

ORDINANCE NO. 6817

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO CAMPING AND OCCUPYING CITY PROPERTY, AMENDING THOSE PORTIONS OF ORDINANCE NO. 6781 PERTAINING TO SECTIONS 2.22.210, 2.22.220, AND 9.50.030 OF THE AUBURN CITY CODE, AND ADDING A NEW SECTION ACC 2.22.240 TO THE AUBURN CITY CODE

WHEREAS, in 2020, the City proposed Ordinance No. 6781 to the City Council. Ordinance 6781 regulated camping and related activity on City property and designated activity prohibited in the ordinance as a misdemeanor criminal offense with corresponding potential criminal penalties;

WHEREAS, the City Council considered Ordinance 6781 at its study sessions on July 27 and August 24, 2020, and at its regular Council meeting on September 8, 2020;

WHEREAS, at these meetings, the Council heard statements from City representatives Jeff Tate and Kent Hay regarding the basis for Ordinance 6781 and the reasons for its proposal to the Council;

WHEREAS, the Council voted on Ordinance 6781 at the September 8 Council meeting. During the voting process, the Council revised Ordinance 6781 by motion to replace its criminal offense designation and penalties with civil infraction penalties;

WHEREAS, the Council voted to adopt Ordinance 6781 as revised by motion;

WHEREAS, in an ongoing effort to address the problems associated with homelessness, the City proposes this Ordinance with its below proposed revisions to ACC 9.50.030 and ACC 2.22. This ordinance is intended to restore the criminal offense designation and penalties originally contemplated for Ordinance 6781, and also to give

city enforcement personnel an additional legal option of issuing trespass admonishments to persons camping in parks or on other city properties and providing for an appeal;

WHEREAS, in support of this ordinance the City offers the following additional information regarding the homelessness problem in the City and the City's responsive remedial efforts. This information was not presented to the Council or considered by the Council when Ordinance 6781 was adopted:

- Environmental impacts: Homelessness and related activity has the following environmental impacts on the City:
 - Over the last 6 months the City has identified 43 different homeless encampments on City-owned property. Twenty-nine (29) of these encampments have been located within wetlands or within riparian habitat areas that are adjacent to the Green River, White River or Mill Creek, all of which provide important habitat to salmon;
 - The City has identified encampments that have become flooded during typical seasonal high water events. Flooding within wetlands causes islands and hummocks that are sometimes dry to be underwater. Seasonal flooding along rivers causes water to move at high velocity through riverine floodplains. In both instances, clothing, hypodermic needles, human waste, plastic, batteries, electronics, bicycles, shopping carts, tires, food waste, and other garbage enter the wetland depressions, channels, creeks and rivers. Some of this debris is also transported downstream and outside of Auburn;
 - It is contrary to the objectives of environmental protection and preservation for clothing, hypodermic needles, human waste, plastic, batteries, electronics, bicycles, shopping carts, tires, food waste, and other garbage to enter wetlands, creeks, and rivers that provide value to aquatic life, terrestrial life, flood detention, surface water quality and ground water quality;
 - The City of Auburn has invested many millions of dollars to protect and preserve the environment, and has acquired dozens of properties for this purpose. The City has spent millions of taxpayer dollars to restore environmentally sensitive lands that were previously altered;
 - One single example of a City investment to protect and restore environmentally sensitive lands is the Mill Creek 5K wetland

restoration and creek realignment project. The City spent more than \$7,000,000 to acquire sensitive lands, install a fish friendly culvert under 15 Street NW, recreate a meandering fish friendly creek present decades ago that was then altered for farmland, and plant millions of new trees, shrubs and grasses for the benefit of fish and water quality. These financial investments and mitigation efforts have been heavily impacted and, in some areas, destroyed by activity associated with homeless encampments;

- Throughout the City, vegetation has been removed, human waste deposited, and used hypodermic needles discarded in areas that otherwise prohibit private property owners from mowing, planting, grading, hydroseeding, applying pesticide or herbicide, constructing trails, building, or any other type of human activity that encroaches into the environmentally sensitive feature or its buffer. Chapter 16.10 of the Auburn City Code states that environmentally sensitive critical areas are naturally vegetated, undisturbed, enhanced or revegetated areas that are to be protected from adverse impacts to their integrity and value;
- Financial impacts:
 - The City has received estimates from 3rd party contractors to clean up the 43 homeless encampments referenced above. The estimates for these clean-up efforts range in cost from \$10,000 to \$50,000 per encampment;
 - The total clean-up cost for these encampments ranges from \$430,000 to \$2.25 million. This cost only covers the cost to haul out debris—it does not cover the costs associated with site preparation, installation of erosion control measures, and restoration of a site once it is cleaned up. The City expects to incur these additional costs as annual recurring costs as well as the cost of staff support to complete such work;
 - The City does not have the budget to cover these costs on an annual basis, and believes that its historic approach of investing public money in shelter services rather than environmental cleanup is a better and more effective use of public funds;
- Limited effectiveness of infraction enforcement: Enforcement of the ordinance as a civil infraction will not adequately address the problems associated with homeless encampments and related activity on public property because:

- by law, civil infractions carry only monetary penalties that provide little to no deterrent to homeless individuals who have little or no financial resources to pay;
 - unpaid civil infraction penalties result in a money judgment against the cited person that can affect their creditworthiness when later applying for financial or housing resources;
 - court's hearing and deciding civil infractions can only impose the infraction's monetary penalty—they cannot order cited persons to utilize needed community services designed to alleviate the underlying causes of homeless behavior;
 - civil infraction offenses cannot be referred to the City's community court program for adjudication, so cited individuals attending traditional court to address a cited infraction will not be connected to the community court program facility or its adjacent ACRC facility that offers individuals needed and available services and resources aimed at reducing homelessness;
- Safety and health concerns: Civilian social workers will often accompany police officers while contacting individuals experiencing homelessness and who also may be camping on City property. Individuals camping under these circumstances often utilize tents as temporary shelters and/or for the storage of personal items. Contacts between individuals camping and officers can be unpredictable, requiring officers to have specialized training and equipment. In order to ensure the safety of unarmed, untrained, and under equipped City staff such as the City's homeless navigator, who may be working alongside law enforcement with homeless individuals, it is important that officers have an unobstructed view into the tent to scan for weapons or other dangerous items. It is not uncommon for individuals experiencing homelessness to possess weapons as a form of protection. Having an unobstructed view would also enable police or civilian workers to see whether individuals inside are experiencing a medical emergency requiring immediate assistance;

WHEREAS, having received and considered the above additional information related to: 1) the homelessness problem in the City and its effects on City residents, resources and environment; and 2) the enforcement tools needed by the City to effectively address the problem and its City-wide effects, the Council finds it in the City's best interests to further consider the issue of homelessness in the City and how the City can

effectively address the issue through its ordinance directed at prohibiting camping activity on City property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. Section 2.22.210 of the Auburn City Code is amended to read as follows:

No person shall erect, maintain, use or occupy a tent or shelter in any City of Auburn park unless there is an unobstructed view through such tent or shelter from at least two sides. Nothing in this section shall be construed to authorize overnight camping, which is prohibited in parks pursuant to ACC 9.50.030. Violation of this section is constitutes a Class 1 civil infraction punishable by a \$250 fine pursuant to Chapter 7, 80 RCW. Nothing in this section shall be construed to authorize overnight camping, which is prohibited pursuant to ACC 9.50.030.

Section 2. Amendment to City Code. Section 2.22.220 of the Auburn City Code is amended to read as follows:

A. Unless otherwise posted, parks shall open one-half hour before sunrise and close one-half hour after sunset. No person shall enter or remain in a park when it is closed. Any person entering or remaining in a closed park when it is closed is subject to arrest and prosecution for criminal trespass a Class 1 civil infraction pursuant to ACC 9.96.900 and/or RCW 9A.52.

B. The director may extend open hours for sanctioned events, but only that portion of a park being used for the event will be open beyond normal hours; other areas of such a park shall remain closed.

C. This section shall not apply to:

1. Police officers or park employees while on duty.
2. Sidewalks that are within the right-of-way of a public street, when the street is not within the boundaries of a park.

3. Persons entering or remaining in a closed park in violation of ACC 9.50.030.

Section 3. **New Section.** A new section ACC 2.22.240 is added to the Auburn

City Code to read as follows:

A. Enforcement authority in parks. In addition to any other enforcement authority, when any police officer or City official has probable cause to believe that any person within a park has committed a crime as defined by the RCW or by the Auburn City Code, or has violated any ordinance, rule or regulation established by this Park code or by the City's parks department, the officer or official may:

1. Order such person to immediately leave the park. Any person refusing to comply with such an order or returning to the park on the same calendar day as such an order is subject to prosecution for criminal trespass pursuant to RCW 9A.52 and/or ACC 9.96.900; and

2. Issue the person a written admonishment excluding them from City park property for a period up to 1 year from the issue date. Persons receiving such an admonishment who return to park property within the admonishment period are subject to prosecution for criminal trespass pursuant to RCW 9A.52 and/or ACC 9.96.900.

B. Admonishment issuance and appeals.

1. Admonishments issued under this section:

a. are valid and effective whether or not the excluded person is charged, tried or convicted of any crime or infraction;

b. are valid and effective even if the admonished person refuses a copy of the admonishment, provided that the issuing city official reasonably notifies the admonished person of the admonishment period, place(s) of exclusion and appeal process under this section;

c. are valid and effective for the admonishment period unless and until shortened or rescinded by an official ruling after appeal in this section;

d. may be based upon observations by city officials and/or police officers, or upon civilian reports that an official or officer could reasonably rely on in determining probable cause; and

e. shall include a statement of the appeal rights in this section and a form for appealing the admonishment as provided by this section.

2. Persons receiving admonishments under this section may appeal the admonishment in writing. Any such appeal must:

- a. Be in writing, either on the form referenced in this section or in a writing including at least the person's name, the involved property location and the approximate admonishment date to enable processing of the appeal;
 - b. Be received by the City Clerk or postmarked within 14 calendar days of the person's receiving the admonishment; and
 - c. Be under oath and include all facts that the excluded person believes supports a shortening or rescinding of the admonishment.
3. The director of parks, arts, and recreation, or designee, shall review the appeal and shall issue a ruling upholding, rescinding or shortening the admonishment within 14 calendar days of receiving the appeal. The director or designee may consider the admonishment and any other relevant and trustworthy submitted written materials in deciding the appeal. The admonishment shall be upheld if supported by a preponderance of evidence. The ruling may be transmitted to the excluded person by mail, in person, electronically, or by any other method specified by the person or reasonably likely under the circumstances to give notice.
4. The appeal process in this section cannot be used to appeal any criminal penalties imposed by a court under this section or any other law.
- C. Limitation. Trespass admonishments issued to persons violating ACC 9.50.030 on park property shall be processed pursuant to ACC 9.50.030(E).

Section 4. Amendment to City Code. Section 9.50.030 of the Auburn City

Code is amended to read as follows:

A. *Camping Prohibited.* It is unlawful for any person to camp, occupy camp facilities or use camp paraphernalia on city property, except as set forth in subsection C of this section.

B. *Storage of Camping Items Prohibited.* It is unlawful for any person to store camp facilities and camp paraphernalia on city property, except as otherwise provided by ordinance.

C. *Exceptions.* The prohibitions contained in subsection A of this section shall not apply if:

~~1. The violation constitutes a trespass on park property under ACC 2.22.220; or~~

12. The person is engaged in activity prohibited by subsections A and B of this section because they are experiencing homelessness, and there is no ~~available~~ overnight shelter ~~available for persons experiencing homelessness~~ on the date that the prohibited activity occurs; or

23. The person is camping or using camp paraphernalia or camp facilities at a Game Farm Park Campground site after paying the required fees; or

34. The person is camping or using camp paraphernalia or camp facilities as permitted under this subsection:

a. The director of the parks, arts, and recreation department may permit persons to camp, occupy camp facilities, use camp paraphernalia, or store personal property in parks property as defined in Chapter 2.22 ACC and as listed in the park inventory portion of the parks, recreation and open space plan, within the city's comprehensive plan.

b. The director of the parks, arts, and recreation department may approve a permit for camping on city park property if the director finds, based upon a permit application and information otherwise obtained, that:

i. Adequate sanitary facilities are provided and accessible at or near the camp site;

ii. Adequate trash receptacles and trash collection will be provided;

iii. The camping activity will not unreasonably disturb or interfere with the peace, comfort and repose of private property owners;

iv. The camping activity is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or to create a disturbance; and

v. The camping is in the public interest.

c. The director of the parks, arts, and recreation department is authorized to promulgate rules and regulations regarding the implementation and enforcement of this chapter.

d. Seven days is the maximum period of time a permit may authorize camping on city property.

e. Any person denied a permit may appeal the denial to the hearing examiner in the manner described in Chapter 2.46 ACC and ACC 15.07.130 with the director of the parks, arts, and recreation department serving the role of the building or fire official in that code.

4. The person is camping or trespassing on any City utility property identified in ACC Title 13, which shall be regulated by that Title;

5. The person is camping or trespassing on Auburn Municipal Airport properties or areas identified in ACC 18.04, which shall be regulated pursuant to ACC 9.96.900 and/or RCW 9A.52.

