



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Steve McClary, Interim City Manager
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Date prepared: August 20, 2021

Meeting date: August 23, 2021

Subject: Resolution Declaring the Existence of a Local Emergency and Establishing a Program for Reducing the Risk of Fires Associated with Individuals Living Unhoused and Otherwise Engaged in Unpermitted and Unregulated Camping

RECOMMENDED ACTION: It is recommended that the City Council: 1) Adopt Resolution No. 21-49 Declaring the Existence of a Local Emergency and Establishing a Program for Reducing the Risk of Fires Associated with Individuals Living Unhoused and Otherwise Engaged in Unpermitted and Unregulated Camping; and 2) Discuss and consider the proposed Camping Ordinance and provide direction to City staff.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: The City of Malibu is designated by CAL FIRE as a Very High Fire Hazard Severity Zone (VHFHSZ). Malibu bears this designation based on vegetation, its steeply sloping topography and its fire history, among other factors. Currently, factors such as live fuel moisture and extreme drought conditions pose a dangerous risk to the City, its residents, and its unhoused population.

Most vegetation fires in the Santa Monica Mountains are caused by human activity, including sparks from power lines, car accidents, weed whackers, arson, and campfires. The City and other agencies are actively working to reduce fire ignition from all causes, minimize the hazard, and prepare for response. The City's current efforts include home ignition zone assessments, public education on fire preparedness and the safe use of weed whackers, a hazard tree removal program, neighborhood chipper events to further

encourage brush clearance, and a multi-agency exercise with partner agencies to improve response coordination.

In order to further protect the health and safety of the community, City staff has worked with Mayor Pro Tem Silverstein and Councilmember Pierson to develop a two-fold approach to reduce the risk of fires in what is predicted to be an exceptionally dangerous fire season.

The Emergency Declaration

Since the beginning of 2021, Malibu has experienced seventeen fires attributed to unhoused individuals living in the City's hillsides and parks. Fortunately, these fires were identified quickly, the winds were calm, and the Los Angeles County Fire Department was able to extinguish them without loss of life and with only minimal loss of property.

While many individuals living unhoused do so in urban centers, a growing number have migrated to more remote, mountainous regions, as well as coastal communities, such as Malibu. As more individuals live unhoused in areas designated as VHFHSZ, the risk of vegetation fires started by warming, cooking fires, and other flammable materials increases, especially in the fall when the nights are cooler and Santa Ana winds may be present.

Unhoused individuals living in VHFHSZ are also at significant risk of loss of life due to being trapped by wildfires since they are not likely to receive traditional emergency alerts sent through cell phones. In addition, individuals who are attempting to leave Malibu during an emergency wildfire evacuation could be trapped by fires that start from the ember cast that precedes the fire front in a wind driven fire. This situation also increases the risk that emergency responders may have to divert resources from fighting the fire to assist these individuals and may also pose difficulties in identifying and providing transportation for unhoused individuals who are in an area that is under an Evacuation Order.

CAL FIRE identifies areas based on the severity of fire hazard that is expected to prevail there. These areas, or "zones," are based on factors such as fuel, slope, and fire weather. There are three zones, based on increasing fire hazard: medium, high and very high. The entire City of Malibu is within a VHFHSZ. Therefore, a vegetation fire in Malibu at any time of the year poses an extreme danger, and a wind-driven fire during "fire season" poses an extreme peril to life and property.

Local fire risk conditions in 2021 have hit historic levels. Live fuel moisture (LFM) is a key indicator of fire risk and an LFM of 60% or lower is considered critical. In the Santa Monica Mountains, the LFM is currently at 57%, far dryer than in August 2020 when it stood at 70% which is the historical average for this time of year. As soon as next

month, this historic low LFM will be combined with Santa Ana wind events, which typically occur between September and January. A fire that starts during this time can spread very quickly and pose extreme peril to the safety of persons and property within Malibu.

With the potential for the most devastating fire season on record, it is critical that the City move with urgency to reduce our risk of fire to protect our community. California Government Code Section 8630 empowers the City Council to proclaim the existence of a Local Emergency when there is extreme peril to the safety of persons and property within the territorial limits of the City. Therefore, it is recommended that the City Council declare a Local Emergency aimed at reducing the risk of fires associated with individuals who are living unhoused.

