

**ORDINANCE NO. 1185**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ADDING CHAPTER 9.52 PROHIBITION AGAINST CERTAIN CONDUCT ON PUBLIC PROPERTY AND CHAPTER 9.56 STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY TO TITLE 9, *PUBLIC PEACE, MORALS AND WELFARE*, OF THE PICO RIVERA MUNICIPAL CODE**

**WHEREAS**, reducing homelessness and the impacts of encampments on public property pose challenges for California cities. In *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031, 1046, superseded, *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, the Ninth Circuit held “the Eighth Amendment prohibits the imposition of criminal penalties for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.”; and

**WHEREAS**, this Ordinance reflects the City Council’s desire to maintain public areas in clean, sanitary and accessible conditions to prevent harm to the health and safety of the public in a manner that includes adequate procedural safeguards governing the removal and storage of personal property; and

**WHEREAS**, the proposed Ordinance prohibits certain conduct on public property including a prohibition on hindering or obstructing the free passage of other individuals, urination and defecation, storing and accumulating trash, debris or personal property, and inhabiting vehicles that are parked in certain restricted area; and

**WHEREAS**, it is the obligation of the City to keep its public right of way and public property clean and to protect the public health, safety, and access by City residents and guests; and

**WHEREAS**, the courts and the State Legislature have expressly recognized the power of a city to regulate conduct on streets, sidewalks, or other public places, and has upheld ordinances that provide for the removal, notice and storage of personal property (*De-Occupy Honolulu v. City and County of Honolulu*). Recent court decisions have prohibited state and local governments from imposing criminal penalties on homeless persons camping on public property, but the courts have explicitly upheld the authority of state and local governments to enact and enforce ordinances that maintain and protect public safety and public health; and

**WHEREAS**, the Ordinance does not punish individuals facing homelessness in violation of the Ordinance with traditional punishments such as misdemeanor or fines; and

**WHEREAS**, the City Council of the City of Pico Rivera desires to amend the Pico Rivera Municipal Code as set forth herein.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Pico Rivera as follows:

**SECTION 1.** The City Council finds that the above recitals are true and correct and incorporated herein as part of the findings.

**SECTION 2.** The City Council hereby finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines Section 15061(b)(3) and CEQA Guidelines section 15060(c)(2), (3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment and because CEQA Guidelines section 15378 defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. The Ordinance will not have any effect that would physically change the environment.

**SECTION 3.** The City Council finds that public areas within the city, including streets, sidewalks, parks, public buildings and public land, should be readily accessible and available to residents and the public at large for use in a safe and healthy manner. The use of these areas in a manner that hinders or obstructs the free passage of pedestrians, exercise of bodily functions, habitation in vehicles interferes with the ability of residents and the public to use the areas in the healthy and safe manner for the uses intended for.

**SECTION 4.** A new Chapter 9.52, *Prohibition Against Certain Conduct on Public Property*, is hereby added to Title 9 *Public Peace, Morals and Welfare* to read as follows:

**CHAPTER 9.52 PROHIBITION AGAINST CERTAIN CONDUCT ON PUBLIC PROPERTY**

**9.52.010 Purpose**

**9.52.020 Definitions**

**9.52.030 Free passage shall not be hindered or obstructed.**

**9.52.040 Public Urination and defecation prohibited.**

**9.52.050 Use of vehicles for human habitation restricted on city streets and public property.**

**9.52.060 Limitation on applicability.**

**9.52.070 Enforcement**

**9.52.010 Purpose**

- A. **The courts and the State Legislature have expressly recognized the power of a city to regulate conduct on streets, sidewalks, or other public places, and has specifically authorized local ordinances governing the use of municipal parks and public property. Recent court decisions have prohibited state and local governments from imposing criminal penalties on homeless persons camping on public property, but the courts have explicitly upheld the authority of state and local**

governments to enact and enforce ordinances that maintain and protect public safety and public health.

- B. In accordance with these court decisions, this Chapter prohibits certain conduct on public property which will adversely affect public health and public safety, including a prohibition on hindering or obstructing the free passage of other individuals, performing bodily functions, including urination and defecation, storing and accumulating trash, debris or personal property, and inhabiting vehicles in parked certain restricted areas. This conduct has resulted in significant adverse health and safety issues for the people in Pico Rivera.
- C. The public areas within the city, including streets, sidewalks, parks, public buildings and public land, should be readily accessible and available to residents and the public at large for use in a safe and healthy manner. The use of these areas in a manner that hinders or obstructs the free passage of pedestrians, exercise of bodily functions, habitation in vehicles interferes with the ability of residents and the public at large to use the areas in the healthy and safe manner for the uses intended. Such activity and their attendant negative effects constitute a significant public health and safety hazard, which adversely impacts other members of the public and neighborhoods, as well as industrial, and commercial areas. The city's streets, sidewalks, parking lots, parks and other public areas are intended for free passage use without health and safety problems. Detrimental impacts from activity that hinders or obstructs the free passage of pedestrians, exercise of bodily functions, habitation in vehicles include lack of proper water and sanitary facilities, safety hazards for pedestrians and the inhabitants of vehicles, presence of trash and debris, criminal activities including illegal drug use, and other conditions which are inconsistent with the intended use and enjoyment of these areas by the general public, and constitutes a public health and safety hazard. A purpose of this chapter is to maintain public and private lands, streets, sidewalks, alleys, ways, waterways, parks, playgrounds, recreation areas, plazas, open spaces, lots, parcels and other public and private areas within the city, in a clean, sanitary and accessible condition. Nothing in this chapter is intended to interfere with otherwise lawful and ordinary uses of public areas.

**9.52.020 Definitions**

- A. "Business establishments" means retail stores, food markets, theaters, restaurants, drive-in restaurants, gasoline service stations, bars, hotels, motels, or any other establishment which is open to and provides the public with any goods or services.
- B. "Public property" means any real or personal property owned or controlled by the city and includes, but is not limited to, any publicly-owned park, building, street, sidewalk, way, path, alley, parking lot or other public property owned or controlled by the city and located within the City of Pico Rivera and such other publicly owned

property for which the city is authorized by contract or permit to maintain.

- C. "Street" means all streets, avenues, highways, lanes, alleys, ways, crossings or intersections, co-routes and cui-de-sacs and city rights of way adjacent thereto.

**9.52.030 Free passage shall not be hindered or obstructed.**

- A. No person or persons shall stand, sit, linger, idle, or lie on any street, alley, sidewalk, park, public facility or other public place, or in or about the entrance or exit of any business establishment or public building, either on foot or in an automobile or other vehicle, in such a manner as to obstruct or hinder the free passage of persons along such public way, including obstructing the public right of way in a manner that restricts passage as required by the Americans with Disabilities Act, or obstruct or hinder persons entering and exiting from any business establishment or public building, or in such a manner as to create a health or safety hazard for the community or for the patrons of such public place.
- B. No person in violation of this prohibition shall refuse or fail to disperse or move on when directed to do so by a police officer or city employee.

**9.52.040 Public Urination and defecation prohibited.**

No person shall urinate or defecate on any public street, roadway, boulevard, alley, parking lot, sidewalk, or any other property owned, controlled and/or operated by the city, county or any public agency, or on private property in any area exposed to the public view, except when using a urinal, toilet, or commode located in a bathroom, restroom, or other structure specifically designated for the purpose of urination and defecation.

**9.52.050 Use of vehicles for human habitation restricted on city streets and public property.**

- A. It is unlawful for any person to use a vehicle for human habitation on any street or public property, unless such use of authorized the Pico Rivera Municipal Code, including Section 10.42, Living In Motor Homes or Other Recreational Vehicles, as follows:
1. Between the hours of 9 :00 p.m. and 6:00 a.m. in residential and commercial zones; and
  2. Between the hours of 9:00 p.m. and 6:00 a.m. within 500 feet of a residence, meaning a building used for living, including a house, condominium, apartment unit, or other similar dwelling unit affixed to real property, located in any zone; and
  3. At any time, within 500 feet of a park or a public or private licensed school for pre-kindergarten through 12th grade, pre-school, youth center, or daycare facility. School for purposes of this section does not include a vocational or professional institution of higher education.

- B. For purposes of this section, evidence of human habitation may include observations, considering all the circumstances, that a person is using a vehicle for: sleeping; bathing; preparing or cooking meals; possessing or storing items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, used bedding, kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal grooming items, or containers of feces or urine. Evidence of human habitation also may include observations, considering all the circumstances, that: a person has obscured some or all of the vehicle's windows; there is litter, rubbish, or waste in or around the vehicle; there is furniture set up in or around the vehicle, such as chairs, tables, umbrellas, or portable cooking equipment; or there is evidence of human urination or defecation around the vehicle.
- C. A person who is not in compliance with this Section shall have the opportunity to move the vehicle in violation of this Section to a location outside of the areas described in Subsection A within a reasonable time not exceeding thirty (30) minutes from the time when directed to do so by a police officer or city employee.

