

ORDINANCE NO 2024 – XXXX

AN ORDINANCE OF THE CITY OF SAN MARCOS, CALIFORNIA, ADDING
CHAPTER 10.33 TO THE SAN MARCOS MUNICIPAL CODE PERTAINING TO
ENCAMPMENTS ON CITY PROPERTY, AND AMENDING SECTION 9.04.070

WHEREAS, the City has seen a marked increase in persons erecting encampments on property owned or controlled by the City in recent months; and

WHEREAS, these encampments present risks to the life, health, and safety of those using them, as well as to others in the City, pose risks of damage to certain environmentally sensitive areas, and inhibit the rights of others to use the areas as they are intended; and

WHEREAS, the incidence of camping and encampments on City property has increased in recent years, with the latest Point-in-Time count showing an increase from two to 35, a 1,650% increase from 2023 to 2024; and

WHEREAS, the City has been experiencing has been experiencing the impacts of the increased unhoused population within its boundaries, including a marked increase in calls for service due to illegal encampments, persons living in parked vehicles, and camping on City property, resulting in threats to the life, safety, health, and welfare of its residents, damage to natural resources, and pollution of its waterways;

WHEREAS, examples of the dangers posed by camping, establishing encampments, and living in vehicles parked on public property include:

- (i) Dumping waste into sewers/storm drains;
- (ii) Storing human waste in buckets;
- (iii) Using water and storm water prevention materials from neighboring properties, without permission;
- (iv) Leaving pets unattended or off-leash;
- (v) Accumulating trash and/or personal belongings in adjacent areas, impeding access to sidewalks and other public property;
- (vi) Camping near parks;
- (vii) Impeding the flow of traffic and access by emergency vehicles;
- (viii) Running power cords from RV to nearby property;
- (ix) Operating repair business and/or using power tools near campers;
- (x) Yelling at or otherwise intimidating other persons in the area
- (xi) Preventing others from using parking spaces;
- (xii) Disturbing the peace in neighborhoods with loud arguments;
- (xiii) Increased calls for service to the City's Fire Department related to encampments; and
- (xiv) Fires breaking out at or near encampments, including two within the last month .

WHEREAS, the legal landscape with respect to unsheltered populations has changed dramatically over the past several years, due in large part to the decisions in *Martin v. City of Boise* 920 F.3d 584 (9th Cir. 2019) and *Johnson v. City of Grants Pass* 72 F.4th 868 (9th Cir. 2023), which limited cities' abilities to enforce city-wide anti-camping bans when alternative shelter was not available; and

WHEREAS, on June 28, 2024, the United States Supreme Court reversed the lower court ruling in *Grants Pass*, determining that the enforcement of generally applicable laws regulating camping on public property did not constitute cruel and unusual punishment under the Eighth Amendment; and

WHEREAS, the City desires to amend its Municipal Code to regulate camping and encampments on City property in order to protect its residents life, health, safety, and welfare, and protect and preserve its natural resources.

Section 1. Chapter 10.33 of the San Marcos Municipal Code is hereby added to read as follows:

San Marcos Municipal Code Chapter 10.33 - Encampments on City Property

10.33.100 Purpose

10.33.110 Definitions

10.33.120 Protection of Waterways

10.33.130 Unauthorized Encampments on Public Property

10.33.140 Private Property

10.33.150 Enforcement

10.33.160 Public Nuisance Declared

10.33.170 Notice and Removal of Personal Property in Public Areas

10.33.100 Purpose

This Chapter is intended to ensure that Public Property, as defined in this chapter, is not used in a manner that: (i) poses a risk to the life, health, or safety of persons in the City; (ii) damages the property; (iii) interferes with the availability or accessibility of the property to the City or other intended users; or (iv) interferes with the rights of others to use the property as it is intended to be used. The City has found that the use of Public Property

for camping purposes, the storage of personal property, the establishment of shelter, or unauthorized parking, interferes with the rights of others to use and enjoy these areas as they are intended. In addition, such unregulated human activity on Public Property may significantly damage its ecological value or pose significant health and safety risks to users or the surrounding biology. The Council is committed to protecting the rights of individuals related to their personal property and to treating such property with respect and consideration. It is the purpose of this Chapter to set standards for the preservation and protection of human life, health, and safety, to further the preservation and protection of sensitive Public Property by preventing destruction of these assets, to ensure that Public Property is used for its intended purpose and remains accessible to all residents, businesses, and visitors in the City, and to establish a process for the collection, storage, disposal, recycling, or reuse of personal property found on Public Property. Nothing in this Chapter is intended to interfere with the otherwise lawful and ordinary use of Public Property.

10.33.110 Definitions

Camp or ***Camping*** means:

- 1) to reside on, occupy, or otherwise use any *Public Property* for living accommodation or habitation purposes, or to use one's *Personal Property* to do so (e.g., tent, makeshift shelter, lean-to, vehicle of any kind, specifically including but not limited to, a camper, trailer, coach, fifth wheel, or any other trailer or recreational vehicle, whether or not the vehicle is operable), or to store one's *Personal Property* on *Public Property* (including unauthorized parking of any vehicle): and/or
- 2) to pitch, erect, use, or occupy an *Encampment*, or to use *Camp Paraphernalia* or both, for the purpose of, or in a way that facilitates, outdoor sheltering for living accommodation or habitation purposes, or for remaining outdoors overnight, on *Public Property*.

Camp Paraphernalia means *Personal Property* used to facilitate occupancy of an area and includes *Personal Property* typically associated with camping such as tarps, cots, beds, mattresses, sleeping bags, hammocks, bedding, camp stoves, cooking equipment, buckets, and similar equipment or items used for, or accessory to, *Encampments*, or camping outdoors; also included are, couches, dressers, or other furniture.

Encampment means one or more temporary, makeshift, or hand-built structures not intended for long-term continuous occupancy, including tents, that are used to shelter one or more persons or their belongings and that are not authorized by the City. ***Encampment*** includes any *Camp Paraphernalia* and *Personal Property* associated with or located in or around the structures, shelter, or tents.

Parks, Open Space, Recreation has the same definition as in Section 20.600.180.

Parkways has the same definition as in Section 20.600.180.

Personal Property means tangible personal belongings or possessions, which shall include any movable or tangible thing that is subject to ownership and that can be seen, weighed, measured, felt, or touched, including, but not limited to, furniture, appliances, camping equipment, gear, and tools, *Camp Paraphernalia*, money, books, and vehicles of any kind.

Public Property means all real property that is owned or controlled by the City including, but not limited to, streets, alleys, parking lots, sidewalks, *Parks, Open Space, Recreation, Waterways*, natural areas abutting *Waterways*, improved or unimproved land, rights-of-way, *Parkways*, and easements.

Waste means materials of any nature that constitute garbage, solid waste, or rubbish, as those terms are defined in Section 8.68.020. *Waste* also means abandoned *Personal Property* that is left unattended in or upon *Public Property*, and human waste. *Waste* does not mean recyclable material properly contained and disposed of in a timely fashion.

Waterway means all the portions of San Marcos Creek, and its tributaries, and all drainage culverts and detention basins found within the boundaries of the City of San Marcos.

10.33.120 Protection of Waterways

(a) It is unlawful for any person to cause damage to a *Waterway* or its associated appurtenances, including, but not limited to, manholes and drainage culverts.

(b) It is unlawful for any person to do any of the following at any time:

(1) *Camp*, build or maintain an *Encampment*, or erect a structure of any type in any *Waterway* or along the banks of any *Waterway*, or drive a nail or other object into any tree or other natural area vegetation for the purpose of building an *Encampment* or any other structure, or to affix an object to any tree or other natural vegetation;

(2) move boulders or large rocks, destroy vegetation, paved roads or paths created by the City, or otherwise reconfigure the natural landscape in the waters, or along the banks, of a *Waterway*;

(3) drive, park, or bring any vehicle along the banks of a *Waterway*, except in places specifically provided and designated for vehicular use;

(4) dig on the banks of a *Waterway*; or

(5) store, house, or hold *Waste* along the banks, or into the waters, of a *Waterway*; illegal or illicit discharges or connections to the City's storm water conveyance system are prohibited pursuant to Chapter 14.15, and subject to the enforcement procedures and remedies provided for in that Chapter.

10.33.130 Unauthorized Encampments on Public Property

It is unlawful for any person to *Camp*, or to build or maintain an *Encampment*, in or upon *Public Property* at any time, unless specifically authorized by the City, in writing.

10.33.140 Private Property

Nothing in this chapter is intended to prohibit the activities of an owner of private property or other lawful user of private property that are normally associated with, and incidental to, the lawful and authorized use of private property; and nothing is intended to prohibit the activities of a lawful user if such activities are expressly authorized by the City or by any law, regulation, permit, order or other directive from a regulatory authority.

10.33.150 Enforcement

Violations of this Chapter shall constitute misdemeanors and may be prosecuted as such subject to the fines and custody provisions in section 1.12.010.

10.33.160 Public Nuisance Declared

Any *Encampment* established in violation of this Chapter is declared to be a public nuisance, and the City is authorized to abate the nuisance and remove the *Encampment*, *Camp Paraphernalia*, and related facilities, as authorized by law.

10.33.170 Notice and Removal of Personal Property in Public Areas

(a) Notice and Removal. In the event that unauthorized *Personal Property* is found on *Public Property* in the course of employment by an authorized City employee or contractor (examples of authorized employees include, but are not limited to, employees of the County of San Diego Sheriff's Department, City code enforcement, employees or contractors of City Public Works Department, and other City employees properly trained to carry out this section), such employee or contractor shall leave notice with the owner of the *Personal Property*, or prominently displayed near the *Personal Property*. The notice shall contain all of the following information:

1. The requirement that the *Personal Property* be removed from *Public Property*;
2. The time frame that the property owner has to relocate the *Personal Property*. Such time frame shall not be less than 24 hours unless there is an immediate threat to the public health, safety, or welfare. Further, if the *Personal Property* obstructs and actually interferes with *Public Property* or the intended use of the *Public Property*, then this time frame may be shorter than 24 hours; provided, that if the property owner is present, they are first advised to cease the interference and/or to move the *Personal Property* causing the obstruction and they decline to do so;
3. A statement that, if the *Personal Property* is not removed within the time frame, then the City will remove and store the *Personal Property* consistent with this section. This statement shall also provide the location where the *Personal Property* will be stored;
4. If applicable, the nature and purpose of the cleanup;
5. If applicable, the date, time, and locations of the scheduled cleanup and/or removal of the *Personal Property*;
6. A citation to the applicable section of the municipal code or any other applicable law;
7. A statement of how the *Personal Property* may be reclaimed;
8. A statement that, if *Personal Property* is removed pursuant to this section, then such *Personal Property* may be subject to disposal by the City pursuant to this section after 90 days from the date of removal;
9. A phone number that the person may call for more information; and
10. Any other additional information as determined by the City and/or Sheriff's Department.

After the time frame specified in the notice provided pursuant to this subsection (a), the *Personal Property* on the *Public Property* area may be removed, inventoried, stored, and disposed of by the City pursuant to this section. To the extent possible, the inventory list shall be provided to the property owner(s). For any *Personal Property* removed, a notice shall be posted in a prominent place in the removal area advising where the *Personal Property* is being kept and when it may be claimed by its rightful owner. The notice shall contain the information required by subsections (a)(1) through (10) of this section and any other additional information as determined by the City and/or Sheriff's Department. This notice shall include the earliest date on which the removed *Personal Property* will be disposed of by the City pursuant to this section.

(b) Additional Signage for Removal of *Personal Property*. The City may determine what, if any, areas of the City suffer from blight due to storage of *Personal Property* on any *Public Property*, and erect signs in those areas containing the applicable information specified in subsections (a)(1) through (10) of this section so as to provide additional notice.

(c) Holding and Disposal of Stored *Personal Property*. Except as provided in subsection (a) of this section, found *Personal Property* shall be deposited and inventoried in a safe place for a period of at least 90 days and found money shall be deposited with the City's Director of Finance for a period of not less than 90 days, unless sooner claimed by the true owner. In the event the property or money is not claimed within 90 days, it shall be deemed to be unclaimed *Personal Property* and subject to disposal as provided in this section, or as otherwise provided by law. Additionally, the City shall not be obligated to store *Personal Property* in excess of the City's then-current overall storage capacity. In this case, the City may dispose of unclaimed *Personal Property* prior to 90 days, but will make reasonable efforts to contact the owner of such property prior to doing so.

(d) Trash, Dangerous, or Perishable *Personal Property*. Any *Personal Property* coming into the possession of the City and/or Sheriff's Department may be immediately disposed of without notice, in a manner that the City and/or Sheriff's Department determines to be in the public interest, when such *Personal Property* is trash, perishable, contraband pursuant to State or Federal law, and/or constitutes an immediate threat to the public health, safety, or welfare.

(e) Additional Procedures. The City Manager may adopt additional notice and collection procedures, as necessary, to implement this section.

(f) Applicability. To the extent known by the City or the Sheriff's Department, the provisions of this section shall not apply to the following:

1. *Personal Property* or money subject to confiscation pursuant to State or Federal law;
2. *Personal Property* that constitutes evidence in an ongoing criminal investigation and/or civil proceeding pursuant to State or Federal law;
3. *Personal Property* that has been abandoned by its owner. Abandoned *Personal Property* may be disposed of forthwith.

Section 2. The first sentence of San Marcos Municipal Code Section 9.04.070(a) is hereby amended as follows:

(a) Camping. No Person shall camp, ~~lodge or sleep~~ overnight as defined in SMMC Section ~~12.20.120~~ 10.33.110 between sunset and sunrise in any Area without a Park Use Permit.

Section 3. Severability. If any section, sentence, clause, or phrase of this Ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 4. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after its passage.

Section 5. Publication. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof as a summary, in accordance with the provisions of State law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos, California, held on the 9th day of July, 2024; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the _____ day of _____, 2024, by the following roll call vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

Rebecca D. Jones, Mayor

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos