

ORDINANCE NO. 777

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, AMENDING CHAPTER 2.52 OF THE CARPINTERIA MUNICIPAL CODE PERTAINING TO ABANDONED AND UNATTENDED PERSONAL PROPERTY

WHEREAS, within the City of Carpinteria (“City”) and other cities in the surrounding region, and throughout the State of California, there is a significant number of people experiencing homelessness;

WHEREAS, persons experiencing homelessness (and occasionally persons not experiencing homelessness) sometimes store personal items on public or private property, particularly if they have no other place to store it;

WHEREAS, storage of items in undesignated places can create unsanitary, unhealthy, disorderly, and dangerous conditions that may affect both the individuals and the general public;

WHEREAS, the Legislature of the State of California has, in Government Code sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, in accordance with Government Code sections 65302, 65560, and 65800, the City currently allows immediate removal and sale of individual items pursuant to Carpinteria Municipal Code (“CMC”) Chapter 2.52;

WHEREAS, recently, various courts have analyzed enforcement of local agency regulations similar to those codified in CMC Chapter 2.52 and have held that enforcement of such regulations without providing due process to the owner of the personal property may constitute a violation of the Fourth Amendment to the U.S. Constitution’s prohibition on unreasonable searches and seizures;

WHEREAS, notwithstanding the recent case law, there are situations where abandoned or unclaimed property may create a substantial danger or risk of harm that requires immediate removal of the personal property without following due process procedures in order to prevent substantial harm to individuals, the health and/or safety of the public, and/or the City’s vital government services. For example, open food items left on public property can attract vermin, which in turn can result in substantial adverse public health and safety impacts, including injuries to persons and property;

WHEREAS, the City, in consultation with legal counsel, has determined that CMC Chapter 2.52 require updates in order to better align with recent case law. However, it is critical that the City still be able to quickly remove encampments and personal items that endanger human lives, public health and safety, and vital government services;

WHEREAS, this Ordinance would require that the City comply with certain due process procedures when removing and disposing of personal property, but expressly acknowledges that

minimized due process procedures may be needed in some situations in order to promote public health, safety, and welfare;

WHEREAS, it has been determined that amending the CMC as provided for in this Ordinance is within the City's best interest; and

WHEREAS, the City acknowledges that homelessness continues to remain a dynamic and evolving issue within the City and the surrounding region that requires coordinated efforts by the City, the County of Santa Barbara, the State of California, the Federal Government, and regional partners.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CARPINTERIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals Incorporated.

The above recitals are incorporated herein and are each relied upon independently by the City Council in its adoption of this Ordinance.

SECTION 2. Amendment of Chapter 2.52 of the Carpinteria Municipal Code.

Chapter 2.52 of the CMC is hereby amended to read as set forth in Exhibit A, the text and strikeout of which is attached hereto as Exhibit B.

SECTION 3. Effective Date.

This Ordinance shall be in full force and effect thirty days following the second reading of the Ordinance. Before the expiration of fifteen (15) days following passage, this Ordinance shall be published once with the names of the members of the City Council voting for and against the same in the Coastal View News, a newspaper of general circulation, published in the City.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 5. CEQA Exemption.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Title 14 of the California Code of Regulations, CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activity is not a "project" as defined in section 15378), and 15061(b)(3) (the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment; 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, the activity is not subject to CEQA). The Ordinance generally prevents changes in the environment and thus has no potential for resulting in physical change to the environment, either directly or indirectly.

SECTION 6. Publication.

The City Clerk shall certify as to the passage of this Ordinance and cause the same to be published and posted in the manner prescribed by California law.

PASSED, APPROVED, AND ADOPTED this _____, by the following vote:

AYES: **COUNCILMEMBER(S):**

NOES: **COUNCILMEMBER(S):**

ABSENT: **COUNCILMEMBER(S):**

ABSTAIN: **COUNCILMEMBER(S):**

Mayor, City of Carpinteria

ATTEST:

Brian C. Barrett, CMC, City Clerk
City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held this [date].

