

ORDINANCE 1603

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, ADDING A NEW CHAPTER 9.09 TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BANNING MUNICIPAL CODE TO PROVIDE FOR REGULATIONS GOVERNING CAMPING AND RELATED ACTIVITIES WITHIN THE CITY OF BANNING, AND MAKING A DETERMINATION OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Banning does hereby ordain as follows:

SECTION 1. Environmental Findings. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act ("CEQA"), and has determined that the Municipal Code amendments contained in Section 2 of this Ordinance are exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that these amendments may have significant effect on the environment.

SECTION 2. A new Chapter 9.09 is hereby added to Title 9 of the Banning Municipal Code to read as follows:

"Chapter 9.09 – CAMPING AND RELATED ACTIVITY

9.09.010 - Unlawful camping in public places.

A. Findings and purpose.

1. The streets, parks, public buildings and grounds, and other public areas in the city should be readily accessible and available to residents and the public at large. Public property within the city is not specifically designed for the purposes of camping and so does not have the facilities necessary to protect the property from overuse and unsanitary conditions potentially injurious to public health.
2. Public streets, sidewalks, and walkways are created and maintained for the primary purposes of enabling pedestrians and vehicles to safely and efficiently move about from place to place, facilitating deliveries of goods and services and providing all potential customers and visitors with convenient access to goods and services, as well as a place to recreate and engage in free public speech in shared civic space.
3. The use of public property for camping purposes interferes with the rights of others to use the areas for the purposes for which they were intended, such as transportation, municipal operations, recreation, and open space.
4. Camping activities may constitute a public health and safety hazard when conducted without the property security, sanitary facilities and precautions. The necessity to clean up, repair, or remediate public property that has been used for unlawful camping may result in substantial costs to the public.
5. Pedestrians, particularly elderly, disabled, and vision-impaired, are put at increased risk when they must see and navigate around individuals sitting or lying upon the public sidewalk.

6. There is no specific site or sites that should be designated for camping because it is the experience of the city and other municipalities that sites where camping is continuous or camping populations are numerous become public health, environmental degradation, and policing problems.
7. Designated open space contains ecologically sensitive habitats, including many protected plant and wildlife species, as well as fresh water supplies. Except as provided for in this section, human presence in open space other than on designated trails can seriously damage or destroy these habitats as well as increase the risk of wildfire danger.
8. Certain public lands within the city's geographical boundaries pose significant health and safety hazards to people who make shelter or stay overnight in these areas.
9. It is the obligation of the city to keep its public property and public rights-of-way clean and available for public use, and to protect the public health, safety, and access by city constituents.
10. The city is committed to protecting the life, health, and safety of its residents and all people within the city's geographical boundaries.
11. The purpose of this section is to maintain public places within the city in a clean and accessible condition, to prevent the accumulation of trash and debris and to reduce the risk of both structural and brush fires.
12. This section shall not be interpreted to criminalize any person based on their status as a homeless individual. To that end, whenever an issue of interpretation arises, this section shall be interpreted in a manner consistent with the holding in *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584.
13. The city council is committed to protecting the rights of individuals who cannot obtain shelter and to treating their personal property with respect and consideration and therefore updates this code to conform to and address the impacts of the Ninth Circuit Court of Appeal's decision in *Martin v. City of Boise*.
14. The city currently provides more than 50 shelter beds for people experiencing homelessness, which offer a place to sleep and supportive services, including job programs, housing support, treatment for mental health conditions or substance abuse, and security.
15. The city engages in significant outreach work to build relationships with people experiencing homelessness, using a person-centered, compassionate approach to provide services tailored to each person's specific needs.
16. The city and the county provide housing stability support, eviction protection, transitional housing, and supportive and permanent housing solutions to assist people with ending their homelessness.

