. Be posted at the site from which the personal property was removed.
- iii. Detail the procedures for retrieving the personal property.

5. Storage.

a. Manner and Timing. In instances where storage is required, the City or Sheriff shall store removed personal property for 90 days from the date of removal.

b. Location. The removed personal property shall be stored at a location or locations in the City that reasonably facilitate retrieval.

c. Records. The City or Sheriff shall keep written records, maintained for at least 90 days following removal, of any personal property stored. The records shall include the date that the personal property was removed, the location from which the personal property was removed, and a general description of the personal property.

6. Retrieval. During Business Hours, the City or Sheriff shall promptly assist any person seeking to retrieve property stored pursuant to subsection (B)(5) above.

7. Exceptions. The notice, storage, and retrieval regulations set forth in subsections (B)(4), (B)(5), and (B)(6) above shall not apply to the following:

a. Items that present a health and safety risk if stored, such as items soiled by bodily fluids, items that are moldy, items infested by insects or vermin, and perishable food. Such items need not be stored and may be discarded.

b. Items that constitute evidence of a crime or contraband, which may be seized and discarded as permitted by law.”

**Section 5. Code Amendment.** Section 8.86.030 of Title 8 of the San Clemente Municipal Code is hereby amended to read in its entirety as follows:

**“8.86.030 – Camping Procedures, Removal and Recovery of Personal Property**

See Chapter 12.18 of this code.”

**Section 6. 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 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. Prior Enactments.** The provisions set forth in Section 4 of this Ordinance shall superseded any provision of a prior resolution adopted by the City Council to the extent that the prior resolution is inconsistent therewith.

**Section 8. 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, 910 Calle Negocio, San Clemente, CA 92673.

**Section 9. 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 ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**Section 10. Effective Date.** This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

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

I, \_\_\_\_\_, 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

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Smith, City Attorney



## RESOLUTION NO. 18-01

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA ADOPTING A POLICY, PURSUANT TO SAN CLEMENTE MUNICIPAL CODE CHAPTER 8.86, REGARDING THE PROCESS FOR REMOVAL OF PERSONAL PROPERTY ON PUBLIC LANDS, PRIVATE OPEN SPACE, AND FIRE RISK AREAS**

**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**, San Clemente Municipal Code Chapter 8.86 prohibits camping on public property, private open space, and fire risk areas to authorize the removal personal property on such lands;

**WHEREAS**, the City desires to adopt a policy regarding process for removal of personal property to protect public safety and the due process rights of individuals; and

**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 resolve as follows:

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

**SECTION 2. FINDINGS.** The City Council hereby finds and determines that as follows:

**A. Climatic Conditions.**

1. San Clemente is located in a semi-arid Mediterranean type climate with an extensive urban/wildland interface. It annually experiences extended periods of high temperatures with little or no precipitation. Additionally, its coastal canyons can become very dry and promote the rapid growth of fires. Hot, dry (Santa Ana) winds which may reach speeds of 70 miles per hour or greater, are also common to the area. These climatic conditions cause extreme drying of vegetation and common building materials. Frequent periods of drought and low humidity add to the fire danger. This predisposes the area to large destructive fires (conflagration). In addition to

directly damaging or destroying buildings, these fires are also prone to disrupt utility services throughout the City.

2. In June 2017, the Cristianillos Fire scorched 760 acres adjacent to San Clemente, threatening several homes in the vicinity of the Avenida Pico and Talega area. Homes, businesses and an animal shelter in San Clemente were threatened. The fire involved more than 350 firefighters, two air tankers and two water helicopters to battle the fast-moving brush fire.
3. The climate alternates between extended periods of drought and brief flooding conditions. Flood conditions may affect the local fire authority's ability to respond to a fire or emergency condition. Floods also disrupt utility services to buildings and facilities within the City.
4. Water demand in this densely populated area far exceeds the quantity supplied by natural precipitation; and although the population continues to grow, the already-taxed water supply does not. California is projected to increase in population by nearly ten million over the next quarter of a century with 50 percent of that growth centered in Southern California. Due to storage capacities and consumption and a limited amount of rainfall, future water allocation is not fully dependable.
5. These dry climatic conditions and winds contribute to the rapid spread of even small fires originating in vegetation and open space. These fires spread very quickly and create a need for increased levels of fire protection.

**B. Topographical and Circulation Conditions.**

1. Natural slopes of 15 percent or greater generally occur throughout the City. Elevation change caused by the hills creates the geological foundation on which communities within the City are built and will continue to build. With much of the populated flatlands already built upon, future growth will occur steeper slopes and greater constraints in terrain.
2. Traffic and circulation congestion is an artificially created, obstructive topographical condition, which is common throughout the City.
3. These topographical conditions combine to create a situation, which places fire department response time to fire occurrences at risk, and makes it necessary to provide increased protection measures to protect occupants and property.

## C. Seismic Conditions.

1. The City is a densely populated area that has buildings constructed over and/or near a vast and complex network of faults that are believed to be capable of producing future earthquakes similar or greater in size than the 1994 Northridge and the 1971 Sylmar earthquakes. Earthquake faults run along the northeast and southwest boundaries of Orange County. The Newport-Inglewood Fault, located within Orange County was the source of the destructive 1933 Long Beach earthquake (6.3 magnitude) which took 120 lives and damaged buildings in an area from Laguna Beach to Marina Del Rey to Whittier. In December 1989, another earthquake occurred in the jurisdiction of Irvine at an unknown fault line. Regional planning for recurrence of earthquakes is recommended by the California Department of Conservation.
2. Previous earthquakes have been accompanied by disruption of traffic flow and fires. A severe seismic event has the potential to negatively impact any rescue or fire suppression activities because it is likely to create obstacles similar to those indicated under the high-wind section above. With the probability of strong aftershocks there exists a need to provide increased protection.
3. October 17, 1989, Santa Cruz earthquake resulted in one major fire in San Francisco's Marina District. When combined with the 34 other fires locally and over 500 responses, the local fire department was taxed to its fullest capabilities. The Marina District fire was difficult to contain because mains supplying water to the district burst during the earthquake. This situation creates the need for additional fire protection. The California Department of Conservation Division of Mines and Geology noted in their 1988 report, "unfortunately, barely meeting the minimum earthquake standards of building codes places a building on the verge of being legally unsafe." (*Planning Scenario for a Major Earthquake on the Newport-Inglewood Fault Zone*, p. 59)

D. Wildland-Urban Interfaces. The City includes a number of wildland-urban interfaces, both on public and private lands, which pose a greater risk of wildfires. For this reason, California law requires homeowners to clear flammable vegetation within 30 feet of buildings and to modify vegetation within 100 feet from buildings to create defensible space for firefighters to safely protect their homes. (Cal. Pub. Res. Code § 4291.)

## E. Specific Findings.

1. According to the California Department of Forestry and Fire Protection, "an average of 103 wildfires a year in California are

started by illegal open fires, which include warming fires, cooking fires and campfires." (Jennifer Medina, "Los Angeles Fire Started In Homeless Encampment, Officials Say," *The New York Times*, Dec. 12, 2017.)

2. In just December 2017, fire departments in California responded to several fires, including the larger Skirball Fire in Bel-Air and the Little Mountain Fire in San Bernardino, at or caused by activities at encampments:

a. On December 26, 2017, the San Jose Fire Department responded to a fire in South San Jose, under the Curtner Avenue overpass near the railroad tracks between Stone Avenue and Unified Way. According to the San Jose Fire Department, the fire occurred at an "encampment...[that] was home to as many as 20 people." (Jason Green, "San Jose: Homeless Encampment Catches Fire," *The Mercury News* (San Jose, CA), updated Dec. 27, 2017.)

b. On December 12, 2017, the Riverside Fire Department responded to a fire near Van Buren Boulevard and Jurupa Avenue. The fire occurred at an encampment and, according to the Riverside Fire Department, "several small propane tanks used by transients exploded during the fire fight." (Brian Rokos, "Fire in Riverside Homeless Encampment Comes with Unexpected Dangers," *The Press-Enterprise* (Riverside, CA), updated Dec. 13, 2017.)

c. On December 7, 2017, the Oakland Fire Department responded to a fire in Oakland, near Sixth and Brush Streets and near Fifth and Filbert Streets. The fire occurred at an encampment and destroyed one tent. "The source of ignition was determined to be a cooking fire that spread to the tent." ("Cooking Fire at Homeless Encampment Burns Dangerously Close to BART Tracks in Oakland," *ABC7 News San Francisco and Oakland*, Dec. 7, 2017.)

d. On December 6, 2017, the Los Angeles Fire Department responded to a fire in Bel-Air, near the I-405 North and Mulholland Drive. The fire, known as the "Skirball Fire," covered 422 acres, injured three firefighters, destroyed six houses, and damaged 12 other houses. "LAFD investigators have determined the fire was caused by an illegal cooking fire at an encampment in a brush area adjacent to where Sepulveda Boulevard crosses under the San Diego (405) Freeway." (Los Angeles Fire Department, "Skirball Fire Update," updated Dec. 15, 2017.)

- e. On December 5, 2017, the San Bernardino Fire Department responded to a fire in San Bernardino, near University Parkway and Varsity Avenue. The fire, known as the "Little Mountain Fire," covered 260 acres, injured three civilians, and damaged three houses. (California Department of Forestry and Fire Protection, "Little Mountain Fire," *Incident Information*, Dec. 15, 2017.) According to the San Bernardino City Manager, the fire "was caused by an escaped cooking fire in a homeless encampment." (Gail Wesson, "Little Mountain Fire in San Bernardino Blamed on Homeless Encampment Fire," *The Press-Enterprise* (Riverside, CA), updated Dec. 19, 2017.)

**SECTION 3. POLICY.** Based on the findings above, the City Council hereby adopts the following policy:

- A. **Definitions.**
1. "Essential items of personal property" means tents, tarps, sleeping bags, blankets, bicycles, trailers, carts, identification, medical papers or devices, and medications.
  2. "Exigent circumstances" mean an immediate threat to health and safety. Exigent circumstances include, but are not limited to, a high, very high, or extreme fire rating by the Orange County Fire Authority at or near the site.
  3. "Non-essential items of personal property" mean all items other than essential items.
- B. **Applicability.** This policy applies to, pursuant to San Clemente Municipal Code Chapter 8.86, the City's removal and impoundment of personal property on any lands for which camping is prohibited.
- C. **Personal Property.**
1. **Essential Items.** Removal by the City of essential items of personal property, as defined by this policy, is subject to the timing, notice, and storage requirements of this policy.
  2. **Non-Essential Items.** Non-essential items of personal property, as defined by this policy, may be removed by the City at any time, without notice, and without storage.
- D. **Timing.** The City may remove and impound personal property during business hours, from the opening of business hours, as defined by this policy, to one (1) hour before the close of business hours.

**E. Notice.**

1. **Pre-Removal Notice.** Before the City removes any personal property, the City shall provide notice of the removal. The notice shall:
  - a. No sooner than 24 hours prior to the impoundment;
  - b. Be posted at the site of the personal property;
  - c. Include the date and time by which the personal property must be moved; and
  - d. Explain that the City shall remove and impound the personal property if the personal property is not moved.
2. **Post-Removal Notice.** After the removal of any personal property, the City shall provide notice of the impoundment. The notice shall:
  - a. Immediately after the removal of personal property;
  - b. Be posted at the site from which the personal property was removed; and
  - c. Detail the procedures for retrieval of the personal property.

**F. Storage.**

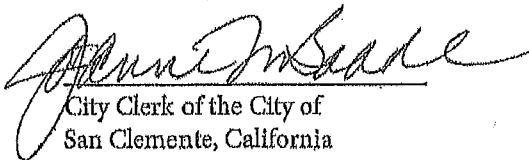
1. **Manner and Timing.** The City shall, in a manner to reasonably facilitate retrieval, store any impounded personal property for ninety (90) days from the date of removal and impoundment.
2. **Location.** The impounded personal property shall be stored at a location or locations in the City that reasonably facilitate retrieval.
3. **Records.**
  - a. The City shall keep record of any personal property impounded. The records shall include:
    - i. The date the personal property was removed impounded;
    - ii. The location from which the personal property was removed; and
    - iii. A general description of the personal property.

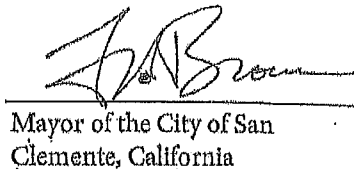
- b. The records shall be maintained for at least ninety (90) days from the date of removal and impoundment.
- G. Retrieval. The City shall allow a person seeking to retrieve their personal property access to the storage location within one (1) hour of receiving said request during posted business hours.
- H. Exigent Circumstances. In exigent circumstances, as defined by this policy, personal property may be removed at any time and without pre-removal notice, but with, to the extent feasible, post-removal notice, and with storage.

**SECTION 4. SEVERABILITY.** If any provision of this resolution 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 6th day of February, 2018.

ATTEST:

  
City Clerk of the City of  
San Clemente, California

  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) §  
CITY OF SAN CLEMENTE )

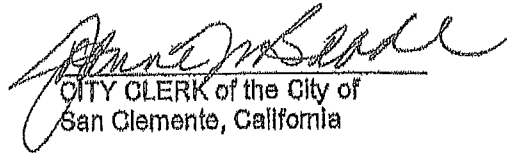
I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 18-01 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 6th day of February, 2018, by the following vote:

AYES: DONCHAK, SWARTZ, WARD, MAYOR BROWN


NOES: NONE

ABSENT: HAMM

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 13<sup>TH</sup> day of FEB., 2018.

  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney





## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: December 7 , 2021

**Approvals:**

City Manager \_\_\_\_\_

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

Attorney \_\_\_\_\_

Finance \_\_\_\_\_

**Department:** City Attorney  
Code Compliance

**Prepared By:** City Attorney

**Subject:** *CONSIDERATION OF AN ORDINANCE AMENDING TITLES 8 AND 12 OF THE SAN CLEMENTE MUNICIPAL CODE REGARDING SHOPPING CARTS AND PUBLICLY STORED PERSONAL PROPERTY AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT*

**FISCAL IMPACT:** Indeterminate. Direct costs to the City will depend on the volume of property encountered, removed, and/or impounded by enforcement personnel.

**Background:** At its March 16, 2021 meeting, the City Council directed the Public Safety Committee and Joint Homeless Subcommittee to review and recommend amendments to the City's regulations on publicly stored personal property and unauthorized use of shopping carts. The committees' subsequent recommendations included: (1) prohibiting the unauthorized removal of shopping carts from the premises of businesses and (2) clarifying and enhancing the City's regulations governing publicly stored personal property. Thereafter, the Council directed the City Attorney to work with staff, the Orange County Sheriff's Department ("OCSD") and County Counsel to update and legally vet the committees' proposals. The Ordinance before the Council this evening (attached as Attachment 1) is the end result of these efforts.

**Discussion:** The Ordinance is organized into two parts, with the first addressing shopping carts and the second publicly stored property.

Shopping Carts

The unauthorized removal of shopping carts can lead to numerous adverse consequences, including increased operating expenses for impacted businesses as well as blight in the surrounding area. At the state level, the Business and Professions Code generally prohibits the unauthorized removal and possession of shopping carts. (See Bus. & Prof. Code, § 22435.2). City personnel, however, do not have the authority to enforce this state law; only OCSD can.

Cities may adopt ordinances that regulate shopping carts so long as the ordinance does not conflict with state law. (Bus. & Prof. Code, § 22435.8). Research by staff indicates that numerous neighboring cities have adopted

such ordinances, including Dana Point (DPMC, § 11.95.010), the City of Orange (OMC, § 8.06.080), Santa Ana (SAMC, § 33-215) and Stanton (SMC, § 9.92.130). Each of these cities' ordinances prohibit, among other things, the unauthorized removal and possession of shopping carts.

The City's shopping cart regulations are provided in Chapter 8.60 of the SCMC. Currently, this chapter does not prohibit the unauthorized removal and possession of shopping carts. The attached Ordinance amends Chapter 8.60 to now prohibit (1) the removal of a shopping cart from the premises or parking area of a business without the written consent of the owner and (2) possession of a shopping cart that was unlawfully removed. Codifying these provisions will enable Code Enforcement officers and other City personnel to cite individuals who engage in such conduct.

#### Publicly Stored Personal Property

Law enforcement and other City personnel routinely encounter unattended personal property that has been stored or abandoned on City property (which is sometimes, but not always, associated with camping). If unaddressed, the presence of personal property in public spaces can cause significant adverse health and safety impacts that include, but are not limited to, the following:

1. Property stored in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and destruction. Such consequences can lead to delayed emergency response times, interrupted utility service, and injuries to persons or property;
2. Property stored near critical driveways, loading docks and/or in a manner that obstructs (often heavily trafficked) public rights-of-way can likewise result in injuries to persons or property. Among other things, such injuries can be caused by persons having to traverse around obstructions and vehicles entering and exiting roadways; and
3. Storing property in public spaces also contributes to blight, can damage such property, and foster unsanitary conditions (e.g., accumulation of items infested with insects or vermin).

The City's current procedures for removing, storing, and disposing of unattended personal property are set forth in City Council Resolution No. 18-01, which was adopted on February 6, 2018 (Attachment 2). Council's desire was to have them consolidated, aligned with other property maintenance protocols (e.g., lost and found on sports fields and parks), and reviewed against current caselaw. The City Attorney and staff have worked to this end in coordination with County Counsel and the Sheriff to review, legally vet, and

update these procedures. The attached Ordinance is the culmination of these efforts.

The updated procedures (“Procedures”) will be added to Title 12 (Streets, Sidewalks, and Public Places) as a new Chapter 12.18. The Procedures incorporate a number of best practices, including elements of the consent decree entered into by the County and used by OCSD (in connection with enforcement in all areas of the County). The Procedures also reflect recent changes in the law, including the Ninth Circuit’s September 2, 2021 decision in *Garcia v. City of Los Angeles* (which invalidated Los Angeles’s procedures for removing bulky items stored on public property). Among other things, the Procedures will prohibit the storage of non-essential personal property on any land or easement that is owned, operated, or managed by the City.<sup>1</sup> The Procedures establish distinct notice, storage, and retrieval protocols that apply depending on the type of property found and its location (e.g., within 10 feet of critical infrastructure). An overview of the Procedures is provided in the table below. City and contract enforcement and maintenance staff will be trained accordingly.

Property <sup>2</sup>	24-Hr. Pre-Removal Notice?	Post-Removal Notice?	Storage for 90 days?	Retrieval?	Notes
Abandoned Property	No	No	No	No	Abandoned essential and non-essential personal property can be removed without notice and discarded immediately. <u>Abandoned property does not include property within a 15' radius of a location where an unhoused individual is camping.</u>
<u>Stored Property Within 15' of a Martin v. City of Boise Campsite</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Subject to specified health, safety, and welfare exceptions.</u>
<u>Stored Property in Blocking Access to Critical Use Areas that Cannot Be Moved Aside</u> <sup>3,4</sup>	No	Yes	Yes	Yes	Same procedures apply regardless of whether property is essential or non-essential, or associated with camping.
Stored Essential Property (Non-Critical Use Area/All Other Areas)	Yes	Yes	Yes	Yes	

<sup>1</sup> “Essential” property includes tents, tarpaulins, bedding, blankets, sleeping bags, bicycles, trailers, carts, clothing, identification, medical papers or devices, medications, and personal items. “Non-essential” is all property that is not “essential” property.

<sup>2</sup> Type of personal property found on “City Property,” which is property or easements that are owned, operated, or managed by the City.

<sup>3</sup> “Stored” property is property that has been put aside or accumulated for use when needed but *not* abandoned.

<sup>4</sup> “Critical Use Areas” include within 10 feet of driveways and loading docks or within 10 feet of bridges and train tracks.

Stored Non-Essential Property (Non-Critical Use Area <u>All Other Areas</u> )	No	Yes	Yes	Yes	
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Lastly, in addition to the items profiled above, the Ordinance amends the City's camping regulations (contained in SCMC Chapter 8.86) to add a cross-reference to Chapter 12.18's Procedures.

**Environmental:** The Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the Ordinance will not result in any construction or development, and it will not have any effect that would physically change the environment. The Ordinance therefore does not qualify as a project subject to CEQA.

In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt from CEQA under State CEQA Guidelines section 15061(b)(3), which exempts projects from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Thus, even if the Ordinance could result in some physical change in the environment, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

**Recommendation:**

1. Find that the Ordinance is not subject to the requirements of CEQA for the following reasons:
  - a. The Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and
  - b. The Ordinance is exempt under State CEQA Guidelines Section 15061(b)(3), the general rule exemption, because it

can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

2. Introduce for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING TITLES 8 AND 12 OF THE SAN CLEMENTE MUNICIPAL CODE REGARDING SHOPPING CARTS, CRITICAL INFRASTRUCTURE AND PUBLIC STORAGE OF PERSONAL PROPERTY AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

3. Repeal City Council Resolution No. 18-01.

***Attachments:***

1. Proposed Ordinance
2. City Council Resolution No. 18-01

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
SAN CLEMENTE, CALIFORNIA AMENDING  
TITLES 8 AND 12 OF THE SAN CLEMENTE  
MUNICIPAL CODE REGARDING SHOPPING  
CARTS, CRITICAL INFRASTRUCTURE AND  
PUBLIC STORAGE OF PERSONAL PROPERTY  
AND FINDING THE ORDINANCE NOT SUBJECT  
TO THE CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

**WHEREAS**, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic, or aesthetic considerations; and

**WHEREAS**, the City Council finds that shopping carts that are removed from local businesses can increase operating expenses for such businesses and contribute to blight in the City; and

**WHEREAS**, Section 22435.2 of the California Business and Professions Code prohibits, among other things, the unauthorized removal and possession of shopping carts; and

**WHEREAS**, Section 22435.8 of the Business and Professions Code authorizes municipalities to enact ordinances that regulate or prohibit the removal of shopping carts except to the extent that any provision of such an ordinance "expressly conflicts" with Business and Professions section 22435 et seq.; and

**WHEREAS**, numerous cities have adopted local regulations prohibiting the unauthorized removal and possession of shopping carts, including Dana Point (DPMC, § 11.95.010), the City of Orange (OMC, § 8.06.080), Santa Ana (SAMC, § 33-215) and Stanton (SMC, § 9.92.130); and

**WHEREAS**, Chapter 8.60 of the San Clemente Municipal Code ("SCMC") contains the City's regulations governing shopping carts; and

**WHEREAS**, Chapter 8.60 does not currently prohibit the unauthorized removal and possession of shopping carts; and

**WHEREAS**, this Ordinance amends Chapter 8.60 to prohibit such activities;  
and

**WHEREAS**, various infrastructure within the City is critical to the protection of public health, safety, and welfare. Such infrastructure includes, but is not limited to, fire stations, hospitals, public utilities, electrical wires, natural gas pipes, and water resources; and

**WHEREAS**, the placement or storage of personal property in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and/or destruction. Such consequences can result in substantial adverse public health and safety impacts, including delayed emergency response times, interrupted utility service, and injuries to persons or property; and

**WHEREAS**, to avoid such consequences, this Ordinance amends Title 12 (Streets, Sidewalks, and Public Places) of the SCMC to add a new Chapter 12.18, entitled "Critical Infrastructure and Public Storage of Personal Property." Subject to limited exceptions, Chapter 12.18 ~~prohibits~~regulates the storage of personal property on any land or easement that is owned or operated by the City; and

**WHEREAS**, Chapter 12.18 includes procedures governing the circumstances under which City personnel and law enforcement (collectively "Enforcement Personnel") may remove property left in such areas; and

**WHEREAS**, Chapter 12.18 requires Enforcement Personnel to comply with distinct notice, storage, and retrieval procedures that apply depending on the type of property found and its location (e.g., within 10 feet of critical infrastructure); and

**WHEREAS**, this Ordinance reflects the City Council's desire to protect public property and the health, safety, and welfare of the City's businesses, residents, and visitors in manner that includes adequate procedural safeguards governing the removal and storage of personal property; and

**WHEREAS**, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**Section 1. Incorporation of Recitals.** The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

**Section 2. CEQA.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could



potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the Ordinance will not result in any construction or development, and it will not have any effect that would physically change the environment. The Ordinance therefore does not qualify as a project subject to CEQA.

In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt from CEQA under State CEQA Guidelines section 15061(b)(3), which exempts projects from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Thus, even if the Ordinance could result in some physical change in the environment, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

**Section 3. Code Amendment.** Section 8.60.030 is hereby added to Chapter 8.60 of the San Clemente Municipal Code and shall read in its entirety as follows:

**"Section 8.60.030 - Unauthorized Removal or Possession of Shopping Carts.**

It is unlawful to do any of the following acts if a shopping cart has a permanently affixed sign as provided in Section 8.60.010:

A. Removal. No person shall remove any shopping cart from the premises or parking area of any business establishment without the written consent of the owner.

B. Possession. No person shall have in his or her possession any shopping cart that has been removed from the premises or parking area of any business establishment without the written consent of the owner.

C. This section shall not apply to shopping carts removed as authorized in writing by the owner or retailer for the purpose of repair, maintenance, or disposal."

**Section 4. Code Amendment.** Chapter 12.18 is hereby added to Title 12 of the San Clemente Municipal Code and shall read in its entirety as follows:

## "Chapter 12.18 – Public Storage of Personal Property

### Section 12.18.010 – Purpose

This Chapter is intended to protect the public health, safety, and welfare by preventing injuries to persons and property. This Chapter is also intended to ensure that certain locations within the City remain accessible to the public as well as City and public safety personnel. Meaningful protection of such interests includes, among other things, regulations governing public storage of personal property. Left unregulated, the storage of personal property in public spaces can cause significant adverse health and safety impacts, including the following:

A. Property stored in, on, or adjacent to critical infrastructure can result in damage, disruption, incapacitation, and destruction. Such consequences can lead to delayed emergency response times, interrupted utility service, and injuries to persons or property.

B. Property stored near critical driveways, loading docks and/or in a manner that obstructs (often heavily trafficked) public rights-of-way can likewise result in injuries to persons or property. Among other things, such injuries can be caused by persons having to traverse around obstructions and vehicles entering and exiting roadways.

C. Storing property in public spaces also contributes to blight, can damage such property, and foster unsanitary conditions (e.g., accumulation of items infested with insects or vermin).

### Section 12.18.020 – Definitions

"Abandoned personal property" means unattended, but not stored, personal property that by its condition of damage, deterioration, disrepair, non-use, obsolescence or location causes ~~any~~ reasonable person to conclude that the owner has permanently relinquished all right, title, claim and possession thereto. In determining whether property is abandoned, enforcement personnel shall, erring on the side of caution, evaluate the facts and circumstances surrounding the item(s), including whether the personal property is unattended and lacks objective signs of ~~ownership abandonment~~. Examples of objective signs of abandonment include items stored, but are not limited to, items located in gutters, placed adjacent to trash receptacles, an empty and/or broken tent sitting by itself on a sidewalk with no other belongings, or a bag of clothes that is open and strewn across a sidewalk, or items that are broken, disheveled, surrounded by trash, or show other signs of neglect. Notwithstanding the foregoing, personal property covered by Section 12.18.040 (B)(1) (Property Associated with Camping) shall not be considered abandoned.

"Business Hours" means the hours that City Hall for the City is open to the public for business.

"City" means the City of San Clemente, California.

"City property" means property or easement that is owned, operated, or managed by the City.

"Critical use area" means any of the following areas of City property:

1. Within 10 feet of any operational or utilizable entrance, exit, driveway, service area, or loading dock, or within, on, or obstructing, any stairway, passageway, hallway, or corridor leading to such areas.
2. Within 10 feet of critical infrastructure.
3. Within 5 feet of any parking space, whether delineated with space markings or otherwise.
4. Any area upon a sidewalk or other public right-of-way that the Americans with Disabilities Act of 1990 (as amended from time to time) requires to be clear of obstructions for purposes of pedestrian and disabled pedestrian traffic.

"Critical infrastructure" means fire or law enforcement stations; hospitals; structures, such as antennas, bridges, train tracks, or drainage systems; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water resources. Critical infrastructure also includes real property or a facility, whether privately or publicly owned, that the City Manager or designee designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.

"Enforcement personnel" means the Orange County Fire Authority, the Orange County Sheriff's Department and employees of the City's Code Compliance, Park Ranger, and Marine Safety Divisions. Enforcement personnel also includes employees designated by the City Manager as having authority to enforce this Chapter.

"Essential personal property" means tents, tarpaulins, bedding, blankets, sleeping bags, bicycles, trailers, carts, clothing, identification, medical papers or devices, medications, personal items (e.g., photographs and documents) and items necessary to acquire assistance for, or achieve, instrumental activities of daily living. Essential personal property does not include any items intended for

commercial purposes, such as items, consumable or otherwise, for sale, trade, barter, or in consideration of donations.

"Instrumental activities of daily living" means activities a person engages in, on their own behalf, to achieve, or participate in, any of the following:

1. Getting into/out of bed or a chair
2. Toilet hygiene
3. Bathing or showering
4. Getting dressed
5. Personal hygiene
6. Eating
7. Walking/climbing stairs
8. Caring for others
9. Caring for pets
10. Child rearing
11. Communication management
12. Community mobility
13. Financial management
14. Health management and maintenance
15. Home establishment and maintenance
16. Meal preparation and cleanup
17. Religious observances
18. Safety procedures and emergency responses
19. Shopping

"Non-essential personal property" means all items other than essential personal property.

"Personal property" means any tangible property other than land that may be subject to ownership. Personal property includes essential and non-essential personal property.

"Public utilities" means any outdoor water, sewer, or electrical outlets or fixtures on government owned, maintained, or operated properties within the City that are not designated for public use.

"Sheriff" means any sworn personnel of the Orange County Sheriff's Department.

"Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location. Stored personal property does not include abandoned personal property.

"Stored personal property" means personal property, other than abandoned personal property, that is accompanied by signs of ownership, such as packing, stacking, or organizing.

"Unattended" means no person is present with the personal property who asserts or claims ownership of the personal property.

### **Section 12.18.030 – Prohibitions**

A. Prohibition. No person shall store any non-essential personal property on City property.

B. Exceptions. Subsection (A) shall not apply to any of the following:

1. Storing property in accordance with a City-issued permit.
2. Storing property as part of activities expressly authorized by the

City.

3. Property storage by an employee of the City or any public utility or government agency in the course of their employment.

### **Section 12.18.040 – Removal, Storage, and Retrieval**

A. Abandoned Personal Property. Enforcement personnel may remove and immediately discard any abandoned essential and non-essential personal property located on City property without complying with the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(34), (B)(45) and (B)(56) below. Notwithstanding the foregoing, any essential or non-essential personal property covered by subsection (B)(1) (Property Associated with Camping) shall not be considered abandoned.

B. Stored Personal Property. Enforcement personnel may remove unattended stored essential and non-essential personal property on City property subject to the following procedures:

1. Property Associated with Camping. Absent exigent circumstances relating to immediate threats to the public health, safety, or welfare and subject to subsection (B)(2) (Critical Use Areas) below, all essential and non-essential personal property located within a 15 foot radius of any location where an unhoused individual is camping in accordance with *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584 and Chapter 8.86 of the San Clemente Municipal Code shall not be considered abandoned and may be removed subject to the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(a), (B)(4)(b), (B)(5), and (B)(6) below.

2. ~~4.~~ Critical Use Areas. Essential and non-essential personal property-in, including property covered by subsection (B)(1) (Property Associated with Camping) above, that is blocking access to any critical use areasarea and that cannot be moved aside may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(~~34~~)(b), (B)(45) and (B)(~~56~~) below. If personal property can be moved aside so as to not block access to the critical use area, then such property shall be removed in accordance with subsections (B)(1) (Property Associated with Camping) or (B)(3) (All Other Areas), as applicable.

~~2. Non-Critical Use Areas.~~

3. All Other Areas. Essential and non-essential personal property that is not covered by subsections (B)(1)(Property Associated With Camping) or (B)(2)(Critical Use Areas) may be removed in accordance with the following:

a. Essential Personal Property. Essential personal property may be removed subject to the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(~~34~~)(a), (B)(~~34~~)(b), (B)(45), and (B)(~~56~~) below.

b. Non-Essential Personal Property. Non-essential personal property may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(~~34~~)(b), (B)(45), and (B)(~~56~~) below.

4. ~~3.~~ Notice.

a. Pre-Removal Notice. In instances where pre-removal notice is required, such notice shall:

- i. Be posted no less than 24 hours prior to the removal.
- ii. Be posted at the site of the personal property.
- iii. Include the date and time by which the personal property must be moved.
- iv. Explain that the City will remove and impound the personal property if it is not moved from City property.

b. Post-Removal Notice. In instances where post-removal notice is required, such notice shall:

- i. Be posted immediately after the removal of personal property.
- ii. Be posted at the site from which the personal property was removed.
- iii. Detail the procedures for retrieving the personal property.

5. ~~4.~~ Storage.

a. Manner and Timing. In instances where storage is required, the City or Sheriff shall store removed personal property for 90 days from the date of removal.

b. Location. The removed personal property shall be stored at a location or locations in the City that reasonably facilitate retrieval.

c. Records. The City or Sheriff shall keep written records, maintained for at least 90 days following removal, of any personal property stored. The records shall include the date that the personal property was removed, the location from which the personal property was removed, and a general description of the personal property.

~~5-6.~~ Retrieval. During Business Hours, the City or Sheriff shall allow apromptly assist any person seeking to retrieve property stored pursuant to

subsection (B)(45) above ~~within one hour of the City's or Sheriff's receipt of the request.~~

~~6-7~~ 6-7 Exceptions. The notice, storage, and retrieval regulations set forth in subsections (B)(~~34~~), (B)(45), and (B)(~~56~~) above shall not apply to the following:

a. Items that present a health and safety risk if stored, such as items soiled by bodily fluids, items that are moldy, items infested by insects or vermin, and perishable food. Such items need not be stored and may be discarded.

b. Items that constitute evidence of a crime or contraband, which may be seized and discarded as permitted by law."

**Section 5. Code Amendment.** Section 8.86.030 of Title 8 of the San Clemente Municipal Code is hereby amended to read in its entirety as follows:

**"8.86.030 – Camping Procedures, Removal and Recovery of Personal Property**

See Chapter 12.18 of this code."

**Section 6. 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 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. Prior Enactments.** The provisions set forth in Section 4 of this Ordinance shall superseded any provision of a prior resolution adopted by the City Council to the extent that the prior resolution is inconsistent therewith.

**Section 8. 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, 910 Calle Negocio, San Clemente, CA 92673.

**Section 9. 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 ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.



**Section 10. Effective Date.** This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Joanne, Baade, City Clerk

\_\_\_\_\_  
Kathleen Ward, Mayor

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  
\_\_\_\_\_.

\_\_\_\_\_  
Joanne Baade, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Smith, City Attorney