



STAFF REPORT

DATE: NOVEMBER 15, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER
PREPARED BY: DEAN DERLETH, CITY ATTORNEY
SUBJECT: URGENCY ORDINANCE AND REGULAR ORDINANCE TO ADD CHAPTER 12.26 TO THE COLTON MUNICIPAL CODE REGULATING CAMPING AND STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY

RECOMMENDED ACTION

It is recommended that the City Council: (1) adopt by a 4/5 vote the proposed urgency ordinance O-08-11 adding Chapter 12.26 to the Colton Municipal Code Regulating Camping and Storage of Personal Property on Public Property; and (2) waive full reading and introduce by title only ordinance O-09-11 adding Chapter 12.26 to the Colton Municipal Code Regulating Camping and Storage of Personal Property on Public Property.

GOAL STATEMENT

The proposed ordinances will help implement the City Council's FY 2010-2011 goal to continue to update policies, ordinances and processes when and as needed.

BACKGROUND

A growing number of cities in California have been experiencing the recent "Occupy Wall Street" movement, which began in September in New York City. Most recently the City of Riverside enforced its anti-camping ordinance against members of the "Occupy Inland Empire" movement who had been living in tents for three weeks outside Riverside City Hall. Riverside had received numerous complaints from members of the public regarding sanitation problems, noise, disorderly behavior and violence caused by the demonstrators camping outside City Hall.

In addition to the Riverside "Occupy" movement, staff is aware that Redlands, Fontana and Victorville also have active "Occupy" movement groups. The media has recently reported that other local "Occupy" movement groups may be forming in Colton, Ontario and San Bernardino.

The Colton Police Department has expressed concerns over recent reports of violence associated with the “Occupy” movement groups, especially when the affected cities have taken action against group members for violating state laws and local ordinances after the camps have been established. Staff is understandably concerned that serious public peace, health, safety and general welfare issues could occur if the “Occupy” movement or any similar group were to stage the same types of demonstrations on public property in the City, including at City Hall.

Staff is also concerned about problems related to inappropriate uses of all public property, including camping and storage of personal property in or on all public property, and has experienced uses of public property which impact the preservation of the public peace, health or safety. Such uses have had a tendency to increase litter and waste in such areas, making them appear disorderly and unkempt, and impacting the public peace, health or safety. When public property appears to be disorderly, unkempt, or intimidating, people avoid those areas, thereby making them inviting areas for crime and other public peace, health, or safety impacts. Conversely, when public property appears clean, orderly, welcoming and comfortable, the law-abiding public takes them as their own and crime goes down, and the public peace, health and safety tend to be preserved.

ISSUES/ANALYSIS

The Colton Municipal Code currently contains certain provisions regulating the use of public property (including prohibiting the use of a park between the hours of ten p.m. and six a.m. the following day, unless allowed as part of an authorized community activity in the park), but does not specifically address the issues of camping and/or storing personal property on all public property within the City.

In response to the concerns of staff, we have prepared both an urgency ordinance and a “regular” ordinance to amend the Colton Municipal Code regarding camping and storage of personal property on public property. Both ordinances contain the same amendments to add new Chapter 12.26 to the Colton Municipal Code.

Section 36937 of the California Government Code authorizes the City to adopt the urgency ordinance with a “4/5” vote, after making certain findings that the ordinance is necessary for the immediate preservation of the public peace, health or safety. The urgency ordinance includes such findings, if the City Council is inclined to adopt them. The urgency ordinance will take effect immediately upon its adoption.

We have also prepared a “regular” ordinance to take effect in the standard time frame (i.e., 30 days after adoption at second reading), in the event the urgency findings are not adopted or are successfully challenged.

The proposed ordinances will amend the Colton Municipal Code by specifically prohibiting camping and/or storing personal property, including camping equipment, on any public property. Public property includes any publicly owned property in the city, improved or unimproved,

including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; publicly owned, maintained or operated parks; publicly owned, maintained or operated landscaped areas or greenbelts; publicly owned, maintained or operated open spaces, including, but not limited to, those adjacent to city hall or other public facilities or buildings of any kind; public sidewalks, curbs and gutters; public educational institutions; or other government owned, maintained or operated properties located within the city.

