



Agenda Report

Date: December 10, 2013
To: Jeffrey W. Collier, City Manager
From: Jeff A. Piper, Chief of Police
Subject: Camping and Storage of Personal Property in Public Areas

RECOMMENDATION

It is recommended the City Council:

- Introduce an ordinance repealing and replacing Whittier Municipal Code Section 12.42 relating to camping and storage of personal property; and
- Authorize staff to do a Summary Publication of the Ordinance

BACKGROUND

In 2010, City Council adopted Ordinance No. 2946 establishing regulations governing camping and storage of personal property. The purpose of the ordinance was to ensure the public areas within the City could be readily accessible and available to the residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. This ordinance was codified under Whittier Municipal Code 12.42.

DISCUSSION

Various amounts of personal property are being left unattended in public places throughout the City, giving rise to competing interests. On one hand, unattended personal property in public areas interferes with access to such public areas and could not only constitute a threat to the health and safety of residents but interfere with safe passage for pedestrians and disabled individuals across public rights-of way. On the other hand, the individual owners of the unattended personal property have a protectable possessory interest in property they leave unattended in public places because the property may include important items such as identification, heirlooms, medications, toiletries and clothing.

After consideration and analysis of these issues, City staff worked with the City Attorney's office to develop an ordinance that balances, addresses, and clarifies the competing concerns noted above while ensuring compliance with State and Federal Law. In summary, the proposed ordinance accomplishes the following:

- It clarifies and expands certain definitions including personal property, abandoned personal property, and storage of personal property.
- It includes detailed provisions relating to notice and post-impound due process for personal property that is impounded.
- It modifies the provisions that relate to the handling of found property in compliance with state and federal law.
- It allows for the destruction of dangerous or perishable property; contraband or evidence of a crime is subject to confiscation pursuant to state and federal law.
- It provides that abandoned property may be destroyed only when such property is clearly and unmistakably abandoned as defined.
- Violations of any provisions of this ordinance may be punished pursuant to the provisions of Chapter 1.08 of the Whittier Municipal Code.

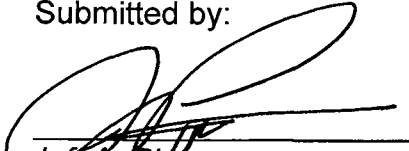
Ted Knoll, Executive Director of First Day, reviewed the proposed ordinance and concluded that it provides an equitable balance between the public's interest and the possessory interest in the personal property of those who leave such property unattended.

FISCAL IMPACT

While additional revenue may be generated as a result of this ordinance, those amounts are anticipated to be negligible and depend on the frequency of violations in any given period.

There is an estimated fiscal impact of \$2,385 if the ordinance is published in its entirety. The estimated cost of Summary Publication is \$1,416 for a savings of approximately \$969. There is \$19,805 available in account 100-15-151-641000 Clerk-Advertising and Publications.

Submitted by:



Jeff A. Piper
Chief of Police

Attachment: A – Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, REPEALING AND REPLACING CHAPTER 12.42 OF THE WHITTIER MUNICIPAL CODE REGARDING CAMPING AND STORAGE OF PERSONAL PROPERTY IN PUBLIC AREAS

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution the City of Whittier has the authority to enact and enforce ordinances for the protection of the health, safety and welfare of its residents;

WHEREAS, Article II, Section 200 of the City of Whittier's Charter empowers the City to make and enforce all laws and regulations with respect to municipal affairs;

WHEREAS, the City Council of the City of Whittier finds that large amounts of personal property are being left unattended in public places throughout the City, and that such personal property creates blight within the City, and obstructs the public rights-of-way;

WHEREAS, the City Council finds that unattended personal property in public areas interferes with access to such public areas and to businesses, and thereby negatively affects quality of life, as well as the profitable operation of such businesses;

WHEREAS, the City Council finds that unattended personal property in public areas constitutes a threat to the health and safety of the people, as such personal property may attract vermin and interfere with safe passage for pedestrians and disabled individuals across public rights-of-way;

WHEREAS, the City Council finds that individuals have a protectable possessory interest in personal property that they leave unattended in public places and parks, and that such property may include important items such as identification papers, heirlooms, medications, toiletries and clothing;

WHEREAS, the City Council finds that the public's interest in having blight-free parks and public rights-of-way is outweighed by the more immediate interests of individuals in not having their personal belongings summarily destroyed;

WHEREAS, Section 2080 et seq. of the California Civil Code provide for the disposition and care of lost and unclaimed property, and Section 2080.4 authorizes the City of Whittier to enact its own provisions;

WHEREAS, the City Council finds that unlawful camping in public areas, streets and parks causes blight, obstructs the public rights-of-way, prevents public areas from being used for their intended purposes, and obstructs access to businesses and public facilities;

WHEREAS, the City Council finds that unattended property in public areas and unlawful camping are different problems that cause blight in the City of Whittier, and should be addressed in ways that are specifically tailored to each problem;

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances and it is infeasible to prepare a fair and accurate summary of the ordinance; and

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a summary of the ordinance in lieu of the entire text.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 12.42 - Camping and Storage of Personal Property - of Title 12 (Streets, Sidewalks and Public Places), of the Whittier Municipal Code is hereby repealed and replaced in its entirety with the following text:

Chapter 12.42 – CAMPING AND STORAGE OF PERSONAL PROPERTY IN PUBLIC AREAS

12.42.010 - PURPOSE.

- A. The public streets and areas within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes and/or storage of personal property interferes with the rights of others to use the areas for which they were intended. The purpose of this chapter is to maintain the public streets and public areas in blight-free conditions, to secure access to public areas and to businesses, and to ensure that public property is used for its intended purposes and remains accessible to all citizens, businesses and visitors in the City of Whittier.
- B. Large amounts of personal property are being left unattended in public areas throughout the City, and such personal property creates blight, obstructs the public rights of way, interferes with access to the public areas and to businesses, and thus negatively affects quality of life in the city, and negatively affects the profitable operation of such businesses.

12.42.020 - DEFINITIONS.

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

- A. "Abandoned personal property" means personal property that the owner surrenders, relinquishes, or disclaims. Indicia of abandoned personal property shall include, but not be limited to: personal property that its owner has indicated he/she does not want; and personal property left on private real property for any period of time without the permission of the real property owner or current tenant.
- B. "Alley" shall have the same meaning as Section 110 of the California Vehicle Code.
- C. "Camp" means to pitch or to occupy camp facilities; to use camp paraphernalia.
- D. "Camp facilities" include, but are not limited to, tents, huts or temporary shelters.
- E. "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks or noncity designated cooking facilities and similar equipment.
- F. "Chief of Police" or "Police Chief" means the Chief of Police of the Whittier Police Department, and shall include his/her designee.
- G. "City clerk-treasurer" shall mean the Whittier City Clerk-Treasurer and shall include his/her designee.
- H. "City manager" shall mean the Whittier City Manager and shall include his/her designee.
- I. "House trailer" shall include any motor vehicle, boat, recreational vehicle or other vehicular device designed for use as a human habitation but shall not include a manufactured home, as that term is defined in 42 U.S.C. § 5402, or its successor provisions.
- J. "Park" means a park, reservation, playground, recreation center or any other area in the city owned, maintained or used by the city for the purpose of public rest, play, enjoyment, active or passive recreation, or assembly, and shall include all buildings and structures located thereon or therewith.
- K. "Public area" means and includes, but is not limited to, any street, alley, park, public right-of-way, recreational area, any place open to the public view or other

place to which the public has access. A public area can be privately or publicly owned.

- L. "Public works director" means the Public Works Director of the City of Whittier or his/her designee.
- M. "Personal property" means tangible personal belongings. Tangible personal belongings include any movable or tangible thing that is subject to ownership; property or chattels that can be seen, weighed, measured, felt, or touched, such as furniture, cooking utensils, money and books. For the purposes of this chapter, personal property shall not include real property, vehicles, bicycles or animals.
- N. "Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property includes land, buildings and easements.
- O. "Storage of personal property in public areas" means accumulating or putting aside personal property, placing it for safekeeping, or leaving it in public areas; or personal property that is left unattended in any public area lacking a guard, escort, caretaker, or other watcher.
- P. "Street" shall have the same meaning as Section 591 of the California Vehicle Code.
- Q. "Unclaimed personal property" means personal property that has been turned in to the chief pursuant to Section 12.42.040, and that has not been claimed within a period of ninety (90) days by its true owner or finder.

12.42.030 - CAMPING IN PUBLIC AREAS PROHIBITED.

- A. It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise designated by the city manager or his/her designee:
 - 1. Any street or alley;
 - 2. Any public parking lot or public area, improved or unimproved;
 - 3. Any park.
- B. The prohibition of this section shall not apply:
 - 1. In the event of emergencies, such as may be caused by flooding, fire, earthquake or any other natural or man-made condition.
 - 2. To events that are approved or sponsored by the city.

3. To camping grounds and parks designated for mobile home or recreational vehicle use.
4. Occasional camping on residential properties, with the property owner's express permission, not to exceed three consecutive days in any ninety-day period.
5. Events on private property, for which the owner(s) or person(s) in lawful possession of the property has obtained a temporary use permit or conditional use permit from the city, which specifically allows the activity.

12.42.040- UNLAWFUL CAMPING – LIVING IN VEHICLES PROHIBITED.

- A. The use of a house trailer, whether on wheels or a foundation, for habitation purposes, either temporary or permanent, other than one located in a regularly established trailer park and in areas designated for such use, is declared to be a nuisance and is prohibited.
- B. The use for habitation purposes of any motor vehicle, operative or nonoperative, including but limited to any automobile, sport utility vehicle or van, which has a designed primary purpose of transportation, and which is parked on any street or public place or anywhere open to public view, is declared to be a public nuisance and is prohibited.

12.42.050 - STORAGE OF PERSONAL PROPERTY IN PUBLIC AREAS PROHIBITED.

- A. It shall be unlawful for any person to store personal property in any public area, except as otherwise approved in writing by the city manager or his/her designee. Personal property stored in public areas in violation of this section shall be impounded pursuant to Sections 12.42.050 through 12.42.110 of this chapter.
- B. Any personal property left in any city park while the park is closed to the public, whether or not the personal property is unattended, may be immediately impounded, pursuant to Sections 12.42.050 through 12.42.110 of this chapter.
- C. Violations of this section may be punishable pursuant to the provisions of Section 1.08.010 of this code.

12.42.060 - POLICE CHIEF TO RECEIVE STORE/UNATTENDED PERSONAL PROPERTY.

The chief of police shall make provisions for receiving and safekeeping of personal property found unattended and coming into his or her possession. A receipt shall be issued to the person delivering such personal property, unless the personal property was found in the course of employment by an employee of the city. The police department shall notify the owner, if his or her identity is reasonably ascertainable, that it possesses the personal property and where it may be claimed. The police department

may require the owner to pay a reasonable charge to defray the costs of storage and care of the personal property.

12.42.070 - NOTICE.

- A. In the event that the personal property is found in the course and scope of employment by an employee of the city, the employee shall leave a notice in a prominent place of any personal property taken, including advising where the personal property is being kept and when it may be claimed by its rightful owner.
- B. The city shall determine what, if any, areas of the city suffer from blight due to storage of personal property in public places, parks or streets and alleys, and erect signs in those areas so as to provide additional notice.

12.42.080 - HOLDING AND DISPOSAL OF STOLEN/UNATTENDED PERSONAL PROPERTY.

Found personal property shall be deposited in a safe place for a period of at least ninety (90) days, and found money shall be deposited with the city clerk-treasurer for a period of not less than ninety (90) days, unless sooner claimed by the true owner. In the event the property or money is not claimed within ninety (90) days, it shall be deemed to be unclaimed personal property, subject to disposal as provided in this chapter.

12.42.090 - TRUE OWNER MAY CLAIM PERSONAL PROPERTY.

During the time that any found personal property is held by the city, it may be delivered or paid to the true owner as follows:

- A. The personal property shall be delivered upon proof of ownership satisfactory to the chief of police after ten (10) days' notice by mail to any others who have asserted a claim of ownership, at any address given by such persons.
- B. If the personal property consists of money, it shall be paid to the true owner upon written order from the chief of police to the city clerk-treasurer. The chief of police shall make such order upon the same proof of ownership and with the same notice as prescribed in the case of property.
- C. If ownership cannot be determined to the satisfaction of the chief of police, he or she may refuse to deliver the personal property or order the payment of such money to anyone until ordered to do so by a court of competent jurisdiction.

12.42.100 - FINDER MAY RECLAIM PROPERTY OR MONEY.

- A. If the reported value of the personal property is \$250.00 (two-hundred fifty dollars) or more, and the true owner does not appear and prove his or her ownership of the personal property within ninety (90) days, the chief of police

shall cause notice of the personal property to be published once in a newspaper of general circulation. If, after seven (7) days following the publication of the notice, no owner appears and proves his or her ownership of the personal property, and the person who found or saved the personal property pays for the cost of publication of the notice, the title shall vest in the person who found or saved the personal property, unless the personal property was found in the course of employment by an employee of the city, wherein the personal property shall be sold at auction as provided in Section 12.42.060.

- B. In the event the reported value of the personal property is less than \$250.00 (two-hundred fifty dollars) and no owner appears to prove his or her ownership of the personal property within ninety (90) days, the title shall vest in the person who found or saved the personal property, unless the personal property was found in the course of employment by an employee of the city, in which case the personal property shall be sold at auction as provided in Section 12.42.060.

12.42.110 - UNCLAIMED PERSONAL PROPERTY TO BE USED BY CITY OR SOLD AT AUCTION – NOTICE.

- A. Upon expiration of the ninety (90) day period, any personal property received by the city and not delivered to the true owner or finder may be appropriated to the use of the City of Whittier upon order of the city manager or his or her finding that the personal property is needed for a public use, and any personal property not appropriated to city use may be sold at public auction to the highest bidder.
- B. All unclaimed money received by the chief of police, and not delivered to the true owner or finder during the ninety (90) day period shall thereafter be deposited in the general fund.
- C. Notice of sale at auction of unclaimed personal property shall be given by the city clerk-treasurer at the direction of the chief of police at least five (5) days before the time fixed therefor by publication at least once in a newspaper of general circulation.

12.42.120 - CONDUCT OF AUCTION.

An auction for the sale of unclaimed personal property shall be in accordance with Civil Code 2080.3, 2080.4 and city policy.

12.42.130 - PROCEEDS TO BE DEPOSITED IN GENERAL FUND.

After any auction for unclaimed personal property is completed, the proceeds of the auction shall be delivered to the city clerk-treasurer for deposit in the general fund.

12.42.140 - UNSALABLE AND UNUSUAL PERSONAL PROPERTY.

Any personal property advertised and offered for sale but not sold and not suitable for appropriation to the use of the city shall be deemed to be of no value and shall be disposed of in such a manner as the city manager deems appropriate.

12.42.150 - DANGEROUS OR PERISHABLE PERSONAL PROPERTY – EVIDENCE.

Any personal property coming into the possession of the chief of police may be disposed of immediately and without notice, in a manner that the chief of police determines to be in the public interest, when such personal property is perishable, contraband pursuant to state or federal law, evidence in a criminal investigation, or constitutes an immediate threat to the public health or safety.

12.42.160 - PROVISIONS NOT APPLICABLE.

- A. The provisions of this chapter shall not apply to real or personal property or money subject to confiscation pursuant to state or federal law, to personal property that constitutes evidence in an ongoing criminal investigation and/or civil proceeding pursuant to state or federal law.
- B. The provisions of this chapter shall apply to personal property or money held as evidence only where the same is unclaimed by any person and no other provisions of law are applicable concerning its disposition.
- C. The provisions of this chapter shall not apply to personal property that has been abandoned by its owner. Abandoned property personal property shall be disposed of forthwith.

12.42.170 - PENALTIES.

- A. Any violation of the provisions of this Chapter may be punished pursuant to the provisions of Chapter 1.08 of the Whittier Municipal Code.
- B. The remedies set forth in subsection A of this Section shall be in addition to any other existing remedies for code enforcement and nuisance abatement actions, including but not limited to, administrative citations or any action at law or equity.

SECTION 2. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection,

sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause a display advertisement of at least one-quarter of a page to be published once in the official newspaper within 15 days after the adoption of the Ordinance, which advertisement indicates the general nature of the Ordinance and information about the Ordinance, including how to obtain copies of the complete text of the Ordinance. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this _____ day of _____ 2013.

BOB HENDERSON, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer