

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL ADDING NEW SECTIONS 9.040.610 THROUGH 9.04.640 TO CHAPTER 9.04, “OFFENSES,” OF TITLE 9 “PEACE, SAFETY MORALS” OF THE RIVERSIDE MUNICIPAL CODE, TO REGULATE HOMELESS ENCAMPMENTS IN HIGH FIRE AREAS

WHEREAS, the City of Riverside (“City”) encourages the use of open spaces and facilities within the City by all members of the public; and

WHEREAS, camping in certain areas has created unsanitary, unhealthy, disorderly, and dangerous conditions that may affect campers, public safety first responders, and the general public; and

WHEREAS, the City has authority to regulate and ensure the public’s health, safety, and general welfare; and

WHEREAS, 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.” (*Ibid.*); and

WHEREAS, the *Boise* decision applies only to the issuance of criminal penalties for sitting, sleeping, or lying outside to persons experiencing homelessness who cannot obtain shelter; and

WHEREAS, the *Boise* court 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, supra*, 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.” (*Ibid*, citing *Boise, supra*, 902 F.3d at 1035 [emphasis in original].); and

WHEREAS, Riverside Municipal Code Section 9.04.600 prohibits camping but is not enforced when no alternative sleeping space is available, and

WHEREAS, the City intends to act in compliance with the *Boise* decision; and

WHEREAS, wildfires are a frequent natural disaster in California, causing significant harm and loss to individuals, communities, wildlife and great swaths of natural landscape and the frequency, duration and size of wildfires have increased over the last several decades; and

WHEREAS, 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.”; and

WHEREAS, 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.”; and

WHEREAS, 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); and

WHEREAS, while most of California is subject to some degree of fire risk, specific features make some areas particularly hazardous based on the severity of fire hazard that is expected to prevail there; and

WHEREAS, 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; and

WHEREAS, while many of these unsheltered individuals live in urban centers, a growing number have taken refuge in the Santa Ana River bottom 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; and

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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. For these reasons, 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; and

WHEREAS, 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; and

WHEREAS, to mitigate the foregoing risks, the City Council has determined to prohibit outdoor camping in areas in the wildland-urban interface;

WHEREAS, this ordinance allows for the implementation of specific time, place, and manner restrictions to establish clear camping prohibitions in order to best serve the health, safety, and general welfare of all, including individuals experiencing homelessness. This Ordinance is intended to avoid unsafe and potentially disorderly conditions, unsanitary and unhealthful conditions, and the degradation or destruction of open spaces and facilities within the City. It also seeks to balance public health and safety with the rights and unique needs of individuals experiencing homelessness who are camping by necessity. Without proper safety measures in place, involuntary camping can interfere with the rights of others to use the areas for their intended purposes and is deleterious to the public, health, safety, and welfare; and

WHEREAS, City Council desires to protect the public health, safety, and welfare of its first responders, residents, businesses, and visitors; and

WHEREAS, to mitigate the foregoing risks, the City Council has determined to prohibit outdoor camping in these high fire areas as well as in areas in, upon, under, or adjacent to certain critical infrastructure; and

WHEREAS, a further principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with the flora, fauna, hillside habit, and wildlife, as well as interference with public services such as law enforcement, fire prevention, transportation, and utilities including communication, water, and waste disposal, within the WUI of the City.

NOW THEREFORE, the City Council of the **CITY OF RIVERSIDE DOES ORDAIN AS FOLLOWS:**

SECTION 1. The City Council adopts the foregoing and incorporates the same herein by this reference.

SECTION 2. The City Council declares the purpose of this ordinance is to mitigate the threat of fire and other potential causes of destruction and damage to, and interference with, critical infrastructure or in City high fire areas, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in those areas of the City determined to constitute high fire danger, and to prohibit sitting, lying, sleeping, the placement of bulky items or personal property in those areas.

SECTION 3. Sections 9.04.610 through and including 9.04.640 are hereby added to the Riverside Municipal Code to read, in their entirety, as follows:

9.04.610. Definitions.

When used in this chapter, the following words and phrases have the following meanings:

“Camp” has the same meaning as in section 9.04.600

“Camping” has the same meaning as in section 9.04.600

“Camp fires” has the same meaning as in section 9.20.055(a)(2).

“Bulky Item” means any item that is too large or a group of items that cumulatively are too large to fit in one sixty-gallon trash container with the lid closed, including, but not limited to, a mattress, couch, chair or other furniture or appliance. The following items shall not constitute a bulky item: a portable, collapsible picnic chair or table, bicycle or any item approved for a city-authorized special event.

“Personal Property” means any and all tangible property, and includes, but is not limited to, goods, materials, merchandise, tents, bedding, sleeping bags, hammocks, and personal items such as luggage, backpacks, clothing, documents, medication and household items.

“Hazardous waste” has the same meaning as in California Public Resources Code § 40141.

“Infectious waste” has the same meaning as in California Code of Regulations, title 14, section 17225.36

“Wildland Urban Interface” means a public geographical area identified by the State of California as a “Fire Hazard Severity Zone” in accordance with Public Resources Code Sections 4201 through 4202 and Government Code Sections 51175 through 51189.

9.04.620 Prohibited activities.

A. *It is unlawful and a public nuisance for any person to sit, lie, sleep, or store, use, maintain, or place any bulky item or personal property, at the following location(s):*

- 1.** *Wildland Urban Interface*

B. Nothing in this chapter is intended to prohibit or make unlawful the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and nothing is intended to prohibit or make unlawful the activities of a property owner or other lawful user if such activities are expressly authorized by this code or other laws, ordinances, and regulations.

9.04.630. Summary abatement.

A. Any violation of section 9.04.620 may be abated in accordance with procedures in section 6.15 of this Code.

B. Abatement pursuant to subsection A 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.

C. Regardless of the city's authority to conduct abatement pursuant to this section, every owner, occupant, or lessee of real property, and every holder of any interest in real property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.

9.04.640. Interference with summary abatement.

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.

SECTION 3. The City Council has reviewed the matter and hereby finds that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2), 15060(c)(3) and/or 15061(b)(3) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment nor have a significant impact on the environment.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen

(15) days after its final passage, the City Clerk shall cause it to be posted and published in a newspaper of general circulation in the manner required by law.