



CITY OF WASHINGTON, ILLINOIS
Committee of the Whole
Agenda

Meeting Date: October 14, 2024

Prepared By: Michael D. McCoy

Agenda Item: Ordinance Regulating Public Camping in the City of Washington

Discussion: Attached is an Illinois Municipal League Model Ordinance concerning public camping in the City of Washington.

Fiscal Impact: None

Action Requested: City Council approval for presentation for adoption on October 21, 2024.

ORDINANCE NO. _____

AN ORDINANCE REGULATING PUBLIC CAMPING WITHIN CORPORATE BOUNDARIES AND OTHER ACTIONS IN CONNECTION THEREWITH

FOR THE CITY OF WASHINGTON, ILLINOIS

WHEREAS, estimates provide that, in 2020, there were approximately 10,431 Illinoisans experiencing homelessness. ILL. OFF. TO PREVENT & END HOMELESSNESS, ILL. DEP'T HUM. SERVS., HOME ILLINOIS: ILLINOIS' PLAN TO PREVENT AND END HOMELESSNESS (2022), available at <https://perma.cc/QV8K-3XGK>; and,

WHEREAS, a 2022 study by the United States (U.S.) Department of Housing and Urban Development estimated that 9,212 people were experiencing homelessness in Illinois in January 2022, with an estimated 20.6% of those homeless persons being unsheltered, meaning they have no form of shelter on which to rely. OFF. POL'Y DEV. & RSCH., U.S. DEP'T HOUS.& URB. DEV., PIT ESTIMATES OF HOMELESSNESS IN THE U.S. (2022), available at <https://www.huduser.gov/portal/sites/default/files/xls/2007-2022-PIT-Counts-by-State.xlsx>; and,

WHEREAS, the estimates provided by the U.S. Department of Housing and Urban Development “likely underestimate the size of the homeless population because identifying people experiencing homelessness is inherently difficult.” U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-433, HOMELESSNESS: BETTER HUD OVERSIGHT OF DATA COLLECTION COULD IMPROVE ESTIMATES OF HOMELESS POPULATION (2020), available at <https://perma.cc/7ZUQ-U5CE>.

WHEREAS, the American Public Health Association has recognized homelessness as a public health issue, since research shows that homeless individuals (1) suffer “higher mortality rates and chronic disease loads” than non-homeless populations; (2) “overuse emergency services, leading to higher costs for treatment” for all persons; and, (3) with no form of shelter “can exacerbate conditions such as diabetes and hepatitis C” *Housing and Homelessness as a Public Health Issue*, Am. Pub. Health Ass'n (Nov. 7, 2017), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>; see also Bernard Beall et al., *Invasive Pneumococcal Disease Clusters Disproportionally Impact Persons Experiencing Homelessness, Injecting Drug Users, and the Western United States*, 226 J. Infectious Diseases 332 (2022), available at <https://doi.org/10.1093/infdis/jiac058>. (finding that “invasive pneumococcal disease” was “disproportionally represented” in the homeless population when compared against populations not experiencing homelessness); and,

WHEREAS, the U.S. Interagency Council on Homelessness has noted that people “who experience homelessness die nearly 30 years earlier than the average American—and often from easily treatable illnesses.” *Homelessness Data & Trends*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/guidance-reports-data/data-trends> (last visited July 15, 2024); and,

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WHEREAS, the **City of Washington** is a home rule municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and,

WHEREAS, pursuant to Section 1-1-4 of the Illinois Municipal Code (65 ILCS 5/1-1-4), the **City of Washington** has those powers conferred upon it by the Illinois Municipal Code; and,

WHEREAS, the Section 1-2-1 of the Illinois Municipal Code (65 ILCS 5/1-2-1), provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and,

WHEREAS, Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1) empowers the corporate authorities of the municipality to pass ordinances to regulate any matter that is expressly within the powers granted to the municipality by making the violation a misdemeanor punishable by up to six (6) months of incarceration; and,

WHEREAS, Section 1-1-10 of the Illinois Municipal Code (65 ILCS 5/1-1-10) empowers the corporate authorities of the municipality to exercise all powers granted to it expressly, by necessity, by the Illinois Municipal Code, by Illinois statute, or by the Illinois Constitution; and,

WHEREAS, Section 11-20-5 of the Illinois Municipal Code (65 ILCS 5/11-20-5) empowers the corporate authorities of each municipality to “do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases”; and,

WHEREAS, Section 11-60-2 of the Illinois Municipal Code (65 ILCS 5/11-60-2) empowers the corporate authorities of each municipality to define, prevent and abate nuisances; and,

WHEREAS, Section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-102) obligates the **City of Washington** to “exercise ordinary care to maintain public property in a reasonably safe condition.” *Bubb v. Springfield Sch. Dist.* 186, 167 Ill. 2d 372, 377 (1995) (citing 745 ILCS 10/3-102); and,

