

ORDINANCE NO. 3105

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 12.42 RELATED TO CAMPING AND STORAGE OF PERSONAL PROPERTY IN PUBLIC AREAS

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

SECTION 1. Chapter 12.42 of the Whittier Municipal Code is hereby amended to read as follows:

“12.42.010 – Purpose.

A.—The public streets and areas within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes and/or storage of personal property interferes with the rights of others to use the areas for which they were intended. **The City enacts this chapter to balance the needs of residents and public at large to access clean and sanitary public areas consistent with the intended uses for public areas with the needs of individuals who have no other alternatives for the storage of personal property to retain access to a limited amount of personal property in public areas and who have no place to sleep at night. This chapter** ~~The purpose of this chapter is to~~ **seeks to balance the needs of all the City’s residents,** maintain the public streets and public areas in blight-free conditions, to secure access to public areas and to businesses, and to ensure that public property is used for its intended purposes and remains accessible to all citizens, businesses and visitors in the City of Whittier, **while taking into account the vulnerable homeless population.**

~~B.— Large amounts of personal property are being left unattended in public areas throughout the city, and such personal property creates blight, obstructs the public rights-of-way, interferes with access to the public areas and to businesses, and thus negatively affects quality of life in the city, and negatively affects the profitable operation of such businesses.~~

12.42.020 - 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 chapter.

- A. "Abandoned personal property" means personal property that the owner surrenders, relinquishes, or disclaims. Indicia of abandoned personal property shall include, but not be limited to: personal property that its owner has indicated he/she does not want; and personal property left on private

real property for any period of time without the permission of the real property owner or current tenant.

- B. "Alley" shall have the same meaning as **California Vehicle Code Section 110 of the California Vehicle Code.**
- C. **"Block" shall mean 500 feet.**
- D. **"Bulky Item" means any item, with the exception of a constructed Tent, E-Z up or canopy, operational bicycle or operational walker, crutch or wheelchair, that is too large to be moved by or carried on a person, including but not limited to, a shed, structure, mattress, couch, chair, other furniture or appliance. A container with a volume of no more than 60 gallons used by an individual to hold Personal Property shall not in itself be considered a Bulky Item.**
- C.E. "Camp" means to pitch or to occupy camp facilities; to use **or store** camp paraphernalia **for habitation purposes, to use any property set forth in Section 12.42.030 for habitation purposes such as sleeping activities, or making preparations to sleep, including laying down of bedding for purposes of sleeping.**
- D.F. "Camp facilities" include, but are not limited to, tents, huts or temporary shelters.
- E.G. "Camp paraphernalia" includes, but is not limited to, tarpaulins, **umbrellas**, cots, beds, **bedding**, sleeping bags, hammocks or non-city designated cooking facilities, **kitchen utensils, camping stoves, portable barbeques** and similar equipment, **extra clothing, personal hygiene items, and/or shopping carts, strollers, wheeled suitcases or similar mobile containers used to transport and/or store other items of camp paraphernalia.**
- F.H. "Chief of police" or "police chief" means the chief of police of the Whittier police department, ~~and shall include his/her or designee.~~
- G.I. "City clerk-treasurer" shall mean the Whittier city clerk-treasurer ~~and shall include his/her or designee.~~
- J. **"City treasurer" shall mean the Whittier city treasurer or designee.**
- H.K. "City manager" shall mean the Whittier city manager ~~and shall include his/her or designee.~~
- L. **"Dwelling" shall mean more than one of the following activities and when it reasonably appears, in light of all the circumstances, that a person is using a vehicle as a place of residence or accommodation: Possessing inside or on a vehicle items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, kitchen utensils, cookware, cooking equipment, and bodily fluids. Obscuring some or all of the vehicle's windows. Preparing or cooking meals inside or on a vehicle, as a place of residence or accommodation.**
- I.M. "House trailer" shall include any motor vehicle, boat, recreational vehicle or other vehicular device designed for use as a human habitation but shall not include a manufactured home, as that term is defined in 42 U.S.C. § 5402

(National Manufactured Housing Construction and Safety Standards Act of 1974), or its successor provisions.

