

REPORT TO THE CITY COUNCIL



DATE: November 19, 2019

TITLE: An Ordinance Amending Desert Hot Springs Municipal Code Chapter 12.04 Regarding Camping Restrictions

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RECOMMENDATION

- 1) Staff Report;
- 2) Entertain questions of Staff from City Council;
- 3) Open the Public Hearing;
- 4) Take testimony from those in favor;
- 5) Take testimony from those opposed;
- 6) Take testimony from those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion and questions to Staff; and
- 9) Introduce and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 12.04 of the Desert Hot Springs Municipal Code regarding camping restrictions."

BACKGROUND

The County of Riverside published a Point-in-Time Count in April 2019 ("PIT"). The PIT is a survey of the sheltered and unsheltered homeless population throughout Riverside County. The County of Riverside relied on more than 700 volunteers to search and count the number of homeless individuals in the county.

The PIT shows 2,811 sheltered and unsheltered homeless individuals countywide. Of that number, 612 are located in the Coachella Valley, and 45 are located within the City of Desert Hot Springs. Despite these numbers, the PIT notes that "the actual number of homeless individuals is estimated to be higher than PIT Count results due to ongoing challenges of locating homeless individuals."

On April 1, 2019, the Ninth Circuit Court of Appeal published an amended opinion in the case of *Martin v. City of Boise*. This case established new restrictions regarding regulations against sitting, lying, and sleeping in public places. The Ninth Circuit 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." (*Martin v. City of Boise* (2019), 920 F.3d 584, 616).

However, the Ninth Circuit Court of Appeal clarified that its holding was a narrow one. In particular, the court stated: "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." (*Martin v. City of Boise* (2019), 920 F.3d 584, 617, fn. 8).

Prior to the *Martin v. City of Boise* decision, the City enacted an ordinance creating regulations for camping. The ordinance, codified as Chapter 12.04 of the Desert Hot Springs Municipal Code, regulates overnight camping and storage of personal property in public places. Camping

regulations affect sitting, lying, or sleeping in public places, and may affect homeless persons. As such, Chapter 12.04 requires an update to remain consistent with the developments in law.

DISCUSSION

Given the combination of a high number of homeless persons residing within the City and new developments in the law, the proposed ordinance contains amendments focused on maintaining the public health and safety without compromising the rights of homeless persons.

The principal change in the proposed ordinance is to remove all criminal penalties for any violations of that chapter. Criminal penalties are likely unenforceable per the *Martin v. City of Boise* decision. However, all civil and equitable remedies remain in place.

Restrictions against camping on public streets, public property, and private property remain unchanged. The clarification that camping as part of the normal use of private property is unchanged. However, the permitting system for camping is removed. Staff believes there is currently not enough public areas suitable for camping to warrant developing and maintaining permits.

Storage of personal property in streets, parks, public areas, and private areas without consent of the property owner remain unlawful. The proposed ordinance adds a new subsection allowing the City Manager or designee to develop procedures for the impoundment and retrieval of personal property. The intent of this change is to provide uniform standards to guide City staff in cleaning up public areas affected by storage of personal property, and for procedures of any person affected by the cleaning, to claim the property back.

If the proposed ordinance is enacted, the City will be able to clean areas affected by unlawful camping and storage of property. This will reduce blight and address community concerns about excessive trash and dumping. Moreover, staff will be able to develop procedures to fairly and humanely treat any homeless persons affected by City cleanup projects. While the law is constantly changing and the full reaches of the *Martin v. City of Boise* decision are not yet known, this proposed ordinance attempts to strike a balance between protecting the public health and safety, and the constitutional rights of persons who camp in public areas.

FISCAL IMPACT

None.

EXHIBITS:

- 1) Ordinance Amending Chapter 12.04 – Camping Restrictions
- 2) County of Riverside 2019 Point-In-Time Count