

ORDINANCE NO. 2040

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING CHAPTER 19.50 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “CAMPING ON PUBLIC PROPERTY” REGULATING CAMPING ON PUBLIC PROPERTY WITHIN THE CITY OF SAN RAFAEL

SECTION 1. FINDINGS

WHEREAS, the purpose of this Ordinance is to enact regulations to address camping in or on public property in the City of San Rafael. The City Council has authority to adopt this Ordinance pursuant to the California Constitution Article XI, section 7; and

WHEREAS, the City Council recognizes that camping in the City by persons with no alternative shelter, and the activities often attendant with camping, have created adverse public health, safety, and welfare conditions for the public, including those who live in the City’s encampments; and

WHEREAS, the City, along with the County of Marin and community partners, has been and is undertaking extensive actions to assist unsheltered persons in the City and region to find shelter and needed services; and

WHEREAS, on June 28, 2024, the Supreme Court issued its decision reversing the Ninth Circuit Court of Appeals in *Grants Pass v. Johnson* finding that the City of Grants Pass had not violated the “Cruel and Unusual Punishments” clause of the Eighth Amendment to the United States Constitution by prohibiting camping on public property when the City could not establish that there was enough alternative shelter available to accommodate the number of individuals experiencing homelessness in the community; and

WHEREAS, on July 25, 2024, Governor Gavin Newsom issued Executive Order N-1-24 instructing State agencies to prioritize the humane removal of encampments, including conducting site assessments, providing advance notice, offering outreach services, and personal property storage for at least 60 days, and encouraging local governments to adopt policies consistent with the order; and

WHEREAS, the City Council recognizes and finds that there are public health and safety hazards and public nuisance activities and conditions frequently associated with camping on public property, and that there are certain public properties where the existence of campsites is incompatible with the necessary use of the property by the public, or where camping presents unacceptable hazards and/or costs to the City’s operations and to the public; and

WHEREAS, some unsheltered persons in the City live in temporary shelters on public property, such as tents and tarps, and accumulate, store, or leave behind personal property, garbage, waste, and biohazards; and

WHEREAS, camping on public property can lead to damage to public property, or hindrance of the operation or protection of public infrastructure and utilities, creating a potential health and safety hazard; and

WHEREAS, camping on public property can have a deleterious impact on the public use of public property, businesses, private real property, and economic development within the City; and

WHEREAS, in July 2023, the City Council adopted Ordinance No. 2030, setting new spacing and density rules and other restrictions for camping on public property by persons with no

alternative shelter available; and

WHEREAS, in the case of Boyd et al. v. City of San Rafael, N.D. Cal., Case No. 23-cv-04085- EMC (“Boyd”), the Court issued a Preliminary Injunction Order under which the City was permitted to enforce Ordinance No. 2030 under Court-modified rules which were operationally impractical to implement, particularly as they involved procedures to administer the Ordinance’s spacing and density requirements; and

WHEREAS, in May 2024, the City Council adopted Ordinance No. 2035, which modified the regulations adopted through Ordinance No. 2030 by allowing campsites of up to 200 square feet for one person and 400 square feet for up to 4 persons camping together; eliminating the 200-foot spacing requirement; requiring a 10-foot safety clearance around each campsite and 10-foot setbacks from other campsites, public utility infrastructure, and private real property; specifying enforcement notice and due process requirements; and making other language changes set forth in the Ordinance; and

WHEREAS, by this Ordinance, the City Council seeks to modify the regulations adopted in Ordinance Nos. 2030 and 2035 to make amendments in light of the recent Supreme Court decision in Grants Pass v. Johnson, to clarify prohibitions against the construction of unpermitted structures and use of building materials for camping on public property, to provide additional safety setbacks from roadways, to update enforcement provisions to align with Governor Newsom’s Executive Order 1-N-24, and making other language changes set forth in the Ordinance; and

WHEREAS, by amending the City’s camping regulations, the City’s goal is to effectively regulate and enforce camping laws for the health and safety of all of the public, including residents who are experiencing homelessness; and

WHEREAS, for the reasons set forth above, this Ordinance is declared by the City Council to be necessary to protect public health, safety, and welfare; preserve public property for the enjoyment and safety of all members of the public; enhance and preserve the orderly administration and management of public property; and preserve, protect, and prevent damage to public resources, and the recitals above taken together constitute the City Council’s statement of the reasons for adopting this Ordinance.

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

SECTION 2. AMENDMENTS TO SAN RAFAEL MUNICIPAL CODE CHAPTER 19.50

Chapter 19.50 of the San Rafael Municipal Code, entitled “Camping of Public Property” is hereby amended in its entirety to read as follows:

Chapter 19.50 - CAMPING ON PUBLIC PROPERTY

19.50.010. - Purpose.

