



# STAFF REPORT

---

June 26, 2024  
File Number 0680-50

---

## SUBJECT

### CONSIDERATION AND INTRODUCTION OF ORDINANCE REGULATING ENCAMPMENTS ON PUBLIC PROPERTY

## DEPARTMENT

Development Services, City Attorney and Police Departments

## RECOMMENDATION

Request the City Council introduce and adopt Ordinance No. 2024-06 repealing Escondido Municipal Code § 17-8 and enacting Escondido Municipal Code §§ 17-8.1 through 17-8.7 relating to regulations of encampments on public property.

Staff Recommendation: Approval (City Attorney's Office: Michael McGuinness, City Attorney)

Presenter: Michael McGuinness, City Attorney

**ESSENTIAL SERVICE** – Yes, Police Services; Fire/EMS Services; Keep City Clean for Public Health and Safety; Land Use/Development; Clean Water; Sewer; Public Works/Infrastructure; Maintenance of Parks facilities/Open Spaces

**COUNCIL PRIORITY** – Improve Public Safety; Increase Retention and Attraction of People and Businesses to Escondido; Encourage Housing Development

## FISCAL ANALYSIS

The net fiscal impact of the adoption of the Ordinance is currently unknown and dependent on factors such as the costs associated with increased citation and prosecution of violations of the new Ordinance; the costs of implementing the abatement notice, documentation and storage provisions; and the results from changes to homeless behavior creating a more inviting environment for existing and future businesses in Escondido and increased property values, if any.

## PREVIOUS ACTION

The Ad-Hoc Subcommittee on Homelessness ("Subcommittee") recommended the adoption by the full City Council of a Policy Statement on Homelessness ("Policy"). The City Council by majority vote adopted the Policy on February 28, 2024. Further, the Subcommittee unanimously recommends the adoption of proposed Ordinance No. 2024-06.



# CITY of ESCONDIDO

## STAFF REPORT

### BACKGROUND

#### Recent Case Law.

The increased presence of homeless encampments on public property has been difficult to effectively address over the past several years. The reasons for this proliferation over this time period are numerous and complex. At least one aggravating factor discouraging local agencies from directly and firmly responding to the problem is recent court decisions handed down by the United States Court of Appeals for the Ninth Circuit, hamstringing local agencies including *Martin v. City of Boise*, 920 F. 3d 584 (9th Cir. 2019) ("*Martin*") and *Johnson v. City of Grant's Pass*, 72 F.4<sup>th</sup> 868 (9<sup>th</sup> Cir. 2023) (amended opinion and order denying rehearing) ("*Grant's Pass*"). The *Martin* and *Grant's Pass* decisions of the Ninth Circuit, the largest U.S federal court of appeal circuit in the United States having jurisdiction over nine western states and two territories, like all of its cases, govern the City of Escondido and all other cities in California.

The premise of these decisions is that enforcement of local ordinances prohibiting public camping by persons claiming to be, or who are in fact, homeless is that it is punishing the person for the *status* of being homeless in violation of the Eighth Amendment to the United States Constitution and past Supreme Court precedent. The Eighth Amendment, as applied to states and their political subdivisions by the Fourteenth Amendment, provides in relevant part that "cruel and unusual punishments" shall not be "inflicted." The Court has relied on at least two United States Supreme Court cases to find that enforcement of commonplace restrictions on public camping constitutes cruel and unusual punishment because it punishes the status of the individual for being homeless. (*Robinson v. California*, 370 U.S. 660 (1962) (drug addiction is a status) and *Powell v. Texas*, 392 U.S. 514 (1968) (alcoholic punished for being drunk in public).

The *Martin* and *Grant's Pass* decisions created confusion and a level of enforcement paralysis to cities trying to understand what may be permissible in enforcing straightforward laws prohibiting *conduct*, like camping, and not arresting someone based solely on their claimed status which was the reasoning of *Robinson* and *Powell*. The confusion was further exaggerated as *Martin* and *Grant's Pass* required, as a predicate to enforcement of public camping laws, the availability of shelter beds for the individual such that he/she had a place to satisfy the human function of sleeping. While the decisions suggested that municipalities could still enforce reasonable time, place and manner restrictions (e.g. blocking access to a sidewalk), the lack of clarity in the decisions and aggressive and expensive lawsuits that have plagued municipalities has made that enforcement option less attractive and financially risky.

Unfortunately, the United States Supreme Court failed to take the *Martin* case for review when presented the opportunity and the confusion and resulting proliferation of homeless encampments became more pronounced. However, early this year, the Supreme Court accepted the *Grant's Pass* case for review and oral argument on the case was heard in April 2024. As of the date of this Staff Report, a decision has not been delivered but it is expected before the close of the Court's term at the end of June 2024.



# CITY of ESCONDIDO

## STAFF REPORT

### Ad Hoc Subcommittee Review.

Not knowing the outcome of the case, the Subcommittee sought recommendations to provide additional lawful enforcement tools for the Escondido Police Department in enforcing local laws to abate these clear and dangerous public nuisances and combatting the consequences of these encampments including the trash, pollutant discharges into sensitive habitats, and damaged property. The Subcommittee held meetings seeking to understand the current legal guidelines and requirements for encampment abatements as well as learn how and whether other local agencies have enacted enforcement ordinances to be compliant with *Martin* and *Grant's Pass*. The Subcommittee recommends the adoption of the proposed Ordinance to help take control of these encampments using lawful means.

### Proposed Ordinance No. 2024-06.

From the Subcommittee process the City Attorney's Office has drafted the proposed encampment abatement ordinance that conforms to the current law in California and under existing Ninth Circuit precedent. It emphasizes the protection of city assets such as waterways, parks and other public spaces using reasonable time, place and manner restrictions. Additionally, the proposed ordinance establishes specific protocols for the encampment abatement process to ensure proper notice; it identifies the types of items that must be secured for later retrieval and those which may be destroyed; it provides for the level of documentation of items removed or destroyed; and it allows for reasonable retrieval of those items removed from an encampment. Finally, it allows for an expedited abatement process upon certain findings by the City Manager.

Should the law, after the decision in *Grant's Pass*, become more restrictive of local control or allow for greater flexibility, the Ordinance can be revisited to modify and conform to the outcome of that decision.

The Ordinance accomplishes the above-described changes in four principle ways. First, the Ordinance, through its recitals and stated purpose in § 17-8.1, acknowledges both the need for protecting the life, health and safety of all people in the City, including those in encampments on public property, with the critical need to preserve and protect environmentally sensitive lands subject to pollutants, trash, damage and even arson. These factors inform and support the legality and reasonableness under existing law of enacting provisions for encampment clean-ups and abatements even when shelter beds may not be available.

Second, it provides additional and updated definitions for the nature of the encampments and protected city property. See § 17-8.2. For example, it references the nature of the abatement process; the role of the City Manager and his designees in taking an active role in targeting certain encampments based on specific factors; and it defines the habitats such as open space, waterways and park space to clarify which areas the City desires to be better protected.



# CITY *of* ESCONDIDO

## STAFF REPORT

Third, it makes clear that regardless of shelter availability, which was a critical condition precedent to public encampment enforcement under the *Martin* and *Grant's Pass* cases, encampments in or on particular public lands are categorically illegal and may be abated without consideration of shelter availability. See § 17-8.3 (protection of waterways), § 17-8.4 (on any city property where there is created an immediate threat or unreasonable risk of harm to persons, public health and safety and a disruption to vital government services; or within 500 feet of schools, in signed prohibited areas, near transit hubs and park and open spaces where there is a substantial public health and safety risk).

Fourth, in § § 17-8.6 through 17-8.7, the Ordinance establishes a reasonable and lawful process for the 24-hour written notice of clean-up and abatement; documentation of the encampment, including personal property and belongings; and collection, storage, disposal, and retrieval of personal property found in encampments on public property. Further, with specific findings made by the City Manager, including regional public health risk advisements from the County of San Diego or other government authority, or where there is presented a "significant risk of property damage, bodily injury or death," an expedited 3- hour abatement process may be employed to remove the encampment off public property.

A violation of the Ordinance by maintaining an illegal encampment can be prosecuted as a misdemeanor with potential for fines and custody pursuant to the general provisions of the Escondido Municipal Code as well as specifically pursuant to § 17-8.5.

### Conclusion.

There is no clear remedy for the complicated problem of homelessness generally and managing the evidence of such in homeless encampments on public property. The proposed Ordinance is a step towards providing the City Manager, through the police and public works departments primarily, an additional tool to more quickly and formally respond to encampments as they are becoming established on City property and to document, for the City's legal protection, the means employed to abate these areas.

### **ORDINANCES**

- a. Ordinance No. 2024-06