CITY OF ames

Caring People ◆ Quality Programs ◆ Exceptional Service

MEMO

Legal Department

To: Mayor Haila and Ames City Council

From: Mark O. Lambert, City Attorney

Date: February 7, 2025

Subject: Memo on 10:30 street/sidewalk closures

On January 28, 2025, the Council adopted the following motion:

"Request staff bring back a memo that outlines options that could be considered by the City Council that will create parity among public spaces for example library, public streets, sideways, and alleys with City parks which have a curfew of 10:30 p.m."

City parks are facilities of the City, and therefore the 10:30 p.m. closing time can be viewed as closing a facility. It is not a curfew.

It is difficult if not impossible to apply the same logic to City streets, sidewalks, and alleys. Streets, sidewalks and alleys are public thoroughfares. They are not the same as a City park. Essentially, prohibiting people from utilizing streets, sidewalks and alleys after 10:30 p.m. would likely be found to be an unconstitutional curfew, as inhibiting the right to travel and the right to engage in First Amendment activity. Most curfew laws passed around the country have only affected minors, and some of those have been upheld if they contain exceptions for minors engaging in First Amendment activity.[1] The case law is

[1] E.g., *Schleifer v. City of Charlottesville,* 159 F. 3d 843(1998) upholding a minor curfew. Also, *Hutchins v. District of Columbia,* 188 F.3d 531 (DC Cir. 1999), striking down a minor curfew law as unconstitutional. The Iowa Supreme Court

mixed, with such ordinances affecting minors being upheld in instances and struck down in instances. It is likely that a curfew for adults could not be imposed except in emergency situations such as disasters.

The City, and the State of Iowa, do not have loitering laws. Likely, this is because loitering laws repeatedly have been found to be unconstitutional by courts.[2] So I would not recommend passing a loitering ordinance.

Additionally, an ordinance that shuts down the City's sidewalks at 10:30 p.m. seems to potentially create a host of problems from a practical standpoint. First, people can have good reason to be going places after 10:30 at night. For example, any businesses are open after 10:30 at night. Secondly, any consistent enforcement could require substantial resources and might be impractical.

Rather than an ordinance prohibiting people from being on the sidewalks and streets after 10:30 p.m., an alternative might be for the Council to consider a prohibition on camping on public property. The City of Des Moines and the City of Waukee have recently passed such ordinances, but not without controversy. These ordinances are attached.

Finally, ASSET Funders (inclusive of the City of Ames) have contracted with a consultant, Analytic Insight, to develop an action plan around addressing homelessness using evidence-based practices to inform the development of the plan. Prohibition on camping will be a practice that could be recommended, or not, by the consultant through their work. The plan is expected to be developed

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upheld Panora's curfew law for minors in *City of Panora v. David Simmons*, 445 N.W. 2d 363 (1989); the Iowa Supreme later held that the City of Maquoketa's minor-curfew ordinance was unconstitutionally overbroad. *City of Maquoketa v. Russell and Campbell*, 484 N.W. 2d 179 (1992).

[2] *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *City of Chicago v. Morales*, 527 U.S. 41 (1999).

by the end of April 2025. I would recommend deferring any action on considering such an ordinance until after April 2025.

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- APPENDIX C - ELECTRIC FRANCHISE
- APPENDIX D - GAS FRANCHISE
- APPENDIX E - TAX INCREMENT ORDINANCES
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- APPENDIX I - IOWA REINVESTMENT DISTRICTS

CODE COMPARATIVE TABLE - 1991 CODE

CODE COMPARATIVE TABLE - ORDINANCES

STATE LAW REFERENCE TABLE

‹ Secs. 102-380—102-405. - Reserved.