**9.52.060 Limitation on applicability.**

This chapter is not intended to violate and shall not be applied or enforced in a manner that violates the United States or California Constitutions and applicable state or federal statutes, and shall be construed and applied in accordance with such laws.

**9.52.070 Enforcement**

- A. Nothing herein precludes the enforcement of any other laws such as parking restrictions, including, but not limited to, prohibitions on overnight parking, storage of vehicles, littering, and illegal discharge or dumping of materials.
- B. Nothing in this chapter shall limit or preclude the enforcement of any other applicable laws or civil remedies or nuisance abatement remedies available for violations of this chapter.

**SECTION 5.** *A new Chapter 9.56, Storage of personal property on public property, is hereby added to Title 9 Public Peace, Morals and Welfare to read as follows:*

**CHAPTER 9.56 STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY**

9.56.010 Purpose

9.56.020 Definitions

9.56.030 Prohibition on the storage of personal property on public property.

9.56.040 Prohibition on attachments.

9.56.050 Removal of stored personal property.

9.56.060 Removal, Storage and Retrieval

9.56.070 Illegal dumping.

9.56.080 Limitation on applicability.

**9.56.010 Purpose**

- A. The courts and the State Legislature have expressly recognized the power of a city to regulate conduct on streets, sidewalks, or other public places, and has specifically authorized local ordinances governing the use of municipal parks and public property. Recent court decisions have prohibited state and local governments from imposing criminal penalties on homeless persons camping on public property, but the courts have explicitly upheld the authority of state and local governments to enact and enforce ordinances that maintain and protect public safety and public health.
  
- B. In accordance with these court decisions, this Chapter prohibits certain conduct on public property which will adversely affect the public health and public safety on public property, including a prohibition on the storage and accumulation of trash, debris, and hazardous materials on public property. This conduct has resulted in significant adverse health and safety issues for the people in Pico Rivera.
  
- C. The public areas within the city, including streets, sidewalks, parks, public building and public land, should be readily accessible and available to residents and the public at large for use in a safe and healthy manner. The use of these areas for storage and accumulation of trash, debris and personal property interferes with the ability of residents and the public at large to use these areas in a healthy and safe manner for the intended uses. Such storage of trash, debris and personal property and their attendant negative effects constitute a significant public health and safety hazard, which adversely impacts other members of the public and neighborhoods, as well as industrial and commercial areas. The city's streets, sidewalks, parking lots, parks and other public areas are intended for use by the general public, not for storage of personal, stolen, or abandoned property. Detrimental impacts from illegal storage, or dumping in these public areas which are not designed for such storage include lack of proper water and sanitary facilities to maintain storage areas, safety hazards for visitors and the inhabitants of substandard temporary structures, presence of trash and debris, harborage of disease-carrying rodents and vectors, criminal activities including illegal drug use, deposit and dumping of biological materials, hazardous substances, or hazardous waste, and other conditions which are inconsistent with the intended use and enjoyment of these areas by the general public. Moreover, the proliferation of lost, abandoned, or stolen shopping carts or wheeled carts around the city results in the obstruction of free access to sidewalks, streets, parking lots, and other ways; interferes with pedestrian and vehicular traffic on public and private streets; and impedes emergency services. A purpose of this chapter is to maintain public and private lands, streets, sidewalks, alleys, ways, creeks, waterways, parks, playgrounds, recreation areas, plazas, open spaces, lots, parcels and other public areas within the city, in a clean, sanitary and accessible condition. Nothing in this chapter is

intended to interfere with otherwise lawful and ordinary uses of public property.

**9.56.020 Definitions**

The following definitions apply to this chapter.

- A. "Abandoned personal property" means unattended, but not stored, personal property that by its condition of damage, deterioration, disrepair, non-use, obsolescence or location, causes a reasonable person to conclude that the owner has permanently relinquished all right, title, claim and possession thereto. In determining whether property is abandoned, enforcement personnel shall, erring on the side of caution, evaluate the facts and circumstances surrounding the item(s), including whether the personal property is unattended and lacks objective signs of abandonment. Examples of objective signs of abandonment include, but are not limited to, items located in gutters, placed adjacent to trash receptacles, an empty and/or broken tent sitting by itself on a sidewalk with no other belongings, or a bag of clothes that is open and strewn across a sidewalk. Notwithstanding the foregoing, personal property covered by Section 9.56.060 (B)(1) (Property Associated with Camping) shall not be considered abandoned.
- B. "Critical use area" means any of the following areas of City property:
1. Within 10 feet of any operational or utilizable entrance, exit, driveway, service area, or loading dock, or within, on, or obstructing, any stairway, passageway, hallway, or corridor leading to such areas.
  2. Within 10 feet of critical infrastructure.
  3. Within 5 feet of any parking space, whether delineated with space markings or otherwise.
  4. Any areas upon a sidewalk or other public right-of-way that the American with Disabilities Act requires to be clear of obstructions for purposed of pedestrian and disabled pedestrian traffic.
- C. "Critical infrastructure" means fire or law enforcement stations; hospitals; structures such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water resources. Critical infrastructure also includes real property or a facility, whether privately or publicly owned, that the City Manager or designee designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruptions, or destruction would have a debilitating impact on the public health, safety, or welfare.
- D. "Essential personal property" means tents, tarpaulins, bedding, blankets, sleeping bags, bicycles, trailers, carts, clothing, identification, medical papers or devices,

medications, personal items (e.g., photographs and documents) and items necessary to acquire assistance for, or achieve, instrumental activities of daily living. Essential personal property does not include any items intended for commercial purposes, such as items, consumable or, otherwise, for sale, trade, barter, or in consideration of donations.

E. "Non-essential personal property" means all items other than essential personal property.

F. "Person" means any individual, group, business, company, corporation, joint venture, partnership or other entity or association composed of two or more individuals.

G. "Personal property" means all tangible property, and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, sleeping bags, hammocks, bicycles, shopping carts, and personal items such as luggage, backpacks, clothing, documents, medication, and household items.

H. "Public property" means any real or personal property owned or controlled by the city and includes, but is not limited to, any publicly owned park, building, street, sidewalk, way, path, alley, park, parking lot or other public property owned or controlled by the city and located within the City of Pico Rivera and such other publicly owned property for which the city is authorized by contract or permit to maintain.

I. "Store, Stored, Storage or Storing" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

J. "Tent" means any tent, as that term is generally understood, and also includes any tarpaulin, cover, structure or shelter, made of any material which is not open on all sides and which hinders an unobstructed view behind or into the area surrounded by the tarpaulins, cover, structure or shelter.

**9.56.030 Prohibition on the storage of personal property on public property.**

Except as may otherwise be expressly permitted by the Pico Rivera Municipal Code, no person shall store any personal property on public property.

**9.56.040 Prohibition on attachments.**

Except as may otherwise be expressly permitted by the Pico Rivera Municipal Code, no person shall erect any barrier against or join any wires, ropes, chains or otherwise attach any personal property to any public property including any trees or plants including, but not limited to, a building or a portion thereof, playground equipment, fencing, bike rack, table, bench, tree, bush, shrub or plant, without the city's prior written consent.



**9.56.050 Removal of stored personal property.**

In the event personal property placed on public property poses an immediate threat to the health or safety of the public, including, without limitation, a threat arising from the personal property containing biological materials, hazardous substances, or hazardous waste, the city may remove and discard it subject to post-removal notice requirements in subsection 9.56.060 (B)(4)(b).

**9.56.060- Removal, Storage and Retrieval**

A. Abandoned Personal Property. Enforcement personnel may remove and immediately discard any abandoned essential and non-essential personal property located on City property without complying with the pre-removal notice, post-removal notice, storage, and retrieval requirements set for in subsections (B)(4), (B)(5) and (B)(6) below. Notwithstanding the foregoing, any essential or non-essential personal property covered by subsection (B1) (Property Associated with Camping) shall not be considered abandoned.

B. Stored Personal Property. Enforcement personnel may remove unattended stored essential and non-essential personal property on City property subject to the following procedures:

1. Property Associated with Camping. Absent exigent circumstances relating to immediate threats to the public health, safety, or welfare and subject to subsection (B)(2)(Critical Use Areas) below, all essential and non-essential personal property located within a 15 foot radius of any location where an unhoued individual is camping in accordance with *Martin v. City of Boise* (9<sup>th</sup> Cir. 2019) 920 F. 3d 584 shall not be considered abandoned and may be removed subject to the pre-removal notice, post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(a), (B)(4)(b), (B)(5), and (B)(6) below.
2. Critical Use Areas. Essential and non-essential personal property, including property covered by subsection (B)(1) (Property Associated with Camping) above, that is blocking access to any critical use area and that cannot be moved aside may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(b), (B)(5) and (B)(6) below. If personal property can be moved aside to not block access to the critical use area, then such property shall be removed in accordance with subsections (B)(1) (Property Associated with Camping) or (B)(3) (All Other Areas), as applicable.
3. All other Areas. Essential and non-essential personal property that is not covered by subsections (B)(1)(Property Associated with Camping) or (B)(2)(Critical Use Areas) may be removed in accordance with the following:
  - a. Essential Personal Property. Essential personal property may be removed subject to the pre-removal notice, post-removal notice,

storage, and retrieval requirements set forth in subsections (B)(4)(a), (B)(4)(b), (B)(5), and (B)(6) below.

- b. Non-Essential Personal Property. Non-essential personal property may be removed subject to the post-removal notice, storage, and retrieval requirements set forth in subsections (B)(4)(b), (B)(5), and (B)(6) below.

4. Notice to remove personal property.

- a. Pre-Removal Notice. In instances where pre-removal notice is required, such notice shall:

- 1. Be posted no less than 24 hours prior to the removal.
- 2. Be posted at the site of the personal property.
- 3. Include the date and time by which the personal property must be removed.
- 4. Explain that the City will remove and impound the personal property if it is not removed from the City property.
- 5. Detail the procedures for retrieving personal property.

- b. Post-Removal Notice. In instances where post-removal notice is required, such notice shall:

- 1. Be posted immediately after the removal of personal property.
- 2. Be posted at the site from which the personal property was removed.
- 3. Detail the procedures for retrieving personal property.

5. Storage

- a. Manner and Timing. In instances where storage is required, the City or Sheriff shall store removed personal property for 90 days from the date of removal.

- b. Location. The removed personal property shall be stored at a location or locations in the City that reasonably facilitate retrieval. Personal property will be stored outside subject to weather elements, the City is not liable for any damage.

- c. Records. The City or Sheriff shall keep written records, maintained for at least 90 days following removal, of any personal property stored. The records shall include the date that the personal property was removed, the location from which the personal property was removed, and a general description of the personal property.

6. Retrieval. During Business Hours, the City or Sheriff shall within a reasonable time following a retrieval request assist any person seeking to

retrieve property stored pursuant to subsection (B)(5) above.

7. Unclaimed Property. All unlawfully stored personal property pursuant to this chapter remaining unclaimed at the end of 90 days from removal shall be deemed intentionally abandoned and may be summarily abated or destroyed, or shall be dedicated for public use or may be given for charitable use to a local nonprofit agency, or placed for sale.
8. Exceptions. The notice, storage, and retrieval regulations set forth in subsections (B)(4), (B)(5), and (B)(6) above shall not apply to the following:
  - a. Items that present a health and safety risk if stored, such as items soiled by bodily fluids, items that are moldy, items infested by insects or vermin, and perishable food. Such items need not be stored and may be discarded.
  - b. Items that constitute evidence of a crime or contraband, which may be seized and discarded as permitted by law.

**9.56.070 Illegal dumping.**

Nothing in this chapter precludes the enforcement of any law, ordinance or regulation of any governmental entity relating to illegal dumping or deposit of hazardous substances.

**9.56.080 Limitation on applicability.**

This chapter is not intended to violate and shall not be applied or enforced in a manner that violates the United States or California Constitutions and applicable state or federal statutes.

**SECTION 6.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this article irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end, the provisions of this article are declared to be severable.

**SECTION 7.** The City Clerk shall certify the passage and adoption of this ordinance. The City Council hereby finds and determines that there are no newspapers of general circulation both published and circulated within the City and, in compliance with Section 36933 of the Government Code directs the City Clerk to cause said ordinance, within fifteen (15) days after its passage, to be posted in at least five (5) public places within the City. This ordinance shall take effect thirty (30) days after its adoption.

[Signatures on the following page]

