



Legislation Text

File #: 15-0110, **Version:** 3

Chief Administrative Office, recommending the Board approve **Final Passage** (Second Reading) of Ordinance **5059** regarding camping, which will generally do the following:

- 1) Banning camping on limited public areas, such as trails, and within the 100 year watermark;
- 2) Banning camping on private property by non-owners in the absence of permission from the owner; and
- 3) Banning daytime camping from 8:00 a.m. to 8:00 p.m. on all other public property unless it is below 50 degrees Fahrenheit or is raining; and
- 4) Banning the storage of personal property on private property without consent, on certain public property, and on public property in a way that obstructs County operations or impedes traffic. (Cont. 8/15/17, Item 23)

FUNDING: None.

DEPARTMENT RECOMMENDATION

At their meeting of August 15, 2017 (Item 23) the Board approve Ordinance 5059 and se for Final Passage (Second Reading) on August 29, 2017.

Chief Administrative Office, recommending the Board consider the following:

- 1) Approve the **Introduction** (First Reading) of Ordinance **5059** regarding camping, which will generally do the following:
 - a) Banning camping on limited public areas, such as trails, and within the 100 year watermark;
 - b) Banning camping on private property by non-owners in the absence of permission from the owner; and
 - c) Banning daytime camping from 8:00 a.m. to 8:00 p.m. on all other public property unless it is below 50 degrees Fahrenheit or is raining; and
 - d) Banning the storage of personal property on private property without consent, on certain public property, and on public property in a way that obstructs County operations or impedes traffic; and
- 2) Waive full reading of the Ordinance, read by title only and continue this matter to the August 29, 2017 meeting for final passage.

DISCUSSION / BACKGROUND

The proposed Chapter 9.55 is the result of a collaborative effort between the Office of the County Counsel and Sheriff's Office. Concerns regarding the health, safety, welfare, and environmental risks posed by camping in areas not designed for that use were balanced against the constitutional right of individuals to rest. The proposed ordinance seeks this balance by:

- (1) Banning camping on limited public areas, such as trails, and within the 100 year watermark;
- (2) Banning camping on private property by non-owners in the absence of permission from the owner; and

- (3) Banning daytime camping from 8:00 a.m. to 8:00 p.m. on all other public property unless it is below 50 degrees Fahrenheit or is raining; and
- (4) Banning the storage of personal property on private property without consent, on certain public property, and on public property in a way that obstructs County operations or impedes traffic.

Sections 9.55.050 and 9.55.070 of the proposed ordinance elaborate on these restrictions in greater detail. Section 9.55.060 of the proposed ordinance also limits the ability to store personal property on private property without consent, on certain public property, and on public property in a way that obstructs County operations or impedes passage.

The proposed ordinance was conceptually approved with an independent “aggressive panhandling” ordinance. At the time they were brought forward, the aggressive solicitation ordinance appeared to pose fewer legal concerns. More recently, however, courts have shifted their analysis of such ordinances and have been striking them down as unconstitutional content-based restrictions of speech in violation of the First Amendment. The change in analysis stems from the Supreme Court’s reversal of a federal circuit court’s decision upholding a solicitation ordinance with instructions that the circuit court reconsider its decision in light of the Supreme Court’s recent First Amendment case rejecting the Ninth Circuit’s more expansive reading of when an ordinance is “content neutral.” While courts had initially viewed aggressive solicitation ordinances as “content neutral” and therefore reviewed under a less demanding standard, the more recent trend in light of the Supreme Court decision is to view them as content based and therefore reviewed under the most demanding constitutional standard. Since then, plaintiffs have successfully challenged solicitation ordinances throughout the country. It is therefore recommended to wait on any “aggressive panhandling” ordinance until the law is more settled and decisions reveal an acceptable path to address the underlying concerns without infringing on First Amendment rights.

Drafting the “illegal camping” ordinance also revealed the need to update and amend the County’s unclaimed property ordinance (Chapter 8.86). In the proposed amendments to Chapter 8.86 before the Board as a companion department item, the times and procedures were updated to remain consistent with state law. Provisions allowing for retrieval of personal property without identification were also added to address concerns that may result from impounding personal property under the proposed Chapter 9.55.

ALTERNATIVES

The Board could choose to not approve the camping ordinance and either ask for staff to revise the ordinance and return to the Board. In addition, the Board could decide to reject the ordinance.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel and the Sheriff’s Office have reviewed and approved the proposed new ordinance. The District Attorney’s Office and the Department of Planning and Building have also reviewed the proposed ordinance.

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

At this time, there is no known cost to this item.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) Publish the Ordinance in the appropriate local newspaper(s) following Board approval of the Introduction (First Reading) of the Ordinance;
- 2) Continue this agenda item to 8/29/17 for Final Passage of Ordinance.

STRATEGIC PLAN COMPONENT

Public Safety and Healthy Communities

CONTACT

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