- J.N. "Park" means a park, reservation, playground, recreation center or any other area in the city owned, maintained or used by the city for the purpose of public rest, play, enjoyment, active or passive recreation, or assembly, **including the Greenway Trail**, and shall include all buildings and structures located thereon or therewith.
- K.O. "Public area" means and includes all property that is owned, managed or maintained **by the City and shall include**, but is not limited to, any street, alley, park, public right-of-way, recreational area, ~~space, ground building or structure~~ any place open to the public view or other place to which the public has access. ~~A public area can be privately or publicly owned.~~
- L.P. "Public works director" means the public works director of the City of Whittier or his/her designee.
- M.Q. "Personal property" means tangible personal belongings. Tangible personal belongings include any movable or tangible thing that is subject to ownership; property or chattels that can be seen, weighed, measured, felt, or touched, such as cooking utensils, money, medication, documents, clothing, luggage and books. For the purposes of this chapter, personal property shall not include real property, vehicles, bicycles or animals.
- N.R. "Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property includes land, buildings and easements.
- ~~O.S.~~ ~~"Storage of personal property in public areas" means accumulating or putting aside personal property, placing it for safekeeping, or leaving it in public areas; or personal property that is left unattended in any public area lacking a guard, escort, caretaker, or other watcher.~~ **"Store", "Stored", "Storing" or "Storage" means to put Personal property aside or accumulate for use when needed, to put for safekeeping and/or to place or leave in a Public Area. Moving Personal property to another location in a Public Area or returning Personal property to the same block on a daily or regular basis shall be considered Storing and shall not be considered to be removing the Personal property from a Public Area. This definition shall not include any Personal Property that, pursuant to statute, ordinance, permit, regulation or other authorization by the City or State, is Stored with permission of the City or state on real property that is owned or controlled by the City.**
- P.T. "Street" shall have the same meaning as **California Vehicle Code** Section 591.
- U. **"Tent" means a collapsible shelter made of fabric such as nylon or canvas or a tarp stretched and sustained by supports, which is not open on all sides and which hinders an unobstructed view behind or into the area surrounded by the fabric. In order to qualify as a Tent for purposes of this subsection, a Tent, when deconstructed, must be able to fit into a 60-gallon container with the lid closed.**

- V. **“Unattended” means no Person is present with the Personal Property who asserts or claims ownership over the Personal Property. Conversely, property is considered “Attended” if a Person is present with the Personal Property and the Person claims ownership over the Personal Property.**
- Q.W. "Unclaimed personal property" means personal property that has been turned in to the chief pursuant to Section 12.42.050, and that has not been claimed within a period of ninety (90) days by its true owner or finder.
- X. **“Vehicle” means any motor vehicle, trailer, house car or trailer coach as defined by the California Vehicle Code.**

12.42.030 - Camping in public areas prohibited.

- A. It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise designated by the city manager or his/her designee:
1. Any street or alley;
 2. Any public parking lot or public area, improved or unimproved;
 3. Any park.
- B. The prohibition of this section shall not apply:
1. In the event of **an emergencies, including a city declared emergency or natural disaster**, such as ~~may be caused by flooding, fire, earthquake or any other natural or man-made condition~~ **a flood or earthquake**.
 2. To events that are approved or sponsored by the city.
 3. To camping grounds and parks designated for mobile home or recreational vehicle use.
 4. ~~Occasional camping on residential properties, with the property owner's express permission, not to exceed three consecutive days in any ninety day period.~~
 5. ~~Events on private property, for which the owner(s) or person(s) in lawful possession of the property has obtained a temporary use permit or conditional use permit from the city, which specifically allows the activity.~~

12.42.040 - ~~Unlawful camping—Living in vehicles prohibited.~~ **Use of vehicles for dwelling prohibited on city streets.**

- A. ~~The use of a house trailer, whether on wheels or a foundation, for habitation purposes, either temporary or permanent, other than one located in a regularly established trailer park and in areas designated for such use, is declared to be a nuisance and is prohibited.~~
- B. ~~The use for habitation purposes of any motor vehicle, operative or nonoperative, including, but not limited to, any automobile, sport utility vehicle or van, which has a designed primary purpose of transportation, and which is parked on any street or public place or anywhere open to public view, is declared to be a public nuisance and is prohibited.~~
- A. **No person shall use a Vehicle for Dwelling as follows:**

1. **Between the hours of 9:00 p.m. and 6:00 a.m. on any City street; or**
2. **At any time within one Block radius of any edge of a lot containing a park or licensed school, pre-school or daycare.**

12.42.050 - Storage of personal property in public areas-prohibited.

