



CITY COUNCIL AGENDA REPORT

DATE: March 2, 2021

AGENDA OF: March 9, 2021

DEPARTMENT: City Manager, Police, City Attorney

SUBJECT: Ordinance Amending Chapter 6.36 of the Santa Cruz Municipal Code
Related to Regulations for Temporary Outdoor Living. Location:
Citywide. CEQA: Exempt. (CM, PD, CA)

RECOMMENDATION: Consider adoption of Ordinance 2021-03 amending Chapter 6.36 of the Santa Cruz Municipal Code related to temporary outdoor living and consider potential modifications thereof as part of the current ordinance as drafted or as part of subsequent amendments.

BACKGROUND: On February 23, 2021, the Council received an extensive report on potential changes to Chapter 6.36 of the Santa Cruz Municipal Code, a chapter currently entitled “Camping” and which was being considered to be changed to “Regulations for Temporary Outdoor Living.” The staff report for that item (attached hereto) cited the wide range of activities that the City undertakes to support its unhoused residents, framed relevant legal considerations, and analyzed options for modifying the existing code. Hundreds of pages of public comments were received on the draft ordinance, and many members of the public spoke at the hearing. Following public comment, discussion, and deliberation, the Council voted to introduce the ordinance, as amended, for publication. Many of the amendments were in direct response to comments received from members of the public. The draft action minutes (attached) detail various changes and actions.

Ordinance changes require two approvals, a first reading when an ordinance is introduced and a second reading when an ordinance is formally adopted. The item before the Council at this meeting is consideration of a second reading, whereby the Council could formally adopt the ordinance that was passed for publication on February 23, 2021. Should the Council adopt the ordinance, its provisions would take effect 30 days following the adoption. However, the ordinance under consideration does have a number of provisions that would not take effect until other triggers have been met, such as the lifting of the federal judge’s injunction in the matter of *Santa Cruz Homeless Union et al v. City of Santa Cruz et al*, Case 5:20-cv-09425-SVK. The Discussion section below presents potential ordinance modifications to the Council for its consideration. Said modifications would have process implications for the first and second readings, and those options are presented later in the Discussion section.

DISCUSSION: A wide range of comments were received prior to, during, and subsequent to the Council’s discussion of the subject ordinance. The comments raise issues that the Council may

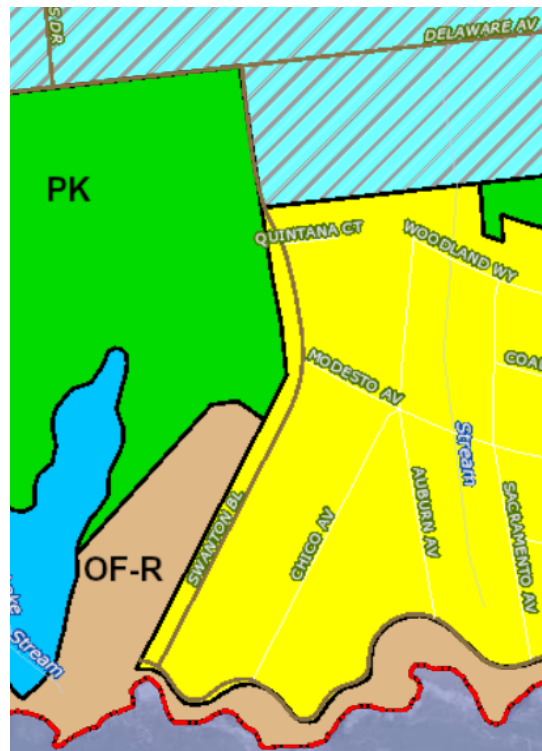
- b. Swanton Boulevard. The published ordinance under consideration prohibits camping on public properties in the OF-R Ocean Front Residential Zoning District and in the R-1 Residential Zoning Districts. As depicted on the map below, a portion of Swanton Boulevard that is directly across the street from residential uses is actually zoned PK Parks. While the area is zoned as PK Parks, it is not captured as part of the areas where camping is prohibited, since it is part of the State Parks system and not included as an identified park in the Parks Master Plan, which serves

as the reference document for prohibited parks. Should the Council want to consider additional camping prohibitions in this area, staff would request that Council specifically articulate which portions of Swanton Boulevard prohibit camping. For example, options could include, but are not limited to, prohibition on:

- i. All of Swanton Boulevard;
- ii. All of the west side of Swanton Boulevard, plus the residentially zoned portion on the east side, but not including the industrially zoned portion on the east side; or
- iii. All areas on the east and west side of Swanton Boulevard that are adjacent to residentially zoned areas.

