

ORDINANCE NO. 24-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY AMENDING CHAPTER 1 (“DISORDERLY CONDUCT, ETC.”) OF ARTICLE IV (“PUBLIC WELFARE, MORALS, AND POLICY”) AND CHAPTER 1 (“PUBLIC PARKS”) OF ARTICLE X (“PARKS, PLAYGROUNDS, AND RECREATION”) OF THE DOWNEY MUNICIPAL CODE RELATED TO LOITERING, CAMPING, AND OBSTRUCTIONS OF PUBLIC RIGHTS-OF-WAY

WHEREAS, Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, certain portions of streets and highways are dedicated for use by the public for vehicular travel; and,

WHEREAS, sidewalks and crosswalks are primarily dedicated for use by the public for pedestrian travel; and,

WHEREAS, persons who sit, sleep, or lie on highways, sidewalks, crosswalks, and similar rights-of-way – and who place or store personal property within those rights-of-way, could create a hazardous situation for other members of the public attempting to use those rights-of-way for their intended purposes; and,

WHEREAS, benches and seats located at transit stops and within transit vehicles, and seats within publicly owned and operated buildings are dedicated for use by persons while utilizing those services; and,

WHEREAS, the City Council recognizes that camping and associated activities by persons – irrespective of that person’s housing status – on property open to the public for pedestrian, vehicular, or recreational use have created adverse public health, safety, and welfare conditions for the public, including those who live within said encampments; and,

WHEREAS, unsheltered persons often reside or sleep on public property within temporary shelters, including, but not limited to, tents and tarps, and accumulate, store, or leave personal property, garbage, waste, and biohazards; and,

WHEREAS, encampments on public property open for use by the public create an obstruction and/or hinderance to, or are otherwise incompatible with, the use of the public property for its intended use; and,

WHEREAS, camping on public property can lead to damage to public property, as well as a hinderance to the operation or protection of public infrastructure and utilities, creating a potential health and safety hazard; and,

WHEREAS, camping on public property can have a deleterious impact upon the public use of public property, businesses, private real property, and economic development within the City; and,

WHEREAS, the City, along with community partners, has undertaken and continues to undertake extensive actions to assist unsheltered persons within the City to find shelter and needed services; and,

WHEREAS, the City Council recognizes that, notwithstanding its efforts to find shelter and needed services for those in need, not all persons are willing to immediately accept available housing and services – and adverse impacts upon the public health, safety, and welfare cannot be adequately addressed; and,

WHEREAS, on June 28, 2024, the United States Supreme Court decided *City of Grants Pass, Oregon v. Johnson et al. (2024) 603 U.S. _____ [Docket No. 23-175]* overturning a Ninth Circuit decision that imposed restrictions on local government's authority to enforce laws regulating encampments; and,

WHEREAS, on July 25, 2024, California Governor Gavin Newsom issued Executive Order N-1-24, wherein Governor Newsom ordered agencies and departments subject to his authority to address encampments on State property, and encouraged local governments "to adopt policies consistent with [the Executive] Order and to use all available resources and infrastructure...to take action with the urgency that this crisis demands to humanely remove encampments from public spaces, prioritizing those encampments that most threaten the life, health, and safety of those in and around them"; and,

WHEREAS, it is the desire of the City Council of the City of Downey to protect the health, safety, and welfare of persons who seek to use and enjoy the streets, highways, sidewalks, parks, and other public rights-of-way within the City, as well as to preserve their ability to use and enjoy those rights-of-way by the public for their intended uses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 4106 ("Loitering on Streets or Sidewalks") of Chapter 1 ("Disorderly Conduct, Etc.") of Article IV ("Public Welfare, Morals, and Policy") of the Downey Municipal Code is hereby amended to read as follows:

§4106 ~~LOITERING ON STREETS OR SIDEWALKS~~ CAMPING ON PUBLIC PROPERTY

~~No person shall loiter, stand, or sit in or upon any public highway, alley, sidewalk, or crosswalk so as to in any manner hinder or obstruct the free passage therein or thereon of persons or vehicles passing along the same.~~

(a) **Definitions.** The following definitions are applicable to this Section:

(1) "Abandon" means to leave an item in a location where the person no longer has control over the item, or to give up or discontinue any interest in an item. Personal property that is left unattended on public property for a period in excess of 30 consecutive

minutes or 60 minutes cumulatively within a twenty-four (24) hour period, as well as any personal property located on public property during days and/or times when the public property is not open to the public, shall be deemed abandoned.

