



Honorable Mayor and Members of the Hermosa Beach City Council

ADOPTION OF ORDINANCE REPEALING HERMOSA BEACH MUNICIPAL CODE (“HBMC”) SECTIONS 12.28.010(H) AND 12.20.240 AND ADDING CHAPTER 12.40 TO THE HBMC REGULATING CAMPING IN PUBLIC AREAS

CEQA: Determine the Ordinance is exempt from the California Environmental Quality Act.

(City Attorney Patrick Donegan and Deputy City Manager Angela Crespi)

Recommended Action:

Staff recommends City Council:

1. Waive the full second reading and adopt by title only Ordinance No. 25-1486 of the City of Hermosa Beach, California, (**Attachment 1**) repealing Hermosa Beach Municipal Code (“HBMC”) sections 12.28.010(H) and 12.20.240 and adding Chapter 12.40 to the HBMC regulating camping in public areas and finding the ordinance is exempt from the California Environmental Quality Act (“CEQA”); and
2. Direct the City Clerk to print and publish a summary ordinance in a newspaper of general circulation within 15 days following adoption and post a copy on the City’s bulletin for 30 days.

Executive Summary:

As requested by the City Council at its October 8, 2024 meeting, staff presents this ordinance for the City Council’s consideration regarding camping in public areas in the City (including in vehicles) and the blocking of public access by those sleeping, laying, or placing personal property in the City. The proposed ordinance repeals two existing HBMC code sections dealing with camping in certain places (the Strand, beach, and City parks) and instead proposes a dedicated chapter (Chapter 12.40) to be added to the HBMC that more holistically regulates camping and its related issues on a more City-wide basis.

The ordinance proposes, among other remedies, that violations of Chapter 12.40 may be subject to the City’s administrative citation process. The City Council introduced on first reading and waived full reading of the ordinance at its February 25, 2025 meeting and directed certain changes regarding the violation section.

Background:

At its September 10, 2024 meeting, Councilmember Detoy requested, and Mayor Pro Tem Saemann and Mayor Francois supported, a future agenda item to discuss the Grants

Pass Supreme Court decision regarding camping in public areas. At its October 8, 2024 meeting, the City Council received a report on the issue.

Existing prohibitions on camping in the City are found in two parts of the Hermosa Beach Municipal Code (“HBMC”).

HBMC section 12.28.010 prohibits the public camping in City parks and states that:

“Within the limits of any public park or playground, no person shall: . . .

H. Camp or lodge, except in municipal automobile camps designated as such by the city manager”

HBMC section 12.20.240 regulates camping on the Strand or beach and states:

“No person shall camp on or use for overnight sleeping purposes any portion of the beach or Strand, or bring a house trailer or similar vehicle onto the beach or Strand, and a violation of this section shall be an infraction.”

While not applicable in every public place in the City, the above stated HBMC provisions constitute the City’s current regulatory regime as it pertains to camping in the City and prohibited the camping in City parks and the Beach/Strand. However, over the past few years there have been some pertinent court cases dealing with local regulation on camping that up until the most recent Grants Pass Supreme Court decision, restricted or narrowed what local cities in California could do to regulate public camping.

The two Ninth Circuit Court of Appeal cases that significantly narrowed the permissible scope of local regulation of public camping were the *Martin v. City of Boise* (“*Martin*”) and *Johnson v. City of Grants Pass* (“*Johnson*”) decisions.

In *Martin*, homeless individuals sued the City of Boise, Idaho, after being criminally prosecuted under city ordinances banning public camping. As relevant here, the Ninth Circuit held that the Cruel and Unusual Punishment Clause of the Eighth Amendment “prohibits the imposition of criminal penalties for sitting, sleeping or lying outside on public property for homeless individuals who cannot obtain shelter.” Subject to some exceptions, *Martin* prohibited cities from arresting homeless individuals for involuntarily sitting, lying or sleeping in public when the city does not provide a shelter bed in its “jurisdiction” for that potential arrestee. In December 2019, the Supreme Court denied Boise’s petition to review this decision.

The *Johnson* decision came later and involved two Grants Pass, Oregon, camping regulations. The first allowed sleeping in public, but prohibited the use of “bedding, [a] sleeping bag, or other material used for bedding purposes.” The city argued that *Martin*’s holding was limited to prohibitions on sleeping in public. And on that basis, the city maintained that local regulations—such as a complete prohibition on the use of bedding, sleeping bags and related items—were permissible. The Ninth Circuit disagreed and

concluded that the “only plausible reading” of the term “sleeping” in the context of *Martin* is that it “includes sleeping with rudimentary forms of protection from the elements.”