D. *Definitions.* For this section, the following shall apply:

1. “Available overnight shelter” means:

- a. A public or private shelter located within the city of Auburn that offers overnight shelter to persons experiencing homelessness and confirms to a city employee that it has an available overnight space at no cost for that person; or
- b. If no shelter described in subsection (D)(1)(a) of this section has available space, a shelter located within King or Pierce County that offers overnight shelter to persons experiencing homelessness and confirms to a city employee:

(i) that it has an available overnight space at no cost for that person; and

(ii) that it ~~such shelter~~ is ~~also~~ accessible to the person by public transportation or vehicle for hire at no cost for that person. ~~or by vehicle for hire at no cost to the individual or family experiencing homelessness.~~

c. An overnight shelter is available if an individual is prevented from using an otherwise available shelter space because of their past or present voluntary actions such as unlawful drug use or possession, criminal act(s), unruly behavior or willful violation of shelter rules or restrictions pertaining to such activity.

d. 2. An overnight shelter is unavailable if:

(i) a. An individual or family cannot use the shelter’s available space because of shelter-imposed restrictions on its use (other than any restrictions the shelter has imposed pursuant to (D)(1)(c) of this section) ~~a person’s sex, familial or marital status, religious beliefs, disability, or length of stay; or~~

(ii) b. A city employee, an individual or family attempts to secure a space at the shelter for the day and is denied due to lack of available space. ~~;~~ ~~or~~

~~c. An individual’s past or present voluntary actions such as intoxication, drug use, or unruly behavior prevent the use of an otherwise available shelter space.~~

23. “City property” as used in this section means all improved and unimproved real property owned or leased by the city of Auburn, and all city of Auburn easements, including but not limited to all portions of city parks, as defined in Chapter 2.22 ACC, city buildings, rights-of-way, city parking lots, and city environmentally sensitive areas as defined in ACC 16.06.065. ~~, airport property, wetlands, and city utility facilities.~~ City property shall not include:

a. religious organization property subject to RCW 35A.21.360;

b. city utilities or utility property identified in ACC Title 13; or

c. Airport property or areas identified in ACC 18.04.

34. “Camp” or “camping” means to pitch, create, use, or occupy camp facilities for the purposes of habitation, living accommodation, or dwelling, as evidenced by the storage of personal belongings in “camp facilities” or the use of “camp paraphernalia.”

45. “Camp facilities” include, but are not limited to, tents, tarps configured for shelter, huts, and temporary shelters. “Camp facilities” does not include shelters when used temporarily in a park for recreation or play, consistent with Chapter 2.22 ACC, during hours when the park is open to the public.

56. “Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city-designated cooking facilities and similar equipment.

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

E. Penalties and enforcement. ~~y. When enforced, v~~

1. A violation of this subsection is a misdemeanor punishable by 90 days in jail and/or a \$1,000 fine. Class 1 civil infraction pursuant to Chapter 7.80 RCW.

2. When any police officer or City official has probable cause to believe that any person has violated this section, the officer or official may:

a. Order such person to immediately leave the property where the violation is occurring. Subject to (C)(1) of this section, any person refusing to comply with such an order or returning to the property on the same calendar day as such an order is subject to prosecution for criminal trespass pursuant to RCW 9A.52 and/or ACC 9.96.900; and

b. Issue the person a written admonishment excluding them from the property where the violation is occurring for a period up to 1 year from the issue date. Subject to (C)(1) of this section, persons who return to the property within the admonishment period are subject to prosecution for criminal trespass pursuant to RCW 9A.52 and/or ACC 9.96.900.

3. Admonishments issued under this section:

a. are valid and effective whether or not the excluded person is charged, tried or convicted of any crime or infraction;

b. are valid and effective even if the admonished person refuses a copy of the admonishment, provided that the issuing city official reasonably notifies the admonished person of the admonishment period, place(s) of exclusion and appeal process under this section;

c. are valid and effective for the admonishment period unless and until shortened or rescinded by an official ruling after appeal in this section;

d. may be based upon observations by city officials and/or police officers, or upon civilian reports that an official or officer could reasonably rely on in determining probable cause; and

e. shall include a statement of the appeal rights in this section and a form for appealing the admonishment as provided by this section.

4. Persons receiving admonishments under this section may appeal the admonishment. Any such appeal must:

a. Be in writing, either on the form referenced in this section or in a writing including at least the person's name, the involved property location and the approximate admonishment date to enable processing of the appeal;

b. Be received by the City Clerk or postmarked within 14 calendar days of the person's receiving the admonishment; and

c. Be under oath and include all facts that the excluded person believes supports a shortening or rescinding of the admonishment.

5. Admonishment appeals under this section involving City parks shall be processed according to ACC 2.22.240. Otherwise, the Director of Community Development or designee shall review the appeal and issue a ruling upholding, rescinding or shortening the admonishment within 14 calendar days of receiving the appeal. The Director or designee may consider the admonishment and any other relevant and trustworthy submitted written materials in deciding the appeal. The admonishment shall be upheld if supported by a preponderance of evidence. The ruling may be transmitted to the excluded person by mail, in person, electronically, or by any other method specified by the person or reasonably likely under the circumstances to give notice.

6. The appeal process in this section cannot be used to appeal any criminal penalties imposed by a court under this section or any other law.

Section 5. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 6. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 7. **Effective date.** This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____