The Council may also want to consider item 1.c, immediately below, in contemplating how to approach the Swanton Boulevard area.

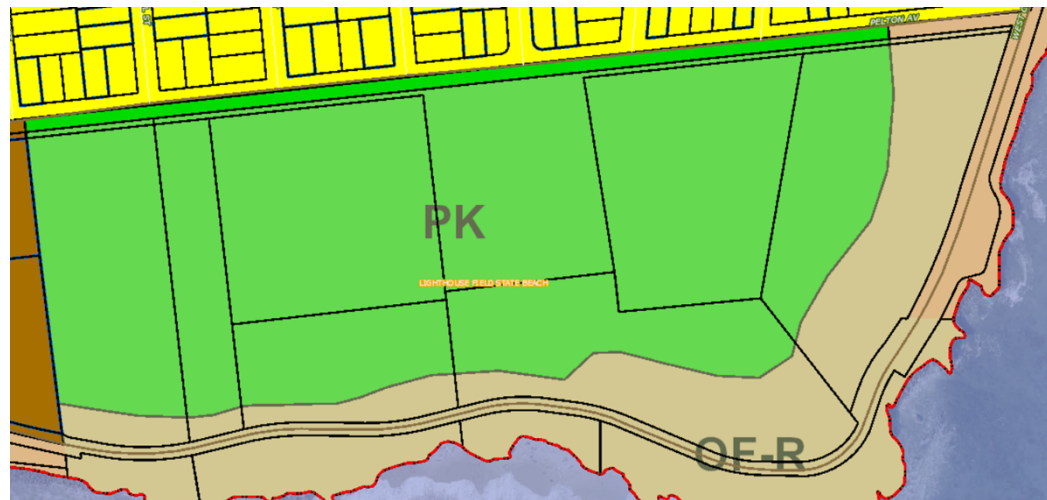
Map 2: Zoning Designations for Swanton Boulevard and Nearby Areas



- c. Lighthouse Field. An issue similar to that of Swanton Avenue is present on Pelton Avenue. Lighthouse Field is a State Park, and the State prohibits camping within that area. However, City right-of-way adjacent to the State Park takes on the zoning of the adjacent properties. As is the case on the north end of Natural Bridges State Park, much of the Lighthouse Field State Park area is zoned PK Parks. The published ordinance does not prohibit camping based on zoning districts. Instead, it calls out parks, as designated in the Parks Master Plan, as prohibited areas. Therefore, most of the right-of-way adjacent to Lighthouse Field on Pelton Avenue, extending to the centerline of that street, is zoned PK Parks. See Map 3 for a

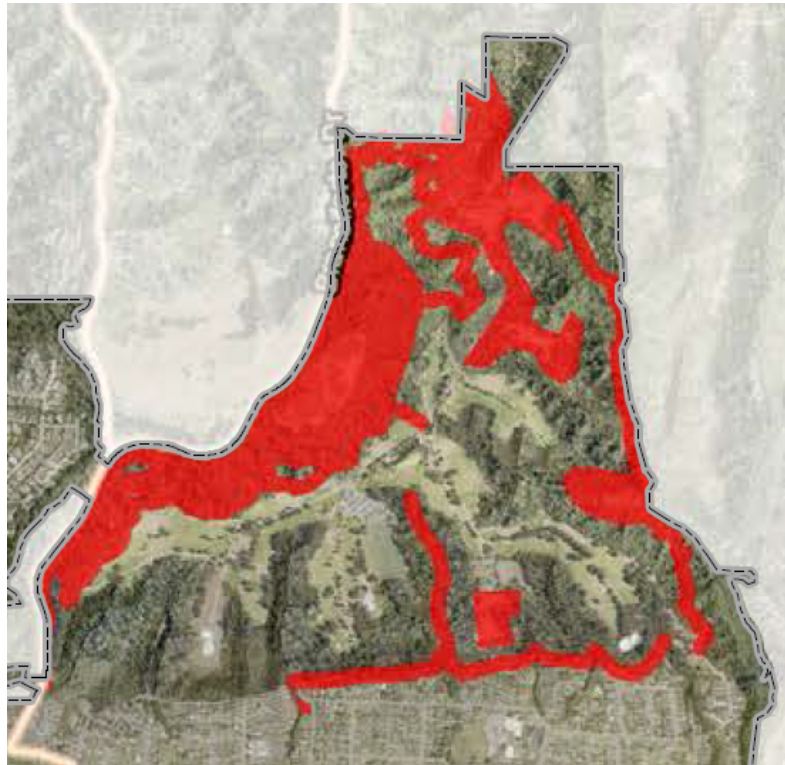
depiction of this condition. As camping is not prohibited in the PK Parks Zoning Designation, the Council should consider addressing the allowance at this location, since it is a residential area where the Council may have intended to prohibit camping. One approach could be for the ordinance to be revised such that camping is prohibited on public property adjacent to a State Park when said public property also abuts a residential zoning district.

Map 3: Zoning Designations for Lighthouse Field State Park and Pelton Avenue

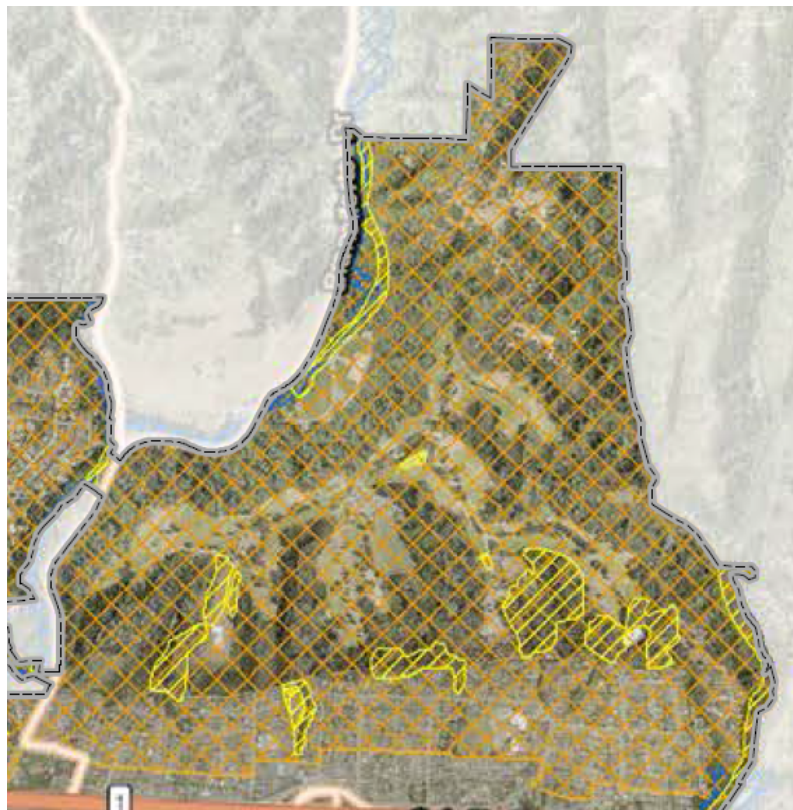


- d. De Laveaga Park. A designated trail exists between much of the Prospect Heights neighborhood and De Laveaga Park. Due to the ordinance's prohibition on camping within 75 feet of a designated trail, camping is prohibited in a large portion of the perimeter between De Laveaga Park and the Prospect Heights neighborhood, as depicted below on Map 4. Some residents have called for the remaining perimeter (roughly the area along De Laveaga Park Road, west of its intersection with Prospect Heights) to have a buffer where camping is prohibited. Other residents have cited the fire risk and the infrastructure in the area, such as the 911 Center, Armory, and Shakespeare Theater, as reasons for prohibiting camping in a larger portion of De Laveaga Park, such as an area between the Prospect Heights neighborhood and the golf course. In considering such prohibitions, the Council should be aware that all of De Laveaga Park (and the associated open spaces) are in the Wildland Urban Interface (WUI). The ordinance under consideration grants the Fire Chief the ability to close these areas to camping (as well as areas outside the WUI) based on his/her assessment of fire danger. Some of the area is also identified sensitive habitat, so areas could be closed due to that status as well. Map 5 depicts the WUI and sensitive habitat areas.

Map 4: Areas in De Laveaga Park Where Camping is Prohibited



Map 5: De Laveaga Wildland Urban Interface (Orange Hatch) and Sensitive Habitat (Yellow Stripe) Areas



- e. State Parks. Some individuals have requested that the City explicitly prohibit camping in State Parks. As discussed in the February 23, 2021 agenda report, the State retains land use authority on properties where they are conducting official State business. The State prohibits camping in the State Beaches and State Parks within the City limits. To address community concerns, should the ordinance be adopted, the maps prepared by the City to facilitate implementation can state that camping is not allowed in those areas pursuant to State requirements.
 - f. Parks and Open Space Clarification. The published ordinance prohibits camping “Within all parks, as defined by the Parks Master Plan, but not including open spaces.” The double negative created by including “but not including open spaces” has created some confusion, particularly as it relates to other sections of the ordinance. The phrase is unnecessary, since open spaces are categorized differently in the Parks Master Plan. Therefore, additional clarity would be provided by removing the “but not including open spaces” phrase.
- 2) Transportation Program. The published ordinance under consideration by the Council, based on the Council motion, includes the statement that “authorized storage programs shall be required to provide transportation assistance to individuals who request it.” Staff had questions about this provision (such as, “from where?” and “to where?”) and inquired with the maker of the motion. Given the ambiguity of the language, the Council should consider alternative, clarifying language. An alternative option could be as follows: “As City personnel encounter individuals who are camping in prohibited areas or at prohibited times, the City shall have a service available to assist individuals with on-street transportation to storage facilities.” Such language would provide policy-level direction clarifying that the transportation refers to on-street transportation, and it would specify that the intent is to assist individuals who are improperly camping in reaching daytime storage facilities.
- 3) Locations for Disabled Individuals, Caretakers, and Families with Minors. The published ordinance specifies that families with minors, individuals with a Qualifying Disability, and a single caretaker for each disabled individual can remain in a single location with their respective tents erected for up to 96 hours. The intent was to allow for such individuals to be able to remain on a sidewalk during the 96-hour period, so long as they are not blocking access to businesses or emergency vehicles and so long as the other criteria prescribed in the Section 6.36.040(b)(5) are followed. However, the aforementioned section does not specifically call out an exception for families with minors, disabled individuals, or disabled individuals’ respective caretakers to block a sidewalk during the daytime hours when camping would otherwise be prohibited. The provision prohibiting use of off-trail open space areas during the daytime hours when camping is prohibited, Section 6.36.060(i), similarly does not call out an exception for those who would otherwise be allowed to have a tent for 96 hours pursuant to other provisions. An exception should be specified for qualifying individuals, or another location should be identified. The Council should direct staff to consider one or more of the following and to provide updated language for the Council’s consideration related to:
- a. Allowing qualifying individuals to block sidewalks, consistent with other ordinance provisions, such as the 96-hour limitation;

- b. Allowing qualifying individuals to remain in open space areas that are otherwise closed, consistent with other ordinance provisions; or
 - c. Providing specific locations where disabled individuals, caretakers of disabled individuals, and families with minors can remain in place for longer periods of time, consistent with other ordinance provisions. Such specific locations could include City parking lots, for example, but then those parking lots could not be used for public parking purposes during daytime hours.
- 4) COVID-19 Considerations. A number of members of the public expressed concerns about enforcement of various ordinance provisions that would force individuals to move their belongings while in the midst of the COVID-19 pandemic, especially in light of Center for Disease Control (CDC) recommendations that unsheltered individuals remain in place during the pandemic. The Council briefly discussed this at the February 23 hearing. The published ordinance seeks to address this issue by stating in Section 6.36.040(d) that the rules prohibiting the erection of tents during the daytime would not be enforced until such time that unsheltered individuals have reasonable access to a free COVID-19 vaccine. The Council may view this approach as a reasonable level of protection for the individuals. Alternatively, the Council could consider a different milestone for enforcement of the daytime rule, such as when the CDC changes its guidance, when the County/State Declaration of Local Health Emergency is lifted, or when the County moves into a “yellow” or “orange” tier of COVID spread (per California’s multi-tier system).
- 5) Outreach Direction. The published ordinance contains, based on the Council’s February 23 action, the following text:

City staff shall ensure that outreach precedes or occurs simultaneously to enforcement of prohibited outdoor living to the greatest extent possible, for instance, when public safety/life safety is not under immediate/urgent threat. Outreach could take the form of City, County, NGO or faith-based staff contact with identified individuals on a complaint basis or within a structured proactive program.

As written, the text states that “City staff shall ensure that outreach proceeds or occurs simultaneously.” The City funds two mental health liaisons from the County to ride with Police officers on certain calls for service, but those individuals are likely not best suited (or available) for the outreach necessary to connect unsheltered individuals to a range of services. The City provides funding to various organizations that either directly or indirectly support outreach, and the County supports a wide range of outreach as well. However, the City does not control the actions of staff in those organizations. Thus, it may be challenging for City staff to “ensure” that outreach occurs in advance of any enforcement, particularly since Countywide outreach resources are limited.

The “to the greatest extent possible” ordinance language could also prove challenging, as it could be “possible” to wait for a County, faith-based, or NGO (non-governmental organization) outreach team to connect with a group of individuals, but with hundreds of unsheltered individuals in the City and nearly the same amount in other areas of the County, enforcement personnel could have to wait for extended periods of time before outreach personnel can connect with the individuals. That may not be the ideal or desired outcome. Of note here, it may be more efficient and timely for a County, NGO, or faith-based

outreach team to connect with individuals at a daytime storage program, at a safe sleeping site, or at a sanctioned encampment, and an inability to enforce various regulations could potentially prolong the time it would take to connect an individual to said outreach services. The City could hire outreach staff or directly fund outreach staff in another organization, but that quickly gets to be very costly, particularly for the number of new staff that would be needed, and even then, wait times could be extensive.

If the Council's desire is to not enforce regulations until outreach has occurred in most instances, even if said policy would trigger long wait-times for enforcement to occur, then the existing language could remain. If the Council's desire is to provide some more flexibility, while still setting the expectation that outreach is important and should be sought, then alternative language such as the following could be considered as a replacement to the text in the published ordinance.

City staff shall seek opportunities, particularly when public safety/life safety is not under immediate/urgent threat, through coordination with City, County, non-governmental organization, or faith-based staff, for outreach to precede or occur simultaneously to enforcement of prohibited outdoor living so that, when feasible, non-enforcement personnel can contact identified individuals on a complaint basis or within a structured, proactive program.

It may also be appropriate here for Council to clarify what type of "outreach" is anticipated or sought. Outreach typically involves helping to connect homeless people to homeless services, but it is unclear if the Council also intended for this "outreach" to include education as to where nighttime camping is permitted within the City.

- 6) Citation and Misdemeanor Provisions and Approach. Some community members have expressed concerns that the ordinance criminalizes the act of being homeless. To the contrary, as explained in the February 23 agenda report, presentation, and discussion, the ordinance ensures that adequate legal sleeping spaces remain available within the City.
 - a) Nevertheless, concerns about misdemeanor provisions, in particular, have been expressed. The published ordinance cites a number of ways in which a misdemeanor charge can be levied, including having an open fire, not taking reasonably prompt action to remove an unpermitted encampment, and two violations of the Chapter within a 30-day period. Aside from the specific reference to fires being a misdemeanor, the other two misdemeanor provisions are tied to more generic violations of the ordinance.

