

ORDINANCE NO. 1718

**AN ORDINANCE OF THE CITY COUNCIL OF  
SAN CLEMENTE, CALIFORNIA AMENDING  
SAN CLEMENTE MUNICIPAL CODE SECTIONS  
8.16.050 AND 12.32.050 CONCERNING LOCAL  
FIRE REGULATIONS AND AMENDMENTS TO  
THE 2019 CALIFORNIA FIRE CODE (ADOPTED  
ON DECEMBER 3, 2019) AND FINDING THE  
ORDINANCE NOT SUBJECT TO THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, California Health & Safety Code sections 17958.5 and 18941.5 authorize cities to adopt the codes contained in Title 24 of the California Code of Regulations with changes and modifications determined to be reasonably necessary because of local climatic, topographic, or geologic conditions; and

**WHEREAS**, on December 3, 2019, the City adopted the 2019 California Fire Code (Fire Code), based on the 2018 International Fire Code, with necessary local amendments to assure the Code is tailored to the particular fire protection needs of the City as required by local climatic, topographic, and geologic conditions and to assure that a maximum level of fire protection is provided to residents, businesses, and other occupants; and

**WHEREAS**, the City's local fire code amendments are provided in Chapter 8.16 of the San Clemente Municipal Code ("SCMC"); and

**WHEREAS**, the City Council desires to clarify local amendments included in the adoption of the Fire Code related to open burning and the use of open-flame cooking devices and portable open-flame devices in the public right-of-way or on properties zoned or designated by the City as "Open Space," "Inland Canyon," "Coastal Canyon," "Coastal Bluff," "Public," or "Institutional;" and

**WHEREAS**, this Ordinance strengthens the City's fire regulations by: (1) deleting and amending certain existing local amendments from the SCMC, (2) creating a new local amendment (the "New Local Amendment"), and (3) providing enforcement authority for the Orange County Sheriff Department and employees designated by the City Manager in the City's Marine Safety, Code Compliance, and Park Ranger Divisions; and

**WHEREAS**, the New Local Amendment covers the same activities and is more restrictive than the existing local amendments; and

**WHEREAS**, the New Local Amendment prohibits kindling, building, lighting, or maintaining a fire in: (1) the public right-of-way, (2) property owned or managed

by the City, (3) property that is zoned or designated by the City as "Open Space," "Public," "Civic Center," or "Institutional," or (4) vacant or unimproved portions of property that are zoned or designated by the City as "Inland Canyon," "Coastal Canyon" or "Coastal Bluff; and

**WHEREAS**, the New Local Amendment contains exceptions for activities authorized by the SCMC, the City, and/or the Orange County Fire Authority ("OCFA"); and

**WHEREAS**, the New Local Amendment permits fires in public and private parks provided that specified safety measures are followed. Such safety measures include, but are not limited to, fire location restrictions (fires must occur in a designated fire ring or pit or in a commercially manufactured appliance) and fuel prohibitions (no painted or chemically treated wood may be burned); and

**WHEREAS**, SCMC section 12.32.050 sets forth the circumstances under which fires are permitted on public and private beaches. This Ordinance includes a minor amendment to section 12.32.050 to clarify that fires on beaches must be in a designated fire ring or pit or in a commercially manufactured appliance; and

**WHEREAS**, the amendments set forth in this Ordinance are reasonably necessary due to climatic, geological and topographical conditions in the City for the reasons set forth below; and

**WHEREAS**, California Government Code section 50022.3 requires that the City Council hold a public hearing on the Ordinance after the first reading; and

**WHEREAS**, on September 7, 2021, the City Council held a duly noticed public hearing on the Ordinance and provided all interested persons with the opportunity to appear and be heard; and

**WHEREAS**, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals.** The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

**SECTION 2. CEQA.** The City Council finds that this Ordinance is not a "project" subject to the California Environmental Quality Act (CEQA). The Ordinance does not qualify as a project because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, § 15378, subd. (a).) The language merely

clarifies existing language included in the City's fire code. In the alternative, the City Council finds that the Ordinance falls within the "common sense" exemption set forth in State CEQA Guidelines section 15061, subdivision (b)(3), which exempts activity from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Here, it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment because the New Local Amendment covers the same activities and is more restrictive than the Inadvertent Local Amendments; accordingly, the Ordinance will not result in any development or in any new activity with the potential to impact the environment.

**SECTION 3. Findings.** The City Council finds and determines that:

**I. Climatic Conditions**

A. The jurisdiction of San Clemente is located in a semi-arid Mediterranean type climate. It annually experiences extended periods of high temperatures with little or no precipitation. Hot, dry (Santa Ana) winds, which may reach speeds of 70 m.p.h. or greater are also common to the area. These climatic conditions cause extreme drying of vegetation and common building materials. Frequent periods of drought and low humidity add to the fire danger. This predisposes the area to large destructive fires (conflagration). In addition to directly damaging or destroying buildings, these fires also disrupt utility services throughout the City.

B. In June 2017, the Cristianitos Fire scorched 760 acres adjacent to San Clemente, threatening several homes in the vicinity of the Avenida Pico and Talega area. Homes, businesses and an animal shelter in San Clemente were threatened. The fire involved more than 350 firefighters, two air tankers and two water helicopters to battle the fast-moving brush fire.

C. The climate alternates between extended periods of drought and brief flooding conditions. Flood conditions may affect the local fire authority's ability to respond to a fire or emergency condition. Floods also disrupt utility services to buildings and facilities within the City.

D. Water demand in this densely populated area far exceeds the quantity supplied by natural precipitation and, although the population continues to grow, the already-taxed water supply does not. California is projected to increase in population by nearly 10 million over the next quarter of a century, with 50 percent of that growth centered in Southern California. Due to storage capacities and consumption and a limited amount of rainfall, future water allocation is not fully dependable.

E. These dry climatic conditions and winds contribute to the rapid spread of even small fires, especially those originating in vegetation and open space. These fires spread very quickly and create a need for increased levels of fire protection.

## II. Topographical Conditions

A. Natural slopes of 15 percent or greater generally occur throughout the City. The elevation change caused by the hills creates the geological foundation on which communities within the City are built and will continue to build. With much of the populated flatlands already built upon, future growth will occur on steeper slopes and greater constraints in terrain.

B. Traffic and circulation congestion is an artificially created obstructive topographical condition, which is common throughout the City.

C. These topographical conditions combine to create a situation, which places fire department response time to fire occurrences at risk, and makes it necessary to provide increased fire protection to protect occupants and property.

## III. Geological/Seismic Conditions

A. The City is a densely populated area that has buildings constructed over and/or near a vast and complex network of faults that are believed to be capable of producing future earthquakes similar or greater in size than the 1994 Northridge and the 1971 Sylmar earthquakes. Earthquake faults run along the northeast and southwest boundaries of Orange County. The Newport-Inglewood Fault located within Orange County was the source of the destructive 1933 Long Beach earthquake (6.3 magnitude) which took 120 lives and damaged buildings in an area that ran from Laguna Beach to Marina Del Rey to Whittier. In December 1989, another earthquake occurred in the City of Irvine at an unknown fault line. Regional planning for reoccurrence of earthquakes is recommended by the State of California, Department of Conservation.

B. Previous earthquakes have been accompanied by disruption of traffic flow and fires. A severe seismic event has the potential to negatively impact any rescue or fire suppression activities because it is likely to create obstacles similar to those indicated under sections above. With the probability of strong aftershocks, there exists a need to provide increased fire protection.

C. The October 17, 1989, Santa Cruz earthquake resulted in one major fire in the Marina District of San Francisco. When combined with the 34 other fires locally and over 500 responses, the fire department was taxed to its fullest capabilities. The Marina fire was difficult to contain because mains supplying water

to the district burst during the earthquake. This situation creates the need for additional fire protection measures to protect occupants and property.

D. Furthermore, road circulation features located throughout the City also make the amendments herein reasonably necessary. There are major roadways, highways and flood control channels that create barriers and slow response times. Hills, slopes, street and storm drain design accompanied by occasional heavy rainfall, cause roadway flooding and landslides and at times may make an emergency access route impassable.

E. In sum, the topographical conditions of sprawling development separated by waterways and narrow and congested streets and the expected infrastructure damage inherent in the seismic zone described above makes it necessary to provide increased fire protection measures to protect the City's occupants and property.

#### IV. Wildland-Urban Interfaces.

The City includes a number of wildland-urban interfaces, both on public and private lands, which pose a greater risk of wildfires. For this reason, California law requires homeowners to clear flammable vegetation within 30 feet of buildings and to modify vegetation within 100 feet from buildings to create defensible space for firefighters to safely protect their homes. (See Cal. Pub. Res. Code, § 4291).

#### V. Supplemental Specific Findings.

A. The region within which San Clemente lies is susceptible to increasingly destructive wildfires. For example, two brush fires broke out on October 26, 2020: the Silverado Fire (in proximity to State Route 241 in the Irvine area) and the Blue Ridge Fire (north of Highway 91 in Yorba Linda). According to CalFire, the Blue Ridge Fire burned at least 13,694 acres, destroyed one structure and damaged 10. The Silverado Fire burned 12,466 acres, destroyed five structures and damaged nine. (City News Service, "Blue Ridge and Silverado Fires in OC Nearly 100% Contained," *NBC Los Angeles*, November 5, 2020.)