ARTICLE VII. - USE OF STREETS AND SIDEWALKS FOR BUSINESS PURPOSES ›

ARTICLE VI. - PROHIBITED CAMPING[3]

Footnotes:

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Editor's note— *Prior to reenactment by Ord. No. 16,382, Ord. No. 16,005, § 1, adopted April 19, 2021, repealed Art. VI, §§ 102-406—102-430, which pertained to benches and derived from Code 1942, §§ 88-27—88-29, 88-32—88-35, 88-38—88-42; Code 1954, §§ 54-199, 54-201, 54-208, 54-211; Code 1962, §§ 54-194—54-212, 54-212.01—54-212.03, 54-212.05, 54-212.06; Code 1975; Code 1979; Code 1985, §§ 23-175, 23-184, 23-185, 23-187, 23-189, 23-194; Code 1991, §§ 23-175—23-199; Ord. No. 4976; Ord. No. 5650; Ord. No. 8454; Ord. No. 8558; Ord. No. 11,406; Ord. No. 11,548; Ord. No. 11,583; Ord. No. 12,048; Ord. No. 14,095; Ord. No. 14,174; Ord. No. 14,935.*

Sec. 102-406. - Definitions.

Unless the context requires otherwise the following definitions apply to this article:

Campsite means any place where bedding, sleeping bag, or other material used for bedding purposes, 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.

Local agency means an organization skilled and experienced in services to the homeless and associated human services. The city is not restricted to working with one local agency.

Personal property means any item reasonably recognizable as belonging to a person and having apparent utility or monetary value.

To camp means to set up or to remain in or at a campsite.

(O.16,382)

Sec. 102-407. - Sleeping on sidewalks, streets, alleys or doorways prohibited.

(a) No person may sleep on public sidewalks, streets, alleys, doorways at any time as a matter of individual and public safety.

(b) No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.

(c) In addition to any other remedy provided by law, any person found in non-compliance of this section may be immediately removed from the premises.

(O.16,382)

Sec. 102-408. - Camping prohibited.

No person may occupy a campsite in or upon any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly owned property or under any bridge or viaduct, unless authorized by the city manager or their designee or otherwise specifically authorized by section 74-101.

(O.16,382)

Sec. 102-409. - Removal of campsite on public property.

Upon discovery of a campsite on public property, removal of the campsite by the city may occur under the following circumstances:

(a) Prior to removing the campsite, the city shall post a notice at the campsite. The notice shall state the name, address and telephone number of the department director; that the campsite is in violation of the requirements of this article; that the owner or user is ordered to cause immediate removal from the public property, which date of removal shall be no less than 24-hours after the date the notice was posted.

(b) At the time a 24-hour notice is posted, the city shall inform a local agency of the location of the campsite.

(c) After the 24-hour notice period has passed, the city is authorized to remove the campsite and all personal property related thereto.

Sec. 102-410. - Offense and fine.

(a) It is the city council's intent that this article shall be utilized for compliance purposes to discourage non-compliant behavior and not as a general enforcement mechanism.

(b) A person who is not a minor and who fails to comply with sections 102-407 or 102-408 commits a simple misdemeanor, punishable by a fine of $15.00 and specifically excludes imprisonment.

(c) For any criminal offense under sections 102-407 or 102-408, it shall be an affirmative defense if space is unavailable or impracticable in a shelter within the City of Des Moines or the person cannot afford the fine.

(d) For any person who fails to comply with sections 102-407 or 102-408, prior to carrying out those sections, a police officer shall offer a one-time transport as time allows to the shelter location or provide directions to the shelter location. A person who refuses to accept the shelter space offered and fails to comply with this article shall be deemed to be in non-compliance of sections 102-407 or 102-408 as applicable.

(O.16,382)

Sec. 102-411. - Disposition and release of personal property.

(a) At the time of removal, items having no apparent utility or monetary value and items in an unsanitary condition may be immediately discarded. Weapons, drug paraphernalia, items appearing to be stolen, and evidence of a crime may be retained as evidence by the city until an alternate disposition is determined.

(b) All personal property removed from the campsite which is not disposed of, or retained as evidence pursuant to subsection (a) above, shall be stored by the city for no less than 30 days in accordance with city policy.

