City of Gilroy

STAFF REPORT

Agenda Item Title:	**Unhoused Camping Ban Near Schools and Critical Infrastructure**
Meeting Date:	March 20, 2023
From:	Jimmy Forbis, City Administrator
Department:	Administration
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STRATEGIC PLAN GOALS Not Applicable

RECOMMENDATION

Council provide direction.

BACKGROUND

At the July 5, 2022 City Council Regular Meeting, staff presented a report to the Council regarding the challenges and issues relating to the enforcement of no-camping ordinances. In the report, the legal challenges presented by the 2019 *Boise* decision was discussed, which restricted the ability of local agencies to enforce ordinances against camping on public property.

The key issue that was presented is the court decision explaining that a municipality cannot criminalize sitting, sleeping, or lying in public "when no sleeping place is practically available in any shelter." However, there was language that scaled back the breadth, as well as other courts elaborating on the limits, such as:

> 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* [emphasis added]. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the "universal and unavoidable consequences of being human" in the way the ordinance prescribes. (Id. at 1136.)

Current Policy Restated
At the July 5, 2022 meeting, Council authorized the Gilroy Police Department ("GPD") to enforce no-camping ordinances on public property if it offers space at a homeless shelter to individuals beforehand and ensures that the particular shelter that it is offering to connect the individual with could accommodate their needs pursuant to The Americans with Disabilities Act ("ADA"). Additionally, Council authorized City personnel to clean and clear encampments in public parks and other public lands in compliance with a written protocol – GPD Police Policy 411 – that provides a number of safeguards required by the Courts, including outreach and notice to occupants, provision of social services, photographic documentation, safeguarding of occupants' personal property, and the making available of shelter space for displaced occupants.

The City had a meeting on September 12th where the discussions of the Los Angeles ordinance were conducted. The ordinance, which sought to establish a no-camping ban surrounding daycares and parks, was adopted by the City of Los Angeles but had not yet taken force. At the conclusion of this meeting, staff received direction to bring back key points for a potential ordinance that would prohibit unhoused camping in certain locations:

- Within 500 feet of schools, parks, daycares, playgrounds, and other locations where children are expected.
- In areas with critical infrastructure.
- In locations that would restrict access to public safety or public infrastructure locations.

Additionally, research would be needed concerning the possibility of prohibiting camping in or around creeks, as well as establishing a definition for camping that can be used in crafting the policy.

ANALYSIS

Policy for Consideration
Staff is proposing, as a foundation the following policy language for consideration. The specific final language and how it interacts with other portions of Gilroy City Code and other policies will vary, but the policy points would still be the target. Staff is seeking Council direction on the key provisions, and then staff will complete the analysis, then craft the draft ordinance to bring back to Council for introduction.

Draft Key Policy Points
Below are the identified key policy components for Council consideration, using a blending of the direction issued by the City Council augmented by the Los Angeles ordinance on minor parts of the policy that were not a component of the direction given. Staff is asking Council to review these key policy points and provide direction of any changes. Such changes will be incorporated into the draft ordinance for Council introduction at a later meeting. There will also be legal review of the ordinance language which may require further modifications.

No person shall obstruct by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property on a street, sidewalk, or other public right-of-way:

(1) In a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L, No. 101-336, 104 Stat. 328 (1990), as amended from time to time;

(2) Within five hundred (500) feet of any school, daycare facility, park, or playground. This prohibition applies all year, overnight, on any weekends and weekdays, even when such facilities may be generally considered closed.

In consultation with the City Attorney's Office (CAO), the original direction of adding "other locations where children are expected" was not included. The CAO believes that the language is too broad to survive a legal challenge and may result in the final ordinance being struck down if included. Additionally, if it were to be re-added, then some limiting language to the application would help to reduce the risk, such as locations where children are expected to congregate, though it is still at risk of losing a legal challenge.

(3) Within one hundred (100) feet of critical infrastructure or emergency and urgent health and safety resources, including water wells, pump stations, sewer lift stations, water tanks, storm drain inlets and outfalls, police and fire stations, ambulance stations, hospitals and medical clinics, railways, bridges and under- and over-passes.

(4) Within ten (10) feet of any operational or utilizable building entrance, exit, driveway or loading dock.

(5) Within five (5) feet of any fire hydrant, fire plug, or other fire department connection.

(6) Within the public right-of-way in a manner that obstructs or unreasonably interferes with the use of the right-of-way for any activity for which the City has issued a permit.

(7) In a manner that obstructs any portion of any street or other public right-of-way open to use by motor vehicles, including any portion thereof marked as a bike lane.

Violations of this policy involving a person who willfully resists, delays, or obstructs a City employee from enforcing this section or who willfully refuses to comply after being requested to do so by an authorized City employee would be subject to the penalties set forth in the Gilroy City code, and will be listed in detail in the upcoming proposed ordinance.

Definition of Camping
Staff commenced the development of a definition of camping, based on common definitions present in municipal codes in various cities. However, the term is not used in the draft policy terms due to concerns raised by the COA that the term “Camp” or “Camping” has been litigated and has repeatedly been deemed too broad or not defined well enough to be upheld in courts. As such, only the physical description of “sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property” is used to lessen the likelihood of the ordinance being struck down. This is language similar to the recent Los Angeles ordinance. This physical description is still under review and may be revised in the final version.

Continued Development
The proposed policy/ordinance continues to be analyzed and adjusted as the work and analysis proceeds, leading eventually to an ordinance for Council introduction. With any input received by Council of the proposed policy points, staff will then analyze and map the locations of these sites and the prohibited distances, as well as identify the interactions of this proposed ordinance with other parts of the Gilroy City Code, to ensure that the eventual ordinance meets the best intents of this endeavor and is likely to survive challenge based on current litigation in this area of law. As was mentioned at the September 12, 2022 Council meeting, this process is a marathon and not a sprint, though we are making good progress towards a final ordinance.

ALTERNATIVES

Council may provide direction modifying the broad terms of the unhoused camping ordinance. Any such changes will be analyzed for incorporation into the final ordinance.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact for this agenda item. Once direction is received, staff will prepare an ordinance, the cost of which will be absorbed within existing appropriations. The fiscal impact of the final ordinance, if any, will be analyzed and reported as part of that staff report.

PUBLIC OUTREACH

This topic was discussed at Council meetings on July 5, 2022 and September 12, 2022.

This item was included on the publicly posted agenda for tonight's meeting.

NEXT STEPS

Staff will take any direction from Council to incorporate into an ordinance for introduction at a following Council meeting.