

**AN ORDINANCE OF THE CITY OF MORGANTOWN
CREATING A NEW ARTICLE OF CITY CODE ENTITLED
“CAMPING ON PUBLIC PROPERTY”**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The Common Council of The City of Morgantown, West Virginia makes the following findings and adopts the following statement(s) of purpose with respect to the provisions of this Ordinance: Pursuant to West Virginia Code section 8-12-5 the City is authorized to regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks, and other public places belonging to the City, including public buildings, public parks, public streets, alleys, and rights-of-way, and all other public property within the City. Camping on public property, except public property that may be designed and managed for camping, is a public health and safety concern due to interference with other intended uses in some areas, such as daily operations of the City, events at public buildings or parks, other park recreational activities, pedestrian, bicycle and vehicular traffic, and other public uses. Camping without adequate sanitation services, such as sewer, water, and garbage, presents a public health and safety concern due to increased risk of spread of disease and potential for citizens contracting illnesses. Unauthorized camping in public places can interfere with the use of public places by members of the public intending to use the public place for activities other than camping, and the City finds and concludes that camping should only occur in designated campgrounds with proper facilities.

Section 2. Adoption of Article 1157 of the City Code.

A new Article 1157 of the City Code, entitled “Camping on Public Property” is hereby adopted as follows (new matter underlined):

ARTICLE 1157. CAMPING ON PUBLIC PROPERTY.

1157.01. Purpose and Scope.

It is the purpose of this article to prevent harm to the health and safety of the public and to promote the public health, safety and general welfare by keeping public streets, sidewalks, parks, and other public property within the City readily accessible to the public, and to prevent use of public property for camping purposes or storage of personal property where those uses interfere with the rights of others to use the areas for the purposes for which they were intended or create health and safety concerns.

1157.02. Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

Camp or camping means to pitch, erect or occupy camp facilities, or to use camp paraphernalia or both for the purpose of habitation, as evidenced by the use of camp paraphernalia.

Camp facilities include, but are not limited to, tents, huts, and temporary shelters.

Camp paraphernalia includes, but is not limited to tarps, cots, beds, sleeping bags, blankets, mattresses, hammocks or portable cooking facilities and similar equipment.

Litter shall have the same meaning as used in Article 523 of this Code, as it may be amended, modified, replaced, or superseded.

Park means any real property, building, structure, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City of Morgantown or Morgantown Board of Park and Recreation Commissioners for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks and pools.

Personal property means an item that is: 1. reasonably recognizable as belonging to a person; 2. in its present condition has apparent utility and/or value; and 3. is not hazardous or unsanitary.

Public property shall mean property owned, controlled, or maintained by the City of Morgantown, including its subordinate agencies, boards, commissions, or other subdivisions.

Street shall have the same meaning as the term “street or highway; alley” as used in Section 301.40 of this Code; provided that such term shall also include unopened or unimproved public rights of way not designated for vehicular travel and all parts of any street, highway, or alley on which vehicular travel is prohibited or restricted.

Solid waste shall have the same meaning as used in Article 1139 of this Code, as it may be amended, modified, replaced, or superseded.

Store means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

Trail means a public path constructed for the primary purpose of allowing recreational non-motorized transportation, recreational transportation with electric bicycles as defined by state or federal law, or nonrecreational transportation by foot, bicycle, or similar means.

1157.03. Unlawful camping. It is unlawful for any person to camp in the following areas, except as otherwise specifically authorized pursuant to this Code or other applicable law:

- A. Any Street;
- B. Any Park or Trail;
- C. Any Public Property, improved or unimproved.

1157.04. Storage of personal property in public places. It is unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following areas, except as otherwise specifically authorized pursuant to this Code or other applicable law:

- A. Any Street;
- B. Any Park or Trail;
- C. Any Public Property, improved or unimproved.

1157.05. Enforcement.

Violation of this Article is deemed a public nuisance subject to summary abatement by any duly authorized official of the City; provided, however, that any abatement shall comply with the provisions of Morgantown Police Department General Order No. 339, entitled "Transient/Outdoor Encampment," and any modifications thereto or successor thereof, and in all cases shall comport with the requirements of Article 3, Section 10 of the West Virginia Constitution and of the 14th Amendment to the United States Constitution, to ensure that no person is deprived of property without due process of law as defined by the referenced provisions.

1157.06. Exceptions. The following areas or circumstances shall be exempt from Sections 1157.03 and 1157.04:

- (a) Persons lawfully camping within campgrounds or trailer parks specifically designated and approved for such use pursuant to applicable laws.
- (b) Persons camping with a valid permit authorized by Article 941 of this Code.
- (c) Lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.

1157.07. Penalty for violations.

- (a) Any person who commits a first violation of any provision of this Article shall be given a written warning describing the violation and providing information about resources to obtain assistance in seeking alternate shelter.
- (b) Any person who commits a second violation of any provision of this Article shall be subject to a fine of not more than \$200.00.
- (c) Any person who commits a third violation of any provision of this Article within 12 months of the first violation shall be subject to a fine of not more than \$500.00 and/or subject to a penalty of imprisonment not more than 30 days.
- (d) Each day that a violation continues shall be deemed a separate offense.
- (e) No citation shall be issued, nor any criminal penalty imposed, under this Section unless a person in violation of this Article has been offered alternate shelter and refused the offer. For purposes of this subsection, an offer of shelter means identification by or on behalf of the City of an alternate location where the person may shelter overnight, including, but not limited to, a place

in an emergency shelter or any alternate indoor or outdoor location where the person may sleep overnight.

(f) Any person who may otherwise be subject to a fine or imprisonment under this Section shall, upon notification to the Municipal Court that the person wishes to participate in treatment for substance abuse or mental health, or case management to return the person to housing stability, be entitled to an alternative sentence as described in this Subsection. Defendants exercising this alternative sentencing option shall not waive any protections otherwise afforded to them by law, and shall not be subject to a fine or imprisonment as a sanction for the alleged violation of this Article at issue, provided that they complete all aspects of any sentence imposed upon them. The City, acting through the City Manager, will retain a third party experienced in the treatment of mental health and substance abuse issues, and the provision of case management to return individuals to housing stability, to develop and manage the alternative sentencing established by this subsection no later than the effective date of this Article. The alternative sentencing program developed by the third party will include required assistance with the individual's needs related to substance abuse, mental health, case management, or a combination of those, as appropriate, and sentencing under the program will include a program of required activities or treatments, as well as provision for instances where a participant fails to meet program requirements and is returned to Municipal Court for sentencing under the other penalty provisions of this Article.

1157.08. Severability. If any portion of this article, or its application to any person or circumstances, is held invalid by an authority or entity having jurisdiction to make such determination, the validity of the article as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective 30 days after adoption (the “Effective Date”); provided, that if no emergency shelter is open within the City and accepting new entrants on the Effective Date, the Effective Date will be delayed until such time as an emergency shelter is open within the City and accepting new entrants, and, in such event, the City Clerk is directed to enter a record of such revised Effective Date in the official records of the City. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, or proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: None.

FIRST READING: August 20, 2024

SECOND READING: September 3, 2024

ADOPTED: September 3, 2024

FILED: September 4, 2024 AMENDED September 10, 2024



Mayor



City Clerk

