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RESOLUTION NO. 2021- 63

**A RESOLUTION OF THE ALBANY CITY COUNCIL ESTABLISHING
HOURS AND DIMENSIONAL LIMITATIONS FOR ASSEMBLED CAMP FACILITIES
AND HOURS OF OPERATION FOR CITY-OWNED PROPERTIES**

WHEREAS, on May 17, 2021, the City Council of the City of Albany, California, introduced Ordinance No. 2021-09 (the “Ordinance”) for first reading; and

WHEREAS, the City Council is expected to conduct the second reading and adopt the Ordinance at one of its June 2021 meetings; and

WHEREAS, the Ordinance amends various provisions of Albany Municipal Code (“AMC”) Chapter 8-4 related to camping, hours of operation for City-owned property, and fire safety; and

WHEREAS, subsections (a) and (b) of AMC section 8-4.3 establish hours of operation for waterfront and Albany Hill areas as well as Memorial Park; and

WHEREAS, subsection (c) of AMC section 8-4.3 (as amended by the Ordinance) authorizes the City Council to establish, by resolution or ordinance, hours of operation for additional City-owned properties, including parks, recreational and open space areas; and

WHEREAS, this Resolution establishes hours of operation for such City-owned properties as set forth below; 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

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

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

10 **WHEREAS**, the City parks and other facilities listed herein are within close proximity to
11 residential areas and after hours activities on parks, including camping, can disrupt the peace and
12 enjoyment and security of adjacent residences; and

13 **WHEREAS**, evening and morning events at the Community Center, including paid-for
14 special events demand exclusive access and use of that facility by patrons; and

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

20 **WHEREAS**, this Resolution implements AMC section 8-4.4 by establishing dimensional
21 and hours limitations for said camp facilities; and

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

25 **WHEREAS**, the City remains committed to partnering with public and private
26 organizations, such as the Berkeley Food and Housing Project, in order to continue providing
27 outreach, counseling, and other services to individuals in the City experiencing homelessness; and
28

1 **WHEREAS**, for the reasons set forth above, the adoption of this Resolution is necessary
2 for the avoidance of damage to City property, the preservation of public health and safety, and the
3 prevention of greater health, welfare, and safety risks to people in the City experiencing
4 homelessness and the general public in its use of public property that may be a temporarily
5 occupied emergency shelter by those experiencing homelessness.

6
7 **NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ALBANY,**
8 **CALIFORNIA DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS**
9 **FOLLOWS:**

10 **SECTION 1:** The recitals above are true and correct and are hereby adopted as findings by the
11 City Council.

12 **SECTION 2:** The City Council finds that this Resolution is not subject to the requirements of the
13 California Environmental Quality Act (“CEQA”) for the following reasons:

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

25 Notably, this Resolution will not result in any construction or development. It will not result in
26 increased camping nor will it result in an increase in the population of unsheltered individuals.
27 Rather, the Resolution simply: (1) sets hours of operation for specified City-owned properties and
28

1 (2) establishes dimensional and hours limitations for certain camp facilities that the City is already
2 required (by *Martin*) to allow. For these reasons, the Resolution has no potential to result in a
3 direct, or reasonable foreseeable indirect, physical change in the environment, and it can be seen
4 with certainty that there is no possibility that the activity in question may have a significant effect
5 on the environment.

6 **SECTION 3:** In accordance with subsections (a) – (c) of Albany Municipal Code section 8-4.3,
7 the following City-owned properties are closed to the public during the hours set forth below:
8

9 Waterfront Park: 10:00 p.m. – 5:00 a.m.

10 Memorial Park: 11:00 p.m. – 5:00 a.m.

11 Albany Hill: 10:00 p.m. – 5:00 a.m.

12 Ocean View Park: 11:00 p.m. – 5:00 a.m.

13 Terrace Park: 9:00 p.m. – 7:00 a.m. from April 1 to October 31

14 8:00 p.m. – 7:00 a.m. from November 1 to March 31

15 Pierce Street Park: 9:00 p.m. – 7:00 a.m. from April 1 to October 31

16 8:00 p.m. – 7:00 a.m. from November 1 to March 31

17 Dartmouth Tot Lot: 9:00 p.m. – 7:00 a.m. from April 1 to October 31

18 8:00 p.m. – 7:00 a.m. from November 1 to March 31

19 Albany Community Center: 10:00 p.m. – 5:00 a.m. Sunday through Thursday

20 12:00 a.m. – 5:00 a.m. Fridays and Saturdays

21 **SECTION 4:** Camp facilities erected in accordance with subsections (c) and (d) of Albany
22 Municipal Code section 8-4.4 must comply with all of the following:
23

- 24 1. Camp facilities may only be erected between the hours of 7:00 p.m. and 7:00 a.m., daily.
 - 25 2. Camp facilities may not exceed five (5) feet in height. Height will be measured from the
26 tallest point of any tent, shack, hut, or other temporary shelter to the ground.
 - 27 3. Camp facilities may not exceed nine (9) feet in length or seven (7) feet in width (9' x 7').
- 28

1 **SECTION 5:** Nothing herein shall be interpreted to authorize any activity that is inconsistent with
2 Chapter 8-4 of the Albany Municipal Code (as amended by Ordinance No. 2021-09), including
3 but not limited to camping, erecting camp facilities, or access to City-owned property.
4

5 **SECTION 6:** This Resolution supersedes all prior resolutions to the extent that such resolutions
6 conflict with this Resolution.
7

8 **SECTION 7:** This Resolution shall take effect upon the effective date of Ordinance No. 2021-09.
9


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

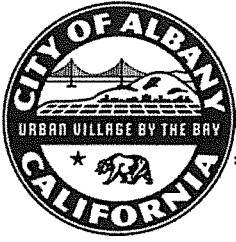
12
13 AYES: Council Members Jordan, McQuaid, Nason, Tiedemann, and Mayor Gary

14 NOES:

15 ABSENT:

16 ABSTAIN:
17

18 
19 _____
20 GE'NELL GARY, MBA - MAYOR
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City of Albany

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RESOLUTION NO. 2021-63

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