Legislation Text

File #: 2022-0719, **Version:** 1

To: Board of Supervisors
Department or Agency Name(s): County Counsel and County Administrator's Office
Staff Name and Phone Number: Matt Lilligren, Deputy County Counsel, (707) 565-2421
Vote Requirement: Majority
Supervisorial District(s): Countywide

Title:
Adoption of Amendments to Sonoma County Code Section 19-15. Limiting the Prohibition of Camping on Public Property to Specific Times and Locations

Recommended Action:

A) Conduct a public hearing and consider whether to adopt an ordinance amending Section 19-15 of the Sonoma County Code to limit the prohibition of camping on public property to certain times and locations.
B) Adopt a resolution introducing, reading the title of, and waiving further reading of the proposed ordinance amending Section 19-15 of the County Code to limit prohibitions on public camping to certain times and locations.

Executive Summary:

Staff recommends that your Board adopt the proposed amendments to Section 19-15 of the Sonoma County Code to conform to recent court decisions limiting local jurisdictions' ability to enforce laws regarding public camping unless certain requirements are met. The proposed amendments would permit individuals to camp during certain times and at certain locations in order to balance the legal rights of unhoused individuals to have a place to sleep when there is no shelter otherwise available for those individuals with the overall health and safety of the community. With the recommended action for this Item, the amendment to Section 19-15 would further define public property, where camping is unlawful on public property, and when camping is prohibited at certain times.

The legal challenges to public camping ordinances and the solutions for legally addressing growing homeless encampments continue to evolve. Jurisdictions around the state differ in their responses. Some jurisdictions are not enforcing camping ordinances or tying enforcement to shelter availability, while others are enacting camping ordinances that attempt to align with recent legal cases. Staff is recommending the latter approach with the proposed ordinance before you for consideration. By doing so, this would bring the ordinance in line with *Martin v. City of Boise* by recognizing the fundamental right for unsheltered individuals to sleep where shelter is not otherwise available, while maintaining the County's ability to prohibit prolonged occupation of public property, large accumulation of items and debris, and the establishment of large-scale encampments. Proposed amendments include (1) prohibition of camping on or near certain types of properties that are particularly sensitive or inconsistent with such use and (2) limiting public camping to 9:00 p.m. to 7:00 a.m. in the remaining areas of public property.

Discussion:
Over the past decade, jurisdictions throughout California have seen a significant increase in the unauthorized camping and storage of personal property both on public and private land. This proliferation of unauthorized camping and storage of property has brought with it social, economic, and environmental concerns along with public health and safety issues. In Sonoma County, the increase in unauthorized camping has led to the development of large-scale encampments, multiple fires and fire hazards, public health and safety concerns, the inability to use or access public property for its intended purpose, biological hazards and environmental harm, public disposal of waste and the accumulation of large amounts of debris and garbage, investment of County funds toward significant encampment cleanup and environmental remediation costs, and other general public health and safety concerns.

Camping on public lands outside of areas specifically designed and designated for those purposes can create health and safety risks, not only for persons engaged in the camping but also, for all persons encountering the sometimes unsanitary and disorderly environment in burgeoning, makeshift camps. Further, camping may interfere with the intended purposes of public areas, obstruct public rights-of-way, and impact important federal regulations requiring a clear path of travel on sidewalks under the Americans with Disabilities Act.

Sonoma County Code Section 19-15 currently regulates camping on public and private property. The Section was originally adopted in 2004 and amended once in 2014 to remove a prior prohibition on vehicle habitation in response to a legal decision from the Ninth Circuit Court of Appeals. Recent changes in the law have impacted the manner in which the County may now enforce Section 19-15 and again have prompted the need for amendment to Section 19-15 to conform to the legal requirements set forth in the Ninth Circuit Court of Appeals decision *Martin v. City of Boise*, 920 F.3d 524, 617 (9th Cir. 2019) ["*Martin*"].

Legal Background on Camping Ordinances
The Ninth Circuit case of *Martin* was brought by a group of homeless individuals in Boise who were cited for violating the City's camping ordinance along with its disorderly conduct ordinance. Plaintiffs alleged these citations violated the Cruel and Unusual Punishments Clause of the Eighth Amendment. The court held that local governments are prohibited from criminalizing homelessness, that jurisdictions must allow individuals to sleep on public property when no other shelter is available to them, and that prosecution by the City of Boise under these circumstances violated the cruel and unusual clause of the Eighth Amendment.

The Court also made clear their ruling did not apply to individuals who refuse free shelter when offered realistic access, and that, in some circumstances, jurisdictions can criminalize sleeping outside at certain times or in certain locations. A key consideration in the *Martin* case pertained to the lack of available beds in the City's homeless shelters and a lack of evidence that the individuals had been offered shelter prior to the citations being issued. The Ninth Circuit held 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." The court concluded that if there is no suitable option for 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. The court further held that the government cannot punish someone's status as being homeless, if they have nowhere else to go. As a result of the *Martin* decision, the County cannot criminally cite or arrest a person for

a condition of homelessness (such as sleeping or camping in public spaces), unless it can demonstrate the individual subject to citation or arrest was first offered shelter or otherwise had alternative housing available to them.

The *Martin* decision outlined some general types of enforcement actions that are still legally permissible even without providing adequate shelter. First, individuals who decline an offer of shelter, or reasonably have access to or the means to acquire shelter are not shielded from enforcement. Second, the County may continue to enforce rules against obstruction of public rights of way (streets and sidewalks) or the erection of certain kinds of structures. Third, "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* at 617, fn. 8. The key is whether the local regulation "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*.

Since the Supreme Court denied review in *Martin*, court decisions over the past two years have begun to reinforce *Martin*'s limited holding and a jurisdiction's ability to delineate constitutionally adequate prohibitions against camping on public property.

For example, *Gomes v. County of Kauai*, No. 20-00189 JMS-WRP, 2020 U.S. Dist. LEXIS 154766, at *9 (D. Haw. Aug. 26, 2020), held that the plaintiffs legal challenge to citations they received under two county ordinances prohibiting sleeping and erecting certain structures in a County park did not violate the Eighth Amendment under *Martin*, even if it were true that the County lacked adequate shelter space for its homeless population:

> Plaintiffs did not "allege that Defendants criminalized Plaintiffs for sleeping on public property; instead, it alleges that Defendants criminalized sleeping in a public park. That is, although perhaps Plaintiffs could not sleep at Salt Pond Beach Park without receiving a citation, there is nothing in the Complaint to suggest that Plaintiffs could not sleep in other public places within the County of Kauai. Put differently, had the County of Kauai ordinance criminalized sleeping at Salt Pond Beach Park, with or without a permit, such a restriction would not by itself violate the Eighth Amendment. Instead, *Martin* applies if the locality criminalizes the homeless sleeping on public property 'on the false premise that they had a choice in the matter.' Id. at 617. Here, all that is clear from the Complaint is that Plaintiffs could not sleep at one public park on Kauai."

Gomes v. Cty. of Kauai, at *8-9 (D. Haw. Aug. 26, 2020).

Other "[c]ourts following Martin have declined to expand its holding beyond criminalization of homelessness." *Young v. City of Los Angeles*, 2020 U.S. Dist. LEXIS 23369, 2020 WL 616363, at *5 (C.D. Cal. Feb. 10, 2020) (recognizing "the Eighth Amendment only bars the City from criminally prosecuting Plaintiff for sleeping on public streets when he has no other place to go"). "*Martin* does not limit the [c]ity's ability to evict homeless individuals from particular public places." *Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1081-82 (W.D. Wash. 2019) (collecting cases).

As courts have recognized, *Martin* does not "establish a constitutional right to occupy public property indefinitely at Plaintiffs' option" (*Winslow v. City of Oakland*, 2020 WL 1031759 (N.D. Calif.). Courts have authorized the clearing of homeless encampments, particularly with policies providing adequate notice, offering of shelter beds, and storage of property. The policies must also address the Fourth and Fourteenth

Amendment rights that unhoused individuals have to their property.

Absent exigent circumstances, the County follows the same model to offer adequate notice, outreach, offers of adequate shelter, and storage of property prior to clearing any homeless encampment.

The legal challenges to camping ordinances and the disposal of articles in disbanded homeless encampments, as well as court rulings on these issues, continue to evolve. Jurisdictions around the state differ in their responses. Some jurisdictions are not enforcing camping ordinances or tying enforcement to shelter availability, while others are enacting camping ordinances that attempt to align with the holding of *Martin* and other recent cases. Staff is recommending the latter approach with the proposed ordinance before you for consideration.

Summary of Proposed Amendments to Section 19-15

The following is a list of the proposed amendments to bring the County's existing camping ordinances into compliance with current law under *Martin v. City of Boise* while still providing the County with the necessary legal options to address encampments when they become a health and safety concern:

1. Impose time limitation on enforcement.
    - As amended, Section 19-15 would prohibit camping on public property daily between the hours of 7:00 a.m. to 9:00 p.m.
    - By doing so, this would bring the ordinance in line with *Martin v. City of Boise* by recognizing the fundamental right for unsheltered individuals to sleep, while maintaining the County's ability to prohibit prolonged occupation of public property, large accumulation of items and debris, and the establishment of large encampments.
2. Impose complete prohibition on camping on or near certain types of properties that are particularly sensitive or inconsistent with such use:
    a. Inside public buildings;
    b. Within 100 feet of a residence or residential zoning district;
    c. Within 100 feet of a playground, school, daycare, or other licensed childcare facility;
    d. Within 150 feet of the high water mark of the waters of the state as defined by subdivision (e) of California Water Code § 13050;
    e. Within a "Very High Fire Severity Zone";
    f. Within any County park (i.e., leave Section 20-25 unchanged); and
    g. Within any public highway, road, or street
    h. Within any public right-of-way, where the camping obstructs the free passage of persons, bicycles, or vehicles.

Additional Options: Beyond the above recommendations, there are various other types of properties that could be considered by your Board and be identified for an absolute prohibition on public camping. Other jurisdictions have prohibited camping within a certain distance of buildings or structures (general or specific types), within a certain distance of any retail or other businesses, within certain business districts or downtown corridors, or specifically identified geographic areas. Additional environmentally sensitive or fire prone areas could be identified for inclusion as well. If further areas are considered, however, the County must leave sufficient public property available for public camping to accommodate the unhoused population needing locations to camp by necessity. (See e.g., *Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1083 (W.D. Wash. 2019) (analyzing whether City's camping ordinances left "ample space for Plaintiffs to camp on certain

parts of the sidewalk" and whether "population can be accommodated by the spaces the City identified)

It also should be noted that there are other ordinances in County Code that are not impacted by *Martin* and can continue to be enforced to ensure the health, safety, and welfare of the public in and around the homeless encampments, such as camping on private property, obstruction of public passages, aggressive panhandling, littering, drug and alcohol offenses, vehicle code violations, etc.

Strategic Plan:
N/A

Prior Board Actions:
None.

FISCAL SUMMARY

Expenditures	**FY 21-22 Adopted**	**FY22-23 Projected**	**FY 23-24 Projected**
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:
N/A

Staffing Impacts:			
Position Title (Payroll Classification)	**Monthly Salary Range (A-I Step)**	**Additions (Number)**	**Deletions (Number)**

Narrative Explanation of Staffing Impacts (If Required):
N/A

Attachments:
Attachment A - Ordinance Amending Sonoma County Code Section 19-15

Attachment B - Resolution Introducing and Waiving Reading of Camping Ordinance Amendments

Related Items "On File" with the Clerk of the Board:
None