WHEREAS, the Local Governmental and Governmental Employees Tort Immunity Act generally immunizes municipalities from damages claims where the public property was not being used in the manner intended and permitted by the municipality. *See Wojdyla v. City of Park Ridge*, 148 Ill. 2d 417, 421–22 (1992) (*quoting* 745 ILCS 10/3-102(a)) (“Thus, for a pedestrian to be protected in the present circumstances by the statute, he must be an intended and permitted user of the property under the control of the city.”); and,

WHEREAS, in *City of Grants Pass, Oregon v. Johnson*, 603 U.S. ___, 144 S. Ct. 2202 (2024), the United States Supreme Court held that the criminalization of “public camping”, as defined in the City of Grants Pass’s ordinance, did not unconstitutionally infringe on the Eighth Amendment rights of homeless and otherwise unhoused persons within said City; and,

WHEREAS, in *Johnson*, the United States Supreme Court acknowledged that homelessness is a “complex and serious social issue” whose “causes are many” and which “cries out for effective responses” to combat it. *Johnson*, 603 U.S. ___, slip op. at 10, 34; and,

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WHEREAS, in *Johnson*, the United States Supreme Court relied heavily on the “stepwise” escalation of penalties in Grants Pass’s ordinance to uphold its constitutionality. *Id.* at 11, 16–17; and,

WHEREAS, in view of the foregoing, the **City Council of the City of Washington** believe that it is appropriate, necessary and in the best interests of the **City of Washington** and its residents, that the **City of Washington** implement a Public Camping Prohibition and related enforcement mechanisms, to address the myriad public concerns that public camping creates.

NOW, THEREFORE, be it ordained, by the **City Council of Washington**, Illinois as follows:

Section 1. Incorporation of Recitals. The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. Public Camping as a Nuisance. Public Camping, as the term is defined herein, is hereby declared to be a nuisance within the **City of Washington** for the reasons identified above.

Section 3. Regulation of Public Camping Necessary to Promote Public Health. In an effort to address the public health concerns identified above, the **City Council of Washington, Illinois** hereby declare it necessary or expedient for the promotion of health or the suppression of diseases, to regulate Public Camping, as that term is defined herein, within the **City of Washington** corporate limits.

Section 4. Public Camping Not Intended Use of Public Property. Except for those parcels of property specifically designated by the **City of Washington** in any subsequent ordinance, the **City of Washington** hereby declares that none of its property is permitted nor intended to be used for Public Camping, as the term is defined herein.

Section 5. Definitions. The following definitions apply to this Ordinance:

- A. “Bedding” means a sleeping bag, or any other material, used for bedding purposes.
- B. “Campsite” means any physical space that is not within an established structure, where Bedding or any stove or fire is placed, established or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack or any other structure, or any vehicle or part thereof.
- C. “Exempt Personal Property” means items which would otherwise constitute Personal Property under the terms of this Ordinance, but which (i) has no apparent utility or monetary value; (ii) Personal Property which is unsanitary to store or otherwise maintain; (iii) any weapon possessed illegally; (iv) drug paraphernalia; (v) items appearing to be stolen or otherwise appearing to be evidence of a crime; (vi) items which the person cannot demonstrate the requisite lawful authority to possess; and, (vii) any items of food which can reasonably be expected to spoil or otherwise perish within the next 30 days.

- D. “Personal Property” means any item reasonably recognizable as belonging to a person and having apparent utility or monetary value, except for Exempt Personal Property.
- E. “Public Camping” means to cause or participate in the establishment of, or the act of remaining in or at, a Campsite.

Section 6. Public Camping Prohibited.

- A. No person may sleep, nor otherwise engage in Public Camping, on a public sidewalk, street, alley, lane, other public right-of-way, park, bench, or any other publicly-owned property, nor on or under any bridge or viaduct, at any time.
- B. No person may sleep, nor otherwise engage in Public Camping, in any pedestrian or vehicular entrance to public or private property abutting a public right-of-way.
- C. No person may sleep, nor otherwise engage in Public Camping, on any real property owned or otherwise maintained by the **City of Washington**.
- D. No person may park a vehicle overnight within the **City of Washington** for the purpose of sleeping or otherwise engaging in Public Camping in said vehicle.
- E. For the purposes of this section, the act of parking or leaving a vehicle parked for two consecutive hours, and/or remaining within a public vehicle on any property under the jurisdiction of the **City of Washington** for the purpose of Public Camping, for two consecutive hours without permission from the **City Council or Mayor**, between the hours of midnight and 6:00 a.m., shall be considered a violation of this Ordinance.

Section 7. Exceptions to Prohibition. Notwithstanding the foregoing, it shall not be a violation to engage in Public Camping when done (i) in a manner specifically authorized by this Code; (ii) after a formal declaration of the **City of Washington** in emergency circumstances; or, (iii) upon resolution of the **City Council** the same may exempt a special event from the prohibitions of this section, if the **City Council** finds such exemption to be in the public interest and consistent with the goals and objectives of the **City Council** and with such conditions imposed as the **City Council** deems necessary. Any conditions imposed will include a condition requiring that the applicant provide evidence of adequate insurance coverage and agree to indemnify the **City of Washington** for any liability, damage or expense incurred by the **City of Washington** as a result of the activities of the applicant. Any findings by the **City Council** shall specify the exact dates and location covered by the exemption.