The purposes of this chapter include but are not limited to: protecting public health, safety, and welfare; preserving public property for the enjoyment and safety of all members of the public; enhancing and preserving the orderly administration and management of public property; and preserving, protecting, and preventing damage to public resources. This chapter prohibits conduct that unreasonably interferes with the administration and lawful uses of public property by establishing reasonable time, place, and manner conditions related to camping on public property.

19.50.020 - Definitions.

As used in this chapter, the following terms shall have the following meanings:

- A. "Camp" or "Camping" means use of space on public property for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or using any tents or shelter or other structure or vehicle for sleeping. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are using the area as a living accommodation regardless of the nature of any other activities in which they may also be engaging.
- B. "Camp paraphernalia" means implements and equipment used for camping, including tents, cots, beds, hammocks, vehicles, other temporary physical shelters, tarpaulins, mattresses, sleeping bags, bedrolls, blankets, sheets, pillows, and cookware or cooking equipment.
- C. "Campsite" means the primary physical area of occupation of one person camping or up to four persons camping together, inclusive of camp facilities, camp paraphernalia, and personal property.
- D. "Open space property" means any area described in San Rafael Municipal Code Section 19.10.020. The city will maintain on its public website and in hard copy at the City Clerk's office a map of all open space property meeting this definition.
- E. "Playground" means an improved outdoor area designed, equipped, and set aside for children's play in a park or school that is not intended for use as an athletic playing field or athletic court, and also includes any playground equipment, fall zones, surface materials, access ramps, and all areas within and including any designated enclosure and barriers.
- F. "Public facility" means any building or structure on public property, whether secured, unsecured, locked, unlocked, open, or enclosed, as well as any area of public property enclosed by a locked fence.
- G. "Public property" means any real property within the jurisdiction of the City of San Rafael, which is owned, managed, or controlled by the City of San Rafael.
- H. "Public right-of-way" means land which by written instrument, usage or process of law is owned by, reserved for or dedicated to the public use for street or highway purposes, or other transportation purposes, whether or not such land is actually being used or developed specifically for those purposes.
- I. "Public utility infrastructure" means public bathrooms or infrastructure and equipment used to provide public utility services, including electricity, gas, water, stormwater, telecommunications, and sanitation services.

- J. "School" means any public or private institution of educational learning up to and including grade 12.
- K. "Sidewalk" means any area in the city provided for the use of pedestrians, including planting areas, driveway approaches, and parking strips, between the public vehicular roadway and the edge of public right-of-way bordering, fronting, or adjacent to private real property.
- L. "Store" means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location.
- M. "Vehicle" means any wheeled conveyance, whether motor-powered or self-propelled, and includes any trailer in tow of any size, kind, or description.

19.50.030 - Prohibited Camping on Certain Public Property.

A. Prohibited Camping

1. Open space property. No person or persons shall camp in or on any open space property, or portion thereof.
 2. Parking garages. No person or persons shall camp in or on the premises of any parking garage, or portion thereof, owned or operated by the city.
 3. Public facilities. No person or persons shall camp in or on any public facility, or portion thereof, or in a manner that obstructs, blocks, or otherwise interferes with access to a public facility or private real property.
 4. Playgrounds. No person or persons shall camp within 100 feet of any playground.
 5. Schools. No person or persons shall camp within 250 feet of the property boundary of any school.
 6. Public right-of-way and sidewalks. No person or persons shall camp in or on any public right-of-way or sidewalk, or portion thereof, or in a manner that obstructs, blocks, or otherwise interferes with use of or access to a public right-of-way or sidewalk.
- B. The city council or city manager may, by resolution or administrative order, absolutely prohibit camping, or adopt time, place, or manner conditions on camping, at any time in or on one or more public properties, or portion thereof.
- C. The city shall maintain on its public website and in hard copy at the city clerk's office a current citywide map of all public property parcels prohibited to camping by subsections (A)(1), (A)(2), (A)(4), (A)(5), and (B) of this section 19.50.030.

19.50.040 - Prohibited Camping on Other Public Property; Exception.

A. As to public property not listed as prohibited for camping under Section 19.50.030, no person shall camp on such other public property, except as set forth below.

B. Time, place, and manner conditions:

1. Campsite size and occupancy.

- a. No campsite occupied by one person shall exceed an area of 200 sq. ft., inclusive of camp paraphernalia, and personal property.
- b. No campsite occupied by more than one person shall i) exceed an occupancy of four persons or ii) exceed an area of 400 sq. ft., inclusive of camp paraphernalia, and personal property.
- c. All camp paraphernalia, and other personal property shall be stored and kept within the maximum permitted campsite area.
- d. Items stored or discarded outside of the maximum permitted campsite area shall be presumed to be unattended personal property or trash or debris and may be stored or discarded by the city.
- e. No person shall establish or occupy more than one campsite.