B. Definitions. As used in this section:

1. "Camp" means to pitch or occupy camp facilities; or to use camp paraphernalia, for the purpose of occupancy, habitation, or sheltering for survival in an outdoor area, and in such a way as will facilitate sleeping or storage of personal belongings, carrying on cooking activities, taking measures to keep protected from the elements including heat and cold, or any of these activities in combination with one another or in combination with either sleeping or making preparations to sleep. The act of sleeping on its own does not constitute camping.
2. "Camp facilities" include, without limitation, tents, huts, lean-tos, vehicle camping outfits, unapproved shacks or temporary shelters, cook stoves or fire pits, however constructed.
3. "Camp paraphernalia" includes, without limitation, tents or tent-like structures, cots, hammocks, sleeping bags, bedrolls, blankets, personal cooking facilities, and similar equipment.
4. "Open space" means any parcel or area of land or water that is essentially unimproved and devoted to an open space use, and which is designated on the local open space plan as any of the following: (a) for the preservation of natural resources; (b) for the managed production of resources; (c) for outdoor recreation; (d) or public health and safety.
5. "Public place" means property owned, held, or leased by a public entity or agency, improved or unimproved, and includes, without limitation, open space, parks, plazas, parking lots, highways, streets, bridges, alleys, driveways, sidewalks, walkways, or other public rights-of-way.
6. "Prohibited area" means each of the following locations:
 - a. All city parks;
 - b. The area seventy-five feet from the centerline of any officially-designated recreational or multi-use trail that is open to the general public;
 - c. Gilman Historic Ranch and its surrounding property, located at 1901 Wilson Street, Banning, CA 92220;
 - d. Open space; and
 - e. Public places located within the following zoning districts, as shown on the Official Zoning Map of the city, as the same may be amended from time-to-time by the city council:
 - i. Residential Single-Family: Ranch/ Agriculture (R/A), Ranch/ Agriculture Residential — Hillside (RAR-H), Rural Residential (RR), Rural Residential - Hillside (RR-H), Very Low Density Residential (VLDR), Low Density Residential (LDR), and Mobile Home Park (MHP) districts.

- ii. Residential Multifamily: Medium Density Residential (MDR), High Density Residential (HDR), and Very High-Density Residential (VHDR) districts.
 - iii. Commercial: Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), and Professional Office (PO) districts.
- 7. "Prohibited time" means, for each calendar day, the time beginning at 6:00 A.M. and concluding at 10:00 P.M.
- 8. "Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- C. Camping in a public place.
 - 1. Unlawful camping in prohibited area. It shall be unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia in, on, or under any public place in a prohibited area, as defined in subsection (B)(6) of this section, regardless of the time of day, except as otherwise provided in this chapter. This subsection shall not apply when an individual lacks access to permanent or safe shelter, or is otherwise involuntarily homeless.
 - 2. Unlawful camping during prohibited times in a public place. It shall be unlawful and a public nuisance for any person to camp, occupy camp facilities or use camp paraphernalia in or under any public place in the city during the prohibited time, as defined in subsection (B)(7) of this section, except as otherwise provide in this chapter.
- D. Unlawful storage of personal property in a public place. It shall be unlawful and a public nuisance for any person to store personal property, including camp facilities and camp paraphernalia, in any public place, except as otherwise provided by this code, or except by permission of the property owner. Nothing herein shall be construed to allow storage where otherwise prohibited by this code.
- E. Property removal. Designated city employees may remove personal property unlawfully stored or found on public places as outlined in subsection (D) of this section or found in an unlawful encampment as follows:
 - 1. The location of any personal property including camp facilities and paraphernalia shall be noticed as follows:

"It is illegal to store personal property on a public place such as public open space, parks and parking lots. If this personal property is not removed within 72 hours of the date of this posting, THE PERSONAL PROPERTY SHALL BE DEEMED INTENTIONALLY ABANDONED AND SUBJECT TO REMOVAL AND POSSIBLE DESTRUCTION."
 - 2. City personnel may remove any personal property unlawfully stored or remaining in a public place after the posting period has expired.
 - 3. Personal property which has been clearly abandoned, poses an imminent threat to public health or safety, may result in pollutants entering storm drains or other discharge into water in violation of Section 13.24.090 of this code, is contraband, or

which is evidence of a crime shall not be subject to the above notice requirements and shall be removed immediately by city personnel or police and stored or destroyed according to the provisions below.

F. Personal effects.

1. "Personal effects" for purposes of this section, means personal property consisting of the following items.
 - a. Medication, medical devices, eyeglasses, or other prescription lenses;
 - b. Sleeping bag or bed roll that is sanitary and non-verminous;
 - c. Tents in usable and reasonably good condition;
 - d. Clothes stored in a manner protecting them from the elements, which are not unsanitary, soiled, or verminous;
 - e. Non-perishable food items; and
 - f. Personal property with an estimated individual fair market value of at least fifty dollars.
2. At the time of removal of unlawfully stored or remaining personal effects, city personnel shall conspicuously post and date a notice either at the exact location from which the personal effects were removed or at another nearby location giving the following information.
 - a. A list of personal effects removed;
 - b. A telephone number for information on retrieving personal effects;
 - c. An address where the personal effects are temporarily stored; and
 - d. The length of time during which the personal effects may be claimed.
3. Following removal of unlawfully stored or remaining personal effects, city personnel shall do the following:
 - a. Maintain an inventory identifying the personal effects, where the personal effects were approximately located and the reasonable value of each item;
 - b. Place the removed personal effects in containers labeled in a manner facilitating identification by city personnel and owner, which reasonably protects such property from damage or theft; and
 - c. Store removed personal effects in an area designated by the city for a period of ninety days.

4. Personal property stored by the city, which is claimed within ninety days from removal, shall be released to the person claiming ownership provided the person identifies the property and the approximate location where the property was left.
5. Disposition of property.
 - a. Property that remains unclaimed after ninety days may be dedicated for public use or may be given to a local nonprofit agency for charitable use.
 - b. All other unlawfully store or found personal property which remains unclaimed after ninety days is deemed intentionally abandoned and may be abated and destroyed.

9.09.020 - Sitting, lying, sleeping in public places.

A. Findings and purpose.

1. Public streets, sidewalks, and walkways are created and maintained for the primary purposes of enabling pedestrians and vehicles to safely and efficiently move about from place to place, facilitating deliveries of goods and services and providing all potential customers and visitors with convenient access to goods and services, as well as a place to recreate and engage in free public speech in shared civic space.
2. Except as provided for in this section, sitting or lying on public streets, sidewalks, or walkways interferes with the primary purposes of the public street, sidewalk, or walkway, threatens public safety, and damages the public welfare.
3. Pedestrians, particularly the elderly, disabled, and vision-impaired, are put at increased risk when they must see and navigate around individuals sitting or lying upon the public sidewalk.
4. In some circumstances, people sitting or lying on sidewalks deter many members of the public from frequenting those areas. This, in turn, contributes to an erosion of the essential economic viability of those areas. Business failures and relocations can cause vacant storefronts contributing to a spiral of deterioration and blight, which harms the public health, safety, and welfare.
5. There are numerous other places within the city where sitting can be accommodated without unduly interfering with the safe flow of pedestrian traffic, impairing commercial activity, threatening public safety, or harming the public welfare. These other places include city parks, numerous public benches and other seating facilities, plazas, portions of sidewalks not intensively used by pedestrians, common areas open to the public and private property with the permission of the property owner.
6. The city recognizes that there is a fundamental need to sleep and desires to accommodate that need while also satisfying the needs of the general public to travel freely and safely throughout the city.
7. The limited regulation of sitting or lying down on sidewalks is both reasonably necessary and appropriately balances the public interest and individual rights.

