

## ORDINANCE # 2024-30

### AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING SURPRISE MUNICIPAL CODE, CHAPTER 42, ARTICLE III, BY AMENDING SECTIONS 42-52 AND 42-53 PERTAINING TO URBAN CAMPING; INCLUDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, on June 19, 2018 (Ord. No. 2018-08), the City adopted an Urban Camping Ordinance which was later amended (Ord. No. 2019-02) to reflect the Ninth Circuit Court of Appeals decision in the 2018 case of *Martin v. Boise*;

**WHEREAS**, City Council has determined that enforcement of the City's Urban Camping Ordinance is one of the tools that would be beneficial for the City to have available to address health and safety concerns relating to establishment of unlawful Camping Facilities; and

**WHEREAS**, the City now seeks to reinstate enforcement of its Urban Camping Ordinance in conformance with the United States Supreme Court's June 2024 decision in the case of *Johnson v. Grants Pass* ;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Surprise, Arizona, as follows:

**Section 1.** Chapter 42, Article III, of the Surprise Municipal Code is amended by amending Sections 42-52 and 42-53 pertaining to Urban Camping prohibited acts and violations to read as follows:

Sec. 42-52. Prohibited acts.

- (a) It is unlawful and a public nuisance for any person to camp, occupy camp facilities, establish camp facilities, maintain camp facilities, or use or store camp paraphernalia in the following areas:
  - (1) Any public property; or
  - (2) Any private property.
- ~~(b) Law enforcements officers shall not enforce subsection (a) of this section when the individual is on public property and there is no available shelter space with homeless supportive services within 50 miles of the city limits of the City of Surprise.~~
  - ~~(1) A shelter space shall still be considered an "available shelter" if the individual cannot utilize the space due to voluntary actions such as~~

~~intoxication, drug use, unruly behavior, or violation of shelter rules.~~

- (2) ~~A shelter space shall not be considered an “available shelter” if:~~
- ~~a. The individual is part of a family unit and the family would need to stay overnight at two or more different shelters; however, a shelter space is considered “available shelter” if the individual is part of a family unit but the shelter requires that males and females must sleep separate and apart;~~
  - ~~b. Due to any restrictions or prerequisites placed on the use of the shelter space, the individual would be disqualified from utilizing the shelter space at no fault of their own; or~~
  - ~~c. Utilization of the shelter space is contingent on mandatory participation in programs or activities which implicate the protections offered by the First Amendment of United States Constitution.~~

(B) It is not intended by this section to prohibit or make unlawful:

- (1) Overnight camping on private residential property by the property owner or friends or family of the property owner, so long as all of the following conditions are met:
  - a. The owner consents and the overnight camping is limited to not more than five consecutive nights;
  - b. The activity is not a nuisance because of noise, inadequate sanitation, or other matters offensive to person of ordinary sensibility;
  - c. No fee, charge or other monetary consideration is collected for the privilege of camping or for any services or the use of any facilities related thereto;
  - d. The camping occurs either in the rear yard or an area of a front or side yard separated from view from the street by a fence, hedge or other obstruction.
- (2) Activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes;
- (3) The mere possession of, or transportation of, camp facilities or camp paraphernalia on public or private property, except as provided in this article;
- (4) Activities of a property owner or other lawful user if such activities are expressly authorized by this Code or other laws and regulations.

- (C) The city manager may, as provided in section 42-54 of this article, issue a temporary permit to allow camping on public or private property in connection with a special event. It is a defense to a charge pursuant to this section that the person has a permit issued in accordance with section 42-55.
- (D) It is unlawful and a public nuisance for any person to wash one's body or belongings in a fountain.
- (E) It is unlawful and a public nuisance to urinate or defecate in public.

Sec. 42-53. Violation.

- (a) A violation of this article is a CLASS 1 misdemeanor, ~~and upon conviction, in addition to the remedies provided in A.R.S. tit. 13, the court can order payment for the city's actual costs of transporting and storing property of the violator. In addition to the remedies set forth in A.R.S. tit. 13, the city attorney may institute civil actions to abate a public nuisance under this article.~~
- (b) An individual FOR WHOM PROBABLE CAUSE EXISTS TO BE charged with violation of this article, in lieu of being ISSUED A CRIMINAL CITATION ~~taken to jail~~ may, at the election of the citing police officer and with the consent of the individual, be taken to a facility providing social services related to mental health, housing, and/or substance abuse treatment.

**Section 2.** All ordinances, resolutions or codes in conflict with the provisions of this Ordinance or Code adopted by this Ordinance are repealed.

**Section 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision will not be read to affect the validity of the remaining portions thereof.

**Section 4.** This ordinance will become effective at the time and manner prescribed by law.

**[SIGNATURES ON THE FOLLOWING PAGE]**

**PASSED AND ADOPTED** this 4<sup>th</sup> day of November, 2024.

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Skip Hall, Mayor

Attest:

Approved as to form:

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Kristi Passarelli, City Clerk

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Robert Wingo, City Attorney