2. Clearance and setbacks.

- a. A minimum clearance of 10 feet around all sides of any campsite allowed under this section shall be maintained free and clear of trash, debris, and personal property, including but not limited to camp facilities and camp paraphernalia. Items stored or discarded within the 10-foot clearance area shall be presumed to be unattended personal property or trash or debris and may be stored or discarded by the city.
- b. No campsite may be established or occupied within 10 feet of any other campsite allowed by this section, public utility infrastructure, or private real property, including a fence of such property.
- c. No campsite may be established or occupied within 5 feet of the edge of pavement of a roadway open to the use of the public for purposes of vehicular traffic.

3. Unpermitted structures and building materials. No person shall occupy, construct, or erect on public property, or affix or tie to public or private property, any building, shed, shack, fence, or other structure made of building material, or store any building material on public property for camping. For purposes of this paragraph, "building material" includes wood, steel, concrete, stone, brick, masonry, plastic, cement composites, glass, sand, or other similar material of a type and quantity normally used for construction purposes.

- a. Exception: Fabric tents, fabric tarps, or other similar non-permanent, removable items may be used for temporary shelter within a campsite, provided they are not affixed or tied to any public property, private real property, vegetation, or infrastructure, except for the use of removable stakes to secure the item to unimproved ground on public property.
- b. Exception: Removable plastic pallets or sandbags may be used to temporarily raise a tent or other camp facility off of the ground, provided that such items are not affixed or tied to any public property, private real property, vegetation, or infrastructure.

19.50.050 - Violations; Enforcement.

- A. In addition to enforcement as described below, the City may enforce this chapter pursuant to chapters 1.42, 1.44, and 1.46; provided, however, that no person shall be charged with a criminal violation unless their unlawful conduct is knowing or willful.
- B. The city manager or their designee shall be responsible for enforcement of this chapter.
- C. For a violation of section 19.50.030(A)-(B), the city manager or their designee may require the person in violation to immediately cease the prohibited camping.
- D. For violation of section 19.50.040(B)(1)-(2), related to the size, occupancy, and clearance or setbacks of a campsite, the person camping shall be given 48 hours to come into compliance with this chapter. The city manager or their designee shall provide upon request a physical demarcation of the allowed boundary to assist the person camping to comply with this chapter.
- E. Unpermitted structure. For a violation of section 19.50.040(B)(3), related to an unpermitted structure, the structure shall be tagged with a notice to remove the structure from public property within 48 hours. If the noticed structure is not removed from public property within 48 hours of notice, the city manager or their designee may immediately remove such structure and restore the public property.
- F. Exigent Circumstances. For a violation of section 19.50.040(B)(1)-(2) whereby there is an imminent threat to life, health, safety or infrastructure such that exigent circumstances require immediate action, the City Manager or their designee may require the person in violation to immediately cure the violation. The City Manager or their designee shall provide as much advance notice as reasonable under the circumstances.

19.50.060 - Conflict with Other Regulations.

To the extent that there is any conflict with any other provisions of this code, the standards and regulations of this chapter shall prevail.

SECTION 3. COMPLIANCE WITH CEQA

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the city. The city council hereby finds that under section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this Ordinance shall continue in full force and effect unless amended or modified by the city.

SECTION 5. EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in full force and effect 30 days after its adoption. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the 19th day of August 2024, and was passed and adopted at a regular meeting of the San Rafael City Council on the 3rd of September 2024, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Kate Colin, Mayor

ATTEST:

Lindsay Lara, City Clerk

SUMMARY OF ORDINANCE NO. 2040

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING CHAPTER 19.50 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “CAMPING ON PUBLIC PROPERTY”

This Summary concerns a proposed ordinance of the City of San Rafael, designated as Ordinance No. 2040, which will amend Chapter 19.50 to the San Rafael Municipal Code. Ordinance No. 2040 is scheduled for adoption by the San Rafael City Council at its regular meeting of September 3, 2024. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

Ordinance No. 2040 will amend regulations governing camping on public property in the City of San Rafael. The amended regulations include providing greater flexibility for the City to prohibit camping or set time, place, or manner conditions on camping on public property. The ordinance includes clarification of prohibition on occupying, constructing, or affixing structures made of building materials on public property. Temporary shelters like fabric tents or tarps, provided they are not affixed to public or private property, except with removable stakes on unimproved ground would be permitted. The amended regulations will require a 5-ft. setback from the edge of pavement of a roadway open to the use of public for purposes of vehicular traffic. The ordinance includes a new enforcement section specifying notice and due process requirements. Other existing rules will stay in effect. With these changes, the City’s goal is to effectively regulate and enforce camping laws for the health, safety, and welfare of the public.

Copies of Ordinance No. 2040 are available for public review on the City’s website: <https://www.cityofsanrafael.org>. You may also contact the City Clerk at (415) 485-3066 for information.

LINDSAY LARA
San Rafael City Clerk
Dated: 08/23/24