Should the Council desire a more narrow approach to misdemeanor citations, the ordinance could be crafted to tie misdemeanors to specific actions or behaviors. For example, the ordinance could specify that an individual may be charged with a misdemeanor if they:

- Have a tent or encampment larger than 12 feet by 12 feet that is strewn with litter;
- Maintain a large number of disassembled bikes outside of their tent, with an exception for changing bike tires; or
- Have needles left unattended around their tent.

The above are just some examples of what could be identified. Other violations of the ordinance could be limited to an infraction, so long as none of the identified misdemeanor behaviors are present. The above list could be expanded, contracted, or refined as the Council sees fit. The above list represents initial ideas, and if the Council would like to pursue this path, specific language updates could be brought to the Council for consideration at a future meeting.

- b) Public testimony also included people expressing concerns about the repercussions of infraction citations and misdemeanor charges, such as debt and criminal records, as well as ancillary challenges such as credit scores and challenges securing jobs or housing. As such, the Council could also consider directing staff to draft ordinance language to create a City-sponsored diversion process for violations of the Municipal Code. In such a process, the City Attorneys' office could, for example, be directed to dismiss infraction or misdemeanor citations if the accused person takes certain specified action, such as seeking documentable treatment for mental health or drug addiction or providing documentable community service. If such a program interests the Council, draft ordinance language could be provided at a later date.
 - c) The *Martin vs. Boise* case (discussed in more detail in the attached February 23, 2021 Council agenda report) notes that sleeping cannot be criminalized when adequate places to sleep are not available. Section 6.36.070 speaks to penalties for violation of the ordinance and calls for warnings and outreach in advance of citation or misdemeanor enforcement actions. To convey compliance with the *Martin vs. Boise* ruling even more clearly, the Council could consider adding the following sentence to the end of Section 6.36.070(a): "If no legal option is available as a location where an individual may sleep, then no enforcement action shall be taken, and the person may remain in place."
- 7) Allowable/Prohibited Camping Hours. The packet information provided as part of the February 23 hearing specified allowable camping hours between 8:00 p.m. and 8:00 a.m., with prohibitions between 8:00 a.m. and 8:00 p.m. As part of the Council's deliberations, the allowable camping hours were changed to one hour before sunset to 7:00 a.m. The ordinance passed for publication reflects this change, and it also notes that alternative hours may be necessary for the safe sleeping sites that are organized by the City. Those hours are noted as beginning as late as 8:00 p.m. and ending as early as 7:00 a.m. but no later than 8:00 a.m. The alternative hours for safe sleeping sites were included as a means to recognize that some sites may be located in areas that conflict with other uses, such as vehicular parking or circulation that may be in operation after sundown. Questions have also arisen with respect to whether the standard 7:00 a.m. closure time would allow sufficient light for individuals to pack their belongings, particularly during times of the year when sunrise happens relatively later in the morning. In light of this, the City Council may want to consider whether to modify the hours during which camping is allowed and prohibited.

Environmental Review. As noted in the prior report, the California Environmental Quality Act (CEQA) provides several "categorical exemptions" which are applicable to categories of projects and activities that the Natural Resource Agency has determined generally do not pose a risk of significant impacts on the environment. Section 15307 of the CEQA Guidelines "consists of actions taken by a regulatory agencies... to assure the maintenance, restoration, or enhancement of

a natural resource where the regulatory process involves procedures for protection of the environment.” Section 15308 of the CEQA Guidelines “consists of actions taken by regulatory agencies... to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.” The proposed ordinance is not anticipated to result in any construction. Many individuals already camp in the City, and the ordinance is not anticipated to result in any additional camping. By providing safe sleeping and encampment locations where sanitation facilities would be present, the proposed ordinance could result in fewer people camping in areas where sanitation facilities are unavailable, and provisions contained in the ordinance are expressly intended to protect natural resources and the environment. As beneficial rather than detrimental environmental effects are anticipated to result from the ordinance, the project is also exempt under Code of Regulations Section 15061(b), the “common sense exemption,” since it can be seen with certainty that no significant effect on the environment will occur. Therefore, the adoption of this ordinance is exempt from CEQA.

Process Considerations. The Council has a number of procedural options that it can consider as part of this discussion. The Council could:

- 1) Adopt the ordinance as was passed for publication on February 23, 2021 and decline to make any further changes.
- 2) Adopt the ordinance as was passed for publication on February 23, 2021 and direct staff to make changes in a separate, amending ordinance that would require a new first and second reading. The ordinance that was passed for publication would take effect in 30 days, and any amendments would take effect 30 days following their formal adoption as part of a second reading.
- 3) Direct staff to amend the current ordinance and have it considered as a new first reading.
 - a. If the changes are minor, then the Council could potentially have the first reading as part of this same agenda, and the ordinance would return for a second reading at the March 23, 2021 hearing.
 - b. If the changes require more extensive editing or wordsmithing, then staff would recommend that Council ask staff to draft those changes, consistent with Council direction, and return to Council at the March 23, 2021 hearing for a new first reading. A new second reading would need to follow at a subsequent hearing.
- 4) Set aside and decline to adopt the current ordinance, for now, and provide direction as to next steps.

Next Steps. To reiterate some of the comments from the prior meeting, should the ordinance be adopted, some details related to its implementation still need to be developed. For example, staff have commenced review of the General Plan Environmental Impact Report’s biological analyses to help inform determinations regarding what, if any, sensitive habitat areas could allow for camping in a manner consistent with other provisions of the ordinance while not causing impacts to sensitive species. Consultations with professional biologists could be necessary, and the maps depicting prohibited areas would be updated accordingly. Once all maps are finalized, an application could potentially be developed that would allow users to geo-locate themselves on a map showing various resources, such as safe sleeping areas, daytime storage programs, and areas where camping is not allowed.

The Council’s February 23 motion (attached) contains a wide range of direction, including but not limited to direction to begin implementation of a safe sleeping program within 60 days of the ordinance’s passage. As such, initial conversations have started regarding such facilities. For a facility that is staffed overnight and closed during the day, an initial rough estimate of costs to

serve about 50 people is approximately \$250,000 per year. Council has directed that the City serve 150 people, and thus, costs could be roughly estimated at \$750,000 per year. This cost could be reduced if nonprofits, faith-based organizations, or others manage the operation using unpaid volunteers. Daytime storage programs that are staffed part time, with two staff, seven days per week could be estimated to cost about \$75,000 per year, per location, though said programs could be incorporated into the safe sleeping operations. Should the ordinance pass, further exploration of these programs and options will ensue. Following that evaluation and prior to the implementation of said programs, staff will return to the Council for their consideration of a policy that outlines the general expectations for the operation of these facilities.

As evidenced by the various potential changes noted above, the ordinance, if adopted, is expected to need to be amended often. Staff would learn from its use, gather data, evaluate what is working well and what is not, and present potential modifications to the Council for consideration.

FISCAL IMPACT: As noted previously, the City spends considerable sums of money and very significant staff resources on efforts to address homelessness. Early estimates of a safe sleeping program point towards a cost that could be around \$750,000/year to serve approximately 150 individuals, and early estimates of operating a staffed, daytime storage program run approximately \$75,000 per location per year. With that said, directed and organized spending has the potential to reduce other, reactionary costs that the City has regularly incurred. Expenses and staff time will need to be regularly evaluated to better understand the fiscal implications of the ordinance.

Prepared by:

Lee Butler
Director of Planning,
Community Development, &
Homeless Response

Andy Mills
Police Chief

Cassie Bronson
City Attorney's Office

Reviewed by:

Laura Schmidt
Assistant City Manager

Approved by:

Martin Bernal
City Manager

ATTACHMENTS:

1. Ordinance for adoption consideration at the March 9, 2021 Council meeting
2. Ordinance with track changes as amended at the February 23, 2021 Council meeting
3. Excerpt from Action Agenda reflecting action taken at February 23, 2021 Council meeting
4. February 23, 2021 Agenda Report and related attachments