A draft resolution is attached for the Council's consideration. The resolution declares the existence of an emergency and based thereon, prohibits homeless encampments in areas designated as a VHFHSZ in Malibu. Additionally, the resolution directs:

- City Staff to act in collaboration with the MOT, LASD and LASD-HOST to provide appropriate notification of the prohibition to those PLU residing in encampments;
- City Staff to act in collaboration with the MOT, LASD and LASD-HOST to identify homeless encampments within areas designated a VHFHSZ, provide outreach, and offer available resources; and
- City to act in collaboration with the MOT, LASD and LASD-HOST, to ensure that the VHFHSZ remains free of homeless encampments while also ensuring these efforts do not criminalize PLU.

Draft Camping Ordinance

Section 9.08.090 of the Malibu Municipal Code ("MMC") prohibits camping, lodging or sleeping overnight in any public park, public beach or public street.

In 2019, the United States Court of Appeals, Ninth Circuit, issued its decision in *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, which held in part that "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" (*Martin*, 920 F.3d at 616). *Martin's* holding, however, was narrow and did not "dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place." (*Martin*, at 617). The *Martin* court explained that "an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible," as well as "an ordinance barring the obstruction of public rights of way or the erection of certain structures." (*Martin*, at fn.8).

This proposed ordinance is primarily structured by identifying locations in the City where camping is prohibited, including any public park, public beach or public street, any undeveloped property on which camping is prohibited, and on any land designated by the Fire Chief or the City Manager as a fire risk area. Consistent with *Martin*, camping in these locations will not be criminalized with respect to individuals who do not have access to adequate temporary shelter based solely upon the fact that they are sitting, lying, or sleeping on public property.

As proposed, however, the ordinance identifies certain areas where camping is strictly prohibited. Those areas include property that is (i) within any area that the City Manager, Public Safety Manager or City Council may determine from time-to-time to constitute an extreme fire danger (which may include any area designated as a VHFHSZ by CAL FIRE), (ii) within 25 feet from the public entrance to any place of business (iii) within 200 feet of a residence, and (iv) within 1,500 feet of a day care center or public or private school or college within the city limits of Malibu.

This proposed ordinance also prohibits certain camping-related activities, including starting, building or use a fire, discharging wastewater and/or disposing of trash or garbage in any manner not expressly permitted by law, and using or erecting a camping facility or camping paraphernalia. Camping facility includes a tent, hut, or other temporary shelter and “camping paraphernalia” includes tarpaulins, cots, beds, hammocks, unpermitted cooking or heating equipment.

NEXT STEPS

Except in certain areas where public camping is prohibited under any circumstances, the Council may wish to consider an enforcement policy such that the MMC’s camping prohibitions are enforced after providing or confirming that persons violating those prohibitions have available: (1) transportation to and housing provided by friends, family, charitable, or other providers, (2) provide access to a form of temporary shelter by voucher or other method, and/or (3) paid access to a publicly owned campground. This policy is consistent with *Martin* as it ensures that the City does not criminalize sitting, lying or sleeping in public when a person has no access to temporary shelter.

The Council should also direct staff to confirm that the distance and locational restrictions contained in the proposed ordinance leaves an adequate portion of the City where a person lacking access to adequate shelter will not be subject to criminal penalties for the act of lying, sitting, or sleeping in the City of Malibu.

Finally, the Council should direct City staff to work with the Los Angeles County Sheriff to confirm that the proposed ordinance adequately protects the public’s health, safety, and welfare without criminalizing the act of sitting, lying, or sleeping in public.

Upon conclusion of that work, City staff should bring the final ordinance back to the City Council for review and adoption.

