City Council Memorandum

City of Arts & Innovation

TO: SAFETY, WELLNESS, AND YOUTH COMMITTEE MEMBERS **DATE: JUNE 15, 2022**

FROM: RIVERSIDE FIRE DEPARTMENT
OFFICE OF HOMELESS SOLUTIONS
CITY ATTORNEY'S OFFICE **WARDS: ALL**

SUBJECT: **PROPOSED ORDINANCE OF THE CITY OF RIVERSIDE, CALIFORNIA, ADDING SECTIONS 9.040.610 THROUGH 9.04.640 TO CHAPTER 9.04, "OFFENSES," OF TITLE 9 "PEACE, SAFETY AND MORALS" OF THE RIVERSIDE MUNICIPAL CODE, TO REGULATE HOMELESS ENCAMPMENTS IN THE WILDLIFE URBAN INTERFACE – DIRECT SUBMITTAL**

ISSUES:

Consideration of a proposed ordinance regarding the regulation of homeless encampments in the wildland-urban interface in the City of Riverside.

RECOMMENDATIONS:

That the Safety, Wellness, and Youth Committee:

1. Receive a report regarding a proposed ordinance to regulate homeless encampments in the wildland-urban interface in the City of Riverside; and

2. Recommend that the City Council adopt the proposed ordinance regarding the regulation of homeless encampments in the wildland-urban areas of the City.

BACKGROUND:

Legal Considerations

In *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, 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." This decision applies to the issuing of criminal penalties for sitting, sleeping, or lying outside to persons experiencing homelessness who cannot obtain shelter. The Ninth Circuit qualified its holding, expressly stating that it was not suggesting "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." (*Boise*, 920 F.3d. at 1048, n. 8.) "[T]he opinion holds only that municipal ordinances that criminalize sleeping, sitting or lying in all public spaces, when no alternative sleeping space

is available, violate the Eighth Amendment." (*Boise*, 920 F.3d at 589 (C.J. Berzon concurring.)

The Ninth Circuit's ruling does not apply to individuals who can pay for temporary shelter and choose not to, or to individuals who have realistic access to free shelter and choose not to use it. Similarly, the Court noted that the decision does not preclude, under certain circumstances, criminalizing sleeping outside at particular times or in particular locations.

Risk of Wildfires

The University of Southern California reported that wildfires scorched the American West in 2021. "In California alone, Cal Fire recorded 8,835 wildfires that destroyed more than 2.5 million acres cumulatively." The May 2022 Laguna Niguel wildfire in Orange County destroyed at least 20 homes and hundreds of acres of foliage in no time. Bill Deverell, director of the Huntington-USC Institute on California stated that the continued effects of climate change and especially extreme drought mean wildfire poses a risk year-round. "Summer in California no longer means the beginning of fire season. Rather, it means we are about to enter the roughest six or so months of a fire season that never ends . . . . Drought and the increasing effects of climate change come together in creating the likelihood — even the certainty — of bigger, hotter, and more catastrophic fires year to year." The High Country News reports the following: "Weather isn't the only thing that drives fires in the West. Most fires are started by humans, either deliberately or accidentally. And the fires require fuel to burn – and the extreme drought gripping the west, as well as a century of fire suppression, has led to the buildup of dead trees and vegetation that has helped stoke some of the largest fires in region. Dry soils have helped flames hurtle across the terrain unimpeded by moisture." (Maanvi Singh, "Fire Season is Getting Longer", *High Country News*, Aug. 26, 2021)

According to a recent article published in the Press-Enterprise on May 22, 2022, Riverside County fire authorities are suspending all outdoor burn permits amid worries that the 2022 wildfire season could be even more destructive than in years past, due to the ongoing, statewide megadrought. The ban was effective starting May 23, 2022. Riverside County Fire Chief Bill Weiser stated that county fire department has already experienced critical fire behavior in the region due to warmer temperatures and tinder-dry vegetation. (Josh Cain, "Riverside County Fire Officials Ban Outdoor Burning Amid Megadrought, Early Wildfire Season", *The Press-Enterprise,* May 22, 2022.)

The 2022 Point-in-Time Homeless Count identified 3,316 Riverside County residents experiencing homelessness, 59.71% of whom are unsheltered. The 2020 Count identified 587 City unsheltered residents experiencing homelessness, of which 34% are unsheltered living in an encampment, park, or woods. While many unsheltered individuals live in urban centers, a growing number have taken refuge in the Santa Ana Riverbottom or more remote canyon areas. As more people, both housed and unsheltered, live within high fire zones, the risk of fires starting and causing harm and loss of life has also increased. Unsheltered individuals are often reliant on fires for everyday survival activities, including cooking food and keeping warm, but these activities also increase the risk of nearby brush catching fire and rapidly spreading. Such individuals living in high-fire zones may miss emergency notifications and may experience challenges in safely evacuating. According to the Los Angeles Times, one-third of the 15,610 fires related to homelessness in the past 3 ¼ years were classified as arson. (Doug Smith, James Queally, and Genaro Molina, "24 Fires a Day: Surge in Flames at L.A. Homeless Encampments a Growing Crisis," *Los Angeles Times*, May 12, 2021)

Wildland Urban Interface

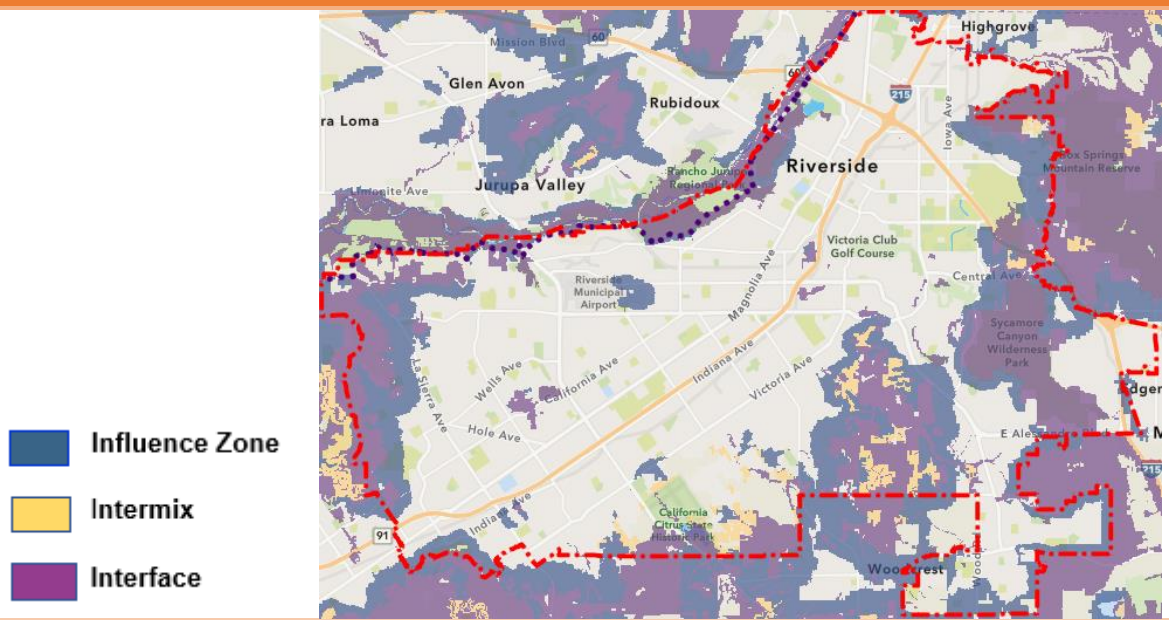
The wildland-urban interface (WUI) is the area where houses meet or intermingle with undeveloped wildland vegetation. This makes the WUI a focal area for human-environment conflicts such as wildland fires, habitat fragmentation, invasive species, and biodiversity decline. Wildfires in the WUI interfaces pose a serious threat to communities worldwide as they can be extremely destructive, killing people and destroying homes and other structures, as happened in California in 2003 and 2007, Greece in 2007, Australia in 2009, Israel in 2016 and Chile in 2017. The Global Fire Monitoring Center reports a global annual average of 297 fatalities caused by wildfires (both civilians and firefighters) between 2008 and 2015.

There are three areas in the WUI:

- Interface is dense housing adjacent to vegetation that can burn in a wildfire and must meet these criteria:
    - Housing density class 2, 3 or 4
    - In moderate, high, or very high Fire Hazard Severity Zone
    - Not dominated by wildland vegetation (i.e., lifeform not herbaceous, hardwood, conifer or shrub)
    - Spatially contiguous groups of 30m cells that are 10 acres and larger
- Intermix is housing development interspersed in an area dominated by wildland vegetation subject to wildfire and must meet these criteria:
    - Not Interface
    - Housing density class 2
    - Housing density class 3, 4 dominated by wildland vegetation
    - In Moderate, High or Very High Fire Hazard Severity Zone
    - Improved parcels only
    - Spatially contiguous groups of 30m cells 25 acres and large
- Influence Zone is wildfire susceptible vegetation up to 1.5 miles from Interface or Wildland Intermix and must meet these criteria:
    - Wildland vegetation up to 1.5 miles from Interface or Intermix

The City of Riverside maintains an integrated geographic information system (GIS) program to support city projects and to provide maps and geographic information to the public. This technology integrates spatial information with tabular data to create maps and provide insight on trends and metrics to support the various city programs. Leveraging this cutting-edge technology, the City produced the following map to establish its WUI.

WILDLAND URBAN-INTERFACE

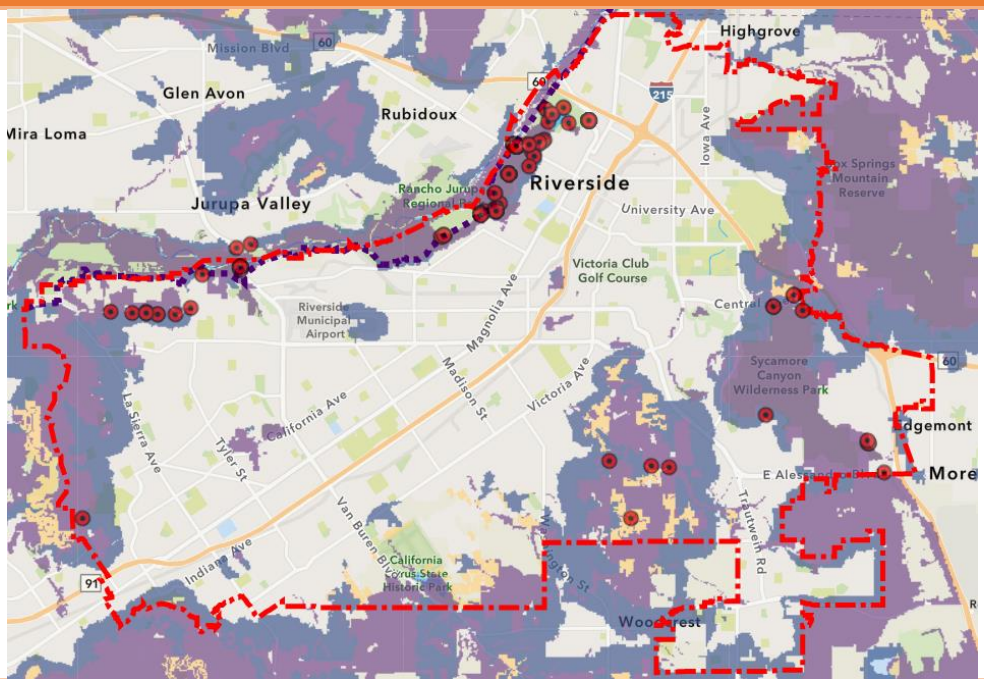


(Source: Wild Urban Interface - CAL FIRE and Resource Assessment Program (FRAP) 2018)

In assessing 911 calls over the last five years, the Riverside Fire Department has responded to 163 Vegetation Fires (66% Human-caused) in the Santa Ana Riverbottom. RFD responded to 12 vegetation calls (62% Human-caused) in Sycamore Canyon, 4 in Hawarden Hills (75% human-caused), and 1 in La Sierra Hills (Human Caused). In 2021, there were:

42 Fires in Santa Ana Riverbottom
1 Fire in Hawarden Hills
3 Fires in Sycamore Canyon
0 Fires in La Sierra Hills
3 Fires in Wildlife Preserve area.

2017-2022 FIRE HISTORY IN THE WILDLAND URBAN-INTERFACE



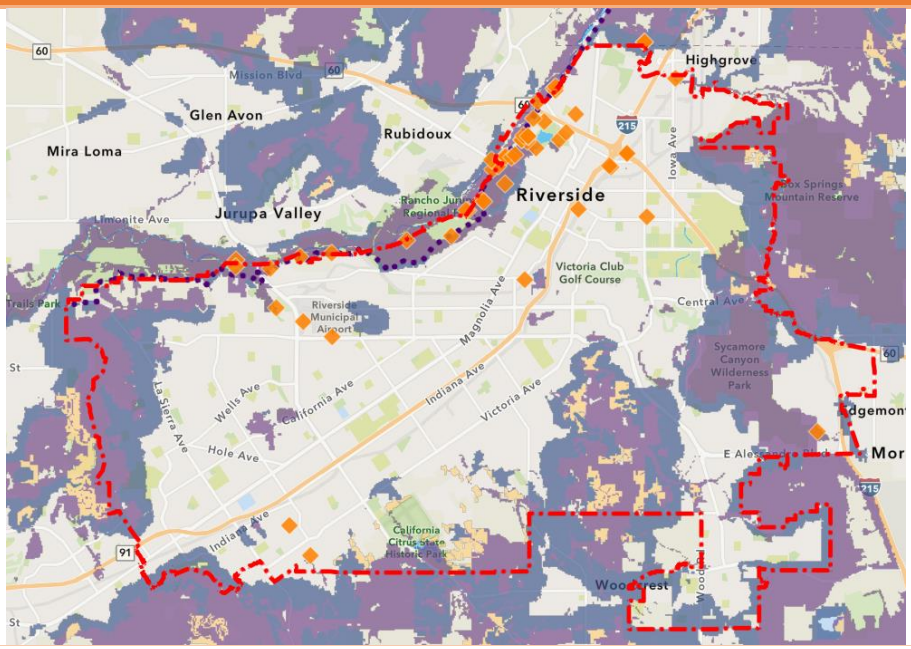
(Source: City of Riverside Fire Department, Dispatch Vegetation Fires 2021-2022 Second map with Red dots)

Efforts to notify or evacuate such unsheltered individuals in remote locations can cause undue harm to outreach workers and first responders including Riverside Fire and Police personnel. The fuel, weather, and topography conditions within the WUI create a challenge for firefighters to quickly extinguish wildfires that occur in those areas. In the wildland setting the fire department has several strategies available that can be used to extinguish fires. Some of the strategies include less aggressive mitigation efforts that would not put firefighters in harm's way such as helicopter water drops or utilizing bulldozers to cut a defensible space between burned and unburned areas. In areas that are known to have encampments, the Fire Department's ability to strategically extinguish a wildfire is significantly diminished as time is of the essence. Instead, fire personnel is often tasked with treading through densely overgrown vegetation areas with limited visibility to extinguish fires and limit the life safety risk associated with the encampments in the area. The known life-safety risk associated with areas such as the Santa Ana Riverbottom places an increased risk on Fire Department personnel to place themselves in harm's way.

In addition to the wildfire risk, the Santa Ana Riverbottom possesses a flood risk to the area. During inclement weather conditions, significant amounts of water flow through the river bottom. As a result of this condition, those living in encampments face the risk of drowning. Fire Department personnel have actively participated in water rescues in the Riverbottom, and this is considered a "Low Frequency/High Risk" event. Water rescues require fire department personnel to enter a swift water atmosphere on boats to rescue those seeking assistance. During some scenarios, aircraft is requested and used to assist with the water rescue.

Below is a map showing homeless encampments within the WUI. In the Summer-Fall of 2021, there were a total of 52 homeless encampments in the WUI. Thirty-nine of those encampments were noted as being within the city boundary. The remaining thirteen encampments noted were identified as being just outside of the city boundary.

HOMELESS ENCAMPMENTS IN THE RIVERSIDE WILDLAND URBAN-INTERFACE



(Source: City of Riverside Fire Department, Dispatch and Field Survey of Fire Origin for Vegetation Fires 2021-2022)

For the reasons shown herein, unsheltered individuals in high-risk fire zones pose a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to life, health, property and/or essential services.

DISCUSSION:

As climate change extends and exacerbates the fire season, particular areas of the City pose too great a risk of harm or loss of life for the City's public safety personnel and residents. The purpose of the proposed ordinance is to protect the public health, safety, and welfare of City residents, businesses, visitors, and City personnel including first responders.

The proposed ordinance (Attachment 1) would:

1) Make it unlawful and a public nuisance for any person to sit, lie, sleep, or store, use, maintain or place any bulky item or personal property in the Wildland Urban Interface;

2) Allow that a violation may be summarily abated which may include, but is not limited to, removal of bulky items, personal property, hazardous waste, infectious waste, discarded items, or debris; and securing the perimeter of the property with fencing, gates, or barricades to prevent further occurrences of the nuisance activity; and

3) Ensure that no person shall willfully prevent, delay, resist, obstruct, or otherwise interfere with a city official, employee, contractor, or volunteer in their execution of an abatement pursuant to this section.

The Committee may wish to consider whether there are other particular locations where regulating sitting, lying, or sleeping outside is necessary in the interest of public health, safety, and welfare.

STRATEGIC PLAN ALIGNMENT:

This item contributes to Strategic Priority No. 2 *Community Well-Being* and Goal No. 2.3 – Strengthen neighborhood identifies and improve community health and the physical environment through amenities and programs that foster an increased sense of community and enhanced feelings of pride and belonging citywide.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Establishing and applying city ordinances has increased the capabilities and capacities of enforcement officials to increase community trust in our public safety efforts.

2. **Equity** – The City of Riverside strives to serve the community with duty and honor by protecting and preserving life, property, and the environment through prevention, education, enforcement, medical, rescue, and fire suppression services.

3. **Fiscal Responsibility** – To provide a timely response, with the highest quality of emergency and non-emergency services to the community. The city's goal is to optimize these services through fiscal responsibility.

4. **Innovation** – Establishing an ordinance and utilizing designated enforcement officials to patrol high-risk areas within the city is an innovative method that is being used to mitigate the risks associated with the wildland-urban interface.

5. **Sustainability & Resiliency** – The establishment of an ordinance within designated high-risk areas will provide the community with a sense of well-being. The proposed ordinance represents the city's proactive stance toward fire risk reduction.

FISCAL IMPACT:

There is no fiscal impact associated with receiving this item should this ordinance go into effect. On May 3, 2022, the City Council directed staff to incorporate the Public Safety Engagement Team (PSET) Expansion (Urban) and the Public Safety Engagement Team (PSET) (Wildlands) into the proposed FY 2022-2024 Biennial Budget. Should the City Council consider and approve this ordinance for wildland areas, the enforcement of the ordinance would occur through the expanded PSET Teams.

Prepared by:	Neil Okazaki, Assistant City Attorney La Wayne Hearn, Deputy Fire Chief Dr. Lorissa Villarreal, Homeless Solutions Officer
Certified as to availability of funds:	Edward Enriquez, Chief Financial Officer/City Treasurer
Approved by:	Edward Enriquez, Interim Assistant City Manager
Approved as to form:	Phaedra A. Norton, City Attorney

Attachments:

1. Exhibit A – Proposed Ordinance
2. Presentation