



City Council AGENDA REPORT

DATE: 05/06/2021

AGENDA OF: 05/11/2021

DEPARTMENT: Planning

SUBJECT: Ordinance Amending Chapter 6.36 of the Santa Cruz Municipal Code Related to Camping Services and Standards. Location: Citywide. CEQA: Exempt. (CM)

RECOMMENDATION: Consider introducing for publication an ordinance amending Chapter 6.36 of the Santa Cruz Municipal Code related to camping services and standards.

BACKGROUND:

Introduction. At its regular meeting of April 9, after considering community and stakeholder input, Council directed staff to return with a different approach to regulating the use of public property for outdoor living, with a focus on the provision of additional safe sleeping and shelter services, a citywide prohibition on overnight camping when such services are available, and a citywide prohibition on daytime encampments when alternative daytime storage options are available.

Larger Context of the Ordinance. Governments at various levels across the country are struggling to address increasing numbers of individuals who are living without permanent housing. A variety of factors have contributed to the situation, including but not limited to systemic inadequacy of available funding, economic factors (such as the Great Recession, economic fallout from COVID-19, and increasing housing costs), lack of mental health services, and a rise in substance abuse.

The City of Santa Cruz (City) undertakes a wide range of activities to serve its unhoused residents, such as support for non-profits like Housing Matters, Downtown Streets Team, Downtown Outreach Workers, County mental health liaisons embedded with police officers, hygiene and trash services, and rental payment assistance, to name a few. The City also maintains an affordable housing trust fund used to help promote affordable housing. Additional details about many of the efforts undertaken by the City can be found online at www.cityofsantacruz.com/homelessness. The array of activities demonstrates that the subject ordinance is but one piece of a much larger effort between the City, County, and various non-profits to address the issues surrounding homelessness.

The County is also responsible for a broad range of work to address homelessness, and the City and County generally have separate and distinct roles. The City and cities throughout California are typically responsible for law enforcement and management of city property within incorporated areas. In executing its role, the City seeks to move individuals along a pathway to

County services. The County and counties generally throughout the state have historically been responsible for health, housing, and human services. The County has recently adopted a three-year strategic plan and six-month work plan for addressing homelessness, and they will be presenting that information to the City Council on May 18, 2021.

Despite significant efforts between the City and other partners, such as the County and various non-profits, homelessness remains a daunting problem. The situation has resulted in environmental, health, and quality of life implications for the unhoused and the broader community, particularly as encampments grow and become entrenched, as evidenced by many prior and ongoing situations within the City. Existing conditions and the City's prior camping ordinance being unenforceable under the *Martin v. City of Boise* case created a desire to update the camping ordinance, and in February 2020, the City Council directed staff to update the camping ordinance.

Recent Council Actions. On February 23, March 9, and April 14, 2021, the Council received extensive reports on potential changes to Chapter 6.36 of the Santa Cruz Municipal Code, a chapter previously entitled "Camping" and which was changed, effective April 8, 2021, to "Regulations for Temporary Outdoor Living." Considering the legal framework from the *Martin v. City of Boise* case (including the legal requirement to have places where individuals can sleep), community concerns, recommendations from the Community Advisory Committee on Homelessness (CACH), and the well-being of the unhoused, the Council's initial 2021 actions identified a range of locations where nighttime camping would be allowed and prohibited, prohibited daytime camping when daytime storage is made available, and called for the establishment of a minimum of 150 safe sleeping spots where sanctioned, nighttime camping could occur safely, legally, and hygienically. An ordinance was passed for publication on February 23 and adopted on March 9, 2021, and in conjunction with the Council's March 9 action, staff was directed to bring back a number of changes to the ordinance and to implement a range of actions and procedural changes that advance the overarching goals of eliminating the impacts of large encampments; establishing time, place, and manner provisions for people living outside; and increasing support for the unhoused residents on their path toward housing. Council also directed that the newly adopted ordinance not be implemented until the safe sleeping spaces were available and until specified COVID-19 improvements were established.

