

# City of Sacramento

## Legislation Text

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**File #:** 2020-00137, **Version:** 1

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**Title:**

**Ordinance Adding Chapter 8.140 to the Sacramento City Code, Relating to Protection of Critical Infrastructure and Wildfire Risk Areas [In lieu of pass for publication to be published in its entirety upon adoption] {Continued from 02/11/2020}**

File ID: 2020-00137

**Location:** Citywide

**Recommendation:**

Adopt an Ordinance adding Chapter 8.140 to the Sacramento City Code relating to protection of critical infrastructure and wildfire risk areas, to be published in its entirety within ten days of adoption in lieu of pass for publication per City Charter section 32(d).

**Contact:** Jason Lee, Fire Marshal, (916) 808-1620, Fire Department

**Presenter:** None

**Attachments:**

- 1-Description/Analysis
- 2-Ordinance
- 3-Fire Survey
- 4-Sump 141
- 5-Sump 157
- 6-Water Treatment Plant
- 7-US Army Corps of Engineers' Levee Owner's Manual

**Description/Analysis**

**Issue Detail:** Establish a citywide code addressing protection of critical infrastructure and wildfire risk areas to provide a reasonable level of life safety and property protection from the hazards of fire and dangerous conditions, provide protection to the levee systems; and to provide safety to firefighters and emergency responders during emergency operations.

**Policy Considerations:** The proposed amendments are consistent with the City's operating principle to promote safety, livability and economic vitality.

**Economic Impacts:** Not Applicable

**Environmental Considerations:** Not applicable

**Sustainability:** Not Applicable

**Commission/Committee Action:** On Tuesday, February 18, 2020, the Law and Legislation Committee recommended 4-0 forwarding the Ordinance to City Council for approval.

**Rationale for Recommendation:** Ordinance will help to address issues with protection of critical infrastructure and wildfire risk areas to provide a reasonable level of life safety and property protection from the hazards of fire and dangerous conditions, and to provide safety to firefighters and emergency responders during emergency operations; provide protection to the levee system.

**Financial Considerations:** No funds are being requested as a part of this report.

**Local Business Enterprise (LBE):** Not applicable

**Background:** A principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with, infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, transportation, and utilities including communication, water, and waste disposal. Destruction of, damage to, or interference with, critical infrastructure is caused by fire, contamination, restricting access, or other causes. Destruction of, damage to, or interference with, critical infrastructure is often caused by persons whose activities are not permitted or authorized in, on, or near critical infrastructure. The purpose of the ordinance is to mitigate the threat of fire and other potential causes of destruction and damage to and interference with, critical infrastructure and wildfire risk areas and similarly sensitive areas, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near those areas.

The attached sampling of Fire Department reports for the period from May 1, 2019, to October 22, 2019, reveals the occurrence of at least 1009 fires associated with encampments in the City. This is the same period during the occurrence of the Morrison Creek fire adjacent to a residential neighborhood on September 24, 2019, which received local media coverage. (See "Fire spreads from south Sacramento homeless encampment to field" (KCRA 3, 9/24/19).) Sump 141 at 921 Elmidge Way, a Department of Utilities (DOU) facility used for sewer drainage, was subsequently damaged by fire from an immediately adjacent encampment on October 24, 2019. (Photographs of the fire damage and encampment are attached.)

Access to other DOU facilities has been obstructed by encampments on several occasions. An encampment obstructed entrance to Sump 85 in December 2018. City staff were deterred from entering upon the grounds of Sump 157 and conducting City business in March 2019 after an encampment and unleashed dogs were discovered inside the fenced City property. (Photographs are attached.) On January 16, 2020, camping paraphernalia, including a tent was observed blocking the Bannon Street entrance to the Sacramento Water Treatment Plant. (Photograph is attached.)

The City exists in a flood plain. The City has a history of floods of varying severities, including catastrophic flooding. Detailed information of that history can be found as [safca.org](http://safca.org), the website for the Sacramento Area Flood Control Agency. The continued integrity of local levees is essential to protecting the City from flooding. (See “How levees fail, how we fix them” (YouTube: US Corps of Engineers Sacramento District Channel (2/19/2011).) Damage to local levees from homeless encampments and the resulting need for repairs to the levees have been the subject of local news coverage. (See “Repair work on levees damaged by homeless camps continues” (CBS 13, 9/30/2019).)

The City is responsible for the maintenance of approximately three miles of levees. The City’s duties regarding maintenance of the levees in the interests of public safety are described in the United States Army Corps of Engineers’ Levee Owner’s Manual for Non-Federal Flood Control Works (2006).

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.”

The proposed ordinance is an exercise of the City’s authority to protect the public health, safety, and welfare as recognized by the Ninth Circuit in footnote 8.

The ordinance would not punish a person for lacking the means to live out the “universal and

unavoidable consequences of being human.”

The ordinance is geographically limited. Possible summary abatement under the ordinance does not apply to the entirety of the City. It is limited to real property upon which the presence of unauthorized personal property poses a heightened threat to the health and safety of residents. Encampments and associated personal property of unsheltered homeless persons would not be subject to such summary abatement on the remainder of property in the City.