ATTACHMENTS:

- A. Resolution No. 21-49
- B. Ordinance No. 492

RESOLUTION NO. 21-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU
DECLARING THE EXISTENCE OF A LOCAL EMERGENCY AND
ESTABLISHING A PROGRAM FOR REDUCING THE RISK OF FIRES
ASSOCIATED WITH INDIVIDUALS LIVING UNHOUSED AND OTHERWISE
ENGAGED IN UNPERMITTED AND UNREGULATED CAMPING

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

- A. Wildfires are a frequent natural and man-made disaster in California, causing significant harm and loss to individuals, communities, wildlife. The frequency, duration and size of wildfires have significantly increased over the past several decades with six of the seven largest fires in California's history occurring in the last 13 months. Malibu is among the areas devastated by wildfire in just the past few years – losing hundreds of homes and acres of vegetation, and suffering hundreds of millions of dollars in damages in the Woolsey Fire which also took three lives.
- B. Researchers at UC Irvine reported that the State's burn season has grown longer and longer over the last 20 years, now beginning in May, rather than June, with the peak shifting from August to July. Los Angeles County's (County) unusually extreme heat, coupled with bone-dry terrain, has created ideal conditions for more rapid spread when fires occur.
- C. A vegetation fire in Malibu at any time of the year poses a danger to life and property. A vegetation fire during a Santa Ana wind event poses extreme peril to the safety of persons and property within Malibu. Historically, the most devastating wildfires in Malibu have occurred between the months of September through January when the wildland and chaparral are at their driest and the Santa Ana winds are most prevalent – with the Woolsey Fire being the latest and most severe wildfire in Malibu.
- D. While most of California is subject to some degree of fire risk, specific features make some areas particularly hazardous. State law requires the California Department of Forestry and Fire Protection ("CAL FIRE") to identify areas based on the severity of fire hazard that is expected to prevail there. These areas, or "zones," are based on factors such as fuel, slope, and fire weather.
- E. There are three zones based on increasing fire hazard: medium, high, and very high. As we go through the 2021 fire season, we must be diligent in reducing the risk of fire, particularly in areas with the highest hazard, which are designated Very High Fire Hazard Severity Zones ("VHFHSZ").
- F. Considering a host of factors, including historical fire patterns, proximity to wildland and parkland, extensive chaparral, and severe drought, CAL FIRE has designated the entirety of the City of Malibu a VHFHSZ.

- G. The County currently has the largest population of individuals living unhoused in the nation. While many individuals living unhoused do so in urban centers, a growing number have migrated to more remote, mountainous regions, as well as coastal communities, such as Malibu. As more individuals elect to live unhoused within high fire zones, the risk of fires starting and causing harm and loss of life has also increased.
- H. Unhoused individuals living in the VHFHSZ are at significant risk of loss of life due to being trapped by wildfires since they are not likely to receive traditional emergency alerts sent through cell phones. In addition, individuals who are attempting to leave the mountainous region during a wildfire could be trapped by fires that start from the ember cast that precedes the fire front in a wind driven fire. This situation also increases the risk that emergency responders may have to divert resources from fighting the fire to assist these individuals.
- I. A 2018 Strategic Plan (“Plan”) developed by Malibu identified the City’s efforts to address this situation on many fronts. For example, the City of Malibu has explored and continues to explore ways to participate in a broad effort to address the root causes of homelessness.
- J. Among other things, the City of Malibu’s Plan goals include connecting individuals with services and temporary and permanent housing solutions and preventing and mitigating the health and safety impacts of homelessness on individuals and the community.
- K. To achieve these ends, the City of Malibu has worked closely with a “Homelessness Working Group” comprised of interested members of the public and outreach workers from The People Concern, a social services agency in the West Los Angeles area, dedicated to engaging the local homeless population.
- L. Since 2018, the City of Malibu’s outreach team (the “MOT”) has helped 136 individuals move into either temporary (27) or permanent (28) housing or reconnect with their families (81). The City of Malibu also partners with the Los Angeles County Sheriff’s Department (“LASD”) and its Homeless Outreach Services Team (“HOST”) to clear and clean the sites of encampments of people living unhoused (“PLU”) according to established protocols (i.e. PLU are given advanced warning of any scheduled clean-up and offered access to outreach services).
- M. Clean-up efforts have enabled the City of Malibu to (1) connect PLU with services and housing; (2) help prevent wildfires caused by fire and heating devices used for warming and cooking; and (3) remove human waste and other unsanitary conditions found in public parks, which create a health hazard for camp occupants and park visitors and impede the public’s use and enjoyment of the parks.

- N. Despite Malibu’s efforts described above, Malibu continues to witness a significant number of PLU and otherwise engaged in unpermitted and unregulated camping in areas designated as VHFHSZ.
- O. PLU may be reliant on fires for everyday activities, including cooking food and keeping warm. These activities also increase the risk of nearby brush catching fire and rapidly spreading. PLU in high-fire zones may miss emergency notifications and may experience challenges in safely evacuating. Additionally, efforts to notify or evacuate PLU in remote locations can cause undue harm to outreach workers and emergency responders.
- P. In just the past year, Malibu has experienced seventeen fires attributed to PLU in area designated as VHFHSZ. In prior years, Malibu has experienced multiple other vegetation fires linked to PLU in area designated as VHFHSZ. Fortunately, those fires have been identified quickly, the winds were calm, and Los Angeles County Fire Department was able to extinguish these fires without loss of life and with only minimal loss of property– albeit not without injuries to some fire fighters. With less fortunate conditions, any one of those fires could have grown into the next Woolsey Fire (or worse).
- Q. Despite a significant increase in fire prevention efforts, there are still areas designated as VHFHSZ where, because of location, access, terrain, and fuels, the risk of a fire starting and rapidly spreading remains incredibly high. As climate change extends and exacerbates our local fire season, particular areas of Malibu pose too much risk of harm or loss of life for PLU, residents, outreach teams, and first responders, to allow PLU to remain in those areas.
- R. Local fire risk conditions in 2021 have hit historic levels. Live fuel moisture (LFM) is a key indicator of fire risk and an LFM of 60% or lower is considered critical. In the Santa Monica Mountains, the LFM is currently at 57%, far drier than in August 2020 when it stood at 70% which is the historical average for this time of year.
- S. As we enter what may be the most devastating fire season on record, it is critical that we move with urgency to reduce the risk of occurrence and spread.
- T. For these reasons, PLU in areas designated as VHFHSZ pose a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to life, health, property and/or essential services.
- U. California Government Code Section 8630 empowers the City Council to proclaim the existence of a Local Emergency when there is extreme peril to the safety of persons and property within the territorial limits of the City. Additionally, California Government Code Section 8634 empowers the City Council to promulgate orders and regulations necessary to provide for the protection of life and property during the time of a Local Emergency. These statutes codify the constitutional “police powers” of local governments to

adopt local legislation designed to protect the health, safety, and welfare of the community.

- V. The extreme peril to the safety of persons and property within Malibu associated with PLU in areas designated as a VHFHSZ outweighs any arguable right that an individual may have to live unhoused or to camp in such areas. To mitigate the risk of fires, Malibu should prohibit PLU in areas designated VHFHSZ and which pose an extreme risk of fire danger. All necessary efforts to connect PLU to resources should occur and should be led by the best practices for addressing PLU such that no individual is criminalized simply for not having a home.

SECTION 2. It is hereby proclaimed that:

1. The potential for a wildfire in Malibu currently poses extreme peril to persons and property in Malibu. As such, a local emergency now exists throughout the City of Malibu, which will remain in effect until the extreme danger of wildfire subsides;
2. To prevent the occurrences of fire and loss of life and property, homeless encampments are prohibited in areas designated as a VHFHSZ in Malibu;
3. City Staff is directed to act in collaboration with the MOT, LASD and LASD-HOST to provide appropriate notification of the prohibition to those PLU residing in encampments;
4. City Staff is directed to act in collaboration with the MOT, LASD and LASD-HOST to identify homeless encampments within areas designated a VHFHSZ, provide outreach, and offer available resources. Homeless encampments offered outreach should be prioritized based on risk level associated with location, access, and terrain, and fuels;
5. City Staff is directed to act in collaboration with the MOT, LASD and LASD-HOST, to ensure that the VHFHSZ remains free of homeless encampments, while also ensuring these efforts do not criminalize PLU;
6. The City is directed to request that the County expand its August 10, 2021 Motion related to reducing risk of fires in VHFHSZ to all of Los Angeles County;
7. City Staff is directed to act in collaboration with the MOT, LASD and LASD-HOST, to provide an initial report back after 30 days on progress relocating PLU in homeless encampments, and an analysis of resources needed to sustain this effort and ongoing progress reports every 60 days thereafter; and

8. City Staff is directed to continue to monitor and report back quarterly on fires that have been linked to PLU in Malibu and to develop appropriate prevention strategies for areas that have seen multiple incidents.

SECTION 3. The local emergency shall be deemed to continue and exist until its termination is proclaimed by the City Council. As required by law, the City Council shall review the need to continue the state of emergency every 60 days until this resolution is terminated.

SECTION 4. This resolution and the actions taken and/or proposed herein are not a project pursuant to the California Environmental Quality Act (CEQA) since they are activities that are excluded from the definition of a project by section 21065 of the California Public Resources Code and section 15378(b) of the State CEQA Guidelines. The proposed actions are organizational or administrative activities of government which will not result in direct or indirect physical changes in the environment. In the alternative, find that the actions are exempt from CEQA as specific actions necessary to prevent or mitigate an emergency pursuant to section 21080(b)(4) and section 15269(c) of the State CEQA Guidelines.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 23rd day of August 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

This proclamation has been issued in accordance with applicable law, is in effect and carries the force of law until October 25, 2021, on which date it expires unless the declaration of local emergency is extended by the City Council.

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

ORDINANCE NO. 492

AN ORDINANCE OF THE CITY OF MALIBU AMENDING SECTIONS 9.08.030 OF THE MALIBU MUNICIPAL CODE (“SITTING OR LYING ON PUBLIC WAYS”) AND 9.08.090 OF THE MALIBU MUNICIPAL CODE (“CAMPING, LODGING, SLEEPING OVERNIGHT ON PUBLIC PROPERTY”); ENACTING AMENDED AND SUPPLEMENTAL CAMPING REGULATIONS AS CHAPTER 8.36 OF TITLE 8 OF THE CODE; AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Findings.

1. The conditions of homelessness remain a dynamic and evolving issue within Malibu and the surrounding region, the County of Los Angeles, the State of California, and throughout the entire country and other countries, requiring coordinated efforts at all levels of government as well as non-profit and private sector partners.
2. According to a March 2020 statement by the United Nations, “1.6 billion people worldwide live in inadequate housing conditions, with about 15 million forcefully evicted every year, according to UN-Habitat, which has noted an alarming rise in homelessness in the last 10 years.” Within the United States, the U.S. Department of Housing and Urban Development has reported that “580,466 people experienced homelessness in the United States on a single night in 2020.” According to the United States Interagency Council on Homelessness, California had an estimated 161,548 individuals experiencing homelessness in 2020. In L.A. County, the Los Angeles Homeless Services Authority reported that 66,436 people experienced homelessness in L.A. County in 2020 (of which 41,290 were living in the City of Los Angeles), which represented a 12.7% increase from 2019.
3. The 2018 Malibu Homelessness Strategic Plan (“Plan”) also reported a substantial increase in the number of persons living unhoused in Malibu since 2016 and identified City efforts to address this situation on many fronts. Malibu also continues to explore ways to participate in a broad effort to address the root causes of homelessness.
4. Among other things, Plan goals include connecting individuals with services and temporary and permanent housing solutions and preventing and mitigating the health and safety impacts of homelessness on individuals and the community.
5. To achieve these ends, the City has worked closely with a Homelessness Working Group comprised of interested members of the public and with outreach workers from The People Concern, a social services agency in the West Los Angeles area, dedicated to engaging the local homeless population.
6. Since 2018, the Malibu outreach team has helped 136 unhoused individuals to move into either temporary (27) or permanent (28) housing or reconnect with their families (81).

7. The City regularly removes and cleans encampment sites. The City also partners with the Sheriff's Department and its Homeless Outreach Services Team ("HOST") to clear and clean the sites of encampments of unhoused individuals according to established protocols (i.e. unhoused individuals are given advanced warning of any scheduled clean-up and offered access to outreach services).
8. Clean-up efforts have enabled the City to (1) connect unhoused individuals with services and housing; (2) help prevent wildfires caused by fire and heating devices used for warming and cooking; and (3) remove human waste and other unsanitary conditions found on private property and in public parks, which create a health hazard for camp occupants and park visitors and impede the public's use and enjoyment of the parks.
9. In addition to the foregoing efforts, Sheriff's deputies historically cited individuals in violation of Section 9.08.090 of the Malibu Municipal Code ("MMC"), prohibiting camping or sleeping in any public park, beach, or street, including vehicles parked on public streets, located in the City.
10. In September 2018, the United States Court of Appeals for the Ninth Circuit decided *Martin v. City of Boise*, which held that "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."
11. Stressing the narrow nature of its decision, the *Martin* decision includes the following disclaimer:

Our holding is a narrow one. '[W]e in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.' . . . We hold only that 'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public.' . . . That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.

