



Council Agenda Report

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

Prepared by: Kelsey Pettijohn, City Clerk

Approved by: Steve McClary, Interim City Manager

Date prepared: September 15, 2021 Meeting date: September 27, 2021

Subject: Second Reading and Adoption of Ordinance No. 492

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 492 amending sections 9.08.030 (Sitting or lying on public ways) and 9.08.090 (Camping, lodging, sleeping overnight on public property) of the Malibu Municipal Code (MMC), enacting amended and supplemental camping regulation as Chapter 8.36 of Title 8 of the MMC; and finding the same exempt from the provisions of the California Environmental Quality Act.

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: On September 13, 2021, the Council introduced on first reading Ordinance No. 492.

ATTACHMENT: Ordinance No. 492

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.

21. 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 City-owned public park, public beach, public street, or public right-of-way.

- B. Upon or in any vacant or undeveloped private property on which camping is prohibited;
- 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 City-owned 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 City-owned 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 200 feet of a residence, or (iii) within 1,500 feet of any 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
(seal)

Date: _____

APPROVED AS TO FORM:

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

JOHN C. COTTI, Interim City Attorney