

ORDINANCE NO. 1779

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, CALIFORNIA, AMENDING CHAPTERS 8.86 AND 12.18 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO PUBLIC CAMPING AND PUBLIC STORAGE OF PERSONAL PROPERTY TO ADDRESS CHANGES IN LAW BROUGHT ABOUT BY *CITY OF GRANTS PASS, OREGON V. JOHNSON, ET AL.*, 144 S.Ct. 2202 (2024) AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

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

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

WHEREAS, the City of San Clemente ("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 sites; 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 (“SCMC”) 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*, 902 F.3d 1031 (9th Cir. 2018) (“*Martin*”), 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, in line with *Martin*, 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, 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. 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 publicly 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* and SCMC 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 publicly owned campground; and

WHEREAS, in circumstances where *Martin*, coupled with the City's potential inability to facilitate or provide housing or shelter, the City was 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 as though fully set forth here, 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 5:00 p.m. 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, Ordinance No. 1722 (February 1, 2022), the recitals of which are incorporated by reference into this ordinance as if fully set forth herein, added the following Chapter to SCMC: Chapter 12.18, Public Storage of Personal Property in light of *Martin*; and

WHEREAS, Ordinance No. 1722 amended SCMC section 8.86.030, to read as follows, "8.86.030 - Camping Procedures, Removal and Recovery of Personal Property. See Chapter 12.18 of this code;" and

WHEREAS, the City wishes to amend Title 8 and Title 12 of the San Clemente Municipal Code to conform to new law regarding sleeping, camping, and storing personal property in public parks and public places put forth by the Supreme Court of the United States in *City of Grants Pass, Oregon v. Johnson, et al.*, 144 S.Ct. 2202 (2024) ("*Grants Pass*"); and

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

WHEREAS, this ordinance's amendments to Title 8 and Title 12 benefit the public health and safety of the City's residents as well as Orange County Sheriff's Department officers and other public safety personnel, and conform Title 8 and Title 12 to *Grants Pass*; 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: The recitals above are each fully 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 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. San Clemente Municipal Code section 8.86.040 is hereby deleted and replaced in its entirety to read as follows:

8.86.040 - Enforcement.

- A. The City may enforce any violation of this chapter pursuant to Section 1.16.010 of this Code and any other means provided by law.

Section 4. San Clemente Municipal Code section 8.86.050 is hereby deleted in its entirety.

Section 5. The definition of “abandoned personal property” in San Clemente Municipal Code section 12.18.020 is hereby amended as follows (new text in underline, deleted text in ~~strike-through~~):

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.~~

Section 6. San Clemente Municipal Code, subsection 12.18.040 is hereby amended as follows (new text in underline, deleted text in ~~strike-through~~):

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.~~

1. ~~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)(~~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)(~~23~~) (all other areas), as applicable.
2. ~~3.~~—All Other Areas. Essential and non-essential personal property that is not covered by subsections ~~(B)(1) (property associated with camping) or (B)(21)~~ (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.
3. ~~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.

4. ~~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.

5. ~~6.~~—Retrieval. During business hours, the City or Sheriff shall promptly assist any person seeking to retrieve property stored pursuant to subsection (B)(~~45~~) above.

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 7. 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 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Clemente hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 9. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

APPROVED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente

Mayor of the City of
San Clemente, California

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

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1779 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 _____, 2024, 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 _____, 2024.

 CITY CLERK of the City of
 San Clemente, California

Approved as to Form:

 Elizabeth A. Mitchell, City Attorney