



AGENDA REPORT

Department: City Attorney's Office
Prepared by: Barry J. Schultz, City Attorney
Meeting Date: Tuesday, April 2, 2024
Approved by: Benjamin A. Martinez, City Manager

SUBJECT:

Ordinance for Introduction – Unauthorized Camping or Encampments on Public Property

RECOMMENDATION:

Introduce Ordinance by First Reading, entitled, “Ordinance of the City Council of the City of National City, California, Amending Title 10 of the National City Municipal Code by Repealing and Reserving Section 10.52.010(W); Amending Title 10 by Adding Chapter 10.56, All Pertaining to Regulating Encampments on Public Property to Establish a Standard for the Protection of the Life, Health, and Safety of All People, and Sensitive Public Lands within the City of National City.”

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

Overview

The City of National City has seen a steady increase in the number of unsheltered individuals residing within the boundaries of National City. Every year the San Diego Regional Task Force on Homelessness conducts an annual Point-in-Time (PIT) count. In 2020, there were 125 unsheltered individuals counted and 149 in 2022. This is an approximate 19.2% increase. In 2023, there were 159 unsheltered individuals identified in National City, which is an approximate 6.7% increase from 2022. The City’s HOME Team has seen an influx of unsheltered individuals in National City from the City of San Diego since San Diego’s encampment ordinance has gone into effect. As the number of unsheltered individuals increase, so does the health and safety risks from unregulated human activity when tents or encampments are set up in public areas.

The health and safety risks from unregulated human activity can include disease, bacterial and viral infections, water pollution, risk of drug exposure or overdose and pedestrian danger among other things. The proposed amendments to the National City Municipal Code are intended to protect the life, health and safety of all people in the City of National City by prohibiting overnight camping near sensitive receptors such as schools, transit stations/hubs, waterways, parks and environmentally sensitive areas.

City’s Current Homelessness Response

The City of National City has implemented the HOME Program, which is a partnership between the National City Police Department and HOME Team. The HOME Team is comprised of a code enforcement officer and homelessness services coordinator that respond to non-emergency calls for service related to homelessness. The HOME Team also conducts outreach to unsheltered

individuals in order to connect them to services such as mental health services, substance abuse services and county services (e.g. General Relief and Food Stamps among others). The HOME Team also works with social workers from the Housing and Disability Advocacy Program and Veterans Villages of San Diego. However, the HOME Team is only successful in providing services to those unsheltered individuals that desire assistance and/or seeks treatment. During the period of June through December 2023, the HOME Team helped 89 people and placed 25 people into housing.

The San Diego Rescue Mission is anticipated to open this summer the first and only shelter located in National City. The thirty (30) day shelter will have 162 beds that will assist families with children and adults. At the time of drafting this staff report, it is reported that construction is 85 percent complete. The San Diego Rescue Mission plans to hire a director and approximately 33 people to staff the shelter. However, it is worth noting that the beds in this shelter will not only be for unsheltered individuals residing in National City, but will be open to anyone in San Diego County that is in need.

Health and Safety Concerns

The health and safety risks from unregulated human activity, such as camping overnight in public areas, can include disease, bacterial and viral infections, water pollution, risk of drug exposure or overdoses and pedestrian danger among other things. It is the City's duty to protect public health and safety by ensuring public areas are clean, safe and accessible. The HOME Team regularly finds needles, pipes, feces, urine in bottles, knives, machetes and guns in encampments or tents, which pose a direct risk to public health and the environment.

In order to protect the health and safety of all people in National City, this proposed Ordinance would make it unlawful for any person to camp in or upon any public property if shelter beds are available, unless specifically authorized by the City Manager. However, if an encampment poses an immediate threat or an unreasonable risk to any particular individual or to public health or safety, this Ordinance will be enforceable regardless of shelter bed availability. Additionally, the Ordinance would make it unlawful, at any time regardless of the availability of shelter beds, for any person to camp or to have unauthorized encampments in the following locations: within two blocks of schools, in any waterway or natural area abutting a waterway, and within any transit hub, on any trolley platform or along any trolley tracks.

Current State of the Law on Homelessness

In April 2019, the Ninth Circuit Court of Appeals issued its decision in the *Martin v. City of Boise* ("*Boise*") case, which drastically changed the enforcement of camping regulations in California. This case involved several homeless individuals that were cited for camping on public property or sleeping in public places in direct violation of a City of Boise ordinance. The court found that criminalizing the act of sleeping outside where no sleeping space is available in any shelter is a violation of the Eighth Amendment (prohibition of cruel and unusual punishment). As a result, ordinances that completely prohibit the act of sleeping on public property when an individual has no other option have been deemed to be unconstitutional. The *Boise* decision provides limitations on how municipalities can regulate sleeping in public, but it does not amount to a total ban on a city's right to regulate the acts of camping or sleeping in public. Cities can continue to impose reasonable time, place and manner restrictions even on individuals that are unsheltered.

In 2023, the Ninth Circuit Court of Appeals upheld and expanded its decision in the *Boise* case in its ruling in the *Johnson v. City of Grants Pass* ("*Grants Pass*") case. Three homeless individuals challenged the constitutionality of the City of Grants Pass enforcement of its public camping

ordinance through administrative fines, as well as the city's prohibition on the use of sleeping supplies (blankets and pillows) while sleeping in public. The Ninth Circuit Court of Appeals expanded its decision in the *Boise* case by determining that the prohibition of sleeping accessories and the administrative enforcement of sleeping in public is unconstitutional.

It is worth noting that the Supreme Court of the United States announced that it would hear the *Grants Pass* case. The Supreme Court will determine whether the enforcement of generally applicable laws regulating camping on public property constitutes "cruel and unusual punishment" prohibited by the Eighth Amendment. The Supreme Court could either uphold the Ninth Circuit Court of Appeals ruling or overturn and potentially change the landscape of enforcement options for camping in public places. Oral arguments are set for April 2024 with a final decision later this year.

FINANCIAL STATEMENT:

Not Applicable

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Public Safety

ENVIRONMENTAL REVIEW:

This is not a project under CEQA and is therefore not subject to environmental review. CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

The Agenda Report was posted within 72 hours of the meeting date and time in accordance with the Ralph M. Brown Act.

ORDINANCE:

First Reading

EXHIBIT:

Exhibit A - Ordinance