FISCAL IMPACTS

No fiscal impacts are anticipated for adopting the proposed ordinances.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Exhibit A – Proposed Urgency Ordinance (O-08-11)

Exhibit B – Proposed Regular Ordinance (O-09-11)

URGENCY ORDINANCE NO. O-08-11

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF COLTON, CALIFORNIA, ADDING
CHAPTER 12.26 TO THE COLTON MUNICIPAL CODE
REGULATING CAMPING AND STORAGE OF PERSONAL
PROPERTY ON PUBLIC PROPERTY**

WHEREAS, pursuant to California Penal Code section 647(c), the city has the power to regulate conduct on a street, sidewalk, or other public place, or on or in a place open to the public;

WHEREAS, local ordinances governing the use of municipal parks are specifically authorized by California State law, including Public Resources Code section 5193;

WHEREAS, the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

WHEREAS, Chapter 12.24 of the Colton Municipal Code (“CMC”) generally prohibits the use of a park, as defined therein, between the hours of ten p.m. and six a.m. the following day, unless allowed as part of an authorized community activity in the park;

WHEREAS, Chapter 12.24 of the CMC thereby generally prohibits camping in public parks;

WHEREAS, the City not only has the power to keep its public property open and available for the purposes to which they are dedicated, it has a duty to do so;

WHEREAS, the City is concerned about problems related to inappropriate uses of all public property, including camping and storage of personal property in or on all public property and not just parks, and has experienced uses of public property which impact the preservation of the public peace, health or safety;

WHEREAS, camping and/or storage of personal property on public property has a tendency to increase litter and waste in such areas, making them appear disorderly and unkempt, and impacting the public peace, health or safety;

WHEREAS, the City recognizes that when public property appears to be disorderly, unkempt, or intimidating, people avoid those areas, thereby making them inviting areas for crime and other public peace, health, or safety impacts;

WHEREAS, the City recognizes that, conversely, when public property appears clean, orderly, welcoming and comfortable, the law-abiding public takes them as their own and crime goes down, and the public peace, health and safety tend to be preserved;

WHEREAS, the City has been made aware of the possibility that one or more groups of

individuals may be planning to camp and/or store personal property on its public property for the purpose of exercising their first amendment and other constitutional rights;

WHEREAS, a growing number of cities in California have been experiencing the recent “Occupy Wall Street” movement, which began in September in New York City. Most recently the City of Riverside enforced its anti-camping ordinance against members of the “Occupy Inland Empire” movement who had been living in tents for three weeks outside Riverside City Hall. Riverside had received numerous complaints from members of the public regarding sanitation problems, noise, disorderly behavior and violence caused by the demonstrators camping outside City Hall;

WHEREAS, in addition to the Riverside “Occupy” movement, staff is aware that Redlands, Fontana and Victorville also have active “Occupy” movement groups, and the media has recently reported that other local “Occupy” movement groups may be forming in Colton, Ontario and San Bernardino;

WHEREAS, the Police Department has expressed concerns over recent reports of violence associated with the “Occupy” movement groups, especially when the affected cities have taken action against group members for violating state laws and local ordinances after the camps have been established.

WHEREAS, staff is understandably concerned that serious public peace, health, safety and general welfare issues could occur if the “Occupy” movement or any similar group were to stage the same types of demonstrations on public property in the City, including at City Hall.

WHEREAS, the City recognizes that there is a need to allow all persons to exercise their first amendment and other constitutional rights, while at the same time there is a need for the City to adopt measures to regulate the use of public property in a manner that will not punish the homeless but will immediately preserve the public peace, health and safety;

WHEREAS, California Government Code Section 36937(b) authorizes the City Council to adopt by a four-fifths vote, without following the procedures otherwise required for the adoption of an ordinance, an urgency ordinance which is necessary for the immediate protection of the public safety, health and welfare; and

WHEREAS, the City has determined that an urgency ordinance is necessary to amend the CMC to adopt measures to regulate the use of public property, including camping and storage of personal property on public property, in a manner that will immediately preserve the public peace, health and safety.

THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. In accordance with California Government Code, Section 36937 and in order to protect the public the public peace, health and safety, the City Council of the City of Colton finds as follows:

A. The Recitals stated above are incorporated herein by reference.

B. Based upon the Recitals, the City Council finds it necessary to amend the CMC to adopt measures to regulate the use of public property, including camping and storage of personal property on public property, in a manner that will immediately preserve the public peace, health and safety.

C. The proposed addition of Chapter 12.26 to the CMC is consistent with all of the objectives, policies, general land uses, programs and actions of all elements of the Colton General Plan, and none of the proposed regulations conflict with current General Plan.

D. The proposed addition of Chapter 12.26 to the CMC is not detrimental to, and instead is necessary to preserve and protect, the public peace, health, safety and general welfare of the City, its residents and businesses, since the regulations establish reasonable public property usage restrictions while preserving the rights of individuals to use public property to exercise their first amendment and other constitutional rights.

E. All legal prerequisites to the adoption of this Ordinance have occurred.

SECTION 2. Chapter 12.26 of the Colton Municipal Code is hereby added to read as follows:

**“CHAPTER 12.26
CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY**

Sections:

- 12.26.010 Purpose.**
- 12.26.020 Definitions.**
- 12.26.030 Camping on Public Property.**
- 12.26.040 Storage of Personal Property on Public Property.**
- 12.26.050 Exceptions.**
- 12.26.060 Enforcement.**

12.26.010 Purpose.

Public property within the city should be readily accessible and available to 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, and is deleterious to the public peace, health, safety and welfare, in that it obstructs intended uses for the public at large, contributes to blight and can cause damage to public property. The purpose of this chapter is to maintain public property within the city as accessible to the public at large, to keep such areas in a clean and accessible condition, and to maintain the public

peace, health, safety and welfare.

12.26.020 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 article. Any terms not defined in this section shall be the same as defined in section 1.04.010 of this Code. To the extent conflicts exist between definitions herein and elsewhere in this Code, the definitions in this section shall control for purposes of this Chapter.

(A) "Camp" means to pitch or occupy camp facilities and/or to use "camp paraphernalia."

(B) "Camp facility" includes, but is not limited to, tents, huts, or other temporary shelters, as well as, cots, beds, sleeping bags, hammocks or bedrolls.

(C) "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, or non-city designated cooking facilities and similar equipment.

(D) "Public property" means any publicly owned property in the city, improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; publicly owned, maintained or operated parks; publicly owned, maintained or operated landscaped areas or greenbelts; publicly owned, maintained or operated open spaces, including, but not limited to, those adjacent to city hall or other public facilities or buildings of any kind; public sidewalks, curbs and gutters; public educational institutions; or other government owned, maintained or operated properties located within the city.

(E) "Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

(F) "Sidewalk" means the same as defined in section 1.04.010 of this Code.

(G) "Street" means the same as defined in section 1.04.010 of this Code.

12.26.030 Camping on Public Property.

It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

12.26.040 Storage of Personal Property on Public Property.

It shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

12.26.050 Exceptions.

This section shall not apply to any person camping, occupying camp facilities or using camp paraphernalia, or to any person storing personal property, including camp facilities and camp paraphernalia, on any public property designated by the city for such purposes. The City Council may, by resolution or ordinance, establish one or more specified areas of public property for such purposes.

12.26.060 Enforcement.

(A) Any person who fails to comply with any provision of this chapter is deemed guilty of a misdemeanor, punishable as set forth in section 8.02.040 of this Code.

(B) Each person shall be deemed guilty of a separate offense for each and every day, or any portion thereof, during which any violation of or failure to comply with any of the provisions of this chapter is committed, continued or permitted by such person, and each instance shall be deemed punishable as provided in this chapter.

(C) The provisions of this chapter are in addition to the authority of the police or other city officials to enforce this Code or other applicable law, and shall supplement, and not supplant, the exercise of any other power available to the city or the enforcement of any other law within the jurisdiction of the city. The remedies included in this Chapter are intended to be cumulative of other available remedies, and the City may pursue any other remedy allowed by law to enforce this chapter, including, but not limited to, injunctive relief and the issuance of administrative penalties pursuant to chapter 8.12 of this Code. All such remedies may be pursued individually, consecutively, or in conjunction with each other.

(D) The provisions of this chapter shall not be construed as permitting conduct not prescribed herein and shall not affect the enforceability of any other applicable provisions of law.”

SECTION 3. If any section, subsection, subdivision, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares

that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 4. The City Council finds that this Urgency Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 5. This Urgency Ordinance was adopted by the necessary four-fifths vote of the members of the City Council pursuant to California Government Code Section 36937, and shall take effect immediately upon its adoption.

SECTION 6. The City Clerk shall certify to the passage of this Urgency Ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Colton, California.

APPROVED AND ADOPTED this 15th day of November, 2011.

Sarah S. Zamora, Mayor
City of Colton

ATTEST:

Eileen C. Gomez, City Clerk
City of Colton

CERTIFICATION

I, EILEEN C. GOMEZ, City Clerk of the City of Colton, California, do hereby certify that the foregoing urgency ordinance (O-08-11) was properly introduced and adopted by at least a four-fifth's (4/5) vote at a regular meeting of the City Council of the City of Colton, California, duly held on the 15th day of November, 2011 by the following vote of the Council:

AYES:

NOES:

ABSENT:

ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this _____ day of _____, 2011.

Eileen C. Gomez, City Clerk
City of Colton

ORDINANCE NO. O-09-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, ADDING CHAPTER 12.26 TO THE COLTON MUNICIPAL CODE REGULATING CAMPING AND STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY

WHEREAS, pursuant to California Penal Code section 647(c), the city has the power to regulate conduct on a street, sidewalk, or other public place, or on or in a place open to the public;

WHEREAS, local ordinances governing the use of municipal parks are specifically authorized by California State law, including Public Resources Code section 5193;

WHEREAS, the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

WHEREAS, Chapter 12.24 of the Colton Municipal Code (“CMC”) generally prohibits the use of a park, as defined therein, between the hours of ten p.m. and six a.m. the following day, unless allowed as part of an authorized community activity in the park;

WHEREAS, Chapter 12.24 of the CMC thereby generally prohibits camping in public parks;

WHEREAS, the City not only has the power to keep its public property open and available for the purposes to which they are dedicated, it has a duty to do so;

WHEREAS, the City is concerned about problems related to inappropriate uses of all public property, including camping and storage of personal property in or on all public property and not just parks, and has experienced uses of public property which impact the preservation of the public peace, health or safety;

WHEREAS, camping and/or storage of personal property on public property has a tendency to increase litter and waste in such areas, making them appear disorderly and unkempt, and impacting the public peace, health or safety;

WHEREAS, the City recognizes that when public property appears to be disorderly, unkempt, or intimidating, people avoid those areas, thereby making them inviting areas for crime and other public peace, health, or safety impacts;

WHEREAS, the City recognizes that, conversely, when public property appears clean, orderly, welcoming and comfortable, the law-abiding public takes them as their own and crime goes down, and the public peace, health and safety tend to be preserved;

WHEREAS, the City recognizes that there is a need to allow all persons to exercise their

first amendment and other constitutional rights, while at the same time there is a need for the City to adopt measures to regulate the use of public property in a manner that will not punish the homeless but will immediately preserve the public peace, health and safety;

THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 12.26 of the Colton Municipal Code is hereby added to read as follows:

**“CHAPTER 12.26
CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY**

Sections:

- 12.26.010 Purpose.**
- 12.26.020 Definitions.**
- 12.26.030 Camping on Public Property.**
- 12.26.040 Storage of Personal Property on Public Property.**
- 12.26.050 Exceptions.**
- 12.26.060 Enforcement.**

12.26.010 Purpose.

Public property within the city should be readily accessible and available to 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, and is deleterious to the public peace, health, safety and welfare, in that it obstructs intended uses for the public at large, contributes to blight and can cause damage to public property. The purpose of this chapter is to maintain public property within the city as accessible to the public at large, to keep such areas in a clean and accessible condition, and to maintain the public peace, health, safety and welfare.

12.26.020 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 article. Any terms not defined in this section shall be the same as defined in section 1.04.010 of this Code. To the extent conflicts exist between definitions herein and elsewhere in this Code, the definitions in this section shall control for purposes of this Chapter.

- (A) “Camp” means to pitch or occupy camp facilities and/or to use

“camp paraphernalia.”

(B) “Camp facility” includes, but is not limited to, tents, huts, or other temporary shelters, as well as, cots, beds, sleeping bags, hammocks or bedrolls.

(C) “Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, or non-city designated cooking facilities and similar equipment.

(D) “Public property” means any publicly owned property in the city, improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; publicly owned, maintained or operated parks; publicly owned, maintained or operated landscaped areas or greenbelts; publicly owned, maintained or operated open spaces, including, but not limited to, those adjacent to city hall or other public facilities or buildings of any kind; public sidewalks, curbs and gutters; public educational institutions; or other government owned, maintained or operated properties located within the city.

(E) “Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

(F) “Sidewalk” means the same as defined in section 1.04.010 of this Code.

(G) “Street” means the same as defined in section 1.04.010 of this Code.

12.26.030 Camping on Public Property.

It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

12.26.040 Storage of Personal Property on Public Property.

It shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

12.26.050 Exceptions.

This section shall not apply to any person camping, occupying camp facilities or using camp paraphernalia, or to any person storing personal property, including camp facilities and camp paraphernalia, on any public property designated by the city for such purposes. The City Council may, by resolution or ordinance, establish one or more specified areas of public property for such purposes.

12.26.060 Enforcement.

(A) Any person who fails to comply with any provision of this chapter is deemed guilty of a misdemeanor, punishable as set forth in section 8.02.040 of this Code.

(B) Each person shall be deemed guilty of a separate offense for each and every day, or any portion thereof, during which any violation of or failure to comply with any of the provisions of this chapter is committed, continued or permitted by such person, and each instance shall be deemed punishable as provided in this chapter.

(C) The provisions of this chapter are in addition to the authority of the police or other city officials to enforce this Code or other applicable law, and shall supplement, and not supplant, the exercise of any other power available to the city or the enforcement of any other law within the jurisdiction of the city. The remedies included in this Chapter are intended to be cumulative of other available remedies, and the City may pursue any other remedy allowed by law to enforce this chapter, including, but not limited to, injunctive relief and the issuance of administrative penalties pursuant to chapter 8.12 of this Code. All such remedies may be pursued individually, consecutively, or in conjunction with each other.

(D) The provisions of this chapter shall not be construed as permitting conduct not prescribed herein and shall not affect the enforceability of any other applicable provisions of law.”

SECTION 2. If any section, subsection, subdivision, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 3. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and

15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. This Ordinance shall take force and effect thirty (30) days after its adoption.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Colton in accordance with law.

APPROVED AND ADOPTED this 6th day of December, 2011.

Sarah S. Zamora, Mayor
City of Colton

ATTEST:

Eileen C. Gomez, City Clerk
City of Colton

CERTIFICATION

I, EILEEN C. GOMEZ, City Clerk of the City of Colton, California, do hereby certify that the foregoing ordinance (O-09-11) was properly introduced and subsequently adopted at a regular meeting of the City Council of the City of Colton, California, duly held on the 6th day of December, 2011 by the following vote of the Council:

AYES:

NOES:

ABSENT:

ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this _____ day of _____, 2011.

Eileen C. Gomez, City Clerk
City of Colton