The second regulation involved the city’s enforcement framework in light of *Martin*’s prohibition on imposing “criminal penalties for sitting, sleeping or lying outside on public property” *Grants Pass* preceded criminal enforcement by issuing civil penalties that—if violated—could then be punished criminally. The Ninth Circuit rejected this approach, reasoning that *Martin*’s holding applies to civil citations where “the civil and criminal punishments are closely intertwined.”

At its core, the question addressed in *Grants Pass* was whether “one specific provision of the Constitution—the Cruel and Unusual Punishments Clause of the Eighth Amendment—prohibits the enforcement of public-camping laws.” The Supreme Court said no.

The Court explained that the Eighth Amendment’s Cruel and Unusual Punishments Clause was adopted to “ensure that the new Nation would never resort” to formerly tolerated punishments considered to be “‘cruel’ because they were calculated to ‘superad[d] terror, pain, or disgrace’ and considered ‘unusual’ because by the time of the Amendment’s adoption, they have ‘long fallen out of use.’” The Court added that the Eighth Amendment is focused on “the method or kind punishment” that a “government entity may impose for the violation of criminal statutes”—not “whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense.”

The Court observed that *Grants Pass*’s civil-then-criminal punishment framework was not “cruel and unusual” because the city imposed limited civil fines for first-time offenders, non-criminal stay away orders from public parks for repeat offenders, and a maximum sentence of 30 days in jail for those who violated the orders. The Court reasoned that this scheme of fines and jail time is a common practice among municipalities nationwide, who impose “similar punishments for similar offenses.”

The Court also rejected the Ninth Circuit’s rationale in *Martin* and *Johnson* that public camping ordinances (like *Grants Pass*’s) violate the Eighth Amendment by criminalizing an individual’s “status” as a homeless person. The Court observed that the camping laws at issue were not “status” crimes because they criminalized conduct (i.e., camping in public) and violations could occur regardless of whether the “charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building.”

In sum, the Supreme Court observed that the “Eighth Amendment serves many important functions, but does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.”

Past Council Actions

Meeting Date	Description
<u>September 10, 2024</u>	Councilmember Deto requested, and Mayor Pro Tem Seamann and Mayor Francois supported, a future agenda item regarding the City’s current regulations on public camping and possible regulatory options in light of the Grants Pass decision.
<u>October 8, 2024</u>	City Council gave direction to bring back a comprehensive Hermosa Beach Municipal Code amendment to regulate camping in public places in light of the recent Grants Pass decision.
<u>February 25, 2025</u>	The City Council introduced on first reading and waived full reading of the ordinance and directed certain changes regarding the violation section.

Discussion:

The Supreme Court’s *Grants Pass* decision overruled the Ninth Circuit’s decisions in *Martin* and *Johnson*. Consequently, cities within the Ninth Circuit’s jurisdiction (which includes all of California) are now free to enact and enforce laws regulating public camping and to address possible other causes and conditions of homelessness in their respective jurisdictions. As such, the proposed ordinance repeals the pertinent language in HBMC sections 12.20.240 and 12.28.010 dealing with camping and proposes a new dedicated Chapter in the HBMC dealing with camping – Chapter 12.40.

As proposed, Chapter 12.40 prohibits camping (defined below) City-wide in prohibited public places (also defined in the ordinance) and includes a prohibition on using a vehicle for human habitation in prohibited public places. Further, this Chapter prohibits the starting or using of a fire in prohibited public places and prohibits the camping, sleeping, lying or storage of personal property in a way that obstructs public access or within 20 feet of any entrance or exit to certain buildings. Finally, violations of this Chapter are subject to the City’s administrative citation process.

Camp is defined as:

“Camp” means to use property for living accommodation purposes or to use a vehicle for human habitation. A person shall be considered to be using property for living accommodation purposes if the person admits they are camping; the person is using a camp facility or camping paraphernalia between the hours of 10:00 p.m. and 6:00 a.m. to live outdoors or remain outdoors overnight; or, based on the totality of the circumstances, it is established that a person is using the property to live, dwell or reside, which is exemplified by the person sleeping or preparing to sleep outdoors; the person having with them damaged recreational equipment that

cannot be used for its intended purpose; the person having with them camp stoves, pots, pans, or other cooking equipment in an area that is not designated for cooking; the person having with them a sleeping bag, sleeping pad, blanket, pillow, bedroll or other similar bedding; the person having with them trash, recyclables, rubbish, or other garbage; the person having with them human waste, animal waste or medical waste that is stored in buckets, bottles or similar containers; and/or the person bathing or grooming themselves outside of facilities designated for these purposes. A person shall be considered to be using a vehicle for human habitation if: the person admits they are using the vehicle to camp; or, based on the totality of the circumstances, it is established that a person is using the vehicle to live, dwell or reside, which is exemplified by the person continuously remaining inside the vehicle at the same location for three hours or more; the person sleeping in the vehicle; the inability of a person outside the vehicle to view through two or more windows because the view is limited or blocked; the inability to use seating in the vehicle because a large volume of personal belongings, trash, rubbish, or garbage is stored in the vehicle; the person preparing or cooking meals inside or on the vehicle; the person bathing or grooming inside the vehicle; the storage of items inside or on a vehicle that are not associated with ordinary use of the vehicle such as a sleeping bag, bedroll, blanket, sheet, pillow, kitchen utensil, cookware, cooking equipment or furniture; the use of buckets, bottles or similar containers to hold bodily fluids; and/or having furniture set up in or around the vehicle, such as chairs, tables, umbrellas or portable cooking equipment. This list of circumstances is not exhaustive and the totality of the circumstances shall govern.”

Practically, while the *Grants Pass* decision and the proposed Chapter 12.40 are steps in the right direction in terms of local control, staff must note that these will not be a panacea for this issue in the City. While some may be discouraged by any local regulations, others in this subset of the population that may violate the proposed Chapter 12.40 may be undeterred by the threat, or issuance, of an administrative citation.

Formal enforcement processes (*i.e.*, administrative citation/criminal charges, etc.) alone will oftentimes not be enough when dealing with this subset of the population for a variety of reasons and will divert limited police and CSO resources away from other pressing issues. Enforcement will be an ongoing challenge and any criminal penalties are subject to review and analysis by the pertinent prosecuting authorities. Thus, while this may be one tool the City may use to address this issue in the City, the City Council and the public should understand that this will likely continue to be an issue in the City.

The City will continue to take a “care first” approach seeking to provide mental health, housing services, and other services aimed at addressing the underlying causes of homelessness. City staff will continue to pursue multiple avenues and collaborative efforts with our governmental and non-profit partners to address this complex challenge including: HB Cares, Mobile Mental Health Team; Harbor Interfaith housing outreach

services through the Beach Cities Partnership; Los Angeles County Department of Mental Health, MET Team deployment; the Housing Initiative Court and CitiNet Homeless Survey with Redondo Beach.

As directed by the City Council at its February 25, 2025 meeting, the violation section of the newly proposed Chapter 12.40 was modified to include provisions that allow the City Manager to dismiss any administrative citations upon acceptance of services or completion of a diversion program - to the satisfaction of the City Manager. Further, violations may be subject to misdemeanor prosecution.

Environmental Review:

The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) of CEQA in that there is no potential for this ordinance to cause a significant effect on the environment. Further, it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment. No exceptions to the exemption apply.

General Plan Consistency:

This report and associated recommendation have been evaluated for their consistency with the City's General Plan. Relevant Policies are listed below:

Governance Element

Goal 1. A high degree of transparency and integrity in the decision-making process.

Policy:

1.4 Consensus oriented. Strive to utilize a consensus-oriented decision-making process.

Goal 2 The community is active and engaged in decision-making processes.

Policy:

2.6 Responsive to community needs. Continue to be responsive to community inquiries, providing public information and recording feedback from community interactions.

Land Use Element

Goal 2 Neighborhoods provide for diverse needs of residents of all ages and abilities, and are organized to support healthy and active lifestyles.

Policy:

2.6 Neighborhood preservation. Preserve and enhance the quality of residential neighborhoods by avoiding or abating the intrusion of disruptive, nonconforming buildings and uses.

Fiscal Impact:

There is no fiscal impact associated with the recommended actions.

Attachment:

Ordinance No. ORD-25-1486

Respectfully Submitted by: Patrick Donegan, City Attorney

Concur: Myra Maravilla, City Clerk

Noted for Fiscal Impact: Brandon Walker, Administrative Services Director

Legal Review: Patrick Donegan, City Attorney

Reviewed by: Angela Crespi, Deputy City Manager

Approved: Suja Lowenthal, City Manager