B. Of particular concern and danger to life and property are fires associated with unlawful camping activities. Examples of such dangers include the following:

i. According to the California Department of Forestry and Fire Protection, an average of 103 wildfires a year in California are started by illegal open fires, which include warming fires, cooking fires and campfires." (Jennifer

Medina, "Los Angeles Times Fire Started in Homeless Encampment, Officials Say," *The New York Times*, Dec. 12, 2017.)

ii. OCFA reports that escaped or illegal campfires were responsible for the recent Colby Fire and Skirball Fire. OCFA reports that the Colby Fire occurred in Los Angeles in January 2014 and burned 1,952 acres, five residences and resulted in one injury. The Skirball Fire occurred in Los Angeles in August 2018 and burned 422 acres, 6 buildings and resulted three injuries.

iii. Since 2019, OCFA reports that it has responded to at least 20 fires in the City that were attributable to fires maintained by individuals experiencing the effects of homelessness.

iv. The *Los Angeles Times* reports that as the number of tents, makeshift shelters and campers on Los Angeles streets has surged, fires related to homelessness have nearly tripled. In the first quarter of 2021, such fires occurred at a rate of 24 a day, constituting 54% of all fires that the Los Angeles Fire Department responded to. (Doug Smith et al., "24 fires a day: Surge in flames at L.A. homeless encampments a growing crises," *Los Angeles Times*, May 12, 2021.)

v. Unlawful fires have resulted in tragic consequences, including the loss of life. In April 2021, a brush fire broke out in Anaheim as a result of a lit candle at an encampment. As firefighters were extinguishing the blaze, they discovered the body of a man in the burn area. (CBSLA Staff, "Burned Body Found In Brush Fire Behind Anaheim Motel," *CBS Los Angeles*, April 21, 2021.)

**SECTION 4.** For the reasons set forth in Section 3 above, the City Council finds that this Ordinance's amendments to the 2019 California Fire Code meet the State mandate for local modifications to the State Standard Building Codes being more restrictive and reasonably necessary because of local climatic, geological or topographical conditions. The City Council further finds that this Ordinance is consistent with the City's desire to further mitigate the public health and safety concerns associated with illegal fires while also preserving the ability for residents and visitors to safely light and maintain fires in the City.

**SECTION 5.** Section 8.16.050 of Title 8 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikethrough~~):

**"8.16.050 - Chapter 3 amended—General Requirements**

Chapter 3 General Requirements. Adopt Chapter 3 in its entirety, with the exception of Sections 308.1.4, 311.5 through 311.5.5, 318, and 319, and with the following amendments:

...

~~Section 307.7.1 Prohibited open burning~~

- ~~(a) Unless otherwise authorized by the City's Municipal Code or permitted by the City or the Orange County Fire Authority, open burning shall be prohibited upon any property zoned or designated by the City as "Open Space," "Inland Canyon," "Coastal Canyon," "Coastal Bluff," "Public," or "Institutional," when not located in a public or private park where fires are permitted and contained within an appliance manufactured or listed for recreational fires, or within any portion of the public right-of-way.~~
- ~~(b) Except as otherwise permitted by the Orange County Fire Authority, the City, or provided in the City's Municipal Code, including but not limited to Section 307.6, for all other properties not covered by subsection (a) above, open burning shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous.~~
- ...

Section 307.7 Fire Prevention

A. Except as provided in subsection B, authorized in the San Clemente Municipal Code, or permitted by the City or the Orange County Fire Authority, no person shall kindle, build, light, or maintain a fire in:

1. The public right-of-way;
2. Property owned or managed by the City;
3. Property that is zoned or designated by the City as "Open Space," "Public," "Civic Center" or "Institutional," or
4. Vacant or unimproved portions of property that are zoned or designated by the City as "Inland Canyon," "Coastal Canyon" or "Coastal Bluff."

Enforcement personnel may order the immediate extinguishment of any fire in violation of this subsection A.

B. The prohibitions provided in subsection A do not apply in any public or private park where fires are permitted so long as all of the following conditions are met:

1. The fire is in a designated fire ring or pit, of a maximum horizontal distance of 3 feet by 2 feet, or contained within a commercially

manufactured appliance that is elevated off of the ground (e.g., a hibachi or barbeque grill);

2. Only wood, charcoal, or paper products are used as fuel;
3. No painted or chemically treated wood is burned;
4. All fuel material fits within the inside edge of the fire ring, pit, or elevated appliance; and
5. The fuel materials do not rise higher than approximately two (2) feet above the top edge of the fire ring, pit, or elevated appliance.
6. Hazardous conditions identified in Section 305.6 exist.

C. Enforcement personnel may order the extinguishment of any fire otherwise permitted under subsection B for any public safety or welfare reason. Such reasons include, but are not limited to, the fire's location or proximity to a hazardous fire area, types of fuel, wind speed, wind direction, flying embers, or other hazardous conditions described in Section 305.6 exist.

D. This section shall be enforced by the Orange County Fire Authority, the Orange County Sheriff's Department, and employees designated by the City Manager in the City's Marine Safety, Code Compliance, and Park Ranger Divisions (collectively referred to herein as "Enforcement Personnel").

...

~~308.1.4 Open flame cooking devices. Is hereby amended:~~

- ~~(a) Unless otherwise authorized by the City's Municipal Code or permitted by the City or the Orange County Fire Authority, open flame cooking devices shall be prohibited upon any property zoned or designated by the City as "Open Space," "Inland Canyon," "Coastal Canyon," "Coastal Bluff," "Public," or "Institutional," when not located in a public or private park where fires are permitted and contained within an appliance manufactured or listed for recreational fires, or within any portion of the public right-of-way.~~
- ~~(b) Except as otherwise permitted by the Orange County Fire Authority, the City, or provided in the City's Municipal Code, including but not limited to Section 307.6, for all other properties not covered by subsection (a) above, charcoal burners and other open flame cooking devices shall not be operated on combustible balconies or within 10 feet (3048 mm) of combustible material.~~

~~308.1.6.2 Portable fueled open flame devices. Is hereby amended:~~



- (a) ~~Unless otherwise authorized by the City's Municipal Code or permitted by the City or the Orange County Fire Authority, portable fueled open flame devices shall be prohibited upon any property zoned or designated by the City as "Open Space," "Inland Canyon," "Coastal Canyon," "Coastal Bluff," "Public," or "Institutional," when not located in a public or private park where fires are permitted and contained within an appliance manufactured or listed for recreational fires, or within any portion of the public right-of-way.~~
- (b) ~~Except as otherwise permitted by the Orange County Fire Authority, the City, or provided in the City's Municipal Code, including but not limited to Section 307.6, for all other properties not covered by subsection (a) above, portable open flame devices fueled by flammable or combustible gases or liquids enclosed or installed in such a manner as to prevent the flame from contacting combustible material.~~

...

**SECTION 6.** Section 12.32.050 of Title 12 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikethrough~~):

**"12.32.050 Fires on the Beach and Pier.**

No person shall start or permit to be maintained any fire on the municipal pier. No person shall start or permit to be maintained any fire on any public or private beach except in a designated fire ring or pit or in a commercially manufactured appliance suitable metal or other container that is elevated off of the sand (e.g., a hibachi or barbeque grill) ~~to prevent overheating of the sand.~~ Only wood, charcoal, or paper products may be used as fuel. No painted or chemically treated wood is allowed. All fuel material must fit within the inside edge of the fire ring, pit, or elevated appliance, and Fuel material may not rise higher than approximately two (2) feet above the top edge of the fire ring, pit, or elevated appliance. Enforcement personnel may order the extinguishment of any fire for any safety or public welfare reason, including but not limited to, the risk of unintended fires due to location or proximity of fire to hazardous areas, types of fuel, wind speed, wind direction, or flying embers.

In addition, no person shall dispose of any coals, embers, or other burning or burnt materials upon or around the municipal pier or any public or private beach (including without limitation in any trash receptacle) except as follows:

- A. Disposal in a designated fire ring or pit; or
- B. Disposal of completely cooled materials in a trash receptacle."

**SECTION 7. Publication.** The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

**SECTION 8. CBSC Filing.** In accordance with California Health and Safety Code section 17958.7, the City Clerk shall file a copy of this Ordinance with the California Building Standards Commission.

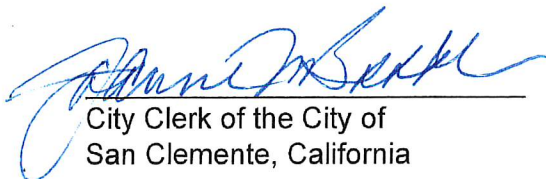
**SECTION 9. Records.** The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.

**SECTION 10. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**SECTION 11. Effective Date.** This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this 5th day of October, 2021.

ATTEST:

  
\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

  
\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF SAN CLEMENTE )


I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1718 having been regularly introduced at the meeting of September 7, 2021, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 5th day of October, 2021, and said ordinance was adopted by the following vote:

AYES: DUNCAN, FERGUSON, JAMES, KNOBLOCK, MAYOR WARD

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 20<sup>TH</sup> day of AUGUST, 2021.

  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney