

ORDINANCE NO. ORD-2023-012

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA REPEALING AND REPLACING CHAPTER 11.22 OF THE SANTA ROSA MUNICIPAL CODE SECTION 11-22 – CAMPING ON PUBLIC STREETS AND PUBLIC PROPERTY

WHEREAS, in 2019, the United States Court of Appeals for the Ninth Circuit Court of Appeals held, in *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019), that the Eighth Amendment to the United States Constitution prohibits “the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter”; and

WHEREAS, the Ninth Circuit’s opinion in *Martin v. City of Boise* noted that its holding was a narrow one and did not grant individuals an unconditional right to sit, lie or sleep on the streets at any time or at any place, leaving open the possibility for local jurisdictions to adopt time, place and manner restrictions on such activities; and

WHEREAS, the City of Santa Rosa has devoted substantial resources to support persons experiencing homelessness and to reduce impacts on the broader community, including among other things:

- Recognizing a homelessness emergency within Santa Rosa by Council’s declaration of a homeless shelter crisis (Resolution No. 28838) and proclamation of a local homeless emergency (Resolution No. 28839), August 9, 2016.
- Establishing a Homeless Services Division within the Housing and Community Services Department comprised of a Manager, Program Specialist, and Technician.
- Investing approximately \$5 million annually in services to support persons experiencing homelessness, including emergency shelter, street outreach, supportive services, and housing assistance. In Fiscal Year 2021/22, these programs served more than 3,000 individuals, including 1,271 sheltered and 219 housed.
- Investing approximately \$10 million to protect vulnerable community members experiencing homelessness during the COVID-19 pandemic through the implementation of non-congregate shelter at a local hotel and the Safe Social Distancing Program, and emergency shelter expansion at the Samuel L. Jones Hall Homeless Shelter.
- Implementing InRESPONSE, mental health response team, designed to respond to calls for service with a mental health first approach, comprised of a licensed mental health clinician, a paramedic, a homeless outreach specialist, and supported by a wrap-around services provider.

- Implementing pilot programs focused on addressing encampments and mitigating community-wide impacts of homelessness, including the Safe Parking Program and the City’s Encampment Team.

WHEREAS, the Santa Rosa Police Department responded to 11,580 homeless related incidents in 2022, which represents eleven percent (11%) of incidents; and

WHEREAS, the Santa Rosa Fire Department responded to 250 encampment-related fires in 2022, which represents approximately twenty-three percent (23%) of fire incidents and an estimated \$1.5 million in property damages; and

WHEREAS, in 2022, the Santa Rosa Fire Department responded to several destructive fires as a result of encampments, illustrating the significant fire risk associated with accumulation of significant quantities of combustible personal property, flammable and compresses gases; and

WHEREAS, the accumulation of significant quantities of combustible personal property and trash, typically associated with the creation of encampments and evidenced by existing conditions poses a significant danger of fire to the occupants of encampments and to adjacent property owners; and

WHEREAS, when circumstances prevent clearing of an encampment, such fire risks can only be lessened with regulations to increase distance between camped persons and structures to lessen the risk of spread; and regulations requiring safe and adequate pedestrian passageways and emergency vehicle access to ensure the safety of those in or near the encampment; and

WHEREAS, based on recent history in Sonoma County including the direct impacts of the 2017 Tubbs and Nuns Fires, the 2020 Glass Fire, the threats of the Kincade Fire, the fire risk in Sonoma County, including fire risks in encampments, requires the City Council of Santa Rosa to act for the preservation of public health and safety; and

WHEREAS, it is the obligation of the City to minimize the risk of wildfire to protect public health and safety for City constituents; and

WHEREAS, the City’s right-of-way and public areas are not intended for shelter or camping, and individuals who make shelter in these areas create health and safety risks for themselves and for persons encountering encampments; and

WHEREAS, encampments that obstruct sidewalks put pedestrians at risk of injury or death from vehicular traffic and impact federal regulations requiring a clear path of travel under the American with Disabilities Act; and

WHEREAS, encampments along waterways create unsanitary conditions and environmental harm in violation of California Fish and Game Code §5652 and create unsafe conditions for individuals residing along waterways during wet weather events; and

WHEREAS, the City has documented additional health and safety issues in and around encampments including accumulation of waste (hazardous and bio-hazardous waste), unsafe structures, limitations to accessibility, storage of hazardous materials, storage of hazardous wastes, unsafe electrical conditions, vandalism, and dumping of waste into storm drains; and

WHEREAS, these health and safety issues pose a significant threat to individuals residing in encampments as well as to surrounding neighborhoods and businesses; and

WHEREAS, it is the obligation of the City to keep its public rights of way clean and available for public use, and to protect the public health, safety, and access by City constituents; and

WHEREAS, the City should seek to accomplish the aforementioned objectives in a manner that preserves the dignity and safety of all residents and exhausts alternative models to promote compliance.

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Recitals. The above recitals are adopted as findings of the City Council in enacting this ordinance. The City Council of Santa Rosa hereby finds that the adoption of this ordinance is necessary for the preservation of the public peace, health and safety, in order to address fire safety and nuisance conditions generated by unpermitted outdoor camping on public and private property, and that the above recitals set forth the factual basis for the adoption of the ordinance.

Section 2. Repeal and Replacement of Santa Rosa Municipal Code Section 11-22 – Camping on Public Streets and Public Property. Current Chapter 11-22 – Camping on Public and Private Property is hereby repealed in its entirety and replaced with a newly enacted Chapter 11-22 to read as follows:

“Section 11-22 – Camping on Public and Private Property

11-22.010 – Definitions.