(c) The owner of personal property which is not disposed of or retained as evidence pursuant to subsection (a) above, may request return of the property in accordance with city policy. The owner of personal property may appeal a decision by the city not to return property stored pursuant to subsection (b) above pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within 30 days commencing on the date of posting the notice of removal of the personal property. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest such decision. The administrative hearing officer's authority on appeal shall be limited to ordering personal property that is stored pursuant to subsection (b) above to be provided to the appellant.

Secs. 102-412—102-455. - Reserved.

‹ Secs. 102-380—102-405. - Reserved.

ARTICLE VII. - USE OF STREETS AND SIDEWALKS FOR BUSINESS PURPOSES ›

ORDINANCE NO. 3105

AN ORDINANCE ADDING CHAPTER 47, CAMPING, OF THE MUNICIPAL CODE OF THE CITY OF WAUKEE, IOWA

WIIEREAS, pursuant to Iowa Code Chapters 364.1 and 364.12 (2023), the City of Waukee, Iowa, is authorized to preserve and improve the property of the City and the peace, safety, health, welfare, comfort and convenience of its residents and shall keep all public grounds, streets, sidewalks, trails, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons, open, in repair and free from nuisance; and

WHEREAS, public property is intended to be used by the public for public purposes, including daily City operations, park recreational use, pedestrian, bicycle and vehicular transportation, and other public uses; and

WHEREAS, camping without adequate sanitation services, including but not limited to bathrooms, showers, sewer, water, and garbage, presents a public health and safety concern to members of the public; and

WHEREAS, it is important to maintain public property consistent with its intended use; and

WHEREAS, the City Council of the City of Waukee hereby finds the requirements established by this Ordinance are necessary for the preservation of the public peace, health, safety, and welfare; and

WHEREAS, the City Council of the City of Waukee, Iowa, has considered this matter during a regular public meeting, has given careful review and consideration to the matter, and deems it necessary and proper to adopt a new chapter 47, "Camping", as a part of the Code of Ordinances of the City of Waukee, Iowa.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Waukee:

Section 1: That the Code of Ordinances of the City of Waukee, Iowa, is hereby amended to adopt the following underlined language:

CHAPTER 47 CAMPING

47.01 UNLAWFUL CAMPING.

1. It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas:

A. Any park, unless expressly authorized by the Waukee Director of Parks and Recreation or designee;

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B. Any publicly-owned property to which the public is not ordinarily allowed access, including but not limited to, public buildings, water storage tank sites, well sites, storm water ponds and facilities, and other secured properties;

C. That portion of any street or sidewalk that is expressly reserved for vehicular or pedestrian travel;

D. Portions of any street right-of-way that is not expressly reserved for vehicular or pedestrian travel; and

E. Any other publicly-owned parking lot or publicly-owned property, improved or unimproved.

47.02 STORAGE OF PERSONAL PROPERTY IN PUBLIC PLACES.

1. It shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following areas:

A. Any park;

B. Any publicly-owned property to which the public is not ordinarily allowed access, including but not limited to, public buildings, water storage tank sites, well sites, storm water ponds and facilities, and other secured properties;

C. That portion of any street or sidewalk that is expressly reserved for vehicular or pedestrian travel;

D. Portions of any street right-of-way that is not expressly reserved for vehicular or pedestrian travel; and

E. Any other publicly-owned parking lot or publicly-owned property, improved or unimproved.

47.03 PENALTY FOR VIOLATIONS.

1. Violation of any of the provisions of this Chapter is a simple misdemeanor punishable by a fine but not imprisonment. Notwithstanding, the maximum fine imposed for a first conviction for a violation of this Chapter shall be no more than one hundred and five dollars ($105.00).

2. Prior to imposing any fine for violation of this Chapter, the Court shall make an inquiry into a person's ability to pay. In the event that a defendant is

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