Several thousand pages of public comments have been received in response to the three recent hearings on this topic. At the April 14 hearing, largely in response to the latest set of public comments, Council directed staff to suspend implementation of the prior ordinance, to establish a minimum of 150 safe sleeping sites (with direction on outreach and siting), to prohibit daytime camping when daytime storage is available, and to prohibit nighttime camping throughout the City when alternative, sanctioned sleeping locations can be offered. The reports for the February 23, March 9, and April 14 hearings, as well as applicable excerpts from the action agendas, are attached hereto for reference.

DISCUSSION:

Ordinance Updates. The latest Council direction essentially calls for a prohibition of daytime camping once a daytime storage program is available for the unhoused, and it calls for prohibition of nighttime camping citywide when alternative sleeping locations are offered. The daytime prohibition was previously included in the ordinance and was discussed in prior (attached) reports. The nighttime prohibition throughout the City has implications for two

sections of the ordinance, 6.36.040 At Risk Areas and Daytime Encampments and 6.36.050 Camping / Outdoor Living Permitted.

In the ordinance adopted on March 9, Section 6.36.040(a) contained 12 subsections specifying a broad range of areas where nighttime camping would be prohibited. In the version presented to (but not passed for publication by) the Council on April 13, the approach was simplified, and Section 6.36.040(a) was reduced to include four subsections, coupled with a change to affirmatively identifying allowable locations in Section 6.36.050(e). In response to the latest direction, Section 6.36.040(a) was further simplified to prohibit nighttime camping throughout the City when safe sleeping, managed encampment, shelter, or other sanctioned locations are available and offered. That section also calls for the City to establish not less than 150 safe sleeping, managed camp, or shelter spaces. Additional subsections of Section 6.36.040 continue to prohibit daytime camping when storage facilities are available. Section 6.36.050(e) previously specified a range of zoning districts where nighttime camping would be allowed, and that section was deleted.

A number of additional changes to the ordinance were also made, as follows:

- The name of the ordinance was updated to be the “Camping Services and Standards Ordinance.”
- Definitions were updated in Section 6.36.020.
- Regulations related to those with qualifying disabilities were updated in Section 6.36.040(d), (e), (f), and (g). Notably, the prior ordinance allowed for individuals with qualifying disabilities to remain in place for up to 96 hours. The revised text provides for non-enforcement of general encampment prohibitions against individuals with “qualifying disabilities” in certain circumstances. With that said, no individual can remain in one location for more than 96 hours, and reasonable assistance shall be provided to assist movement of anyone with a qualifying disability.
- The American Civil Liberties Union submitted a letter dated April 21, 2021 (attached). The letter raised concerns about unsheltered individuals who might hypothetically work at night and thus need to sleep during the daytime. In response to these constructive comments, the City revised Section 6.36.040(j) to authorize daytime sleeping areas for those who work at night.
- Additional edits were made, mostly clarifications, as shown in the attached documents showing the changes between the current ordinance draft and the March 9 and April 13 versions.

Request for Qualifications (RFQ) for Various Services. As part of its March 9 action, Council directed that staff prepare an RFQ to assess the ability and willingness of outside organizations to operate the daytime storage, safe sleeping (nighttime only), or managed encampment (24/7) facilities. This direction was partially in response to concerns regarding the operational costs of such facilities should the City directly oversee operations. The RFQ is a critical path item for the implementation of the ordinance, so it has been one focus of staff work since the April 14 hearing. (Between the March 9 and April 14 hearings, staff was focused on the extensive ordinance changes associated with the March 9 direction.) As of the preparation of this report, a draft RFQ has been prepared, and final edits are being completed prior to review by the City Attorney’s Office and risk management staff. Staff is aiming to release the RFQ the week of May 10 and will provide a verbal update on the status at that meeting.

