



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: CITY ATTORNEY

Prepared by: Lisa Goldfien,
Assistant City Attorney

City Manager Approval: 

TOPIC: PROHIBITION OF CAMPING ON CERTAIN PUBLIC PROPERTY

SUBJECT: URGENCY ORDINANCE OF THE SAN RAFAEL CITY COUNCIL, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(B), PROHIBITING CAMPING OR LODGING AT ANY TIME IN BOYD PARK AND IN CITY PARKING GARAGES

RECOMMENDATION:

Adopt the urgency ordinance.

BACKGROUND:

At the [June 7](#) City Council meeting, the Council received an extensive report summarizing the actions the City has been taking over the past several years to address the needs of persons experiencing homelessness, and also describing the recent establishment of larger encampments during the COVID-19 pandemic. In that report, staff presented its proposals for next steps in addressing the community's concerns about the encampments, the health and safety of the people currently living in the encampments, and opportunities arising from the impending infusion of new financial resources from the state and federal governments arising out of the pandemic. One of staff's recommendations was to study possible ordinances to address public health and safety hazards that are frequently associated with homeless encampments, including restricting encampments in high fire risk areas and in certain critical use facilities.

Historically, fire season has spanned from May to December each year. However, due to recurring dry climate conditions, fire professionals in California, including San Rafael Fire Chief White, generally agree that the fire season should now be viewed as year-round. For example, officials in Southern California issued a rare Red Flag warning on December 23rd, 2020, the latest date a warning of that level has ever been recorded. Similar conditions in January 2021 resulted in wildfires in Santa Cruz and San Mateo counties.

Since 2017, California has regularly experienced numerous unprecedented, fast-moving, and catastrophic wildfires which resulted in the tragic loss of dozens of lives and thousands of structures in both rural and urban areas of the state. So far, Marin County has been fortunate to escape these

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Council Meeting: _____

Disposition: _____

devastating fires, but they have prompted both San Rafael and the County to focus intensively on expanding existing and creating new wildfire mitigation strategies, culminating in 2020 with the City's Wildfire Prevention and Protection Action Plan and the establishment of the 17-member agency Marin Wildfire Prevention Authority, funded by the voter-approved Measure C parcel tax. (See staff reports of [August 20, 2018](#), [September 3, 2019](#), [October 21, 2019](#), and [August 3, 2020](#).)

Encampments and the cooking and warming fires and flammable materials that typically accompany them, add dangerously to the already critical risk of wildfire in the City's open space and on some other public properties. In addition, the encampments can also generate other nuisance conditions and activities that interfere with the proper use of certain public properties. For this reason, San Rafael's municipal code, like many others, prohibits camping or lodging in the City's parks and open space and other public properties. However, the 2019 federal court decision in *Martin v. City of Boise* (920 F.3d 584) has caused confusion about the limitations on a city's ability to enforce its existing camping prohibitions when encountering encampments established by individuals affected by homelessness. The *Martin v. Boise* case held that the City of Boise's criminal enforcement of its ordinance banning camping on all public property was unconstitutional when applied to individuals who had no alternative shelter available to them.

In consideration of the *Martin v. Boise* decision, and the ongoing lack of sufficient shelter for all of the unhoused persons living in San Rafael, the City has not been strictly enforcing existing limits on camping in and on some public properties. However, while *Martin v. Boise* dictates that a city without sufficient alternative shelter may not criminalize the act of sleeping somewhere on public property, the decision does not require a city to allow camping/sleeping everywhere on public property. The case recognizes that there may be certain public properties where the existence of encampments will be entirely at odds with the necessary use of the property by the public, or where they will pose unacceptable hazards and/or costs to a city's operations and to the public. In such cases, the City needs to be able to enforce a camping prohibition, and the *Martin v. City of Boise* case does not prevent the City from doing so.

For this reason, the City has continued to commit City funds and personnel to the vigorous enforcement of the San Rafael Municipal Code's prohibition against camping in City open space. (San Rafael Municipal Code Section 19.10.060.(4).) Throughout the year, the City takes multiple measures to protect and prevent wildfires in open space areas. Among other steps, the City employs Rangers to regularly patrol open space areas, and operates a comprehensive vegetation management program, which has been greatly expanded in recent months, thanks to the funds provided by the Measure C Wildfire Prevention Tax.¹

Now, the expanded number of encampments established by unsheltered individuals during the pandemic has led staff to a recognition that some clarity is needed about other public property where the protection of the public health, safety and welfare requires a strict prohibition of camping. This report recommends that the Council adopt an urgency ordinance to clarify for the public certain additional public properties where the City will strictly enforce a camping prohibition.

ANALYSIS:

As the City becomes aware of public properties where the presence of camping activities can be seen to significantly jeopardize the health, safety and welfare of the City's residents, workers, visitors, and

¹ Additionally, the municipal code authorizes City staff to close open space areas entirely to public use during periods of extreme fire hazard. (SRMC Section 19.10.060(6).) The Fire Chief and City Manager have exercised this discretion in the past to close City open space to all public use during fire season due to extreme wildfire risk.

properties, or to significantly impair essential City or public use of the property, it is important for the City Council, directly or through a delegation of authority to staff, to expressly declare and confirm the absolute prohibition of camping activities on those properties.

Staff has concluded that it is necessary at this time to provide for a clear camping prohibition in Boyd Park and in the City's parking garages.

Boyd Park: SRMC Chapter 8.10-Parks and Recreation, already prohibits camping or lodging in the City's parks; however this is one prohibition that the City has not uniformly enforced in consideration of the requirements of the *Martin v. City of Boise* decision. Nevertheless, Fire Department staff and the public have recognized for quite a long time the tremendous wildfire risk posed by encampments in Boyd Park, which is directly adjacent to the very high fire-risk, and highly-populated and central San Rafael Hill area. Presently there are several encampments located in Boyd Park. Now that we are experiencing extraordinary wildfire risk conditions, staff deems it urgent that the City Council act to make it abundantly clear that the City will not permit camping at any time in Boyd Park and will enforce the prohibition at all times.

City Parking Garages: The expansion of encampments that has resulted from the COVID-19 pandemic has led to camping activities in places where they have not existed in the past, including the City's parking garages. The encampments in these garages have generated numerous public safety calls to douse fires, stop gushing water from tampered-with fire suppression equipment, and clean up debris and hazardous solid wastes in stairwells and in parking areas. The City spends tremendous resources on public safety and public works calls for service and repair costs in an effort to keep the garages usable for necessary public parking. The Municipal Code does not expressly prohibit camping in the garages, and staff deems it urgent that the City Council adopt an ordinance imposing this prohibition and clarifying that it will be enforced at all times.

Staff has prepared an ordinance containing the provisions stated above and recommends that it be adopted as an urgency ordinance that will take effect immediately. Staff also recommends, and has included in the ordinance, a delegation of authority to the City Manager to order additional specific closures of public property to camping where he determines, in consultation with staff and stakeholders, that compelling circumstances require such closures. The ordinance contains findings in support of the urgency.

The affirmative vote of at least 4/5 of the City Council is required for the ordinance to be adopted as an urgency ordinance.

FISCAL IMPACT:

There is no immediate fiscal impact resulting from adoption of the ordinance. Enforcement of the ordinance will occur as part of staff's existing duties. Savings may occur as fewer calls for service and repairs are required in City parking garages.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the urgency ordinance.
2. Do not adopt the urgency ordinance and direct staff to bring a nonurgency ordinance to the City Council for consideration. Such an ordinance would not become effective for at least two months.
3. Take no action.

RECOMMENDED ACTION:

Adopt the urgency ordinance.

ATTACHMENTS:

1. Urgency Ordinance of the San Rafael City Council, Pursuant to California Government Code Section 36937(B), Prohibiting Camping or Lodging at Any Time in Boyd Park and In City Parking Garages

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE SAN RAFAEL CITY COUNCIL,
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(B),
PROHIBITING CAMPING OR LODGING AT ANY TIME IN BOYD PARK
AND IN CITY PARKING GARAGES**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

WHEREAS, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, on February 26, 2020, community transmission of a widespread, ongoing global outbreak of respiratory illness known as COVID-19 was confirmed by the Centers for Disease Control and Prevention (CDC) in the Bay Area; and

WHEREAS, due to the COVID-19 pandemic, on March 4, 2020, California Governor Newsom declared a state of emergency in the State of California; and

WHEREAS, similarly on March 16, 2020, a Shelter-in-Place Order for all of Marin County was issued by the Marin County Health Officer; and

WHEREAS, on March 17, 2020, the City Council ratified and confirmed the Emergency Services Director's Proclamation of Local Emergency; and

WHEREAS, widespread business closures and loss of employment arising out of the health orders and other governmental regulations imposed by the state and the County of Marin to help control the COVID-19 pandemic have led to financial hardships for many residents of the City of San Rafael and the County of Marin; and

WHEREAS, the COVID-19 pandemic has exposed many residents to the threat of losing their homes and the potentially devastating impacts of such losses has compelled the state, the County of Marin, and the City of San Rafael to impose temporary bans on evictions of tenants who are unable to pay rent due to pandemic-related economic hardship; and

WHEREAS, the impacts of the pandemic have nevertheless resulted in increased numbers of people experiencing homelessness throughout the state and in San Rafael, and an increase in the establishment of encampments on public property in the City by persons experiencing homelessness; and

WHEREAS, the City Council and the San Rafael community have expressed concerns about the health and safety of the people currently living in these encampments, and the City, along with the County of Marin and community partners, has been and is undertaking extensive actions to assist these individuals to find shelter and needed services; and

WHEREAS, in the 2019 case of *Martin v. City of Boise* (920 F.3d 584), the federal Court of Appeals for the Ninth Circuit held that the City of Boise's criminal enforcement of its ordinance

banning camping on all public property was unconstitutional when applied to individuals who had no alternative shelter available to them; and

WHEREAS, in consideration of the *Martin v. City of Boise* decision, and the present lack of sufficient shelter for all of the persons living without shelter in San Rafael, the City has not been strictly enforcing existing limits on camping in and on some public properties; and

WHEREAS, while the *Martin v. City of Boise* decision mandates that a city without sufficient alternative shelter may not criminalize the act of sleeping on public property, it does not require a city to allow camping/lodging on all public property, and does not prevent a city from prohibiting camping/lodging on specified public properties; 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 homeless encampments, and that there may be certain public properties where the existence of encampments will be entirely incompatible with the necessary use of the property by the public, or where they will pose unacceptable hazards and/or costs to the City's operations and to the public; and

WHEREAS, since 2017, California has regularly experienced numerous unprecedented, fast-moving, and catastrophic wildfires which resulted in the tragic loss of dozens of lives and thousands of structures in both rural and urban areas of the state, and while so far, Marin County has been fortunate to escape these devastating fires, they have prompted both San Rafael and the County of Marin to focus intensively on expanding existing and creating new wildfire mitigation strategies, culminating in 2020 with the City's Wildfire Prevention and Protection Action Plan and the establishment of the 17-member agency Marin Wildfire Prevention Authority, funded by the voter-approved Measure C parcel tax; and

WHEREAS, encampments and the cooking and warming fires and flammable materials that typically accompany them, add dangerously to the already critical risk of wildfire in the City's open space and on some other public properties, which risk is at its peak now; and

WHEREAS, for this reason, the City has continued to commit City funds and personnel to the vigorous enforcement of the San Rafael Municipal Code's prohibition against camping/lodging in City open space, and has been taking multiple measures to protect and prevent wildfires open space areas, including employing Rangers to regularly patrol open space areas, and operating a comprehensive vegetation management program, which has been greatly expanded in recent months with funding provided by the Measure C Wildfire Prevention Tax; and

WHEREAS, to protect against the year-round risk of catastrophic wildfires, the City Council finds that it is also necessary to strictly prohibit camping/lodging in Boyd Park, which is situated directly adjacent to the very high fire-risk, and highly-populated and central San Rafael Hill area. There are numerous encampments in Boyd Park at present and it is imperative that they be removed/relocated to mitigate the fire risk; and

WHEREAS, the City Council recognizes that the encampments have also generated other nuisance conditions and activities that are interfering with the proper use of the City's parking garages and generating numerous public safety calls to douse fires, stop gushing water from

tampered-with fire suppression equipment, and clean up debris and hazardous solid wastes in stairwells and in parking areas; and

WHEREAS, the City Council desires to clarify where the protection of the public health, safety and welfare requires a strict prohibition of camping or lodging on public property; and

WHEREAS, for the reasons set forth herein, there is currently an urgent and imminent threat necessitating the immediate need to impose a camping/lodging prohibition in Boyd Park and in the City's parking garages; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the Council finds that pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this ordinance will have a significant impact on the physical environment; and

WHEREAS, for all the foregoing reasons, the City Council finds and declares that adoption of this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared;

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

SECTION I. Declaration of Threat to Public Health, Safety, and Welfare Necessitating Urgency Ordinance.

The City Council of the City of San Rafael hereby finds and declares that there is a current and immediate threat to the public health, safety and welfare and a need for the immediate preservation of the public peace, health, safety and welfare that warrants this urgency ordinance, which finding and declaration is based upon the facts, findings, and declarations stated in the recitals of this Ordinance, and all oral and written testimony presented at the July 6, 2021 San Rafael City Council meeting.

SECTION II. Prohibition of Camping on Certain Public Property.

1. Boyd Park. Notwithstanding the decision of the federal Court of Appeals for the Ninth Circuit in the 2019 case of *Martin v. City of Boise* (920 F.3d 584), no person shall camp or lodge at any time in any fashion, including in a tent, on the ground, in a motor home or in another vehicle, or use or store camp facilities or camp paraphernalia, as defined in the San Rafael Municipal Code, in Boyd Park or in any portion thereof.

2. City Parking Garages. Notwithstanding the decision of the federal Court of Appeals for the Ninth Circuit in the 2019 case of *Martin v. City of Boise* (920 F.3d 584), no person shall camp or lodge at any time in any fashion, including in a tent, on the ground, in a motor home or in another vehicle, or use or store camp facilities or camp paraphernalia, as defined in the San Rafael Municipal Code, in or on the premises of any parking garage owned or operated by the City of San Rafael.

3. Other Specified Public Property as Determined by the City Manager. The City Council hereby delegates to the City Manager the authority to order the strict prohibition of camping or lodging at any time in any fashion, including in a tent, on the ground, in a motor home or in another vehicle, or using or storing camp facilities or camp paraphernalia, as defined in the San Rafael Municipal Code, in or on the premises of any specific City-owned or controlled public property, when the City Manager determines, after consulting with City staff and other stakeholders, that such closure is necessary to eliminate or mitigate a substantial risk or risks to the public health, safety and welfare of the City's residents, businesses, visitors and/or property, and that such prohibition is permissible under applicable law.

SECTION III. Implementation.

The City Manager shall have the authority to approve the posting of signs and/or take any other actions deemed appropriate to implement the prohibitions authorized in this ordinance.

SECTION IV. Severability.

If any provision of this Ordinance or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Ordinance are severable.

SECTION V. Effective Date of Ordinance.

This Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b) and shall remain in effect unless and until repealed by the City Council or superseded by codifying amendments to the San Rafael Municipal Code. The City Clerk is directed to publish forthwith a copy of this Ordinance, 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.

Kate Colin, Mayor

ATTEST:

LINDSAY LARA, City Clerk

I, LINDSAY LARA, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths

(4/5) of the members thereof, at a regular meeting held on Tuesday, the 6th day of July 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk