



# Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Steve McClary, Interim City Manager  
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John Cotti, Interim City Attorney

Date prepared: August 30, 2021 Meeting date: September 13, 2021

Subject: Amendment to Camping Ordinance

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 492 amending sections 9.08.030 (Sitting or lying on public ways) and 9.08.090 (Camping, lodging, sleeping overnight on public property) of the Malibu Municipal Code (MMC), enacting amended and supplemental camping regulation as Chapter 8.36 of Title 8 of the MMC; and finding the same exempt from the provisions of the California Environmental Quality Act; and 3) Direct staff to schedule second reading and adoption of Ordinance No. 492 for the September 27, 2021 Regular City Council Meeting.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** The City of Malibu is designated by CAL FIRE as a Very High Fire Hazard Severity Zone (VHFHSZ). Malibu bears this designation based on its vegetation, steeply sloping topography, and fire history, among other factors. Most vegetation fires in the Santa Monica Mountains are caused by human activity, including sparks from power lines, car accidents, weed whackers, arson, and campfires.

The City and other agencies are actively working to reduce fire ignition from all causes. The City's current efforts include home ignition zone assessments, public education on fire preparedness and the safe use of weed whackers, a hazard tree removal program, neighborhood chipper events to further encourage brush clearance, and a multi-agency tabletop exercise to improve response coordination.

Despite these efforts, since the beginning of 2021 Malibu has experienced seventeen fires attributed to unhoused individuals living in the City's hillsides and parks. Fortunately, these fires were identified quickly and the Los Angeles County Fire Department was able to extinguish them without loss of life and with only minimal loss of property. To address this problem, the proposed amendment to the City's camping ordinance will provide a legal tool to remove individuals who are living in the VHFHSZ, thereby reducing the chances of a fire start caused by a cooking, warming fire, or other means (i.e., smoking).

In addition to the fire safety concerns, the proposed camping ordinance will facilitate local efforts to preserve and protect public and private property and to mitigate risks to the health, welfare, and safety of unhoused individuals in the City and the community at large.

In 2019, the United States Court of Appeals, Ninth Circuit, issued its 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). *Martin's* holding, however, was narrow and did not "dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place." (*Martin*, at 617). The *Martin* court explained that "an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible," as well as "an ordinance barring the obstruction of public rights of way or the erection of certain structures." (*Martin*, at fn.8).

This proposed ordinance is primarily structured by identifying locations in the City where camping is prohibited, including any City-owned public park, public beach or public street or public right-of-way, any undeveloped private property on which camping is prohibited, and on any land designated by the Fire Chief or the City Manager as a fire risk area. Consistent with *Martin*, camping in these locations will not be criminalized with respect to individuals who do not have access to adequate temporary shelter based solely upon the fact that they are sitting, lying, or sleeping on public property.

As proposed, however, the ordinance identifies certain areas where camping is strictly prohibited. Those areas include property that is (i) within any area that the City Manager, Public Safety Manager or City Council may determine from time-to-time to constitute an extreme fire danger (which may include any area designated as a VHFHSZ by CAL FIRE), (ii) within 200 feet of a residence, and (iii) within 1,500 feet of a day care center or public or private school or college within the city limits of Malibu.

In addition, this proposed ordinance prohibits certain camping-related activities, including starting, building or use a fire, discharging wastewater and/or disposing of trash or garbage in any manner not expressly permitted by law, and using or erecting a camping facility or camping paraphernalia. A "camping facility" includes a tent, hut, or other

temporary shelter and “camping paraphernalia” includes tarpaulins, cots, beds, hammocks, unpermitted cooking, or heating equipment.

At the August 23, 2021 City Council meeting, the Council directed staff to confirm that the distance and locational restrictions contained in the proposed ordinance leave an adequate portion of the City where a person lacking access to adequate shelter will not be subject to criminal penalties for the act of lying, sitting, or sleeping in the City of Malibu. The City Council also directed City staff to work with the Los Angeles County Sheriff to confirm that the proposed ordinance adequately protects the public’s health, safety, and welfare without criminalizing the act of sitting, lying, or sleeping in public.

The Sheriff’s Department has confirmed that the proposed ordinance adequately protects the public’s health, safety, and welfare without criminalizing the act of sitting, lying, or sleeping in public. Staff has also analyzed the locational restrictions and determined that it does leave adequate portions of the City where a person lacking access to adequate shelter will not be subject to criminal penalties for the act of lying, sitting, or sleeping in the City of Malibu.

While adoption of this ordinance enhances the City’s ability to reduce the chances of a fire start caused by a cooking or warming fire, staff along with the recently established Homelessness Task Force will continue to pursue efforts to address individuals who are living in the City unhoused. For example, the recently appointed Homelessness Task Force has as its Charter:

1. Review the draft updated goals and objectives of the Homelessness Strategic Plan.
2. Review the concept, need and possible implementation of an Alternative Sleeping Location (ASL).
3. Develop a plan to mitigate public safety and environmental impacts, particularly fires, related to homeless encampments.
4. Explore new ideas to address homelessness, research strategies used by other jurisdictions, and identify best practices that could be implemented in Malibu.
5. Develop a robust public engagement and outreach plan to obtain community input on proposed strategies to protect the health, safety, and welfare of the community from the dangers of homelessness and provide assistance to Malibu residents experiencing homelessness.
6. Make recommendations to the City Council on all of the above.

In addition, the City continues to contract with The People Concern (TPC) for homeless outreach and housing navigation services. In July 2021, TPC outreach team connected

23 individuals with services and moved three people into permanent and temporary housing. The City is striving to make all necessary efforts to connect people who are living unhoused to resources such that no individual is criminalized simply for not having a home.

### **Environmental Impacts**

This Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the Ordinance will not result in any construction or development, and it will not have any effect that would physically change the environment. The ordinance therefore does not qualify as a project subject to CEQA.

In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt from CEQA under State CEQA Guidelines section 15061(b)(3), which exempts projects from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Thus, even if the Ordinance could result in some physical change in the environment, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

Staff recommends that the City Council direct staff to file a Notice of Exemption for this Ordinance with the County Clerk of the County of Los Angeles in accordance with State CEQA Guidelines.

**ATTACHMENTS:** Ordinance No. 492

## ORDINANCE NO. 492

AN ORDINANCE OF THE CITY OF MALIBU AMENDING SECTIONS 9.08.030 OF THE MALIBU MUNICIPAL CODE (“SITTING OR LYING ON PUBLIC WAYS”) AND 9.08.090 OF THE MALIBU MUNICIPAL CODE (“CAMPING, LODGING, SLEEPING OVERNIGHT ON PUBLIC PROPERTY”); ENACTING AMENDED AND SUPPLEMENTAL CAMPING REGULATIONS AS CHAPTER 8.36 OF TITLE 8 OF THE CODE; AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby ordain as follows:

### SECTION 1. Findings.

1. The conditions of homelessness remain a dynamic and evolving issue within Malibu and the surrounding region, the County of Los Angeles, the State of California, and throughout the entire country and other countries, requiring coordinated efforts at all levels of government as well as non-profit and private sector partners.
2. According to a March 2020 statement by the United Nations, “1.6 billion people worldwide live in inadequate housing conditions, with about 15 million forcefully evicted every year, according to UN-Habitat, which has noted an alarming rise in homelessness in the last 10 years.” Within the United States, the U.S. Department of Housing and Urban Development has reported that “580,466 people experienced homelessness in the United States on a single night in 2020.” According to the United States Interagency Council on Homelessness, California had an estimated 161,548 individuals experiencing homelessness in 2020. In L.A. County, the Los Angeles Homeless Services Authority reported that 66,436 people experienced homelessness in L.A. County in 2020 (of which 41,290 were living in the City of Los Angeles), which represented a 12.7% increase from 2019..
3. The 2018 Malibu Homelessness Strategic Plan (“Plan”) also reported a substantial increase in the number of persons living unhoused in Malibu since 2016, and identified City efforts to address this situation on many fronts. Malibu also continues to explore ways to participate in a broad effort to address the root causes of homelessness
4. Among other things, Plan goals include connecting individuals with services and temporary and permanent housing solutions and preventing and mitigating the health and safety impacts of homelessness on individuals and the community.
5. To achieve these ends, the City has worked closely with a Homelessness Working Group comprised of interested members of the public and with outreach workers from The People Concern, a social services agency in the West Los Angeles area, dedicated to engaging the local homeless population.