8. Designated open space contains ecologically sensitive habitats, including many protected plant and wildlife species, as well as fresh water supplies. Except as provided for in this section, human presence in open space, other than on designated trails, can seriously damage or destroy these habitats as well as increase the risk of wildfire danger.
- B. Definitions. As used in this section:
1. "Obstruct pedestrians or vehicular traffic" means to obstruct or impede passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact.
 2. "Public place" means public property, including, without limitation, publicly owned parking lots and driveways, highways, streets, bridges, alleys, sidewalks, walkways, and city-owned areas generally accessible to the public.
- C. Prohibited conduct.
1. No person shall obstruct pedestrian or vehicular traffic by sitting or lying in a public place or in doorways or entrances or exits to buildings.
 2. No person shall be permitted to sleep in a public place between the hours of 6:00 A.M. to 10:00 P.M. daily.
 3. No person shall be permitted to sleep in a public place between the hours of 10:00 P.M. to 6:00 A.M., unless there are no sleeping spaces practically available in any shelter or if there does not exist any viable alternative to sleeping in a public place.
 4. No person shall be permitted to sleep in any open space, as defined in subsection (B)(4) of Section 9.09.010.
 5. Except as otherwise permitted under Title 17 of this code, it is unlawful for any person to sleep between 6:00 A.M. and 10:00 P.M. in any vehicle parked in or upon any public place or in or upon any privately owned parking area used for parking of customers of any business enterprise without the written consent of the owner of such business enterprise.
- D. Exceptions. The prohibitions set forth in subsection (C) of this section shall not apply to:
1. Persons operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to an applicable, valid permit; or person participating in or attending a parade, festival, performance, rally, demonstration, meeting or similar event conducted in a public place;
 2. Any conduct that is in conformity with the terms of any permit granted pursuant to this code; or
 3. Persons patronizing dining establishments with seating areas in the public right-of-way, who have been permitted pursuant to this code.
- E. Picketing or protesting. It is not the intent of this section to prohibit protesting, picketing, demonstrating, signature gathering, voter registration, leafleting, or any other lawful

activity permitted under the laws of the United States of America, State of California, or by the National Labor Relations Act in connection with a labor dispute.

9.09.030 - Camping on private property.

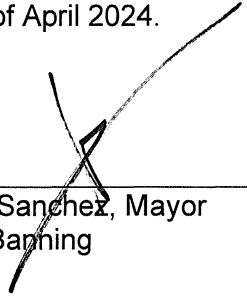
- A. Except as otherwise provided in this section, it shall be unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia in, on, or under any private property within the city or to start or maintain an open fire on private property in violation of the Fire Code.
- B. Except as otherwise provided in this subsection, this section shall not apply to persons camping upon their own land or to persons camping with the written consent of the owner of the land; provided, that such written consent is in their possession at the time and is shown upon demand of any peace officer and is not otherwise prohibited by Title 17 of this code. Irrespective of any written consent provided by the owner of the land, no person shall camp, or permit to camp, on private property for a period of time exceeding seven consecutive days without an interruption of at least five consecutive non-camping days. For purposes of this section camping for any portion of a day shall count as a full camping day.
- C. This section shall not apply to persons lawfully camping within campgrounds or trailer parks approved pursuant to Title 17 of this code nor shall it be construed to waive or preempt any requirement or authorization provided under Title 17 of this code."

SECTION 2. If any section, subsection, paragraph, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, paragraph, clause or phrase of this Ordinance, irrespective of any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases subsequently declared invalid or unconstitutional.

SECTION 3. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.


SECTION 4. This Ordinance will become effective on the thirty-first (31st) day following its passage and adoption.

PASSED, APPROVED AND ADOPTED this 23rd day of April 2024.



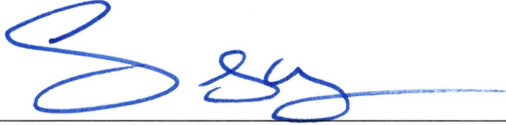
Alberto Sanchez, Mayor
City of Banning

ATTEST:



Caroline Patton, Administrative City Clerk
City of Banning

APPROVED AS TO FORM:



Serita Young, City Attorney
Richards, Watson & Gershon

CERTIFICATION:


I, Caroline Patton, Administrative City Clerk of the City of Banning, California, do hereby certify that Ordinance 1603 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 9th day of April 2024, and was duly adopted at a regular meeting of said City Council on the 23rd day of April 2024, by the following vote, to wit:

AYES: Happe, Minjares, Sanchez, and Wallace.

NOES:

ABSENT: Flynn.

ABSTAIN:



Caroline Patton, Administrative City Clerk
City of Banning, California