12. Additionally, the *Martin* states as follows:

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. . . . So, too, might an

ordinance barring the obstruction of public rights of way or the erection of certain structures. . . .

13. The City seeks to enforce restrictions on camping in Malibu, as revised by this Ordinance, consistent with the *Martin* decision.
14. To this end, until resolved otherwise by the City Council, and in the absence of a Local Emergency, it shall hereafter be City policy to refrain from enforcing certain aspects of Section 9.08.090 with respect to individuals who do not have “access to adequate temporary shelter” (as defined in the *Martin* decision).
15. In January 2021, the Homelessness Working Group reassessed the City’s Strategic Plan according to current conditions and efforts; and based on lessons learned from three years of implementation, the Group recommended that the City prioritize the public health and safety concerns posed by individuals living unhoused in Malibu.
16. The City’s Public Safety Department oversees the Working Group, and the Malibu Public Safety Manager affirms reported risks associated with unregulated encampments of unhoused individuals, including risks to fire safety, public sanitation and water quality, and the public safety generally (particularly as relates to traffic fatalities).
17. Local climatic, geological, or topographical conditions relating to the City’s location in a Very High Fire Hazard Severity Zone (a “VHFHSZ”), as designated by CAL FIRE, increase the risk of wildfire from unpermitted heat sources and use or collection of flammable materials, and recent fires originating in local encampments of unhoused individuals, including encampments on vacant or undeveloped private property, have both necessitated emergency evacuation and clean-up efforts and threatened the health, safety and welfare of all Malibu residents (and residents of adjacent communities).
18. Encampments of unhoused individuals concentrated near the Pacific Coast Highway increase the risk of traffic related fatalities, as individuals have been struck by oncoming vehicles on the roadway.
19. In addition to seeking to ensure that the City’s camping ordinance does not run afoul of any prohibition in the *Martin* decision, the City further seeks to revise its camping ordinance to acknowledge the public health and safety concerns animating the present challenges posed by unhoused individuals and best practices the City has implemented in responding to the same.
20. The City remains committed to partnering with public and private organizations, such as HOST and The People Concern, and to continue providing outreach, counseling, and other services to unhoused individuals living in the City.
24. For the reasons set forth above, the City Council finds that adoption of this Ordinance is necessary to facilitate local efforts to preserve and protect public and private property (including City parks and open waters within the City’s jurisdiction); to contain fire hazards that increase the risk of local wildfires; and to mitigate risks to the health, welfare, and safety

of unhoused individuals in the City and the community at large.

SECTION 2. Chapter 8.36 is hereby added to Title 8 (Health and Safety) of the Malibu Municipal Code to read as follows:

**“Chapter 8.36
Camping**

8.36.010 Definitions.

8.36.020 Prohibited Camping Locations.

8.36.030 Prohibited Camping Activities.

8.36.040 Removal and Recovery of Personal Property.

8.36.050 Exceptions.

8.36.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

“Camp” shall have the same meaning as that term is defined in Section 9.08.090 of the Malibu Municipal Code.

A “Camping Facility” includes, but is not limited to, a tent, hut, or other temporary shelter.

“Camping Paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, hammocks, unpermitted cooking or heating equipment or paraphernalia, or similar equipment.

8.36.020 Prohibited Camping Locations.

Except as otherwise permitted by the City, it is unlawful for any person to camp in the following locations:

- A. Upon or in any public park, public beach or public street;
- B. Upon or in any vacant or undeveloped property on which camping is prohibited;
or
- C. Upon any land designated by the Fire Chief or the City Manager as a fire risk area, including areas in or near a wildland-urban interface and brush areas.

