



CITY OF POMONA COUNCIL REPORT

October 21, 2024

To: Honorable Mayor and Members of the City Council

From: Anita D. Gutierrez, City Manager

Submitted By: Betty Donavanik, Development Services Director

SUBJECT: ADOPTION OF URGENCY ORDINANCE NO. 4352 AND INTRODUCTION AND FIRST READING OF ORDINANCE NO. 4350 AMENDING POMONA CITY CODE CHAPTER 46 (STREETS SIDEWALKS AND OTHER PUBLIC PLACES), ARTICLE IV (ENCROACHMENTS) TO ADD A NEW DIVISION 4 (SIDEWALK, WALKWAY, OFF-STREET PARKING AND STREET/ROADWAY OBSTRUCTIONS)

RECOMMENDATION:

It is recommended that the City Council take the following actions:

Introduce, waive further reading, and adopt the following:

- 1. URGENCY ORDINANCE NO. 4352 – AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, PURSUANT TO SECTION 510 OF THE CITY CHARTER, AMENDING POMONA CITY CODE CHAPTER 46 (STREETS SIDEWALKS AND OTHER PUBLIC PLACES), ARTICLE IV (ENCROACHMENTS) TO ADD A NEW DIVISION 4 (SIDEWALK, WALKWAY, OFF-STREET PARKING AND STREET/ROADWAY OBSTRUCTIONS);**
- 2. ORDINANCE NO. 4350 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING POMONA CITY CODE CHAPTER 46 (STREETS SIDEWALKS AND OTHER PUBLIC PLACES), ARTICLE IV (ENCROACHMENTS) TO ADD A NEW DIVISION 4 (SIDEWALK, WALKWAY, OFF-STREET PARKING AND STREET/ROADWAY OBSTRUCTIONS); and**

Adopt the following resolution:

3. RESOLUTION NO. 2024-184 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE FISCAL YEAR 2024-25 OPERATING BUDGET BY APPROPRIATING \$200,000 FROM THE GENERAL FUND RESERVES TO COVER OVERTIME EXPENSES FOR THE ENFORCEMENT OF SIDEWALK OBSTRUCTIONS

EXECUTIVE SUMMARY:

The City of Pomona has received complaints regarding obstructions on sidewalks, walkways, parking lots and streets/roadways that interfere with the safe passage of pedestrians and those using mobility assistance devices. The illegal placement of obstructions on sidewalks has led to injuries and tragic accidents. The proposed Urgency Ordinance No. 4352 (Attachment No. 1) and Ordinance No. 4350 (Attachment No. 2) seeks to ensure the unobstructed flow of pedestrian traffic on public sidewalks in compliance with the Americans with Disabilities Act (ADA), and traffic on roadways and streets. The City has an important and substantial public interest in providing regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community. The proposed Ordinances would safeguard public safety by minimizing the risk of pedestrians from dangerous situations; coordinate the multiple uses of the public right-of-way; and ensure the unobstructed flow of pedestrian traffic on public sidewalks and pedestrian paths, and vehicular traffic on roadways.

SB1439/GOVERNMENT CODE §84308 APPLICABILITY:

When this box is checked, it indicates the agenda item is subject to the Levine Act SB1439 requirements. Councilmembers are reminded to check their campaign contributions and determine whether they have received a campaign contribution of \$250 or more that would require disclosure and/or recusal from discussing or acting on this agenda item. Campaign contributions of \$250 or more made 1) by any person or entity who is identified in the agenda report as the applicant or proposer or 2) on behalf of the applicant or participant, including a parent, subsidiary or otherwise related business entity, or 3) by any person who has a financial interest in the agenda item requires a councilmember to comply with SB1439.

FISCAL IMPACT:

Enforcement of obstructions on sidewalks, walkways, parking lots and streets/roadways will be led by staff from the Development Services Department, Code Enforcement Division, Public Works Department and the Police Department. Due to the majority of the activities related to the placement of obstructions on the sidewalks occurring during the evening, staff overtime is necessary for the operations. The total estimated overtime costs is \$200,000 and will be appropriated in the following line items for the respective Departments:

- Development Services Code Enforcement (101-1740-51030-00000) \$89,000
- Public Works (101-2520-51030-00000) \$31,000

- Police (101-2010-51039-00000) \$80,000

This request through the adoption of Resolution No. 2024-184 will amend the FY 2024-25 General Fund Operating budget by increasing appropriations by \$200,000.

PREVIOUS RELATED ACTION:

No previous related action.

DISCUSSION:

A proliferation of individuals and businesses have used and occupied the public right-of-way (street/roadway and sidewalk). This includes but is not limited to, tents, cooking equipment, tables and chairs. These obstructions have resulted in interfering with free passage by members of the general public. Additionally, open flames and heating devices are placed in close proximity with pedestrians and combustible material which has resulted in obstructions and increased fire hazards in the public right-of-way.

Ensuring the free flow of pedestrian traffic is particularly important to the safety of the elderly, the very young, individuals with disabilities, and others who are less able to navigate through crowds and around obstacles or hazards and who are particularly endangered by having to navigate off and onto curbs when sidewalks or pedestrian paths are blocked.

On October 14, 2022 at 7:42 p.m. a driver making an unsafe turn collided with the curb line and proceed to drive on the sidewalk injuring approximately 12 people, including one fatality, each person was waiting to purchase food or pick up their order from a food vendor vending on the sidewalk.

The Los Angeles County Fire Code Title 32, Section 104.5.1 allows the county fire code official to authorize the Pomona Police Department to enforce the County Code. Section 307.6 of Title 32 of the County Code states: “A person shall not build, light, maintain, or cause or permit to be built, lighted, or maintained, any open outdoor fire or use or cause or permit to be used, any open outdoor fire for any purpose” unless permitted or specifically exempted.

The Americans with Disabilities Act (ADA) governs pedestrian accessibility and sets forth minimum width, slope, and other specifications for unobstructed path of travel for City sidewalks. State law makes it a misdemeanor to “obstruct[] the free movement of any person on any street, sidewalk, or other public place” (Cal. Pen. Code § 647c).

Existing law pursuant to objective health, safety and welfare concerns, permits the City to take further actions to abate these obstructions and fire hazards. The proposed Urgency Ordinance and Ordinance proposes to amend Pomona City Code Chapter 46 (Streets Sidewalks and Other Public Places), Article IV (Encroachments) to add a new Division 4 (Sidewalk, Walkway, Off-street Parking and Street/Roadway Obstructions) to establish procedures for the City to remove and dispose of items or materials placed or maintained on public property for more than 30 minutes without a permit.

The proposed Urgency Ordinance and Ordinance is necessary to protect accessible paths of travel necessary to assure wheelchair access to the sidewalks in compliance with ADA, as well as maintain minimum safe access along public sidewalks for all.

Summary of Proposed Urgency Ordinance No. 4352 and Ordinance No. 4350

Definitions

The terms below define “obstructions” and whom can cure the obstructions from a pedestrian path, walkway, sidewalk, off-street parking lot or street/roadway.

Enforcement Officer means any city employee or officer, including but not limited to inspectors of the municipal code enforcement division, public works inspectors, building inspectors, County public health inspectors, County fire inspectors and police department officers.

Obstruction means and includes any one of those items or materials described in Section 46-215 placed, or maintained on public property for a period in excess of thirty (30) minutes.

Off-street Parking means any publicly owned parking facility and any privately owned parking facility for which the privilege to park is held open for the common public use of retail customers.

Pedestrian path or Walkway means any paved path or area owned or controlled by the city and intended specifically for pedestrian travel.

Sidewalk means that portion of the street between the curb line and the adjacent property line, a public sidewalk or paved pedestrian path specifically designed for pedestrian travel or any surface in the public right-of-way provided for the exclusive use of pedestrians.

Street/Roadway means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Street includes all roads and any part of the entire width of right-of-way of any city street, whether or not such entire area is actually used for street purposes.

Unlawful Obstructions and Discharges

It shall be unlawful for any person to place any of the following on a pedestrian path, walkway, sidewalk, off-street parking lot or street/roadway without a permit. Please see attached Urgency Ordinance and Ordinance for full list of obstructions.

- Any chair, stool, bench, table or any materials or items that form a chair or table or stand.
- Any compressed gas container or flammable liquids, gasses or solid fuels including but not limited to gasoline, kerosene, or propane.
- Any ovens, barbecues, grills or cooking device with an open flame or heat source.
- Any banner or freestanding sign on a walkway, sidewalk or Street/Roadway.
- Trashcan.
- Other items deemed as an obstructions.

Additionally, it shall be unlawful for any person to discharge onto a walkway, sidewalk, storm drain, right-of-way or any gutter, tree wells, any liquids, grease or waste materials.

Enforcement

Upon observing and documenting a violation, the Enforcement Officer may order to cure or impound the obstruction by proceeding with the following actions.

1. Order to cure or remove the Obstruction;
2. Issue a warning or administrative citation; or
3. After failure to cure or remove the Obstruction and based on the risk to public safety, impound the items or materials creating the obstruction.

Should the items or materials be impounded, the Enforcement Officer shall issue a receipt to the person who put the Obstruction in place that includes the date and time of the impoundment, a description of the items, and instructions on how to reclaim them. If the Enforcement Officer determines that due to its condition the equipment cannot be safely stored and must be destroyed, the Enforcement Officer shall state this on the receipt.

Impounded items may be reclaimed within 60 days, or at such earlier time the City determines that the equipment cannot be safely stored, impounded equipment will be deemed forfeited to the City. In addition to any other remedy allowed by law, any person who violates the Ordinance may be subject to criminal sanctions, civil actions, and administrative citations.

Should the City Council adopt the Ordinances, Code Enforcement staff will conduct street outreach for the sidewalk vendors, informing them of the new regulations regarding obstructions within the sidewalks. The educational outreach will be for a duration of 30 days. Upon completion of the outreach, staff from Code Enforcement, Public Works and the Police Department will commence the enforcement of unpermitted obstructions placed on the sidewalks.

Urgency Ordinance

As an urgent ordinance, the proposed Urgency Ordinance requires five (5) affirmative votes of the City Council pursuant to Section 510 of the City Charter. The Council declares an ordinance necessary for the immediate preservation of public peace, health, or safety, containing a declaration of the facts constituting the urgency, and passes it by a five-seventh (5/7) vote of those present.

Should the Council adopt the Urgency Ordinance, the ordinance will become effective immediately pursuant to Pomona City Charter Section 510 and to remain in effect until rescinded. By adopting the Urgency Ordinance, the City creates a regulatory mechanism to assure that safety hazards, such as inhibiting the ability of individuals with disabilities and other pedestrians to follow a safe path of travel; public exposure to fire hazards such as open outdoor flames; interference with the performance of police, firefighter, and emergency medical personnel services; and obstacles contributing to congestion for pedestrian, vehicle, and bicycle traffic are mitigated to ensure the public health, safety and welfare of the community.

Additionally, the City wishes to have these new regulations in place immediately to ensure the health, safety and welfare of the public during the upcoming holiday season in which causes increased amounts of traffic, affecting the safety of pedestrians and motorists, due to a high concentration of visitors during the holiday season.

Prepared by:
Betty Donovanik
Development Services Director

ATTACHMENTS:

Attachment No. 1 – Urgency Ordinance No. 4352
Attachment No. 2 – Ordinance No. 4350
Attachment No. 3 – Resolution No. 2024-184