6. Since 2018, the Malibu outreach team has helped 136 unhoused individuals to move into either temporary (27) or permanent (28) housing or reconnect with their families (81).
7. The City regularly removes and cleans encampment sites. The City also partners with the Sheriff's Department and its Homeless Outreach Services Team ("HOST") to clear and clean the sites of encampments of unhoused individuals according to established protocols (i.e. unhoused individuals are given advanced warning of any scheduled clean-up and offered access to outreach services).
8. Clean-up efforts have enabled the City to (1) connect unhoused individuals with services and housing; (2) help prevent wildfires caused by fire and heating devices used for warming and cooking; and (3) remove human waste and other unsanitary conditions found on private property and in public parks, which create a health hazard for camp occupants and park visitors and impede the public's use and enjoyment of the parks.
9. In addition to the foregoing efforts, Sheriff's deputies historically cited individuals in violation of Section 9.08.090 of the Malibu Municipal Code ("MMC"), prohibiting camping or sleeping in any public park, beach, or street, including vehicles parked on public streets, located in the City.
10. In September 2018, the United States Court of Appeals for the Ninth Circuit decided *Martin v. City of Boise*, which held 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."
11. Stressing the narrow nature of its decision, the *Martin* decision includes the following disclaimer:

Our holding is a narrow one. '[W]e in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.' . . . We hold only that 'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public.' . . . That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.

12. Additionally, the *Martin* states as follows:

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. . . . So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. . . .

13. The City seeks to enforce restrictions on camping in Malibu, as revised by this Ordinance, consistent with the *Martin* decision.
14. To this end, until resolved otherwise by the City Council, and in the absence of a Local Emergency, it shall hereafter be City policy to refrain from enforcing certain aspects of Section 9.08.090 with respect to individuals who do not have “access to adequate temporary shelter” (as defined in the *Martin* decision).
15. In January 2021, the Homelessness Working Group reassessed the City’s Strategic Plan according to current conditions and efforts; and based on lessons learned from three years of implementation, the Group recommended that the City prioritize the public health and safety concerns posed by individuals living unhoused in Malibu.
16. The City’s Public Safety Department oversees the Working Group, and the Malibu Public Safety Manager affirms reported risks associated with unregulated encampments of unhoused individuals, including risks to fire safety, public sanitation and water quality, and the public safety generally (particularly as relates to traffic fatalities).
17. Local climatic, geological, or topographical conditions relating to the City’s location in a Very High Fire Hazard Severity Zone (a “VHFHSZ”), as designated by CalFire, increase the risk of wildfire from unpermitted heat sources and use or collection of flammable materials, and recent fires originating in local encampments of unhoused individuals, including encampments on vacant or undeveloped private property, have both necessitated emergency evacuation and clean-up efforts and threatened the health, safety and welfare of all Malibu residents (and residents of adjacent communities).
18. Encampments of unhoused individuals concentrated near the Pacific Coast Highway increase the risk of traffic related fatalities, as individuals have been struck by oncoming vehicles on the roadway.
19. In addition to seeking to ensure that the City’s camping ordinance does not run afoul of any prohibition in the *Martin* decision, the City further seeks to revise its camping ordinance to acknowledge the public health and safety concerns animating the present challenges posed by unhoused individuals and best practices the City has implemented in responding to the same.
20. The City remains committed to partnering with public and private organizations, such as

HOST and The People Concern, and to continue providing outreach, counseling, and other services to unhoused individuals living in the City.

21. For the reasons set forth above, the City Council finds that adoption of this Ordinance is necessary to facilitate local efforts to preserve and protect public and private property (including City parks and open waters within the City’s jurisdiction); to contain fire hazards that increase the risk of local wildfires; and to mitigate risks to the health, welfare, and safety of unhoused individuals in the City and the community at large.

SECTION 2. Chapter 8.36 is hereby added to Title 8 (Health and Safety) of the Malibu Municipal Code to read as follows:

**“Chapter 8.36  
Camping**

**8.36.010 Definitions.**

**8.36.020 Prohibited Camping Locations.**

**8.36.030 Prohibited Camping Activities.**

**8.36.040 Removal and Recovery of Personal Property.**

**8.36.050 Exceptions.**

**8.36.010 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

“Camp” shall have the same meaning as that term is defined in Section 9.08.090 of the Malibu Municipal Code.

A “Camping Facility” includes, but is not limited to, a tent, hut, or other temporary shelter.

“Camping Paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, hammocks, unpermitted cooking or heating equipment or paraphernalia, or similar equipment.

**8.36.020 Prohibited Camping Locations.**

Except as otherwise permitted by the City, it is unlawful for any person to camp in the following locations:

- A. Upon or in any City-owned public park, public beach, public street, or public right-of-way.

