



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: September 19, 2017

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: Christopher A. Callihan, City Attorney

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TITLE: **An Ordinance Amending Article XIII of Chapter 16 Of the Salinas Municipal Code And Article XIV Of Chapter 16 of the Salinas Municipal Code Related to Camping And Storage Of Personal Property in Public Places; and A Resolution Adopting A Form and Procedure for the Promulgation of Public Notice of Closing of Public Property for Cleaning**

RECOMMENDED MOTION:

Adopt an ordinance amending Article XIII of Chapter 16 and Article XIV of Chapter 16 of the Salinas Municipal Code related to camping and storage of personal property in public places and approve a Resolution regarding public notice of cleanups.

RECOMMENDATION:

It is recommended that the City Council adopt an ordinance amending Articles XIII and XIV of the Salinas Municipal Code to allow lying, sleeping, and camping, under limited circumstances, on public property and for the storage of a limited amount of personal property, under limited circumstances, on public property. It is further recommended that the City Council approve a resolution setting forth the public notice procedure for the closure of public property for periodic cleanup.

EXECUTIVE SUMMARY:

The public areas within the city, including streets, sidewalks, parks, public buildings and public land, should be readily accessible and available to residents and the public at large for use in a clean, safe, and healthy manner. The use of these areas for overnight camping purposes or for the storage of an individual's personal property interferes with the ability of residents and the public at large to use the areas in the healthy and safe manner for the uses intended. Such activities can constitute public health and safety hazards, which adversely impact other members of the public and neighborhoods, as well as industrial, agricultural, and commercial areas. Nonetheless, sleeping and resting are universal and unavoidable consequences of being human. Some personal property is necessary for all individuals to survive and function. People need access to essential documents, medications, prescription eye glasses, cell phones, sleeping bags, and blankets. For

individuals with no access to private spaces, sleeping and resting can only be done in public. For individuals without a private place to store essential items, those items must be stored in public.

A purpose of the proposed ordinance and resolution is to strike a balance between the needs of residents and the public at large for reasonable, clean, safe access to public spaces, and the needs of those without access to private spaces to sleep, rest, and access essential personal property. The proposed ordinance and resolution seek to maintain public and private lands, streets, sidewalks, alleys, ways, creeks, waterways, parks, playgrounds, recreation areas, plazas, open spaces, lots, parcels and other public and private areas within the city, in a clean, sanitary and accessible condition, while account for the basic needs of the City's most vulnerable residents. The proposed ordinance and resolution will protect the health, safety and welfare of the entire community, including the City's marginally housed and unhoused residents. To that end, the proposed ordinance and resolution make it unlawful to camp, establish, maintain, operate or occupy camping facilities, or use camp paraphernalia on public or private property, or to store personal property on public property subject exceptions set forth to address the needs of the City's marginally housed and unhoused residents.

BACKGROUND

Unlawful Camping

The proposed ordinance makes it unlawful and a public nuisance for any person to camp on public property between the hours of 5 a.m. and 7 p.m. The proposed ordinance further makes it unlawful to camp at any time there is available overnight shelter space. The ordinance thus strikes a balance between the needs of unhoused individuals and the needs of the public at large. Individuals camping in public spaces have to remove their camps each morning by 5 a.m., which will allow businesses, their patrons, residents, and visitors to use those public spaces otherwise inhabited by encampments. The ordinance makes it unlawful for an individual to inhabit public property when there is shelter space available to that individual. As the City and its partners move forward in establishing shelter space, the ordinance will facilitate the movement of unhoused and marginally housed individuals toward the use of that shelter space.

The proposed ordinance addresses issues that City employees and members of the public have reported in relation to encampments. City employees and members of the public have reported, in the past, that overnight camping has specifically interfered with their use of public buildings, public sidewalks, public streets, parking lots, parking garages, and other open spaces. City employees leaving City Hall were, in the past, confronted by overnight campers screaming, yelling, and displaying other aggressive and erratic behavior that has made those employees fear for their safety upon ingress or egress to or from the building. City employees have also been confronted by overnight campers subjecting them to unwanted sexual comments. City employees and members of the public, in the past, have complained about the smell of public places, most-notably the area in front of City Hall, the area around the John Steinbeck Library, and the doorways to the Permit Center and the stairways in the adjacent parking structure, as a result of overnight camping activity, including urination and defecation by overnight campers.

It has been specifically reported that some public spaces could not be used by residents and the public at large for the manner and uses in which they were intended, including specific complaints that outdoor public spaces, including, but not limited to, the space in front of City Hall and the space around the John Steinbeck Library, that were once used by residents and the public at large to recreate, eat lunch, and take breaks, can no longer be used for those purposes as a result of the litter, urine and feces left by overnight campers in those areas.

City employees have had to regularly clean up and remove human waste from areas used for overnight camping including, but not limited to, the space in front of City Hall, the space surrounding the library, public parking lots, and public parking garages. The proposed ordinance addresses the need of the City to protect its employees and ensure that its residents and the public at large have access to public buildings and services by making it unlawful to camp within 300 feet of City Hall, public libraries, the public service yard, police stations, public safety facilities, fire stations, airports, sports complexes, recreation center, the Armory Building, Permit Center, pump station, golf course, sewage treatment plant, and parking garages owned or operated by the City of Salinas.

Children are particularly vulnerable to dangers that persist in encampments, including dangers posed by discarded intravenous needles and improperly disposed of waste and refuse. The proposed ordinance addresses the vulnerability of Salinas's youngest residents by making it unlawful to camp, at any time, within 300 feet of a public school, private school, library, sports complex, or recreation center at which children regularly gather.

The Public Works Department has put into place a water monitoring plan that requires the City to monitor water in specific wastewater outfalls. Public Works has reported unhoused or marginally housed individuals camping in some of these outfalls. Camping in outfalls poses a great danger in case of an unexpected rain and interferes with the water monitoring program. The proposed ordinance makes it unlawful to camp in a wastewater outfall at any time.

Encampments within the City create substantial public health issues including the accumulation of refuse, garbage, used intravenous needles, and human waste. Between May 3, 2016 and May 3, 2017, City cleanup crews removed 418.12 tons of refuse and garbage during cleanups of encampments. Recent cleanups include, August 24, 2017, when the City's cleanup crew removed 10 tons of garbage and refuse from Chinatown; and August 1, 2017, when the City's cleanup crew removed 22 needles from an encampment at Natividad Creek. The encampment at Natividad Creek included holes and tunnels 5 feet deep or more. The tunnels pose a substantial danger of collapse or flooding during rain.

The City cleanup crew also discovered a camper who had created a dirt hut by digging behind the location where the soil meets the embankment in the reclamation ditch by Fairview Avenue. This hut, like the tunnels at Natividad Creek, poses a significant danger of flooding or collapse during a rain. The proposed ordinance and resolution address the need of the City to undertake periodic cleanups of encampments.

The ordinance makes it unlawful to camp 24 hours prior to a publicly noticed cleanup, during a publicly noticed cleanup, or 24 hours after a publicly noticed cleanup. The resolution approves a

public notice procedure for publicly noticed cleanups. The proposed ordinance forbids the City from posting for cleanup more than 1/4 of the sidewalks in the City on any single day, thereby balancing the City's need to undertake cleanups with the needs of the marginally housed and unhoused residents. Making it unlawful to camp 24 hours prior to a notice cleanup will allow City employees and Police Officers time to clear out encampments before cleanup crews move through to collect garbage, refuse, and discarded intravenous needles. Making it unlawful to camp 24 hours after a publicly noticed cleanup will encourage residents, patrons of businesses, and the public at large to use recently cleaned areas. The proposed ordinance and resolution balance the need of the City to maintain clean, safe public spaces, and the need to encourage the use of those spaces with the needs of the marginally housed and unhoused residents to sleep and rest.

There have been reported instances of campers in encampments interacting in an unfavorable way with patrons of institutions that sell alcohol. Institutions that sell alcohol to be consumed on site tend to be open later than other businesses. The consumption of alcohol and other substances ingested for their effects have a tendency to cause impairment of judgment, which can lead to undesirable personal interactions, including fights. The proposed ordinance address this issue by making it unlawful to camp within 100 feet of a bar, nightclub, other purveyor of onsite liquor, or licensed purveyor of medical or commercial cannabis.

Nothing in the proposed ordinance is intended to interfere with otherwise lawful and ordinary uses of public or private property. In fact, the proposed ordinance allows for overnight camping on private residential property by no more than six people with the consent of the property owner or a person in lawful possession of the property, provided that the camping does not pose a threat to the public's health, safety, welfare, or otherwise create a public or private nuisance. In order to ensure that health and safety is maintained, a person in lawful possession of residential property who allows overnight camping must provide access to onsite flush toilets and onsite refuse disposal.

It has been recognized that, subject to reasonable conditions, camping and camping facilities associated with special overnight events can be beneficial to the cultural and educational well-being of the city. The proposed ordinance continues the City's policy to allow for overnight camping in connection with a special overnight event, subject to an overnight event permit issued at the discretion of the community development director. The proposed ordinance defines special overnight event to include programs operated by departments of the city, events organized by nonprofit or community-based organizations, organized youth or school events, and sporting events.

The community development director may, in her discretion, consult with city departments, the health officer, the fire officer, the police chief, or the public prior to issuing or declining to issue an overnight event permit. The community development director shall have the discretion to impose conditions on an overnight event permit including, but not limited to, security, sanitation facilities, the number of occupants, posting of bonds or deposits, insurance, quiet hours, duration of the permit, and permitted activities on the premises. The community development director has the discretion to revoke an overnight event permit in such case as she becomes satisfied that the maintenance or continuing operation of the camp or camp facilities is adverse to the public health, safety, or welfare. Any camp or camp facility associated with an overnight event permit must have

a copy of the overnight event permit conspicuously posted at the camp or camp facility. The City Council will set a reasonable application fee for a special event permit.

The proposed ordinance makes it unlawful, after a warning by a City employee, to walk, stand, sit, or lie on any monument, vase, decorative fountain, drinking fountain, bike rack, trash receptacle, median, fire hydrant, street-tree planter, berm, utility cabinet, railing, fence, planter, stairwell, parking lot, or parking structure. The proposed ordinance further makes it unlawful. Walk, stand, sit, or lie upon any public lawn or planted area that is posted with signs that forbid such conduct. While it is necessary for unhoused and marginally housed individuals to be able to lie and sleep, on a monument, vase, decorative fountain, drinking fountain, bike rack, trash receptacle, median, fire hydrant, street-tree planter, berm, utility cabinet, railing, fence, planter, stairwell, parking lot, or parking structure.

With respect to encampments on private property, City staff have received numerous complaints from residents and property owners and requests for assistance in removing encampments from private property. Recognizing the health and safety concerns associated with encampments on private property and the inability of some private property owners to effectively remove encampments, the proposed ordinance authorizes the City to recover its costs associated with authorized clean-ups of encampments on private property. In the event the City cleans-up an encampment from private property, pursuant to the property owner or other authorized person's consent, the City may recover its costs incurred in effectuating that clean-up. This will provide an additional tool for the City to use to address the health and safety issues of encampments on private property, in addition to those on public property.

Storage of Personal Property

The proposed ordinance balances the needs of residents and the public at large to access public spaces and the needs of people without access to private space to have access to a limited amount of personal property. Certain personal property is necessary, including driver's licenses, identification cards, Social Security cards, court documents, medications, medical documents, toiletries, cell phones, sleeping bags, prescription eye glasses, and blankets. People without access to private space cannot help but store some limited necessary items in public spaces. The proposed ordinance balances this need with the need of residents and the public at large to use public spaces in a clean, healthy and safe manner.

The proposed ordinance makes it lawful for the City to impound, after a pre-removal notice, unattended property and excess personal property stored on public property. Excess personal property is defined as property in excess of that which can be stored in a 90-gallon bin with the lid closed. The proposed ordinance makes it lawful for the City to impound property that prevents access as required by the Americans with Disabilities Act, during a public cleanup and the 24 hours before or after a public cleanup, and on closed public property, without prior notice. The proposed ordinance allows the City to dispose of any personal property, stored on public property, that poses an immediate threat to the health or safety of the public or that constitutes evidence of a crime or contraband.

The proposed ordinance sets forth the City's policy regarding pre-removal notices, post-removal notices, storage of impounded property, and repossession of impounded property. The proposed ordinance maintains the City's policy with regard to attachments on both public and private property as well as illegal dumping.

In its attempt to address the needs of marginally housed and unhoused individuals, the proposed ordinance does not criminalize the storage of personal property in public spaces. Rather, the proposed ordinance sets forth specific circumstances in which City employees may impound or dispose of personal property stored in a public space, and criminalizes an individual's interference with a City employees lawful impounding of or disposal of that property. No individual can receive a criminal citation for merely storing personal property in a public place. An individual would only face criminal liability if she willfully resists, delays, or obstructs a City employee during that employees lawful impounding or disposal of personal property.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

STRATEGIC PLAN INITIATIVE:

Adoption of the proposed ordinance will support the Council's goal of maintaining a safe, livable community. The proposed ordinance and resolution balance the need to ensure public areas within the city, including streets, sidewalks, parks, public building and public land, be readily accessible and available to residents and the public at large for use in a clean, safe, and healthy manner with the needs of people without access to private spaces to lie, sleep, and have access to a limited amount of personal property. The proposed ordinance will further the City Council's quality of life goals insomuch as it will promote healthy and vibrant public places and allow for special events including family-oriented and diverse activities related to recreation, arts, culture, and educational and leisure opportunities, while still accounting for the needs of those individuals without access to private spaces.

FISCAL AND SUSTAINABILITY IMPACT:

The proposed ordinance is an amendment to the Municipal Code, which already prohibits camping and storage of personal property on public property. Police resources will be necessary for the enforcement of the prohibition. The Public Works Department's resources will be necessary for

cleaning encampments and for impounding and storing personal property. Legal resources will be necessary for the prosecution of citations issued under the proposed ordinance. However the resources required by this amendment are not expected to differ substantially from those required by the current Municipal Code.

ATTACHMENTS:

Proposed Ordinance
Proposed Resolution