

**CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT**

MEETING DATE: July 5, 2022

TO: SONORA CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: Ordinances regarding the Protection of Critical Infrastructure and Health and Hygiene of Camps

RECOMMENDATION:

1. Motion to waive reading of Urgency Ordinance No. 844, reading by title only, waiving further reading, and adoption of an Urgency Ordinance of the City Council of the City of Sonora Adding Sonora Municipal Code Chapter 9.61, Protection of Critical Infrastructure and Fire Severity Zone, of Title 9, Public Peace, Morals and Welfare.
2. Motion to waive reading of Urgency Ordinance No. 845, reading by title only, waiving further reading, and adoption of an Urgency Ordinance of the City Council of the City of Sonora Adding Sonora Municipal Code Chapter 9.62, Health and Hygiene, of Title 9, Public Peace, Morals and Welfare.
3. Waive reading, read by title only, and introduce for first reading an ordinance of the City Council of the City of Sonora Adding Sonora Municipal Code Chapter 9.61, Protection of Critical Infrastructure and Fire Severity Zone, of Title 9, Public Peace, Morals and Welfare.
4. Waive reading, read by title only, and introduce for first reading an ordinance of the City Council of the City of Sonora Adding Sonora Municipal Code Chapter 9.62, Health and Hygiene, of Title 9, Public Peace, Morals and Welfare.

DISCUSSION:

The Critical Infrastructure Protection Ordinance and Health and Hygiene Ordinance.

There is a shelter crisis in the City of Sonora (the “City”) due to a significant number of persons without the ability to obtain shelter. As a result, there has been an increase in homeless encampments within the City. Encampments pose an immediate threat to public health, safety and welfare. Encampments attract illegal dumping, rodents, fire hazards and contamination. Encampments around critical infrastructure pose a threat to City law enforcement, fire prevention, transportation and utility services due to risk of fire, contamination, blocked access or other causes that damage critical infrastructure. To protect public health, safety and welfare, the City must manage encampments to ensure healthy and hygienic communities. The City must also prevent camping and the use of camping paraphernalia near critical infrastructure.

The critical infrastructure protection ordinance will address the threat to public health, safety and welfare posed by encampments near critical infrastructure (the “Critical Infrastructure Protection Ordinance”). The Critical Infrastructure Protection Ordinance will declare it a public nuisance for any person to camp, occupy camp facilities, use camp paraphernalia, or store personal property within twenty-five (25) feet of critical infrastructure, within twenty-five (25) feet of a vehicular or pedestrian entrance or exit of critical infrastructure, in portions of right-of-way that are required by law to be free of obstructions to first responders, and in areas designated as fire severity zones. The Critical Infrastructure Protection Ordinance does not apply to camping on private property if authorized by the private property’s owner. Violations of the Critical Infrastructure Protection Ordinance will be subject to abatement after seventy-two (72) hours’ written notice. If conditions and violations are so severe that immediate action is required to prevent serious threat of harm, the City can pursue summary abatement without prior notice. Further, violations of the Critical Infrastructure Protection Ordinance will be subject to criminal, civil, and administrative penalties, in addition to any legally available remedies.

The health and hygiene ordinance will address the threat to public health, safety and welfare posed by encampments (the “Health and Hygiene Ordinance”). The Health and Hygiene Ordinance authorizes the Public Works Department to carry out clean and clear operations of camp sites to prevent the buildup of hazardous waste, illegal dumping, infectious waste, refuse, or solid waste. The clean and clear operations require seventy-two (72) hours’ notice to affected occupants. Any property left at the campsite during the clean and clear operations will be considered abandoned and subject to disposal. Unabandoned and temporarily unattended items will be collected for safe storage and retrieval by occupants unless the items are not safe for storage. Any items not safe for storage will immediately be discarded. Further, permanent closure of a campsite can occur if an existing or expected natural disaster or environmental harm poses a threat to the health and safety of the camp’s occupants.

Compliance with *Martin v. City of Boise*.

Due to the *Martin v. City of Boise* (“*Martin*”) decision, ordinances that prohibit camping in public places are unenforceable against homeless individuals when there is no practical alternative shelter available.¹ Given the City’s current lack of open shelter beds, the City is unlikely able to enforce an ordinance prohibiting camping in public places.

Ordinances prohibiting camping in public places at particular times or in particular locations, however, are still enforceable.² Accordingly, the Critical Infrastructure Protection Ordinance will likely survive a legal challenge under *Martin* since the Critical Infrastructure Protection Ordinance only prohibits camping within twenty-five (25) feet of critical infrastructure, in portions of right-of-way that are required by law to be free of obstruction to first responders, and areas designated as fire severity zones. Further, the Health and Hygiene Ordinance only authorizes permanent closure of an encampment site when there is an existing or expected natural disaster or environmental harm posed by a threat to the health and safety of a camp’s occupants.

Ordinances requiring the temporary vacating of an encampment in a public space on a regular basis for public health and safety purposes are also enforceable.³ Accordingly, the Health and Hygiene Ordinance will likely survive a legal challenge under *Martin*. The Health and Hygiene Ordinance provides for “clean and clear” operations to protect public health and safety.

¹ *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, 618.

² *Id.* at 616-17.

³ *Shipp v. Schaaf* (N.D. Cal. 2019) 379 F.Supp.3d 1033, 1037 (“*Shipp*”).

Collecting Personal Property Located within Encampments.

When the City abates encampments by collecting personal property of the encampment's occupants, the United States Constitution's due process clause requires that the City take reasonable steps to give notice to the property owner.⁴ Further, the City must provide owners of taken property the opportunity to retrieve their property.⁵ Both the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance comply with the United States Constitution's due process clause by providing encampment occupants seventy-two (72) hours' written notice prior to abatement and clean and clear operations.⁶ The Critical Infrastructure Ordinance only authorizes summary abatement in the limited circumstance where conditions or violations are so severe that immediate action is required to prevent the serious threat of harm. Further, when the City abates pursuant to both the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance, the City will store taken unabandoned and temporarily unattended property for at least ninety (90) days for retrieval by property owners, unless such property is not safe for storage.⁷

Adoption as an Urgency Ordinance

Due to immediate threat to public health, safety and welfare of camping and using camping paraphernalia near critical infrastructure, and encampments, the City Council may adopt both the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance as urgency ordinances.⁸ As an urgency ordinance, both the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance will take effect immediately.⁹ To adopt the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance as urgency ordinances, the City Council must adopt each ordinance by **a four-fifths (4/5) vote of the City Council.**¹⁰

It is recommended that the City Council also adopt both the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance through the regular process. Should a court determine that camping and using camping paraphernalia near critical infrastructure and encampments do not pose an immediate threat to public health, safety and welfare, the City will have the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance in place. At this meeting, the City Council will consider introduction of the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance for first reading.¹¹ If introduction is approved, the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance will return for final adoption at a regular meeting of the City Council.¹² Only a majority vote of the City Council is required to adopt the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance through the regular process.¹³ The Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance will take effect thirty (30) days after adoption as non-urgency ordinances.¹⁴

⁴ *Lavan v. City of Los Angeles* (9th Cir. 2012) 693 F.3d 1022, 1032.

⁵ *Ibid.*

⁶ See *Shipp, supra*, at 379 F.Supp.3d at p. 1038.

⁷ See *ibid.*

⁸ See Gov. Code, § 36937, subd. (b).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Gov. Code, § 36934.

¹² *Ibid.*

¹³ Gov. Code, § 36936.

¹⁴ Gov. Code, § 36937.

FISCAL IMPACT:

The City will bear the cost of enforcing the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance. The Critical Infrastructure Protection Ordinance authorizes the City to recover the cost of abating camping and use of camping paraphernalia near critical infrastructure. Practically, however, the recovery of abatement cost can be difficult.

ENVIRONMENTAL:

The Ordinance is not a “project” under the California Environmental Quality Control Act.¹⁵

OPTIONS:

1. Adopt the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance as an urgency ordinance; and introduce the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance for first reading;
2. Continue the item for later consideration of the City Council with direction to City staff for additional analysis; or
3. Reject the proposed the Critical Infrastructure Protection Ordinance and the Health and Hygiene Ordinance.

ATTACHMENTS

The Critical Infrastructure Protection Urgency Ordinance

The Health and Hygiene Urgency Ordinance

The Critical Infrastructure Protection Ordinance (Non-Urgency)

The Health and Hygiene Ordinance (Non-Urgency)

¹⁵ Pub. Resources Code, § 21065.
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