(2) “Camp” or “camping” means to use a camp facility or camp paraphernalia, or both, for the purpose of, or in a way that facilitates, outdoor sheltering for living accommodation purposes or for remaining outdoors overnight. “Camp” or “camping” also includes occupying an encampment.

(3) “Camp facility” means a tent, cot, bed, hammock, vehicle, or other temporary physical shelter or enclosure.

(4) “Camp paraphernalia” means implements and equipment used for camping, including, but not limited to, camp facilities, tarpaulins, makeshift shade structures, mattresses, sleeping bags, bedrolls, blankets, sheets, pillows, cookware, and cooking equipment.

(5) “Encampment” means one or more temporary, makeshift, or hand-built structures or enclosures not intended for long-term continuous occupancy, including tents, that are used to shelter one or more persons or their belongings and that are not authorized by the property owner. Encampment includes any camp facility, camp paraphernalia, and/or personal property associated with or located in or around the structures or tents.

(6) “Park” shall have the same meaning as set forth in Downey Municipal Code Section 10100.2, as that section may be amended from time to time.

(7) “Public facility” means any building or structure on public property, whether secured, unsecured, locked, unlocked, open, or enclosed, as well as any area of public property enclosed by a locked fence.

(8) “Public property” means any real property, building, or vehicle within the jurisdiction of the City of Downey, which is owned, managed, or controlled by the City of Downey. “Public property” includes, but is not limited to, public streets, highways, alleys, sidewalks, walkways, parking lots, parking structures, transit vehicles, transit stations and stops, and parks. “Public property” also includes those portions of property owned, managed, or controlled by the County of Los Angeles, Los Angeles County Flood Control District, and/or State of California (including the California Department of Transportation) for which the City has been authorized to enter and remove camp facilities, camp paraphernalia, and/or encampments.

(9) “Store” means to put aside or accumulate personal property for safekeeping or use when needed, or to place or leave in a

location. "Store" shall also include personal property that is left unattended for a period in excess of 30 consecutive minutes or 60 minutes cumulatively within a twenty-four (24) hour period, as well as any personal property located on public property during days and/or times when the public property is not open to the public.

(b) **Camping on Public Property Prohibited.** It is unlawful and a public nuisance for any person to camp or to maintain or occupy an encampment on any public property, except as authorized by Downey Municipal Code Section 10114 or other applicable law, ordinance, rule, or regulation.

(c) **Storage or Abandonment of Personal Property on Public Property Prohibited.** It is unlawful and a public nuisance for any person to store or abandon any personal property on any public right-of-way or on any public property, except as authorized by any applicable law, ordinance, or permit.

(1) **Exceptions.** This subsection shall not apply to any of the following:

A. Any City employee or other authorized person who stores personal property in a vehicle, building, or facility owned, operated, or controlled by the City while said employee is on duty or otherwise authorized to do so.

B. The abandonment of any personal property within a waste or recyclable container located on public property designated for such use.

(d) **Violations; Enforcement**

(1) Any person who violates any provision of this Section is guilty of a misdemeanor offense punishable in accordance with Section 1200 of this Code.

(2) Each violation of this Section is hereby declared to be a public nuisance, and may be abated by administrative or civil action (including, but not limited to, civil injunction or other abatement action).

(3) The remedies provided in this Section are cumulative and in addition to any other remedies available at law or in equity.

(4) City Officials as designated by the City Manager may cause the removal of any personal property (including, but not limited to, camp facility and/or camp paraphernalia) found on public property in violation of this Section, in accordance with duly promulgated rules, regulations, policies, and procedures.

In a manner consistent with this Section, the City Manager, or designee thereof, is authorized to promulgate rules, regulations, policies, and/or procedures for the removal of personal property from public property, the recovery of removed personal property by the owner thereof, the storage of the removed personal property pending recovery by the owner, and the disposition of removed personal property if not recovered by the owner in a timely fashion.

(5) Personal property (including, but not limited to, camp facility and/or camp paraphernalia) located in an encampment on public property is subject to removal in accordance with rules, regulations, policies, and procedures.

SECTION 2. Section 4107 (“Loitering: Places of Public Assemblage”) of Chapter 1 (“Disorderly Conduct, Etc.”) of Article IV (“Public Welfare, Morals, and Policy”) of the Downey Municipal Code is hereby amended to read.

~~§4107 LOITERING: PLACES OF PUBLIC ASSEMBLAGE~~

~~No person shall loiter, stand, or sit in or at the entrance of any church, hall, theater, or place of public assemblage so as in any manner to obstruct such entrance.~~

[RESERVED]

SECTION 3. Section 4119 (“Obstructing Pedestrian or Vehicular Traffic”) of Chapter 1 (“Disorderly Conduct, Etc.”) of Article IV (“Public Welfare, Morals, and Policy”) of the Downey Municipal Code is hereby amended to read as follows:

~~§4119 OBSTRUCTING PEDESTRIAN OR VEHICULAR TRAFFIC~~
OBSTRUCTIONS – STREETS, SIDEWALKS, OTHER AREAS ACCESSIBLE BY THE PUBLIC

~~No person shall block, impede, or obstruct any public place or any entrance, exit, or approach to any place of business in or upon any public place in a manner calculated or with the intent to prevent, delay, hinder, or interfere with the free passage there along or therethrough of any other person who is entering, occupying, or leaving any place of business, or who is performing any service or labor, or who is seeking or obtaining employment, or who is purchasing, selling, using, delivering, transporting or receiving any goods, wares, merchandise, services, entertainment, accommodations, or articles, or who is attempting or seeking to do any of the foregoing, or to prevent, delay, hinder, or interfere with the free passage there along or therethrough of any vehicle or conveyance operated by or in the custody of any such other person or in which any such other person is riding or attempting to ride.~~

(a) **Definitions.** Unless the context clearly indicates otherwise, terms used in this Section shall have the same meaning as set forth in Section 4106(a) of this Chapter.

(b) **Public Rights-of-Way.** Unless otherwise authorized by this Code or by other applicable law, no person shall sit, sleep, or lie, nor place, keep, maintain, store, or abandon any merchandise, goods, furniture, baggage, or any other article of personal property on any public highway, alley, bicycle lane or path, crosswalk, median, sidewalk, parkway, public parking lot or structure, or other public property or public way in such a manner that the person and/or items of personal property obstructs the intended usage of that public way for pedestrian or vehicular travel, or in a manner that otherwise constitutes a public safety hazard.

(c) **Public Seats and Benches.**

(1) No person shall, at any time, lie upon any seat or bench designed or intended for sitting by the public within a park, public facility, or any public transit vehicle, nor at any public transit stop or station.

(2) No person shall sit upon any seat or bench at a public transit stop or station unless actively waiting for public transportation that stops at that location.

(3) No person shall place, keep, maintain, or store any items of personal property upon any bench or seat within a park, public facility, or any public transit vehicle, or at any public transit stop or station, or within any public transit vehicle, or within any publicly owned or operated building in a manner that obstructs or hinders the ability of any other person from being able to sit down on the bench or seat as designed and intended.

(d) **Building Entrances and Exits.**

(1) **Buildings Generally Open to the Public.** Unless otherwise authorized by this Code or by other applicable law, no person shall stand, sit, lie, or otherwise physically occupy, nor shall any person place, keep, maintain, store, or abandon items of personal property in or at, the entrance to or exit from any place of public assemblage or other place generally open to the public in such a manner as to obstruct such entrance or exit, to prevent, delay, hinder, or interfere with any person entering, occupying, or leaving said building, or to otherwise constitute a public safety hazard while that place is open to the public.

(2) **Non-Residential Buildings Not Open to the Public.** Unless otherwise authorized by this Code or by other applicable law, no person shall stand, sit, lie, or otherwise physically occupy, nor shall any person place, keep, maintain, store, or abandon items of personal property in or at, the entrance to or exit from any non-residential

building in such a manner as to obstruct such entrance or exit, during any time that the building is not open to the public, without written permission of the owner or person in lawful possession thereof

A. Written permission to stand, sit, lie, or otherwise physically occupy, or to otherwise place items of personal property in or at, the entrance or exit to a building *adjacent to a public highway or sidewalk* in violation of Article III, Chapter 3 (“Fire Code”) and/or Article VIII (“Building Regulations”) of the Downey Municipal Code shall be deemed invalid and to have no legal effect.

(3) **Exception.** The provisions of Subsection 4106(c) do not apply to any lawful picketing, or other activities that are authorized by law.

(e) **Other Locations.**

(1) Notwithstanding any other provisions of this Section, and unless otherwise authorized by this Code or by other applicable law, no person shall sit or lie, nor shall any person place, keep, maintain, store, or abandon any items of personal property, in such a manner that the person and/or items of personal property:

A. Obstructs any paved sidewalk, walkway, path, or other public rights-of-way designed and intended for pedestrian travel by providing less than thirty-six inches (36”) of unimpeded, clear access along that right-of-way, or that otherwise impedes passage as provided by the Americans with Disabilities Act of 1990, as amended from time to time;

B. Is located on any public highway, alley, sidewalk, parkway, crosswalk, median, or other public way within three feet (3’) of any fire hydrant, fire plug, or other Fire Department connection;

C. Is located on any public highway, alley, sidewalk, parkway, crosswalk, median, or other public way within ten feet (10’) of any operational or utilizable driveway or loading dock;

D. Is located on any public highway, alley, sidewalk, parkway, crosswalk, median, or other public way within ten feet (10’) of any Automated Teller Machine (“ATM”) located adjacent to a public sidewalk, street, or highway;

E. Is located on any public highway, alley, sidewalk, parkway, crosswalk, median, or other public way within ten feet (10’) of any outdoor dining area located upon or adjacent to a public sidewalk;

F. Is located on any public highway, alley, sidewalk, parkway, crosswalk, median, or other public way within ten feet

(10') of any bench designed or intended for sitting by the public at a public transit stop or station, except that sitting is authorized on such benches for the sole purpose of waiting for public transportation that stops at that location;

G. Is located within the Downey Civic Center (including Downey City Hall, Downey Police Station, Downey Library, and corresponding walkways and parking areas), except that sitting is authorized on benches installed for such purposes and/or in seats located inside of buildings while utilizing the services provided therein;

H. Is located within the Barbara J. Reilly Community & Senior Center, except that sitting is authorized on benches and/or in seats while utilizing the services provided at the Center; and/or,

I. Obstructs or unreasonably interferes with the use of any portion of a public right-of-way for any activity for which the City has issued a permit.

(f) **Exceptions.**

(1) The provisions of this Section do not prohibit any of the following:

A. The parking or placement of a motor vehicle or any bicycle or scooter in a location provided, designated, and approved for such use and in accordance with any applicable laws, rules, and regulations pertaining to the parking or placement of said motor vehicle, bicycle, or scooter;

B. Any person from sitting on the curb portion of a sidewalk while attending or viewing any lawfully conducted parade;

C. Any person from sitting or lying upon a public highway, greenbelt, street median, alley, sidewalk, crosswalk or other public place when necessitated by physical disability or injury of such person, provided that such person relocates to a lawful location as soon as physically able;

D. The temporary placement of personal property on a sidewalk or street during the active loading or unloading of that property (not to exceed 30 minutes), but only during the minimum time for the active loading or unloading of such property to occur and provided the personal property is not left unattended; and,

E. Any activity that is subject to a permit issued by the City authorizing such activity.

SECTION 4. Section 10102 (“Compliance”) of Chapter 1 (“Public Parks”) of Article X (“Parks, Playgrounds, and Recreation”) of the Downey Municipal Code is hereby amended to read as follows:

§10102 Compliance

(a) The Director shall have the authority to promulgate rules, regulations, policies, and procedures for the implementation and enforcement of provisions of this Chapter – including for the ejection and expulsion of any person who has violated or is in violation of any provision of this Article, other applicable law, or any duly promulgated rule, regulation, policy, or procedure.

(b) No person shall enter, be, or remain in any park unless he complies with all of the regulations set forth in this chapter applicable to such park, and with all other applicable ordinances, rules, and regulations, and with all conditions made a part of any permit.

SECTION 5. Section 10112 (“Operating Hours: Parks”) of Chapter 1 (“Public Parks”) of Article X (“Parks, Playgrounds, and Recreation”) of the Downey Municipal Code is hereby amended to read as follows:

§10112 Operating Hours: Parks

All parks and facilities, except those hereinafter set forth, shall be closed not later than 10:00 p.m. each day of the week. In the event the Director determines it is necessary for the protection of a park, or its facilities, or properties adjacent thereto, he may determine that a park shall be closed earlier than 10:00 p.m. on all or certain days. In the event an hour of closing earlier than 10:00 p.m. is established, all entrances to the park shall be posted in such a manner as to give notice thereof.

Those facilities not required to be closed at 10:00 p.m. daily are:

(a) The Downey Theater; and

(b) Those park buildings or facilities being used pursuant to a permit or other official business as authorized by the Director.

The closing time of such facilities shall be determined by the Director and shall be dependent upon the nature, character, purpose, and use of such facilities.

Notwithstanding the other provisions of this section, a group using a park pursuant to a permit, if the permit so provides, may use a park during the time specified in the permit.

Except as otherwise provided and permitted in this Code, ~~in this section and Section 10114 of this chapter,~~ no person shall ~~sleep, camp, loiter, or otherwise enter~~ or remain in any park or leave or store any personal property (including a vehicle) within any park or any appurtenant parking lot, between the hour such park is closed and 8:00 a.m. the following day.

SECTION 6. Section 10129 (“Tents, Canopies, Bounce Houses, and Other Structures”) of Chapter 1 (“Public Parks”) of Article X (“Parks, Playgrounds, and Recreation”) of the Downey Municipal Code is hereby added to Chapter 1 (“Public Parks”) of Article X (“Parks, Playgrounds, and Recreation”) of the Downey Municipal Code to read as follows:

§10129 Tents, Canopies, Bounce Houses, and Other Structures

(a) No person shall place, erect, or maintain any tents, nor any bounce houses or other similar inflatable devices, within any City park except where placement or erection of such structure is authorized by a Reservation Permit issued by the City in accordance with Section 10124 of this Code or other permit issued by the City.

(b) No person shall store any personal property or place or maintain any canopy, tarpaulin, blanket, or any similar makeshift shade structure within, nor attach any such object to, any tree, hedge, shrub, flowerbed area, fence, wall, or bench within any City park except where placement or erection of such structure is authorized by a Reservation Permit issued by the City in accordance with Section 10124 of this Code or other permit issued by the City.

SECTION 7. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other Ordinance or provision of the Downey Municipal Code referenced in this Ordinance shall affect in any manner any offense or act committed or done or any penalty or forfeiture incurred, or any right established or accruing before the effective date of this Ordinance; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered prior to the effective date of this Ordinance. The provisions of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. The provisions of this Ordinance shall have priority over substantially similar provisions previously adopted by the City relating to the same subject matter.

SECTION 8. If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 9. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

APPROVED AND ADOPTED this ____ day of _____, 2024.

MARIO TRUJILLO, Mayor

ATTEST:

MARIA ALICIA DUARTE, CMC
City Clerk

APPROVED AS TO FORM:

JOHN M. FUNK
City Attorney

I HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Downey at a Regular meeting held on the ____ day of _____, 2024, by the following vote, to wit:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

MARIA ALICIA DUARTE, CMC
City Clerk