

ORDINANCE NO. 2024-06

AN ORDINANCE REPEALING SECTION 17-8 OF CHAPTER 17, ARTICLE 1, OF THE ESCONDIDO MUNICIPAL CODE AND ADDING NEW SECTIONS 17-8.1 THROUGH 17-8.7 TO CHAPTER 17, ARTICLE 1, RELATING TO REGULATING ENCAMPMENTS ON PUBLIC PROPERTY

WHEREAS, the City of Escondido is committed to protecting the life, health, and safety of its residents and all people within the geographical boundaries of the City; and

WHEREAS, the City Council of the City of Escondido (“City Council”) finds that certain public lands within the City's geographical boundaries pose significant health and safety hazards to people who make shelter or stay overnight in these areas; and

WHEREAS, the City Council finds that some of these public lands are environmentally sensitive and may be significantly damaged by unregulated human activity; and

WHEREAS, the City Council is committed to protecting the rights of individuals who cannot obtain shelter and to treating their personal property with respect and consideration and therefore desires to update the Municipal Code to conform to current federal and state constitutional and statutory law; and

WHEREAS, the City has adopted a Homeless Policy, which outlines the City’s considered approach to dealing compassionately and effectively with the myriad of issues surrounding homelessness; and

WHEREAS, City streets, sidewalks, and parks are intended for safe and sanitary shared use by a diverse community of users including businesses, government, and the general public for gathering, recreating, movement of people, maintenance, and cleaning, and are frequently used by people relying on a variety of mobility devices; and

WHEREAS, the Council finds that certain public lands in the City pose a greater danger to the health and safety of people who may stay in those areas overnight, and to the general public, if used for sheltering, including near parks, schools, shelters, in open space and City waterways; and

WHEREAS, there are significant adverse impacts caused by encampment activity concentrated around shelters provided to individuals and families experiencing homelessness, including predatory behavior and drug dealing, that undermines the community's efforts to provide meaningful assistance and long-term solutions for people seeking reasonable support; and

WHEREAS, people experiencing homelessness on City streets and in City parks have been exposed to illicit drug use, including but not limited to fentanyl, leading to exponential increases in the accidental deaths by overdose among people experiencing homelessness; and

WHEREAS, the sustained presence of people in the City's open space and waterways within the City has created unsafe, unsanitary, unhealthy, and dangerous conditions including water pollution and frequent uncontained fires that threaten people living or using these areas, first responders, and the general public; and

WHEREAS, the Escondido Fire Department has had to respond to several vegetation fires in the City's open space areas which were suspected to have resulted from human activity; and

WHEREAS, the City experiences extended periods of high temperatures with little or no precipitation and strong seasonal dry winds from the east (*i.e.* Santa Ana winds) that can significantly increase the danger and spread of wildfires, adding to the severity of fires when they start; and

WHEREAS, due to the high wildfire risk in the City as well as all of San Diego County, the City deems it to be in the best interests of public safety to address the potential for human-caused fires in areas that

may be remote or unseen for lengthy periods of time allowing for the quick spread of fires imposing significant danger to life and property throughout the City; and

WHEREAS, people sheltering along waterways within the City are at risk of experiencing flooding, vector-related disease and other health issues and these areas often contain sensitive environments at risk of significant damage by unregulated human activity; and

WHEREAS, the City is obligated to protect public health and safety and its natural resources by maintaining clean, safe, and accessible City properties for all residents to enjoy, including parks, open space, and the public right of way; and

WHEREAS, to mitigate risks to the health and safety of its citizens and potential damage to environmentally sensitive lands, the City Council desires to adopt reasonable and objective time, place and manner regulations establishing locations where public camping and the maintenance of an encampment is prohibited, regardless of the availability of shelter, due to the significant health and safety risk to those engaged in that activity, the general public, and the environment; and

WHEREAS, it is the intent of this Ordinance to prohibit camping and maintenance of encampments within the City while encouraging people experiencing homelessness to use available low barrier shelters and access a variety of services available from the City and its partners; and

WHEREAS, when abating any encampment, the City will provide written notice in advance of the clearing that explains when the encampment will be cleaned up and how an individual can reclaim items that are stored during the process; and

WHEREAS, the City will store any personal property that may belong to a person, has apparent utility in its current condition and can be safely retrieved from the site, but will not store property that is

hazardous, practically un-storable, contraband, or listed on the City's current list of common items regularly abandoned during the abatement process.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Escondido, as follows:

SECTION 1. That Section 17-8 of Chapter 17, Article 1, of the Escondido Municipal Code is hereby repealed in its entirety and replaced by Sections 17-8.1 through 17-8.7 to read as follows:

Section 17-8.1 Encampments on Public Property.

Purpose. The City Council of the City of Escondido finds that the City is committed to protecting the life, health, and safety of all people in the City and finds that certain public lands within the geographical boundaries of the City pose significant health and safety hazards to the people who make shelter or stay overnight in these areas. Additionally, the City Council finds that some of these public lands are environmentally sensitive and may be significantly damaged by unregulated human activity. The City 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 Ordinance to set standards for the preservation and protection of human life, health, and safety; to further the preservation and protection of sensitive public lands to prevent destruction of these assets; and to establish a process for the collection, storage, disposal, recycling, or reuse of personal property found in encampments on public property.

Section 17-8.2. Definitions.

For purposes of this Chapter, the following words, terms, and phrases shall be defined as follows:

Abatement means the process of documenting and collecting eligible items for storage, and removing and disposing of, recycling, or reusing of waste at an encampment.

Camp shall have the same meaning as provided for in Section 17-7 and shall not be construed to prohibit camping in public campgrounds under a permit authorized by other provisions of law or ordinance.

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, sleeping bags, hammocks, bedding, camp stoves, cooking equipment, buckets, and similar equipment, mattresses, couches, dressers, or other furniture.

City Manager as used herein shall mean the appointed City Manager for the City of Escondido and all persons designated and authorized by the City Manager to perform the activities required under this Ordinance including but not limited to all law enforcement and Public Works personnel.

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 property owner. Encampment includes any camp paraphernalia and personal property associated with or located in or around the structures or tents.

Open space means any undeveloped public property either primarily in its natural state, including canyons and unimproved waterways, or that is held out by the City or used by the public for passive recreational purposes, conservation, habitat preservation, or that maintains or enhances the conservation of natural or scenic resources.

Park means any public property, whether developed or undeveloped, held out by the City or used by the public for active or passive park and recreation uses, including adjacent buffer lands and natural areas and any adjacent parking lots and perimeter sidewalks. The definition of park includes open space.

Shelter means any facility where individuals or families experiencing homelessness can access beds and other services or an area designated by the City Manager for use by individuals or families experiencing homelessness.

Waterway means all or portions of the Escondido Creek, Kit Carson Creek, their tributaries and headwaters, and any other drainage channel or improved or unimproved watercourses, found on public property, within the boundaries of the City of Escondido.

Section 17-8.3. Protection of Waterways.

It is unlawful for any person to do any of the following:

- (1) Build or erect a structure of any type within or along the banks of any waterway, or using or affixing any object to trees 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, large rocks, or otherwise reconfigure the natural landscape or destroy vegetation, paved roads or paths created by the City in the waters of or along the banks of a waterway,
- (3) Drive, park, or bring any shopping cart or wheeled vehicle along the banks of a waterway, except in places specifically provided and designated for such use,
- (4) Dig into or on the banks of a waterway, or
- (5) Discharge or store waste, including garbage, refuse, or human or animal waste, along the banks or into the waters of a waterway.
- (6) Nothing in this Section 17-8.3 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 Manager or by any law, regulation, permit, order or other directive from a regulatory authority.

Section 17-8.4. Unauthorized Encampments on Public Property.

- (1) It is unlawful for any person to camp or to maintain an encampment in or upon any public property, including in any street, sidewalk, park, open space, waterway, and banks of a waterway, unless specifically authorized by the City Manager.
- (2) It is unlawful for any person to camp or to maintain an encampment where such activity poses:
 - a. An immediate threat or an unreasonable risk of harm to any natural person,
 - b. An immediate threat or an unreasonable risk of harm to public health or safety,
or
 - c. Disruption to vital government services.
- (3) At all times, regardless of the availability of shelter space or beds, it is unlawful for any person to camp or to maintain an encampment in the following locations:
 - a. Within 500 feet of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education provided that signs are posted prohibiting camping that are clearly visible to pedestrians. School for purposes of this provision does not include a vocational or professional institution of higher education, including a community or junior college, college, or university,

- b. Within 500 feet of any shelter provided that signs are posted prohibiting camping that are clearly visible to pedestrians,
- c. In any open space, waterway, or banks of a waterway,
- d. Within any transit hub, on any trolley platform, or along any trolley tracks provided that signs are posted prohibiting camping that are clearly visible to pedestrians, and
- e. In any park or open space where the City Manager determines there is a substantial public health and safety risk and provided that signs are posted prohibiting camping that are clearly visible to pedestrians.

Section 17-8.5. Enforcement.

- 1) Violations of this Article may be prosecuted as misdemeanors subject to the fines and custody provisions in Escondido Municipal Code.
- 2) Violations of Section 17-8.4(2) are enforceable at all times regardless of shelter availability.

17-8.6. Abatement of Encampments, generally.

The City Manager may remove personal property, camp paraphernalia, and all other property, contraband, litter, and waste found at an encampment or at a location where a person is engaged in unlawful camping in compliance with the following procedures:

(1) Written Notice Required Prior to Abatement

- a. A written Notice of Clean-Up will be posted on each tent or structure and in any other distinct areas of the encampment providing notice of the date of clean-up and giving a minimum of 24 hours for persons to remove their personal property.

The written notice shall also include the following statement, which may be updated by the City Manager to provide accurate and relevant information:

You must remove your belongings from the site within 24 hours. You should not leave behind any belongings you want to keep. All belongings left behind will be removed by the City. The City will post an Impound Notice if belongings are stored during the clean-up process.

If you wish to minimize the risk of losing valued belongings, you should keep those belongings on your person at all times, in a storage facility, or in visible, sanitary, and safely accessible bags or bins.

If you think your belongings were stored, you can claim them by following the directions on the Impound Notice after the clean-up is complete. Information about how to claim your belongings is also available on the City's website.

- b. Twenty-four hours after Notice has been posted, the City Manager may conduct the abatement of the site on the date posted on the Notice of Clean-Up. If abatement is delayed or rescheduled, the City Manager may conduct abatement within 48 hours of the posted Notice of Clean-Up without reposting a new Notice of Clean-Up. If abatement is delayed longer, the City Manager shall repost a Notice of Clean-Up with a new date.

(2) The City Manager shall follow these additional procedures when persons are present at an encampment during abatement:

- a. When shelter is available, the City Manager shall provide any person at an encampment with shelter and service information and direct them to remove their belongings from the site. The City Manager shall evaluate reasonable

requests for additional time or assistance to remove items and may accommodate those requests to the extent practicable and consistent with state and federal law.

- b. Any person who returns to an encampment during abatement shall be allowed to remove their personal property from the site in a reasonable time period. Personal property left behind will be deemed abandoned.
- c. Any person arrested for a criminal offense or an outstanding warrant shall not be required to abandon personal property they identify as their own. Unless the person requests the personal property be discarded or entrusted to another, all personal property of apparent value will be taken to the Escondido Police Department for impoundment in accordance with existing policy and procedure. Where the owner of the items cannot be readily identified or discovered, the City Manager shall follow the abatement process in this Division.

(3) Abatement Documentation. The City Manager shall document the abatement process by:

- a. Photographing the site or encampment area before any abatement begins,
- b. If reasonably possible, and subject to health and safety considerations, open backpacks, purses, suitcases, and other small storage containers to determine whether they contain items eligible for storage,
- c. If reasonably possible, document the items contained in bags or suitcases,
- d. Document all items to be stored, and
- e. Document the site after abatement has concluded.

(4) Unclaimed items found in abatement shall be eligible for storage if:

- a. Circumstances indicate that the item belongs to a person,
- b. The item has apparent utility in its current condition and circumstances, and

- c. The item can be safely retrieved from the site.
- (5) An eligible item found during an abatement shall be put into storage, unless it meets one of the following disqualifying conditions:
- a. Hazardous, including items contaminated with human waste, animal waste, or bugs, explosives, weapons, liquids, drug paraphernalia, or mold,
 - b. Likely to become hazardous in storage, including perishables, wet materials that might become moldy, and items covered in mud,
 - c. Practically un-storable, due to large size, weight, or other similar characteristic,
 - d. Contraband or stolen, or
 - e. Is on the City Manager's current list, published on the City's website, of common types of items that, in the experience of City staff, individuals regularly abandon during abatement, and there is no contrary indication as to the specific item.
- (6) The City Manager shall record each eligible item to be stored, including the location it was found and the date of storage. Any stored items shall be kept in storage at least 60 calendar days and then may be disposed of, recycled, or reused.
- (7) After abatement has concluded and when eligible items are collected and will be placed in storage, the City Manager shall post notices at the location of the abatement that includes information how a person can claim stored items. Information about retrieval of stored items shall also be available on the City's website. A person may retrieve stored items based on a description with sufficient specificity to demonstrate ownership.

Section 17-8.7. Expedited Abatement.

- (1) In an expedited abatement, the City Manager shall follow the same abatement and storage procedures in Section 17-8.6, but shall post a Notice of Clean-Up giving a

minimum of three hours for all persons to remove their personal property and may initiate such expedited abatement immediately after the expiration of the three-hour Notice.

(2) The City Manager shall prioritize and expedite the removal of an encampment if:

- a. The City receives direction from County of San Diego or other governmental authority that abatement of the encampment is necessary to preserve public health or safety, including to address known or suspected outbreaks of diseases;
or
- b. The City Manager observes or reasonably suspects the encampment creates a condition that presents a significant risk of property damage, bodily injury or death.

SECTION 2. That the City Council did hold a public hearing at a regularly scheduled and agendized meeting of the City Council of the City of Escondido noticed consistent with state law.

SECTION 3. That upon consideration of the Staff report, draft ordinance, and public comments, the City Council of the City of Escondido did find good cause to adopt the Ordinance.

SECTION 4. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. The City Council authorizes all subsequent action to be taken by City Officials consistent with this Ordinance.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code section 36933, and to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

SECTION 8. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.