- ~~A. It shall be unlawful for any person to store personal property in any public area, except as otherwise approved in writing by the city manager or his/her designee. Personal property stored in public areas in violation of this section shall be impounded pursuant to Sections 12.42.050 through 12.42.110 of this chapter.~~
- ~~B. Any personal property left in any city park while the park is closed to the public, whether or not the personal property is unattended, may be immediately impounded, pursuant to Sections 12.45.050 through 12.42.110 of this chapter.~~
- ~~C. Violations of this section may be punishable pursuant to the provisions of Section 1.08.010 of this code.~~
- A. No person shall Store any Unattended Personal Property in a Public Area. With pre-removal notice as specified in Subsection 12.42.070.A., the City may impound any Unattended Personal Property in a Public Area, regardless of volume. Post-removal notice shall be provided as set forth in Subsection 12.42.070.B.**
- B. No person shall Store any Personal Property in a Public Area in such a manner as to obstruct City operations, including street or sidewalk maintenance or cleaning, or park or landscaping maintenance, repair or irrigation. Without prior notice, the City may temporarily move Personal Property, whether Attended or Unattended, which is obstructing City operations in a Public Area during the time necessary to conduct the City operations. The City may also impound Personal Property that is obstructing City operations in a Public Area. Post-removal notice shall be provided as set forth in Subsection 12.42.070.B.**
- C. No person shall Store any Personal Property in a Public Area in such a manner that it does not allow for passage as required by the Americans with Disabilities Act of 1990 as amended from time to time (ADA). Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or Unattended, Stored in a Public Area in such a manner that it does not allow for passage as required by ADA. Post-removal notice shall be provided as set forth in Subsection 12.42.070.B.**
- D. No person shall Store any Personal Property within ten feet of any operational and useable entrance, exit, driveway or loading dock. Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or Unattended,**

- Stored in a Public Area within ten feet of any such area. Post-removal notice shall be provided as set forth in Subsection 12.42.070.B.
- E. No person shall Store in a Public Area that has clearly posted closure time any Personal Property after the posted closure time. Without prior notice, the City may move and may immediately impound any Personal Property, whether Attended or Unattended, Stored in a Public Area within ten feet of any such area. Post-removal notice shall be provided as set forth in Subsection 12.42.070.B.
 - F. No person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended, constitutes an immediate threat to health or safety of the public. Without prior notice, the City may remove and may discard any Personal Property Stored in a Public Area if the Personal Property poses an immediate threat to the health or safety of the public.
 - G. No person shall Store any Personal Property in a Public Area if the Personal Property, whether Attended or Unattended, constitutes an evidence of a crime or contraband. Without prior notice, the City may remove and may discard any Personal Property that constitutes an evidence of a crime or contraband.
 - H. No person shall Store any Bulky Item in a Public Area. Without prior notice, the City may move and may discard any Bulky Item, whether Attended or Unattended, Stored in a Public Area unless the Bulky Item is designed to be used as a shelter. For any Bulky Item that is designed to be used as a shelter but does not constitute a Tent as defined in 12.42.020(U), with pre-removal notice as specified in 12.42.050.D - H the City may remove and discard the Bulky Item, whether Attended or Unattended. If the Bulky Item violates Subsections 12.42.050.D – H. herein, even if it is designed to be used as a shelter, without prior notice, the City may remove and discard the Bulky Item, whether Attended or Unattended.
 - I. Violations of this section may be punishable pursuant to the provisions of Section 1.08.010 of this code.

12.42.060 - Storage and Disposal.

- A. Except as specified herein, the City shall move Personal Property to a place of storage.
- B. Except as specified herein, the City shall store impounded personal property for 90 days, after which time, if not claimed, it may be discarded. The City shall not be required to undertake any search for, or return, any impounded Personal Property stored for longer than 90 days.
- C. The City shall maintain a record of the date any impounded Personal Property was discarded.
- D. Repossession. The owner of impounded Personal Property may repossess the Personal Property prior to its disposal upon submitting

satisfactory proof of ownership. A person may establish satisfactory proof of ownership by, among other methods, describing the location from and date when the Personal Property was impounded from a Public Area, and providing a reasonably specific and detailed description of the Personal Property. Valid, government-issued identification is not required to claim impounded Personal Property

~~12.42.060 – Police chief to receive/store unattended personal property.~~

~~The chief of police shall make provisions for receiving and safekeeping of personal property found unattended and coming into his or her possession. A receipt shall be issued to the person delivering such personal property, unless the personal property was found in the course of employment by an employee of the city. The police department shall notify the owner, if his or her identity is reasonably ascertainable, that it possesses the personal property and where it may be claimed. The police department may require the owner to pay a reasonable charge to defray the costs of storage and care of the personal property.~~

12.42.070 - Notice.

- ~~A. In the event that the personal property is found in the course and scope of employment by an employee of the city, the employee shall leave a notice in a prominent place of any personal property taken, including advising where the personal property is being kept and when it may be claimed by its rightful owner.~~
- ~~B. The city shall determine what, if any, areas of the city suffer from blight due to storage of personal property in public places, parks or streets and alleys, and erect signs in those areas so as to provide additional notice.~~

A. Pre-Removal Notice. Pre-removal notice shall be deemed provided if a written notice is provided to the person who is storing or claims ownership of the Personal Property or is posted conspicuously on or near the Personal Property. The written notice shall contain the following:

- 1. A general description of the Personal Property to be removed**
- 2. The location from which the Personal Property will be removed**
- 3. The date and time the notice was posted**
- 4. A statement that the Personal Property has been stored in violation of Section 12.42.050.**
- 5. A statement that moving Personal Property to another location in Public Area shall not be considered removal of Personal Property from a Public Area.**
- 6. The address where removed Personal Property will be located, including a telephone number and the internet website of the City through which a person may receive information as to impounded Personal Property.**
- 7. A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.**

- B. Post-Removal Notice.** Upon removal of Stored Personal Property, written notice shall be conspicuously posted in the area from which the Personal Property was removed. The written notice shall contain the following:
1. A general description of the Personal Property removed.
 2. The date and approximate time the Personal Property was removed.
 3. A statement that the Personal Property was been stored in violation of Section 12.42.050.
 4. The address where removed Personal Property will be located, including a telephone number and the internet website of the City through which a person may receive information as to impounded Personal Property.
 5. A statement that impounded Personal Property may be discarded if not claimed within 90 days after impoundment.

12.42.080 - Ban on Erection of Tents during Certain Daytime Hours.

No person shall erect, configure or construct a Tent in any Public Area from 8:00 a.m. to 9:00 p.m. (except during rainfall). A person must take down, fold, deconstruct or put away any Tent erected, configured or constructed in any Public Area between the hours of 8:00 a.m. and 9:00 p.m. (except during rainfall). Without prior notice, the City may deconstruct and may impound any Tent, whether Attended or Unattended, located in any Public Area in violation of this subsection or in violation of Subsections 12.42.050 hereof. The City shall provide post-removal notice for any impounded Tent as set forth in Subsection 12.42.070.B.

12.42.090 - Ban on Attachments to Public and Private Property.

- A. Public Property.** No person shall erect any barrier against or lay string or join any wires, ropes, chains, or otherwise attach any Personal Property to any public property, including but not limited to, a building or portion or protrusion thereof, fence, bush shelter, trash can, mail box, pole, bench, news rack, sign, tree, bush, shrub or plant without the City's written prior permission.
- B. Private Property.** No person shall erect any barrier against or lay string or join any wires, ropes, chains, or otherwise attach any Personal Property to any private property in such a manner as to create an obstruction on or across any street or area where the public may travel.
- C. Removal.** Without prior notice, the City may remove any barrier, string, wires, ropes, chains or other attachment of Personal Property, whether Attended or Unattended, to any public property, or to any private property which creates an obstruction to any street or area where the public may travel.

12.42.100 - Illegal Dumping.

Nothing herein precludes the enforcement of any law prohibiting illegal dumping, including but not limited to California Penal Code Section 374.3 and Municipal Code Section 8.36.060 proscribing illegal dumping.

12.42.110 - Unlawful Conduct.

- A. No person shall refuse to take down, fold, deconstruct or otherwise put away any Tent erected or configured between the hours of 8:00 a.m. and 9:00 p.m. in violation of 12.42.080 or willfully resist, delay or obstruct a City employee from taking down, folding, deconstructing, putting away, moving, removing, impounding or discarding the Tent, including by refusing to vacate or retreat from the Tent.**
- B. No person shall refuse to remove any barrier, string, wire, rope, chain or other attachment that violates Section 12.42.090 or willfully resist, delay or obstruct a City employee from deconstructing, taking down, moving, removing, impounding or discarding the barrier, string, wire, rope, chain or other attachment, including by refusing to vacate or retreat from an obstructed area created by the attachment.**
- C. No person shall willfully resist, delay or obstruct a City employee from removing or discarding a Bulky Item stored in violation of Section 12.42.050 including by refusing to vacate or retreat from within or from an obscured area created by the Bulky Item.**
- D. No person shall violate Section 8.36.060 - prohibiting illegal dumping.**

12.42.080~~120~~ - Holding and disposal of stolen/unattended personal property.

Found personal property shall be deposited in a safe place for a period of at least ninety days, and found money shall be deposited with the city clerk-treasurer for a period of not less than ninety days, unless sooner claimed by the true owner. In the event the property or money is not claimed within ninety days, it shall be deemed to be unclaimed personal property, subject to disposal as provided in this chapter.