8.36.030 Prohibited Camping Activities.

Except as otherwise permitted by the City, it is unlawful for any person to do any of the following at any location where camping is prohibited:

- A. Start, build or use a fire for the purposes of warming, cooking, or otherwise, except as may be approved by the City Manager or the Fire Chief, consistent with Chapter 8.12 of this Code;
- B. Discharge wastewater and/or dispose of trash or garbage in any manner not expressly permitted by law (such as, for example, a public trash disposal container);
- C. Urinate or defecate, except when using a urinal, toilet, or other facility designated for that purpose (such as a public restroom during the hours in which such restroom is open to the public);
- D. Erect or use a Camping Facility or Use Camping Paraphernalia; or
- E. Engage in any activity that is prohibited by applicable local, county, state or federal law.

8.36.040 Removal and Recovery of Personal Property.

- A. Except as otherwise provided in this Code or by resolution of the City Council, any personal property left unattended at a location where camping is prohibited under Section 8.36.020 shall be considered abandoned and may be removed or impounded by the City or by peace officers in accordance with agency procedures.
- B. Unless the public health and safety necessitates the immediate disposal of property collected under subsection A, such property may be recovered by the owner according to procedures established by the City Manager, or his or her designee, or by the Los Angeles Sheriff's Department.

8.36.050 Exceptions.

- A. Absent exigent circumstances posing an immediate threat to the public health, safety, or welfare, the provisions of Section 8.36.020(A) will not be enforced against individuals based solely upon the fact that they are sitting, lying, or sleeping on public property, when such individuals do not have access to adequate temporary shelter.
- B. Notwithstanding subsection A of this section, no person shall engage in any camping activity on public property if such property is (i) within any area that the City Manager, Public Safety Manager or City Council may determine from time-to-time to constitute an extreme fire danger (which may include any area

designated as a VHFHSZ by CAL FIRE), (ii) within 25 feet from the public entrance to any place of business (iii) within 200 feet of a residence, and (iv) within 1,500 feet of any day care center, public or private elementary, vocational, junior high, high school or college.

- C. Notwithstanding subsection A of this section, no person may obstruct the public right of way as prohibited in Section 9.08.050 of this Code.

SECTION 3. Subsection B of Section 9.08.030 of the Malibu Municipal Code (“Sitting or lying on public ways”) is amended to read as follows:

B. The provisions of this section do not prohibit a person from sitting, lying, or sleeping on public property if:

1. Necessitated by the physical disability of such person;
2. Such person is viewing a legally conducted parade;
3. Such person is seated on a bench lawfully installed for such purpose; or
4. The prohibition against such activity is exempted from enforcement by the provisions of Section 8.36.040 of this Code.

SECTION 4. Section 9.08.090 of the Malibu Municipal Code is amended to add the following paragraph:

Unless this final paragraph of this section is subsequently repealed, no person who does not have access to adequate temporary shelter shall be arrested or subjected to imprisonment solely for sitting, lying, or sleeping on public property if the prohibition against such activity is exempted from enforcement by the provisions of Section 8.36.050 of this Code.

SECTION 5. Severability.

If any section, subsection, sentence, clause, or provision of this Ordinance is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council expressly declares that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date.

Pursuant to California Government Code section 36937, this Ordinance shall take effect thirty (30) days after its passage and adoption.

SECTION 7. Environmental Review.

The City Council finds that adoption of this Ordinance is not subject to the requirements of the California Environmental Quality Act (“CEQA”). Notably, this action will not result in any construction or development or any increase in camping, and it will not result in an increase in the population of unsheltered individuals. To the contrary, the Ordinance will protect the environment by regulating the use of public and private property and reducing the risk of wildfires. As such, there is no possibility that its adoption would adversely affect the environment in any manner considered significant under CEQA. 14 Cal. Code Regs. § 15061(b)(3). The foregoing regulations also qualify for the Class 8 Exemption concerning agency actions taken to assure the maintenance, restoration, enhancement, or protection of the environment. 14 Cal. Code Regs. § 15308. By restricting the domestic use of land that is not suited for such uses, this Ordinance not only reduces the risk of wildfires, but also goes toward protecting local water quality and maintaining sanitary conditions in the City’s public parks.

Based on the foregoing, a Notice of Exemption shall be filed with the Los Angeles County Clerk in accordance with the State CEQA Guidelines.

SECTION 8. Publication and Certification.

The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause a summary thereof to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk

Date: _____

APPROVED AS TO FORM:
THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY’S OFFICE

JOHN COTTI, Interim City Attorney