An expanded draft scope of work was discussed with the County to ascertain whether they may be interested and able to partner with the City on the release of the RFQ such that both entities can establish a qualified vendor list for services. County staff reviewed the draft scope of work and provided comments; however, it was ultimately determined that the City's targeted timeframes would need to be extended to go through the joint review and issuance process. As noted above, the County and City have separate and distinct roles. Therefore, the scope of work in the RFQ was reduced to remove most tasks that fall exclusively within the County's responsibilities. That said, in addition to the daytime storage, safe sleeping, and managed encampment operations, the draft RFQ also includes tasks related to indoor shelter operations and provision of hygiene services. The indoor shelter operations could potentially be managed in cooperation with the County, and/or it could be done at a privately-operated facility such as a religious institution. While the current focus is on setting up the daytime storage and safe sleeping locations, the addition of shelter operations could be useful to consider, depending on the responses received and their responsiveness to the City's needs (increasing the number of places for unhoused individuals to sleep, minimizing impacts to surrounding areas, costs, etc.). With respect to the hygiene services, some services such as restrooms and hand washing stations will accompany safe sleeping and storage facilities. Others, such as showers or clothes washing, could potentially be offered in coordination and partnership with the County, though such arrangement would still need to be discussed. Regardless of whether the City and County partner in providing additional services such as indoor shelters or expanded hygiene services, the City and County have discussed how the daytime storage, safe sleeping, and managed encampment models can increase access to the County's core functions of providing health, housing, and human services. With the grouping of unhoused individuals at each facility type, the City and County agree that the locations will provide opportunities for connections to the County's health, housing, and human services.

Consistent with Council direction, leading up to and following the release of the RFQ, the City will be engaging various stakeholders such as those with lived experience and service providers to better understand thoughts and ideas related to locations, operational characteristics, and addressing neighborhood needs. Neighborhood group outreach is addressed below.

Safe Sleeping Sites. As noted above, the issuance of the RFQ is critical to operate the safe sleeping sites. The responses to the RFQ will inform the specific timing of when sites may be operational, as some organizations may need to hire additional staffing or modify their existing staffing models before implementation can begin.

Other steps besides the RFQ are also underway. As part of its April 13 action, Council provided direction related to locations of safe sleeping sites and outreach. In setting up at least 150 safe sleeping sites, the Council directed that the sites not be located adjacent to residential areas or schools, while noting that the River Street Shelter (located at 115 C Coral Street), 1220 River Street, and other City facilities and City parking lots be considered, as determined by staff. In addition to the specifically-identified sites on River and Coral Streets, City staff is initially looking at downtown parking lots as potential locations for a nighttime-only safe sleeping location, including but not limited to the River Street garage and the parking structure on Cedar Street between Church and Walnut Streets. Staff will, consistent with Council direction, conduct community outreach in advance of initiating operation of any facilities, focusing that outreach on those residents and businesses located in proximity to safe sleeping locations. The outreach will inform community members about the City's role in and approach to addressing homelessness, provide an overview of the RFQ, identify planned operational characteristics of the safe sleeping

sites, request feedback regarding concerns, and brainstorm ideas for how to address those concerns. That feedback will be considered in conjunction with the RFQ responses and subsequent contracts for operation of safe sleeping facilities.

In addition, the former Community Advisory Committee on Homelessness Safe Sleeping Subcommittee suggested various operational characteristics (included as an attachment to the February 23 agenda report on the camping ordinance and to this report for ease of reference) that will be considered. As noted in the March 9 staff report, staff will return to Council with a policy that outlines general expectations for the operation of these facilities. That general information will be informed by RFQ responses. Other considerations, such as whether sites should be rotated, may also be revisited after initial stages of implementation have been conducted.

Council's April 13 direction indicated that "families with minor children will be prioritized for safe-sleeping areas." Some operators of safe sleeping areas may be reluctant to mix families (with minor children) with other members of the homeless population. If they do allow for mixing, they could require separate facilities such as bathrooms. As such, staff recommends that this direction be updated to call for identifying an approach to prioritize families with minor children in offering shelter or safe sleeping options. Housing Matters, for example, operates a family shelter, and that facility would be preferable for family units than safe sleeping locations.

Recreational Vehicles. Some members of the public have inquired or been confused about how recent code changes affect recreational vehicle (RV) parking. Recent actions by the Council increased the number of RVs allowed to park and house occupants in religious assembly and business parking lots, and they also allowed for people to occupy RVs in a residential driveway for an unlimited period of time (where the prior limit was three days in any calendar month). However, as noted in prior reports, the public property regulations considered in recent actions have not affected on-street recreational vehicle parking. An on-street RV parking ordinance was passed by the City Council in 2015

(<https://www.cityofsantacruz.com/Home/ShowDocument?id=47799>); however, that ordinance has not taken effect, as the California Coastal Commission subsequently reviewed it and postponed its consideration until questions had been answered, such as the availability of other places where RVs can park. This question has subsequently been affected by various changes, including the *Martin v. City of Boise* decision and the aforementioned recent changes to parking on private properties.

The Association of Faith Communities (AFC) has successfully sponsored safe parking programs (<https://www.afcsantacruz.org/safespaces-program.html>) at various religious institutions around the City, and the City and AFC have been in conversations about the potential for a pilot project that would allow for a limited number of on-street parking spaces to be used in a safe parking program similar to that which they operate on various religious assembly uses. Staff will continue to explore this with AFC although, with limited staff capacity, establishment of safe (tent) sleeping sites remains the priority. At this time, staff does not have recent direction to refine the prior on-street RV parking ordinance, though such direction could be provided by the Council.

Environmental Review. As noted in the prior reports, the California Environmental Quality Act (CEQA) provides several "categorical exemptions" which are applicable to categories of projects and activities that the Natural Resource Agency has determined generally do not pose a risk of

significant impacts on the environment. Section 15307 of the CEQA Guidelines “consists of actions taken by a regulatory agencies... to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.” Section 15308 of the CEQA Guidelines “consists of actions taken by regulatory agencies... to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.” The procedures established by the draft ordinance, whereby enforcement authorities have the ability to require that individuals camping in unpermitted areas move to sanctioned locations where sanitation facilities such as restrooms and trash services are available, serve as regulations that will protect the environment. The proposed ordinance is not anticipated to result in any new construction, including but not limited to any construction of new facilities for public services such as police, parks, or fire. Many individuals already camp in the City, and the ordinance is not anticipated to result in any additional camping. By providing safe sleeping and encampment locations where sanitation facilities would be present and by prohibiting camping elsewhere when safe sleeping, encampment, or shelters are offered, the proposed ordinance is expected to result in substantially fewer people camping in areas where sanitation facilities, including restrooms and trash services, are unavailable. That change, in and of itself, will create beneficial impacts to the environment through an increase in the proper disposal of waste compared to existing conditions and allowances, where the City has no mandated safe sleeping locations and where the Citywide camping ban has been deemed unenforceable since late 2018. Further, the City’s experience has been that the most significant environmental degradation associated with outdoor living occurs in places where large groups of unmanaged individuals become entrenched in an area and remain in that area for an extended period of time. As such, the ordinance will reduce environmental impacts when comparing its outcomes to the status quo, where, in the absence of clear and enforceable restrictions, large entrenched encampments have created substantial environmental concerns, such as sanitation, grading, and erosion issues.

With respect to potential transportation (vehicle miles travelled, or VMT) or associated air quality impacts, the transportation assistance to storage facilities called for by the ordinance is expected to be partially accommodated by public transit, and shuttles to other facilities, if necessary, would be expected to be high occupancy vehicles. It is not anticipated that the ordinance would result in more than 110 daily trips, which is the typical screening threshold for VMT analysis. Furthermore, given its compact nature and the fact that trip origins and destinations will be within the City, trips lengths will not be either substantial nor above the Countywide comparison thresholds, as evidenced by the fact that most of the City does not even meet the screening thresholds for evaluation of potential VMT impacts.

As the majority of environmental impacts resulting from the ordinance will be beneficial rather than detrimental environmental and with the other potential environmental effects being de minimis, the project is also exempt under Code of Regulations Section 15061(b), the “common sense exemption,” since it can be seen with certainty that no significant effect on the environment will occur. Therefore, the adoption of this ordinance is exempt from CEQA.

Health in All Policies. The three pillars of Health in All Policies include equity, public health, and sustainability. The subject ordinance and associated Council directions consider these pillars in a variety of ways. The ordinance and/or the Council policy direction includes establishment of at least 150 safe sleeping sites and a daytime storage program for the unhoused. These programs provide safe, known locations for unhoused individuals to sleep and an opportunity for

individuals to safely store their belongings during the day while going to jobs or medical appointments. The ordinance contains behavioral expectations and hygiene facilities associated with sleeping and storage locations that protect the environment, thereby contributing to sustainability. Addressing health, the ordinance contains provisions that prevent its enforcement until identified COVID-19 thresholds are met. It contains expanded camping allowances during inclement weather, and it provides additional allowances and considerations for disabled individuals. It also has provisions that help ensure that all Santa Cruzans will have access to park and open space resources that contribute to their health and well-being.

Conclusion & Next Steps. Some key objectives of the updated Ordinance are eliminating the impacts of large encampments; establishing time, place, and manner provisions for people living outside; increasing support for the unhoused in ways that the City can manage; and establishing an effective and legally defensible ordinance. The Council's current approach, as conveyed in prior actions and the attached draft ordinance, seeks to accomplish those key objectives.

Ordinance changes require two approvals, a first reading when an ordinance is introduced and a second reading when an ordinance is formally adopted. The item before the Council at this meeting is consideration of a first reading. Should the Council pass an ordinance for publication as part of this meeting, it would need to be adopted at a separate, subsequent hearing. Ordinances typically take effect 30 days following the second reading. However, the ordinance under consideration contains some provisions that would not take effect until other triggers have been met, such as the lifting of the federal judge's injunction in the matter of *Santa Cruz Homeless Union et al v. City of Santa Cruz et al*, Case 5:20-cv-09425-SVK; the establishment of safe sleeping and daytime storage facilities; as well as meeting of specified COVID-19 thresholds, as specified in the draft ordinance.

As the subject municipal code section is not within the Local Coastal Program, the need for a Local Coastal Program Amendment is unlikely. Staff also believes that a Coastal Development Permit (CDP) should not be necessary, as the Coastal Act expressly does not impose limitations on the power of the City to declare, prohibit and abate nuisances, or on the City's power to adopt and enforce additional regulations, not in conflict with the Coastal Act, imposing restrictions or limitations on activities which might adversely affect coastal resources.¹ Should a CDP be determined as necessary, however, it would be processed following the Council's decisions on the ordinance. Staff is in communication with the Coastal Commission as to this matter..

As evidenced by the various potential changes noted above, the need for further amendment to the ordinance can reasonably be expected, as staff learn from its use, gather data, evaluate what is working well and what is not, and present potential modifications to the Council for consideration. Consistent with Council direction at its February 23, March 9, and April 13 hearings, staff is proceeding with work on a wide range of policy issues related to homelessness. Staff will be returning to Council in the coming months with updates on these items, many of which are contained in the attached meeting summaries for the aforementioned Council hearings, including but not limited to a discussion of the operational characteristics and costs of safe sleeping and daytime storage facilities, a regular census of homeless individuals in the community, and enhancing connections to County services.

¹ Cal. Public Resources Code § 30005(a), (b).

FISCAL IMPACT: As noted in previous reports, the City spends considerable sums of money and very significant staff resources on efforts to address homelessness. Early estimates of a safe sleeping program point towards a cost that could be around \$750,000/year to serve approximately 150 individuals at three sites of 50 people each, and early estimates of operating a staffed, daytime storage program run approximately \$75,000 per location per year. A managed camp with 24 hours-per-day and 7 days-per-week staffing could cost over \$1 million per year. Consistent with prior Council direction, staff is preparing a request for qualifications to more precisely gauge how and at what price private and non-profit operators may operate such facilities. With that said, directed and organized spending has the potential to reduce other, reactionary costs that the City has regularly incurred. Expenses and staff time will need to be regularly evaluated to better understand the fiscal implications of the ordinance, and as noted above, different alternatives, such as increasing the safe sleeping or managed encampment capacities, would result in increased spending.

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ATTACHMENTS:

1. Draft ordinance to be considered for publication at the May 11, 2021 Council meeting (clean version)
2. Draft ordinance with track changes, as amended from the draft ordinance presented on April 13, 2021
3. Draft ordinance with track changes, as amended from the ordinance adopted on March 9, 2021
4. Letter from the American Civil Liberties Union of Northern California dated April 21, 2021
5. Excerpt from Action Agenda reflecting action taken at April 13, 2021 Council meeting
6. April 13, 2021 Agenda Report and related attachments (including 3.9.21 and 2.23.21 agenda reports, related attachments, and excerpts from Action Agendas)