



# City of Stockton

## Legislation Text

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**File #:** 22-0752, **Version:** 1

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### **APPROVE AN ORDINANCE ADDING TITLE 8, CHAPTER 8.100, TO THE STOCKTON MUNICIPAL CODE RELATING TO PROTECTION OF CRITICAL INFRASTRUCTURE AND WILDFIRE RISK AREAS**

#### RECOMMENDATION

It is recommended that the City Council approves an ordinance adding Title 8, Chapter 8.100, to the Stockton Municipal Code relating to protection of critical infrastructure and wildfire risk areas.

#### Summary

A principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with critical infrastructure, which includes but is not limited to (i) infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, transportation; (ii) utilities including communication, water, and waste disposal; and (iii) waterways and water sources along with attendant infrastructure including levees and bridges. Destruction of, damage to, or interference with, critical infrastructure is caused by fire, contamination, restricting access, or other causes, often by persons whose activities are not permitted or authorized in, on, or near critical infrastructure.

#### DISCUSSION

##### Background

The City has a documented history of issues with encampments along various waterways, including Calaveras River and Smith Canal. Related problems include illegal dumping, fires, trespassing, damage to property, contamination of the waterways, and destruction of fencing which facilitates further illegal activity and creates a safety concern. Staff have received large numbers of calls for service and complaints through Ask Stockton related to the above-referenced waterways.

Much of the City exists in a flood plain. Detailed regional flood information can be found at <https://www.sjafca.org>, the website for the San Joaquin Area Flood Control Agency. The continued integrity of local levees is essential to protecting the City from flooding. Encampments placed on or around levees can serve to weaken them. For example, an individual may dig up a levee to create level ground for a tent and trench around a tent to make a drainage ditch for rain runoff. Officials from reclamation districts rely on assistance from the City to remove individuals who compromise the levy system.

While prior Legislative Committee comments have indicated waterways to be a prime candidate for added protection, a new ordinance could also protect additional critical infrastructure which can benefit the public health, safety, and welfare. By means of example, the Fire Department notes that

many arsons involve encampments or transient issues. Public health and safety concerns are elevated when these encampments and other transient activities are situated on or near critical infrastructure and wildfire risk areas.

The United States Court of Appeals for the Ninth Circuit held in *Robert Martin et al. v. City of Boise* (2019) 920 F.3d 584 that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” The Ninth Circuit provided the following caveat in footnote 8 of Martin:

“Our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes.”

### Present Situation

The Environmental and Legislative Committee, at its July 20, 2022 meeting, approved a proposed ordinance for review and input from City departments and City Council approval.

A new ordinance protecting critical infrastructure would be an exercise of the City’s authority to protect the public health, safety, and welfare as recognized by the Ninth Circuit in footnote 8. Such an ordinance would not punish a person for lacking the means to live out the “universal and unavoidable consequences of being human.” Rather, such an ordinance would be geographically limited. Possible summary abatement under such an ordinance would not apply to the entirety of the City. It would be limited to real property upon which the presence of unauthorized persons and personal property poses a heightened threat to the health and safety of residents.

### **Current Abatement Process**

City currently relies on general trespassing and right of way obstruction laws to facilitate abatement, such as SMC sections 9.28.050 and 9.64.030 or the California Penal Code.

On public right of ways and on City-owned property, SPD Strategic Community Officers (SCOs) post 72-hour notices to vacate. The notices provide the date and time abatement will occur, inform an individual how to collect abated property of value, and a list of resources including food banks, shelters, and counseling services. The notices are in English and Spanish.

For private property, the City enforces laws on trespassing with respect to the removal of persons, but cleanups are the responsibility of the property owner.

Existing trespassing and right of way obstruction laws in the SMC are not designed to address

abatement of encampments within sensitive areas. For instance, City's trespassing ordinance can only be enforced on property where "No Trespassing" signs are properly posted. SPD can utilize California Penal Code sections which prohibit trespassing generally to effectuate removal. However, a new City ordinance provides clarity and specificity to City staff and the public at large.

### **New Ordinance - Locations**

A new ordinance would enable City staff to abate encampments upon or within 25 feet of covered areas. Categories of covered areas could include:

1. Levees;
2. Sloughs;
3. Wildfire risk areas; and
4. Other areas designated as Critical Infrastructure by the City.

The fourth category of locations is a list of critical infrastructure designated by the City. The list will be prepared by the City Manager and presented to Council for approval and modification, with the first version of the list included as an exhibit to the ordinance.

### **New Ordinance - Abatement Process**

A new ordinance would provide a notice period before an illegal encampment could be abated. Such a notice would include reference to applicable law, notify camp dwellers of the time by which their property must be removed before abatement activity may occur, warn that certain property may be disposed of if abated, and note how one may collect removed property.

City's current practice is to provide 72 hours of notice for cleanups on City property. The City of Sacramento provides for 24 hours of notice in their ordinance. The notice period is the minimum amount of time provided; in practice, more time may elapse before abatement occurs. Abatement could occur on private property with permission from the owner. Without permission, a non-compliant owner could be handled as a routine code enforcement violation for a public nuisance.

An ordinance could also allow for an exception to the notice requirement where a violation poses an imminent threat to public health or safety.

### **New Ordinance - Penalties**

Violation of the ordinance subjects an individual to criminal sanctions, civil actions, and/or administrative citations. The civil penalty would accrue on each day a violation persists.

### **New Ordinance - Limitations**

There are limitations in the ordinance discussed herein. The ordinance does not create additional staff positions or allocate additional funding to abatement efforts, so the City's capacity to remove encampments is not changed. Further, the ordinance does not prevent removed individuals from re-establishing encampments after abatement - a phenomena regularly observed by staff. That being said, an ordinance still provides the City a useful tool to abate unsafe encampments in sensitive areas.

FINANCIAL SUMMARY

There is no direct impact to the General Fund as a result of passing this ordinance.