Brian C. Barrett, CMC City Clerk
City of Carpinteria

APPROVED AS TO FORM:

Jena S. Acos, on behalf of Brownstein
Hyatt Farber Schreck, LLP, acting as
City Attorney of the City of Carpinteria

EXHIBIT A
Chapter 2.52

[Starts on next page]

Chapter 2.52 UNATTENDED AND ABANDONED PERSONAL PROPERTY

2.52.010 Definitions.

- A. "Personal property" means movable, tangible items or things.
- B. Personal property that is a "threat to health/safety or criminal" means personal property that poses a threat to health and safety or is contraband/evidence of a crime (such as drug paraphernalia).
- C. "Abandoned personal property" means personal property that, based on the totality of the circumstances, a reasonable person would believe has been abandoned by its owner. Personal property belonging to a homeless person is generally not abandoned personal property.
- D. "Unattended personal property" means personal property that, based on the totality of the circumstances, a reasonable person would believe has been left unattended by its owner but is not abandoned.

2.52.020 Storage Prohibited.

It is unlawful to store personal property on public property.

2.52.030 Abatement Process.

- A. Abandoned personal property and personal property that is a threat to health/safety or criminal may be immediately removed and disposed of by enforcement officers.
- B. Subject to Section C below, unattended personal property may only be removed in accordance with the following procedures:
 - 1. Post pre-removal notice 72 hours prior to removal.
 - 2. Post post-removal notice notifying the reader of how to collect removed items.
 - 3. Hold property for 90 days.
- C. If City staff reasonably determines that compliance with the pre-removal notification requirement set forth in Subsection B.1 is not feasible given the nature of the property, staff shall follow the other aspects of the Abatement Process (e.g., post-removal notice and 90-day storage) to the extent reasonably possible. If City staff reasonably determines that compliance with both the notification requirements set forth in Subsections B.1 and B.2 are not feasible given the nature of the property, staff shall follow the procedures for summary abatement set forth in Chapter 1.06.
- D. After holding personal property for the requisite time period, the city manager or authorized designee may sell or otherwise dispose of such property, including via a public auction held in accordance with California Civil Code § 2080 et seq.

2.52.040 Exception to Enforcement.

Notwithstanding anything to the contrary in Chapter 1.08 or elsewhere in this Code, enforcement officers shall not issue a citation or otherwise pursue prosecution to enforce unauthorized storage of personal property in violation of Section 2.52.020 when the violator is a homeless person, provided that personal property belonging to such persons may still be removed in accordance with the abatement process set forth above.

EXHIBIT B
Chapter 2.52

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Chapter 2.52 ~~UNCLAIMED~~UNATTENDED AND ABANDONED PERSONAL PROPERTY⁴

2.52.010 Definitions.

- D. ~~2.52.010~~ “Personal property ~~—Storage and care by police department~~” means movable, tangible items or things.
- E. Personal property that is a “threat to health/safety or criminal” means personal property that poses a threat to health and safety or is contraband/evidence of a crime (such as drug paraphernalia).
- F. “Abandoned personal property” means personal property that, based on the totality of the circumstances, a reasonable person would believe has been abandoned by its owner. Personal property belonging to a homeless person is generally not abandoned personal property.
- D. “Unattended personal property” means personal property that, based on the totality of the circumstances, a reasonable person would believe has been left unattended by its owner but is not abandoned.

~~The police department may take into its possession and care for any abandoned bicycle, tricycle, go-cart or other personal property left upon a public alley, street or place and is authorized to place the same in storage and to take any and all steps necessary to properly care for such property. Upon taking possession of such property, the police department shall give notice thereof to the owner if such owner can be ascertained by a reasonable investigation.~~

~~(Prior code § 3601(a))~~

2.52.020 Unclaimed property—Sale authorized—DispositionStorage Prohibited.

- ~~A. Whenever any property of any kind or nature comes into the possession of the police department and is unclaimed for the following specified periods, the property shall be sold or disposed of by the city manager or designee unless the owner, in the meantime, has claimed such property.~~
- ~~B. Such unclaimed property in the possession of the police department shall be held for a period of at least three months during which time the police department shall try to ascertain the owner thereof. If such owner can be found or ascertained, such property shall be restored to such owner and the owner shall at that time pay any reasonable storage charges that may be required.~~

It is unlawful to store personal property on public property.

2.52.030 Abatement Process.

- E. Abandoned personal property and personal property that is a threat to health/safety or criminal may be immediately removed and disposed of by enforcement officers.

⁴~~For statutory provisions on lost and unclaimed property, see Civil Code § 2080 et seq.~~

F. Subject to Section C below, unattended personal property may only be removed in accordance with the following procedures:

1. Post pre-removal notice 72 hours prior to removal.
2. Post post-removal notice notifying the reader of how to collect removed items.
3. Hold property for 90 days.

G. If City staff reasonably determines that compliance with the pre-removal notification requirement set forth in Subsection B.1 is not feasible given the nature of the property, staff shall follow the other aspects of the Abatement Process (e.g., post-removal notice and 90-day storage) to the extent reasonably possible. If City staff reasonably determines that compliance with both the notification requirements set forth in Subsections B.1 and B.2 are not feasible given the nature of the property, staff shall follow the procedures for summary abatement set forth in Chapter 1.06.

H. ~~C.~~ After holding ~~such~~personal property for ~~a period of three months, in the event any such property is unclaimed or unredeemed by the owner~~the requisite time period, the city manager or authorized designee ~~shall~~may sell or otherwise dispose of such property, ~~and the whole thereof, at~~including via a public auction to the highest bidderheld in accordance with California Civil Code § 2080 et seq.

~~D. The owner of such property, or any part thereof, who may establish ownership thereof, may reclaim and redeem the property or any part thereof, at any time prior to its actual sale.~~

~~E. The only exception to the above any perishable or nauseating property which may be destroyed as soon as possible.~~

~~F. Notice of such sale shall be given by the city manager or authorized designee at least five days before the time fixed therefor by publication once in a newspaper of general circulation published in the city. Any property remaining unsold after being offered at such public auction may be destroyed or otherwise disposed of by the city.~~

~~G. If the city determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the city and need not be sold.~~

~~(Ord. 541 § 1 (part), 1998; Ord. 247 § 9, 1978; prior code § 3600)~~

~~2.52.030 Confiscated weapons and narcotics—Disposition.~~

~~Weapons used in the commission of a crime and all confiscated weapons may not be sold at auction or released but must be destroyed according to law. Narcotics must also be disposed of as required by law.~~

~~(Prior code § 3601(b))~~

2.52.040 ~~Found property—Return to finder~~Exception to Enforcement.

Notwithstanding anything to the contrary in Chapter 1.08 or elsewhere in this Code, enforcement officers shall not issue a citation or otherwise pursue prosecution to enforce unauthorized storage of personal property in violation of Section 2.52.020 when the violator is a homeless person, provided that personal property belonging to such persons may still be removed in accordance with the abatement process set forth above.

- ~~A. The provisions of California Civil Code Sections 2080, 2080.1 and 2080.2 shall apply to found property, the finder and restoration to owner procedures.~~
- ~~B. In the event no owner of found property whose reported value is two hundred and fifty dollars or more appears within three months of the date such property is turned over to the police department, the city manager shall cause a notice of the property to be published at least once in a newspaper of general circulation within the city. If after seven days of the publication of such notice, no owner appears and proves his ownership of the property and the person who found or saved the property pays the cost of the publication, the title shall vest in the person who found or saved the property unless the property was found in the course of employment by an employee of any public agency in which case the property shall be sold pursuant to Section 2.52.020.~~
- ~~C. If the reported value of the property is less than two hundred and fifty dollars and no owner appears and proves ownership of the property within three months, the title shall vest in the person who found or saved the property, unless the property was found in the course of employment by an employee of any public agency, in which case the property shall be sold pursuant to Section 2.52.020.~~

~~(Ord. 541 § 1 (part), 1998; Ord. 314 § 1, 1981)~~