



CITY COUNCIL AGENDA REPORT

DATE: November 16, 2019

AGENDA OF: November 26, 2019

DEPARTMENT: City Manager and City Attorney

SUBJECT: Shelter Capacity Update and Ordinance Amending Ch. 6.36 – Camping of the City of Santa Cruz Municipal Code (CM/CA)

RECOMMENDATION:

1. Receive updates from staff regarding winter shelter capacity and conversations with Santa Cruz County, and direct staff regarding next steps as appropriate.
2. Introduce for publication an ordinance amending Chapter 6.36 – Camping of the City of Santa Cruz Municipal Code to align with the Ninth Circuit U.S. Court of Appeals decision in *Martin v. City of Boise* (2019) 920 F.3d 584.

1. WINTER SHELTER CAPACITY

This item will be presented orally by the City Manager.

2. ORDINANCE AMENDING CHAPTER 6.36 – CAMPING

BACKGROUND: *Martin v. City of Boise*. On September 4, 2018, the Ninth Circuit Court of Appeals issued a decision in the case of *Martin v. City of Boise* (Boise). This case involved multiple homeless individuals who had been cited for camping on public property or sleeping in public buildings or places, in violation of the city's ordinance. The court concluded that it is a violation of the Eighth Amendment, which protects against cruel and unusual punishment, for a municipality to criminalize the act of sleeping outside where no sleeping space is practically available in any shelter. As a result, ordinances completely prohibiting the act of sleeping on public property when an individual has no other option have been deemed unconstitutional.

DISCUSSION: Although the Boise decision limited how municipalities may regulate their own property as it relates to sleeping in public, the decision was narrowly focused. The fundamental, biological need for sleep was a driving consideration in the Ninth Circuit's decision. However, the case does not stand for a total ban on a city's right to regulate the behavior should there be compelling reasons for the regulations, nor does it require cities to allow sleeping at any time and in every publicly owned location. The City of Santa Cruz Municipal Code (Chapter 6.36) currently prohibits camping on all public and private property, except in areas specifically designated for camping. This prohibition is not enforceable because there is insufficient temporary space available to shelter the number of homeless individuals currently sleeping out of doors in the City. The proposed amendments to Chapter 6.36 are intended to continue to prohibit camping on public property throughout the City in a manner that ensures compliance with federal law and the enforceability of the City's regulations.

PROPOSED AMENDMENTS

The Police Department has refrained from enforcing Chapter 6.36 on public property since *Boise* ws decided. The proposed amendments are intended to establish enforceable camping regulations as follows:

- Continue to prohibit overnight sleeping or setting up bedding on public property. Currently, SCMC Section 6.36.010 prohibits sleeping or setting up bedding between the hours of 11:30 p.m. and 8:30 a.m. As proposed, camping between the hours of 10:00 p.m. and 7:00 a.m. would continue to be prohibited. A homeless person found in violation of new Section 6.36.030, however, would only be cited if he or she has immediate access to available alternative shelter (as determined by the Police Department) but, after notice and a reasonable opportunity to do so, declines to avail himself or herself of it.
- Current Section 6.36.010(c) makes it unlawful to establish or maintain a campsite at any time. New Section 6.36.020 would make it unlawful, between the hours of 7:00 a.m. to 10:00 p.m., to “establish or maintain outdoors or in, on, or under any structure not intended for human occupancy, a temporary or permanent place for cooking or sleeping, by setting up or maintaining bedding, sleeping bag, blanket, mattress, tent, hammock, or other sleeping equipment, or by setting up any cooking equipment, *with the intent to remain in that location overnight*.”
- For both daytime and nighttime encampments, new Sections 6.36.020 and 030 would require, prior to issuing a citation, the person found in violation to be provided with notice and a reasonable opportunity move their belongings and vacate the area.
- Current Section 6.36.020 – CAMPING PERMITTED (renumbered as 6.36.040), which specifies circumstances under which camping is permitted in the City (e.g., legally established campgrounds, in rear yard or enclosed side yard of a residence, in a vehicle on business or church parking lots, etc.), remains largely unchanged, except to add camping events authorized by resolution of the City Council. This would include, for example, if the City Council identifies a suitable location on public or private property to establish an temporary emergency homeless shelter.
- Current Section 6.36.030 – PERMIT FOR CAMPING IN CITY PARKS (renumbered 6.36.050) authorizes the director of parks and recreation to issue a permit allowing camping in certain park areas under specified terms and conditions but prohibits any person or group from camping in a city park under that section for more than three nights in any twelve months. This section is largely unchanged, except that the three-day limitation could be extended by resolution of the City Council.
- Current Section 6.36.040 – PENALTY – SINGLE OFFENSE (renumbered 6.36.060), which declares a single offense as an infraction punishable by a fine of \$20 or no more than 8 hours community service, would be modified to reduce community service hours to 3.
- Current Section 6.36.040 – PENALTY – SUBSEQUENT OFFENSE WITHIN TWENTY-FOUR HOURS, which declares a subsequent offense for a violation of Section 6.36.010(c) – Setting Up Campsite a misdemeanor, would be renumbered as Section 6.36.070, and would declare a second violation of Section 6.36.020 – Daytime Encampments within 48 hours a misdemeanor.
- Current Section 6.36.055, which requires dismissal of any citation issued to a person while on a on a waiting list for shelter at the Homeless Services Center or River Street Shelter, or when the National Guard Armory winter shelter is filled to capacity, would be deleted in its entirety.
- Current Section 6.36.060 – PUBLIC NUISANCE DECLARED, which authorizes, upon a

determination that a campsite constitutes an immediate threat to health, safety or welfare, that it be removed “forthwith” would be removed. In its place is Section 6.36.080 – REMOVAL AND STORAGE, which authorizes the removal of attended or unattended encampments, pursuant to standard operating procedures (SOPs) to be established by resolution of the City Council, which are in the process of being developed.¹ The intent here is to ensure that ample notice is provided before, during and after an illegally established encampment is closed by the City.²

- For occupied encampments, that will entail hand-delivered notice to occupants and an opportunity to dismantle and relocate their equipment and belongings before City personnel will remove what remains. Unoccupied encampments will be provided posted notice.
- The length of notice will depend upon various factors to be fleshed out in the SOPs, such as location, size and upkeep of the encampment, the presence of any threats to health and safety, including of the occupants, and the presence of any hazardous conditions (such as fire risk factors).
- For items remaining after an encampment is closed, the City personnel will make a good faith attempt to identify and remove, tag, inventory and store personal effects from the encampment, other than stolen property, contraband, evidence of a crime, garbage, material constituting a bio-hazard or clearly discarded items.
- Following removal the site will again be posted with notice, to include a list of items removed, a telephone number for information on retrieval, the location where the material is stored, and the length of time during which the personal effects may be claimed.

ENVIRONMENTAL REVIEW: The adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the implementation of this Ordinance would not result in any physical changes to the environment and therefore would not have significant effects on the environment.

FISCAL IMPACT: None.

Prepared and Submitted by:

Tony Condotti,
City Attorney

Submitted by:

Martin Bernal,
City Manager

Andy Mills,
Chief of Police

Approved by:

Martin Bernal,
City Manager

ATTACHMENTS:

1. Draft Ordinance – redline
2. Draft Ordinance - clean
3. Correspondence from Santa Cruz County Regarding Winter Shelter Options

¹ The SOPs approved by the Council in April will be replaced by those under development.

² At its November 19th meeting, the Community Advisory Committee on Homelessness (CACH), by consensus, recommended that the Council direct staff to provide a draft of the SOPs to the CACH for comment and input prior to implementation.