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ORDINANCE NO. 2021-09

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**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING PORTIONS
OF ALBANY MUNICIPAL CODE CHAPTER 8-4 RELATED TO CAMPING,
HOURS OF OPERATION FOR CITY-OWNED PROPERTY, AND
FIRE SAFETY, AND FINDING THE ORDINANCE EXEMPT FROM
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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WHEREAS, Albany Municipal Code (“AMC”) sections 8-4 through 8-4.11 provide regulations governing the use of City parks, recreation, open space, waterfront, and Albany Hill areas within the City of Albany (the “City”); and

WHEREAS, subject to limited exceptions, AMC section 8-4.4 currently prohibits camping in any park, recreation, open space, waterfront or Albany Hill area; and

WHEREAS, this Ordinance amends AMC section 8-4.4 to add additional City-owned property to areas listed in the preceding recital where camping is already prohibited; and

WHEREAS, on April 1, 2019, the United States Court of Appeals, Ninth Circuit, issued a 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); and

WHEREAS, the Ninth Circuit qualified its holding in *Martin*, stating that its decision does not mean that cities “... 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...” (*Martin*, 920 F.3d at fn. 8); and

WHEREAS, in acknowledgment of *Martin*’s limitations on the arrest of indigent homeless persons for sitting, lying or sleeping on City property where no alternative shelter is available, this Ordinance amends AMC section 8-4.4 to provide that in circumstances where *Martin* so dictates, section 8-4.4’s public camping prohibitions will not be enforced, except at certain sensitive locations where camping is always prohibited; and

WHEREAS, structures (such as tents) with enclosed coverings can constitute a danger to public safety in part because they prevent law enforcement and other public safety personnel from observing all areas of and activities on the site, including illegal activities inside the enclosed structure (e.g., weapons violations or drug use); and

1 **WHEREAS**, to mitigate the potential public safety risks associated with such
2 structures, this Ordinance amends AMC section 8-4.4 to provide that in circumstances
3 where *Martin* compels the City to allow public camping, assembled camp facilities (i.e.,
4 tents, huts, or other temporary shelters) used for public camping must comply with any
dimensional and/or hours limitations established by the City Council (in a future
ordinance or implementing resolution); and

5 **WHEREAS**, for purposes of adding clarity to the regulations set forth in AMC
6 section 8-4 *et seq.*, this Ordinance amends AMC section 8-4.2 (Definitions) to add
7 definitions for City, camping, camp facilities, and camp paraphernalia; and

8 **WHEREAS**, subsection (c) of AMC section 8-4.3 authorizes the City Council, by
9 resolution or ordinance, to set hours of operation for any City park, recreational or open
space area; and

10 **WHEREAS**, this Ordinance amends subsection (c) of AMC section 8-4.3 to add
11 City-owned property to areas where the City Council may set hours of operation; and

12 **WHEREAS**, the City's climatic, topographical, circulation, seismic, geological,
13 and wildland-urban interface conditions create an increased risk of fires; and

14 **WHEREAS**, the California Department of Forestry and Fire Protection reports an
15 average of 103 wildfires per year are ignited by illegal open fires, and, several fire
16 departments in California have responded to such fires at, or caused by activities at,
unauthorized camping; and

17 **WHEREAS**, subsection (a) of AMC section 8-4.5 prohibits persons from
18 building, maintaining, or lighting any open outdoor fire within any park, recreation, open
19 space, waterfront or Albany Hill area except within those facilities and/or areas provided
and designated for that purpose. This Ordinance adds City-owned property to this
prohibition;

20 **WHEREAS**, except in certain areas where public camping is prohibited under any
21 circumstances, consistent with *Martin*, it shall hereafter be the City's policy to enforce the
22 public camping prohibitions set forth in AMC section 8-4.4 (as revised by this Ordinance)
23 after providing or confirming that persons violating those prohibitions have available: (1)
24 transportation to and housing provided by friends, family, charitable, or other providers,
(2) shelter in the form of hotel vouchers, and/or (3) paid access to a publicly owned
campground; and

25 **WHEREAS**, the conditions of homelessness remain a dynamic and evolving issue
26 within the City and surrounding region requiring coordinated efforts by the City, Alameda
27 County, the State of California, the Federal Government, and non-profit/private sector
28 partners; and

1 **WHEREAS**, the City remains committed to partnering with public and private
2 organizations, such as the Berkeley Food and Housing Project, in order to continue
3 providing outreach, counseling, and other services to individuals in the City experiencing
homelessness; and

4 **WHEREAS**, for the reasons set forth above, the adoption of this Ordinance is
5 necessary for the avoidance of damage to City property, the preservation of public health
6 and safety, and the prevention of greater health, welfare, and safety risks to people in the
City experiencing homelessness and the general public; and

7 **WHEREAS**, any and all other legal prerequisites relating to the adoption of this
8 Ordinance have occurred.

9 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES ORDAIN AS
FOLLOWS:**

10 **SECTION 1:** The recitals above are each incorporated by reference and adopted as
11 findings by the City Council.

12 **SECTION 2:** All amendments to the Albany Municipal Code as provided in this
13 Ordinance are displayed with additions shown in underline and deletions shown in
14 ~~strikethrough~~.

15 **SECTION 3:** The City Council finds that this Ordinance is not subject to the
16 requirements of the California Environmental Quality Act (“CEQA”) for the following
reasons:

- 17 A. This Ordinance is not a “project” within the meaning of Section 15378 of the State
18 CEQA Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) [“An
19 activity is not subject to CEQA if ... [t]he activity is not a project as defined in
20 Section 15378”].) Here, the Ordinance is not a “project” within the meaning of
21 Section 15378 because the Ordinance has no potential “for resulting in a direct
22 physical change in the environment, or a reasonably foreseeable indirect physical
change in the environment,” as further discussed below. (State CEQA Guidelines,
§ 15378.)
- 23 B. In the alternative, and if a project, this Ordinance is exempt under State CEQA
24 Guidelines section 15061(b)(3), the common sense exemption, because it can be
25 seen with certainty that there is no possibility that the activity in question may
have a significant effect on the environment.

26 Notably, this Ordinance will not result in any construction or development. It will not
27 result in increased camping nor will it result in an increase in the population of
28 unsheltered individuals. This Ordinance will protect the environment through its
increased protection of public property (i.e., by adding City-owned property to AMC
section 8-4.4’s prohibitions). This Ordinance will also protect the environment by
reducing the risk of wildfires (i.e., by adding City-owned property to AMC section 8-
4.5’s prohibitions). Thus, this Ordinance has no potential to result in a direct, or

1 reasonably foreseeable indirect, physical change in the environment, and it can be seen
2 with certainty that there is no possibility that the activity in question may have a
3 significant effect on the environment. The City Council, therefore, directs that a Notice
4 of Exemption for this Ordinance be filed with the Alameda County Clerk in accordance
5 with the State CEQA Guidelines.

6 **SECTION 4: CHAPTER 8-4 OF THE ALBANY MUNICIPAL CODE IS HEREBY**
7 **AMENDED TO READ AS FOLLOWS:**

8 **“8-4 CITY-OWNED PROPERTY, PARKS, RECREATION, OPEN**
9 **SPACE, WATERFRONT, AND ALBANY HILL AREAS**

10 **8-4.1 Purpose.**

11 The purpose of this section is to provide regulations for the use of City-owned
12 property, parks, recreation, open space, waterfront and Albany Hill areas within the City
13 of Albany.

14 **8-4.2 Definitions.**

- 15 a. Albany Hill area shall mean all the public areas on Albany Hill, including public
16 property areas abutting and contiguous to Cerrito Creek, and the area known as
17 Creekside Park.
- 18 b. Bicycle shall mean a device upon which any person may ride, propelled
19 exclusively by human power through a system of belts, chains, or gears, and
20 having one or more wheels. Bicycle does not include any authorized public safety
21 bicycle.
- 22 c. Camping means to set up, pitch, occupy, or leave camp facilities or to use camp
23 paraphernalia.
- 24 d. Camp facilities include, but are not limited to, tents, shacks, huts, or other
25 temporary shelters, structures or specialty vehicles (including but not limited to
26 house trailers, camp trailers, camp wagons, and any other mobile or stationary
27 campers) which are used or could be used for overnight camping.
- 28 e. Camp paraphernalia includes, but is not limited to, tarpaulins, cots, beds, sleeping
bags, hammocks, non-City designated cooking facilities, or similar equipment.
- f. City means the City of Albany, California.
- g. Motor vehicle shall include any vehicle that is self-propelled or a device by which
any person or property may be propelled, moved, or drawn upon a street or
highway. Motor vehicle includes but is not limited to a truck, passenger car,
motorcycle, off-road vehicle, "dirt bike," all-terrain vehicle, motorized skateboard,
"Go-ped," motorized scooter, and any similar vehicle. Motor vehicle does not

1 include a self-propelled wheelchair, motorized tricycle, or motorized quadricycle
2 when operated by a person who, by reason of physical disability, is otherwise
3 unable to move about as a pedestrian. Motor vehicle does not include any
authorized maintenance or public safety vehicle.

4 h. Parks, recreation and open space areas shall mean those park and recreation areas
5 commonly known as Memorial Park, Ocean View ~~Middle School~~ Park, Terrace
6 Park, the Dartmouth-Talbot Tot Lot, the Ohlone Greenway, the Key Route Strip,
7 the Pierce Street Park, and all other parks, recreation and open space areas of the
City.

8 i. Sound amplifying equipment shall mean any machine or device for the
9 amplification of the human voice, music, or any other sound. Sound amplifying
10 equipment shall not include a standard automobile radio which cannot be heard
11 outside the vehicle from fifty (50) or more feet away. Sound amplifying
12 equipment shall not include a warning device on an authorized emergency vehicle
or horn or other warning device on any vehicle used only for traffic safety
purposes.

13 j. Waterfront areas shall mean those public areas west of the freeway which lie
14 between Albany's northern and southern borders.

15 **8-4.3 Hours of Operation.**

16 a. Notwithstanding Section 8-4.4, ~~N~~o person shall use, remain in, or enter upon any
17 waterfront or Albany Hill area between 10:00 p.m. and 5:00 a.m., other than duly
18 authorized City employees, persons participating in City sponsored activities or
19 other activities which the City has provided prior written permission to utilize the
waterfront area beyond the closing time. The hours of operation of specific
facilities within any waterfront area may also be set by the Director of the
Recreation and Community Services Department.

20 b. Notwithstanding Section 8-4.4, ~~n~~o person shall use, remain in or enter into
21 Memorial Park between 11:00 p.m. and 5:00 a.m., other than duly authorized City
22 employees, persons participating in City sponsored activities or other activities
23 which the City has provided prior written permission to utilize Memorial Park
24 beyond the closing time. The Director of the Recreation and Community Services
Department is authorized to modify the hours of operation for specific facilities
within Memorial Park.

25 c. The City Council, by resolution or ordinance, may set hours of operation at
26 additional ~~other~~ City-owned properties, including parks, recreational or open
27 space areas.
28

1 **8-4.4 Camping.**

- 2 a. It is unlawful for any No person shall to engage in camping in any City-owned
3 property, including but not limited to park, recreation, open space, waterfront or
4 Albany Hill area. Prohibited camping includes setting up, occupying or leaving
5 tents, shacks, sleeping bags or any other shelters, structures or specialty vehicles
6 (including but not limited to house trailers, camps trailers, camp wagons, and any
other mobile or stationary campers) which are used or could be used for overnight
camping in any park, recreation, open space, waterfront or Albany Hill area.
- 7 b. The restrictions contained within this section shall not apply to programs
8 sponsored or cosponsored by the City.
- 9 c. Absent exigent circumstances related to immediate threats to the public health,
10 safety, or welfare, the provisions of this section will not be enforced against
11 indigent homeless persons sitting, lying, or sleeping on City-owned public
12 property, except where access to said property is limited under Section 8-4.3,
13 when no alternative shelter or publicly provided campsite is available in
14 accordance with the holding of *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d
15 584.
- 16 d. In circumstances in which the provisions of this section will not be enforced
17 pursuant to subsection (c) of this section, camp facilities may be erected with a not
18 to exceed footprint and during hours to be set by the City Council by resolution or
19 ordinance.

20 **8-4.5 Fires.**

- 21 a. No person shall build, maintain or light any open outdoor fire within any park,
22 recreation, open space, waterfront or Albany Hill area except within those
23 facilities and/or areas provided and designated for that purpose. This prohibition
24 shall also apply to any City-owned property. Exceptions to this requirement must
25 be approved by the Albany Fire Chief. No person shall leave a fire unattended on
26 City owned property.
- 27 b. No person shall possess or use a personal cooking appliance such as a gas or
28 propane camp stove, portable barbecue or hibachi or similar device in any
waterfront or Albany Hill area. Exceptions to this requirement must be approved
by the Albany Fire Chief.

* * *

SECTION 5: OTHER SECTIONS OF CHAPTER 8-4.

All other sections of Chapter 8-4 that have not been referenced in this Ordinance shall remain the same.

1 **SECTION 6: SEVERABILITY.**

2 If any provision of this Ordinance or its application to any person or
3 circumstances is held invalid, such invalidity has no effect on the other provisions or
4 applications of the Ordinance that can be given effect without the invalid provision or
5 application, and to this extent, the provisions of this Ordinance are severable. The City
6 Council declares that it would have adopted this Ordinance irrespective of the invalidity
7 of any portion thereof.

8 **SECTION 7: PUBLICATION AND EFFECTIVE DATE.**

9 This Ordinance shall be posted at three public places within the City of Albany
10 and shall become effective thirty days after the date of its posting.

11 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
12 the 7th day of June, 2021, by the following vote:

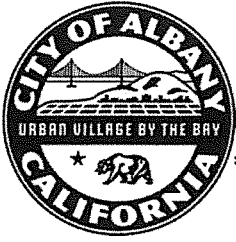
13 AYES: Council Members Jordan, McQuaid, Nason, Tiedemann, and Mayor Gary

14 NOES:

15 ABSENT:

16 ABSTAIN:

17
18 
19 GE'NELL GARY, MBA - MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2021-09

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 7th day of June, 2021, by the following votes:

AYES: Council Members Jordan, McQuaid, Nason, Tiedemann and Mayor Gary

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 8th
day of June, 2021.

Anne Hsu
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.