- B. Upon or in any vacant or undeveloped private property on which camping is prohibited;
- C. Upon any land designated by the Fire Chief or the City Manager as a fire risk area, including areas in or near a wildland-urban interface and brush areas

**8.36.030 Prohibited Camping Activities.**

Except as otherwise permitted by the City, it is unlawful for any person to do any of the following at any location where camping is prohibited:

- A. Start, build or use a fire for the purposes of warming, cooking, or otherwise, except as may be approved by the City Manager or the Fire Chief, consistent with Chapter 8.12 of this Code;
- B. Discharge wastewater and/or dispose of trash or garbage in any manner not expressly permitted by law (such as, for example, a public trash disposal container);
- C. Urinate or defecate, except when using a urinal, toilet, or other facility designated for that purpose (such as a public restroom during the hours in which such restroom is open to the public);
- D. Erect or use a Camping Facility or Use Camping Paraphernalia; or
- E. Engage in any activity that is prohibited by applicable local, county, state or federal law.

**8.36.040 Removal and Recovery of Personal Property.**

- A. Except as otherwise provided in this Code or by resolution of the City Council, any personal property left unattended at a location where camping is prohibited under Section 8.36.020 shall be considered abandoned and may be removed or impounded by the City or by peace officers in accordance with agency procedures.
- B. Unless the public health and safety necessitates the immediate disposal of property collected under subsection A, such property may be recovered by the owner according to procedures established by the City Manager, or his or her designee, or by the Los Angeles Sheriff's Department.

**8.36.050 Exceptions.**

- A. Absent exigent circumstances posing an immediate threat to the public health, safety, or welfare, the provisions of Section 8.36.020(A) will not be enforced

against individuals based solely upon the fact that they are sitting, lying, or sleeping on City-owned public property, when such individuals do not have access to adequate temporary shelter.

- B. Notwithstanding subsection A of this section, no person shall engage in any camping activity on City-owned public property if such property is (i) within any area that the City Manager, Public Safety Manager or City Council may determine from time-to-time to constitute an extreme fire danger (which may include any area designated as a VHFHSZ by CalFIRE), (ii) within 200 feet of a residence, or (iii) within 1,500 feet of any public or private elementary, vocational, junior high, high school, or college.
- C. Notwithstanding subsection A of this section, no person may obstruct the public right of way as prohibited in Section 9.08.050 of this Code.

SECTION 3. Subsection B of Section 9.08.030 of the Malibu Municipal Code (“Sitting or lying on public ways”) is amended to read as follows:

- B. The provisions of this section do not prohibit a person from sitting, lying, or sleeping on public property if:
  - 1. Necessitated by the physical disability of such person;
  - 2. Such person is viewing a legally conducted parade;
  - 3. Such person is seated on a bench lawfully installed for such purpose; or
  - 4. The prohibition against such activity is exempted from enforcement by the provisions of Section 8.36.040 of this Code.

SECTION 4. Section 9.08.090 of the Malibu Municipal Code is amended to add the following paragraph:

Unless this final paragraph of this section is subsequently repealed, no person who does not have access to adequate temporary shelter shall be arrested or subjected to imprisonment solely for sitting, lying, or sleeping on public property if the prohibition against such activity is exempted from enforcement by the provisions of Section 8.36.050 of this Code.

SECTION 5. Severability.

If any section, subsection, sentence, clause, or provision of this Ordinance is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not

affect the validity of the remaining portions of this ordinance. The City Council expressly declares that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date.

Pursuant to California Government Code section 36937, this Ordinance shall take effect thirty (30) days after its passage and adoption.

SECTION 7. Environmental Review.

The City Council finds that adoption of this Ordinance is not subject to the requirements of the California Environmental Quality Act (“CEQA”). Notably, this action will not result in any construction or development or any increase in camping, and it will not result in an increase in the population of unsheltered individuals. To the contrary, the Ordinance will protect the environment by regulating the use of public and private property and reducing the risk of wildfires. As such, there is no possibility that its adoption would adversely affect the environment in any manner considered significant under CEQA. 14 Cal. Code Regs. § 15061(b)(3). The foregoing regulations also qualify for the Class 8 Exemption concerning agency actions taken to assure the maintenance, restoration, enhancement, or protection of the environment. 14 Cal. Code Regs. § 15308. By restricting the domestic use of land that is not suited for such uses, this Ordinance not only reduces the risk of wildfires, but also goes toward protecting local water quality and maintaining sanitary conditions in the City’s public parks.

Based on the foregoing, a Notice of Exemption shall be filed with the Los Angeles County Clerk in accordance with the State CEQA Guidelines.

SECTION 8. Publication and Certification.

The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause a summary thereof to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

JOHN C. COTTI, Interim City Attorney