Section 8. Removal of Campsite. Removal of a Campsite in violation of this Ordinance may occur under the following circumstances:

- A. Prior to removing a Campsite, the **City of Washington** shall post a notice, 24-hours in advance of the removal, unless immediate removal of the Campsite is deemed to be necessary for one of the reasons in subparagraphs 1-4, below. If such immediate removal is undertaken, the basis for causing the immediate removal of such Campsite should be adequately documented by the appropriate person(s).
1. immediate removal of the Campsite is necessary to maintain access to a property;
 2. immediate removal of the Campsite is necessary to maintain the sanitary condition of a property;
 3. immediate removal of the Campsite is necessary because the Campsite is an obstruction to any public right-of-way; or,
 4. immediate removal of the Campsite is necessary because the Campsite poses a risk to the health and safety of the **City of Washington** and its residents.
- B. Upon any action pursuant to Section 8.A, above, the person causing such action to be taken shall inform an appropriate agency delivering social services to homeless individuals in the **City of Washington**, of the location of the Campsite and the persons found to be in violation of this Ordinance, so said agency may determine whether or not it would be appropriate to offer its services to those persons.
- C. If a 24-hour notice has been posted, and the 24-hour notice period has passed, then the Campsite, as well as all Personal Property thereon, shall be removed by the appropriate person(s) acting on behalf of the **City of Washington**.
- D. No portion of this Section shall be construed to prohibit any person found to be engaging in Public Camping from removing their Personal Property from the Campsite; however, such Personal Property that constitutes Exempt Personal Property and which a reasonably prudent law enforcement officer, exercising the applicable constitutional standard, would conclude that said Exempt Personal Property constitutes items appearing to be stolen or otherwise appearing to be evidence of a crime, and/or items which the person cannot demonstrate the requisite lawful authority to possess, may be retained and stored as evidence.

Section 9. Disposition and Release of Personal Property.

- A. All Personal Property removed from any Campsite which is not Exempt Personal Property shall be stored by the appropriate law enforcement agency of the **City of Washington**, for a minimum of 30 days, during which time it

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shall be reasonably available for and released to an individual confirming ownership.

- B. All Exempt Personal Property may be disposed of or retained as evidence by the appropriate law enforcement agency of the **City of Washington**.

Section 10. Penalty; Mitigation.

- A. The penalty for any person's first violation of this Ordinance within a rolling twenty-four (24) month period shall be \$75.
- B. The penalty for any person's second violation of this Ordinance within a rolling twenty-four (24) month period shall be \$150.
- C. The penalty for any person's third violation of this Ordinance within a rolling twenty-four (24) month period shall be \$350.
- D. The penalty for any person's fourth violation of this Ordinance within a rolling twenty-four (24) month period shall be \$500.
- E. The penalty for any person's fifth violation of this Ordinance within a rolling twenty-four (24) month period shall be \$750.
- F. The penalty for any person's sixth or subsequent violation of this Ordinance within a rolling twenty-four (24) month period may be a monetary penalty of \$750 or incarceration for a period not exceeding the maximum time allowed pursuant to Section 1-2-9 of the Illinois Municipal Code (65 ILCS 5/1-2-9).
- G. The **City of Washington** is hereby empowered to exercise all powers afforded to it, at law or in equity, to collect any fines assessed against a person pursuant to this Ordinance, including but not limited to seeking incarceration of said person for a period of time that conforms with Section 1-2-9 of the Illinois Municipal Code (65 ILCS 5/1-2-9).
- H. In the imposition of any penalty pursuant to this Section, the penalty shall be mitigated by whether or not the person immediately removed all Personal Property and litter, including but not limited to bottles, cans, and garbage, from the Campsite after the person was informed that the person was in violation of this Ordinance.
- I. A separate offense of this Ordinance shall be deemed committed on each day on which a violation occurs or continues.
- J. In addition to any other remedy provided by law or this Ordinance, any person found in violation of this section may be immediately removed from the premises where the Campsite is located.

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Section 11. Repeal of Conflicting Provisions. All ordinances, resolutions and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 12. Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 13. Headings/Captions. The headings/captions identifying the various sections and subsections of this Ordinance are for reference only and do not define, modify, expand or limit any of the terms or provisions of the Ordinance.

Section 14. Publication. The clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code (65 ILCS 5/1-2-4).

PASSED THIS ____ day of _____, 20_____.

AYES: _____

NAYS: _____

ABSTENTIONS: _____

ABSENT: _____

APPROVED THIS ____ day of _____, 20_____.

Mayor

ATTEST:

Clerk