12.42.090~~130~~ - True owner may claim personal property.

During the time that any found personal property is held by the city, it may be delivered or paid to the true owner as follows:

- A. The personal property shall be delivered upon proof of ownership satisfactory to the chief of police after ten days' notice by mail to any others who have asserted a claim of ownership, at any address given by such persons.**
- B. If the personal property consists of money, it shall be paid to the true owner upon written order from the chief of police to the city clerk-treasurer. The chief of police shall make such order upon the same proof of ownership and with the same notice as prescribed in the case of property.**

- C. If ownership cannot be determined to the satisfaction of the chief of police, **the chief of police** ~~he or she~~ may refuse to deliver the personal property or order the payment of such money to anyone until ordered to do so by a court of competent jurisdiction.

12.42.400140 - Finder may reclaim property or money.

- A. If the reported value of the personal property is two hundred fifty dollars or more, and the true owner does not appear and prove his or her ownership of the personal property within ninety days, the chief of police shall cause notice of the personal property to be published once in a newspaper of general circulation. If, after seven days following the publication of the notice, no owner appears and proves his or her ownership of the personal property, and the person who found or saved the personal property pays for the cost of publication of the notice, the title shall vest in the person who found or saved the personal property, unless the personal property was found in the course of employment by an employee of the city, wherein the personal property shall be sold at auction as provided in Section 12.42.1560.
- B. In the event the reported value of the personal property is less than two hundred fifty dollars and no owner appears to prove his or her ownership of the personal property within ninety days, the title shall vest in the person who found or saved the personal property, unless the personal property was found in the course of employment by an employee of the city, in which case the personal property shall be sold at auction as provided in Section 12.42.1560.

12.42.440150 - Unclaimed personal property to be used by city or sold at auction - Notice.

- A. Upon expiration of the ninety-day period, any personal property received by the city and not delivered to the true owner or finder may be appropriated to the use of the City of Whittier upon order of the city manager ~~or his or her~~ **and** finding that the personal property is needed for a public use, and any personal property not appropriated to city use may be sold at public auction to the highest bidder.
- B. All unclaimed money received by the chief of police, and not delivered to the true owner or finder during the ninety-day period shall thereafter be deposited in the general fund.
- C. Notice of sale at auction of unclaimed personal property shall be given by the city clerk ~~treasurer~~ at the direction of the chief of police at least five days before the time fixed therefor by publication at least once in a newspaper of general circulation.

12.42.420160 - Conduct of auction.

An auction for the sale of unclaimed personal property shall be in accordance with Civil Code **Sections** 2080.3 **and** 2080.4 and city policy.

~~12.42.430~~**170** - Proceeds to be deposited in general fund.

After any auction for unclaimed personal property is completed, the proceeds of the auction shall be delivered to the city clerk-treasurer for deposit in the general fund.

~~12.42.440~~**180** - Unsalable and unusual personal property.

Any personal property advertised and offered for sale but not sold and not suitable for appropriation to the use of the city shall be deemed to be of no value and shall be disposed of in such a manner as the city manager deems appropriate.

~~12.42.450~~**190** - Dangerous or perishable personal property—evidence.

Any personal property coming into the possession of the chief of police may be disposed of immediately and without notice, in a manner that the chief of police determines to be in the public interest, when such personal property is perishable, contraband pursuant to state or federal law, evidence in a criminal investigation, or constitutes an immediate threat to the public health or safety.

~~12.42.460~~**200** - Provisions not applicable.

- A. The provisions of this chapter shall not apply to real or personal property or money subject to confiscation pursuant to state or federal law, to personal property that constitutes evidence in an ongoing criminal investigation and/or civil proceeding pursuant to state or federal law.
- B. The provisions of this chapter shall apply to personal property or money held as evidence only where the same is unclaimed by any person and no other provisions of law are applicable concerning its disposition.
- C. The provisions of this chapter shall not apply to personal property that has been abandoned by its owner. Abandoned personal property shall be disposed of forthwith.

~~12.42.470~~**210** - Penalties.

- A. Any violation of the provisions of this chapter may be punished pursuant to the provisions of Chapter 1.08 of the Whittier Municipal Code.
- B. The remedies set forth in subsection A of this section shall be in addition to any other existing remedies for code enforcement and nuisance abatement actions, including, but not limited to, administrative citations or any action at law or equity.

SECTION 2. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall take effect 30 days after its adoption and shall be published pursuant to law.

APPROVED AND ADOPTED this _____ day of _____ 2019.

JOSEPH A. VINATIERI, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

Date: _____