For the purpose of this chapter, the following definitions shall apply:

“Public property” shall mean all real property owned or leased by the City of Santa Rosa, including but not limited to all City streets, sidewalks, easements, rights of way and all City facilities.

“Camping” shall mean the conduct of one or more of the following activities on public or private property, when it reasonably appears, in light of all the circumstances, that a person is using space on public or private property as a place of temporary or permanent living accommodation:

1. Sleeping or making preparations to sleep (including the laying down of bedding for the purpose of sleeping);
2. The erection of any tent, structure, or other form of shelter;
3. The preparation or cooking of a meal;
4. Unattended storage of personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, and cookware).

11.22.020 - Camping and storage of personal property in public.

A. It is unlawful for any person to camp in any City park in violation of Section 13-24.040 of this code.

B. No person shall camp, or place personal property on or in any street, sidewalk, public right-of-way or any City facility, in any of the following manners:

1. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, in any way that impedes pedestrian passage on any sidewalk or walkway;
2. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 25 feet of any driveway or loading dock;
3. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 25 feet of any building entrance or exit;
4. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 25 feet of any fire hydrant, designated fire lane, fire department connection, or fire protection equipment;
5. by camping, sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within any street, bike lane or other public right-of-way in any way that hinders or obstructs the free passage, access or movement of any persons, bicycles or vehicles travelling or attempting to pass along the same right of way;
6. by camping, lying, or sleeping, or by storing, using, maintaining, or placing personal property, within 25 feet a public transit facility including transit hubs and bus shelters.

C. In the event alternate shelter is not available, the following health and safety standards apply to camping on public property:

1. No person shall occupy or use an area greater than ten by ten feet for storage of

unattended personal property on any public property. Such occupied area shall be separated by a minimum of four feet of any another person's occupied area.

2. No person shall erect a tent, structure, or other form of shelter for purposes of camping on public property within four feet of another person occupying a different tent, structure, or other form of shelter on public property. The aggregate of multiple tents, structures, or other encampment placed side-by-side without a firebreak clearance of 12 feet shall not exceed 700 square feet total.
3. No person shall dump gray water (i.e., waste water from baths, sinks, washing machines, and other kitchen appliances) or black water (i.e., sewage water) onto sidewalks, streets, parks, open spaces, storm drains, or any other facilities not intended for gray water or black water disposal.
4. No person shall create or use an unpermitted electrical connection on public property.
5. No person shall possess combustible or flammable gas or liquids on public property.
6. Fires on public property shall be prohibited except for purposes of cooking in City installed facilities in accordance with City regulations.
7. No person shall discard hypodermic needles in any public place, except in a designated container designed for disposal of sharps waste.
8. No person shall camp in such a manner or location as to disturb wildlife dens, burrows, or nests, nor shall any person camping on public property cut vegetation or excavate or terrace soil or cause damage to public property.
9. No person camping on public property shall exceed noise levels specified for residential zoning districts in accordance with Chapter 17-16, as measured at the nearest property line.
10. No person shall camp in such a manner which violates California Fish and Game Code §5652 which makes it unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal or bird.
11. No person shall erect a tent, structure, or other form of shelter for purposes of camping on public property under a tree canopy or within vegetation that could aid in spreading a fire to a nearby structure as determined by the Fire Marshal or designee.
12. No person shall erect a tent, structure, or other form of shelter for purposes of camping within 100 feet of a school.

11-22.030 – Camping on private property.

It is unlawful for any person to camp on private property without first obtaining the written permission of the owner. Camping on private property shall be permitted only in a residentially zoned area, only where there exist sanitary sewers, running water, and cooking facilities inside a permanent building which is lawfully established and available to such person and only for periods of not more than 3 consecutive days, unless otherwise authorized by the City pursuant to the Community Homeless Assistance Program (CHAP). The provisions of this section are not intended to prohibit camping within a City authorized campground, a travel trailer park, a recreational vehicle park, safe parking facility, or other area designated and permitted for such activities in accordance with Title 20.

11-22.040 – Penalties for Violation.

A. Any violation of this chapter is a misdemeanor and subject to prosecution in accordance with subsection 1-28.010 of this code. Every day any violation occurs or continues shall be deemed a separate offense.

B. Violations described above are deemed and declared to be a public nuisance and may be subject to abatement in accordance with the City Code and Chapter 20-68 (Enforcement).

C. Nothing in this ordinance shall preclude prosecution under both this ordinance and any other provision of law.”

Section 3. Environmental Review. The City Council finds the approval of this ordinance is exempt under the “common sense” exemption because it does not involve the construction or alteration of facilities and has no potential for resulting in direct or indirect significant effect on the environment, as described in CEQA Guidelines section 15061(b)(3). In the alternative, the proposed regulations are intended to regulate and limit the secondary impacts associated with unhoused persons living in locations likely to cause damage to environmental resources, and to prohibit discharges of untreated wastewater and other pollutants, and is therefore exempt under Cal. Code of Regs, tit, 14, § 15307, as an action to protect natural resources and under Cal. Code Regs, tit. 14, § 15308, as an action for protection of the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

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Section 5. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

This ordinance was introduced by the Council of the City of Santa Rosa on August 8, 2023.

IN COUNCIL DULY PASSED AND ADOPTED this 22nd day of August, 2023.

AYES: (7) Mayor N. Rogers, Vice Mayor MacDonald, Council Members Alvarez, Fleming, Okrepkie, C. Rogers, Stapp

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
Interim City Attorney