



# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** October 22, 2019

**TO:** Ordinance Committee

**FROM:** City Attorney's Office

**SUBJECT:** Storage Of Personal Property In Public Areas

### **RECOMMENDATION:**

That the Ordinance Committee consider a proposed Ordinance of the Council of the City of Santa Barbara Adding Chapter 9.96 to the Municipal Code to Regulate the Storage of Personal Property in Public Places and forward the ordinance amendment to City Council for introduction and adoption.

### **DISCUSSION:**

#### **Legal Considerations**

Unattended or stored personal property in certain public spaces threatens the health and safety of residents and visitors because it interferes with the safe passage of pedestrians and the disabled in the public right-of way, attracts vermin seeking food or refuge, or in extreme cases can be used as a cover for explosive devices or bio-agents. Courts have acknowledged that a "downtown area becomes dangerous to pedestrian safety and economic vitality when individuals block the public sidewalks, thereby causing a steady cycle of decline as residents and tourists go elsewhere to meet, shop and dine." (*Roulette v. City of Seattle* (9th Cir. 1996) 97 F.3d 300, 306, *as amended on denial of reh'g and reh'g en banc* (Sept. 17, 1996).)

The needs of the public to access clean, sanitary, and attractive public areas must be balanced with the needs of individuals who have no other alternatives for the storage of personal property, and who reasonably need to retain access to a limited amount of personal property in public areas. Santa Barbara benefits from tourism, and often travelers of all economic means may be seen carrying substantial quantities of personal possessions. Therefore, the intent of this proposed Ordinance is not to criminalize homelessness or to discourage tourism, but rather to maintain the City's ability, to preserve clean, accessible public areas and to address specific safety issues.

This proposed ordinance is also mindful that while the City is not required to allow the storage of personal property within its public open spaces, it may not indiscriminately remove and destroy that property. That was the central issue in *Lavan v. City of Los Angeles* (9th Cir. 2012) 693 F.3d 1022, in which the Ninth Circuit Court of Appeals held that the removal and immediate destruction of a person's unattended property violates the United States Constitution. In that case, the Ninth Circuit upheld a trial court decision finding likelihood of success on homeless individuals' due process claim against the City of Los Angeles for its program of seizing and destroying personal property left on public property. The plaintiffs in the case were homeless individuals who largely resided on the streets of the Skid Row district of Los Angeles. The plaintiffs stored their personal possessions (including sensitive items such as personal identification documents, birth certificates, and medications) within mobile containers provided to them by social service organizations.

On several occasions, while the plaintiffs stepped away from their personal property to attend to personal tasks such as showering, eating or attending court, the City seized and destroyed their unattended personal property. Because of the historical pattern of use of personal property within this area, the Court found that the City did not have a good-faith belief that the personal possessions were in fact abandoned by the homeless individuals. The Court suggested that the City might lawfully enforce the ordinance by providing notice to the property owner or at the very least provide a post-seizure hearing so that owners may seek return of the property.

The City of Los Angeles amended its ordinance in 2015 in response to the decision in *Lavan* (Chapter 56.11 of the Los Angeles Municipal Code) establishing a process to be used prior to removing or destroying personal property left on sidewalks. The process includes providing notice to the owner prior to removal and storing the property for a period of time prior to disposing of it.

### **The Proposed Ordinance**

This proposed Ordinance was drafted taking into account the Court's decision in *Lavan*. As mentioned, the Ordinance prohibits storage of unattended personal property in defined public areas. These include a public street, sidewalk, plaza, parking lot, park, beach, or public building. The proposed Ordinance also prohibits the storage of excessive amounts of personal property – defined as “bulky,” which means the accumulation of more property than could fit in a four cubic foot container (6,912 cubic inches or 113 liters -- about the size of a very large capacity backpack).

The proposed Ordinance excludes operational personal transportation or mobility devices, such as bicycles, walkers, wheelchairs, strollers, and scooters from the definition of personal property. Furthermore, the proposed Ordinance does not impact personal property stored on public property pursuant to a permit, ordinance, statute or other authorization by City or State. The proposed Ordinance does not apply to private property

or property that is not managed or owned by the City. Finally, this Ordinance compliments other laws prohibiting illegal dumping or other public safety actions.

### **How the Proposed Ordinance Works- Impoundment, Repossession, and Afforded Due Process**

Under the proposed Ordinance, storage is generally defined as being in the same location for more than four hours. This proposed Ordinance also specifies certain locations where property cannot be left regardless of duration, such as in travel ways. If after four hours written notice the unattended or attended bulky personal property has not been removed, the City may impound it and thereafter must store it for potential recovery for ninety days. The proposed Ordinance provides that personal property may be disposed of immediately when the property is perishable or is contraband, or constitutes an immediate threat to the public health or safety. Identification is not required to recover impounded personal property. The owner may claim the property if he or she describes the items or the location of where the property was impounded, or other identifying details. The proposed Ordinance provides that no storage fee shall be charged for any impounded personal property.

The Ordinance sets forth the requirements for pre-removal and post-removal notice, which the City is required to use when impounding personal property whether it be unattended or attended bulky personal property. The notice requirements are specifically detailed in the Ordinance. In addition to pre-removal notice, the proposed Ordinance has the requirements that the written notice be left behind by City employees after personal property is impounded. The proposed Ordinance refers to this as post-removal notice.

In certain circumstances, the Ordinance allows immediate impoundment without notice. These situations include personal property: that does not allow for passage for people with disabilities; obstructs the City's maintenance, cleaning or other operations in public areas; personal property left behind in a public area after a posted closure time; property within five feet of an operational, utilizable entrance, exit, driveway or loading dock; and contraband or property that constitutes evidence of a crime.

The proposed Ordinance also allows the City, without prior notice, to remove personal property that either poses an immediate threat to public safety, is left in certain specified areas like the travel way of streets and sidewalks, or left in a public area with a posted sign that notifies the public of the area where unattended property is prohibited. The proposed Ordinance described signage requirements. For example, the signs are required to be in English and Spanish and an individual sign will not regulate beyond fifty feet in order to provide sufficient pre-removal notice. In determining locations to place a sign, the Ordinance requires consultation between the Public Works Director and the Chief of Police or their designee(s). Any or all of the following reasons must provide the basis to post a sign at a given location: 1) to protect the public in areas where mass casualties could be caused by hidden explosives or bio-agents; 2) sensitive habitat and environment areas that warrant added protection from pollution or contamination 3) areas

that have been subject to repeated incidents of personal property dumping or storage. As part of this process, the Public Works Director is required to keep sufficient records to document the reason(s) for posting at a particular location and remove the sign if the need no longer remains.

### **Enforcement**

Criminal prosecution is limited to situations when an individual either obstructs a City employee from removing stored personal property or when someone continues to violate this Ordinance after being given notice by a peace officer or other City employee charged with code enforcement and given a reasonable opportunity to abate.

### **Conclusion**

In April of this year, City staff came before City Council to discuss efforts to manage homelessness issues while at the same time safety and nuisance issues impacting the City. The report provided information on the funding the City has been providing to innovative initiatives that help identify and facilitate services to homeless individuals such as PATH and City Net. The development of these ordinances were also discussed at that time in order to address many of the issues raised by the community as a whole while being aware of the need for allowing various avenues of economic opportunity and protecting the due process rights of unsheltered homeless.

**ATTACHMENTS:** Ordinance regarding Storage of Personal Property in Public Areas

**PREPARED BY:** John Doimas, Assistant City Attorney

**SUBMITTED BY:** Ariel Pierre Calonne, City Attorney

**APPROVED BY:** City Administrator's Office