

**AN ORDINANCE OF THE CITY OF CLARKSBURG TO CREATE ARTICLE 1120 TO
PROHIBIT CAMPING ON PUBLIC PROPERTY AND
UNAUTHORIZED PRIVATE PROPERTY**

WHEREAS, individuals have utilized public real property and private real property where not authorized to setup temporary or semi-temporary camps and encampments;

WHEREAS, such actions create a public health and safety concern due to the lack of adequate sanitation services, such as sewer, water, and garbage;

WHEREAS, such actions are not using public property in its intended fashion, unduly burdens the public property, and prevents and prohibits others from using such property in its intended fashion;

WHEREAS, the City along with other governmental agencies and their non-profit partners strive to provide safe, temporary and long-term housing for individuals;

WHEREAS, the City's goal is to prohibit temporary or semi-temporary camps and encampments and provide resources for permanent, appropriate housing and treatment;

WHEREAS, the City of Clarksburg hereby desires to prohibit camping on public property and on unauthorized private property.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

ARTICLE 1120 – CAMPING ON PUBLIC PROPERTY OR UNAUTHORIZED PRIVATE PROPERTY

1120.01. 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 and to prevent the same uses on private property where such use is not authorized.

1120.02. Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(a) "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.

(b) "Camp facilities" include, but are not limited to, tents, huts, and temporary shelters.

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

(d) "Litter" shall have the same meaning as used in Article 537.07 of this Code, as it may be amended, modified, replaced, or superseded.

(e) "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 Clarksburg or City of Clarksburg Board of Park Commissioners for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks and pools.

(f) "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.

(g) "Private property" means any property owned, controlled, or maintained by an individual or non-governmental entity.

(h) "Public property" shall mean property owned, controlled, or maintained by the City of Clarksburg, including its subordinate agencies, boards, commissions, or other subdivisions.

(i) "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.

(j) 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 nonmotorized transportation, recreational transportation with electric bicycles as defined by state or federal law, or nonrecreational transportation by foot, bicycle, or similar means.

1120.03. 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; or

D. Any private property if the person does not have permission from the private property owner, agent, or tenant.

1120.04. 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; or

D. Any private property if the person does not have permission from the private property owner, agent, or tenant.

1120.05. Enforcement.

Violation of this Article is deemed a public nuisance subject to summary abatement by any duly authorized official of the City 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.

1120.06. Exceptions. The following areas or circumstances shall be exempt from Sections 1120.03 and 1120.04:

(a) Persons lawfully camping within campgrounds or trailer parks specifically designated and approved for such use pursuant to applicable laws or

(b) Lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.

1120.07. 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.

(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.

(d) Each day that a violation continues shall be deemed a separate offense.

Section 1120.08. Resources to be Provided.

(a) Anytime the City seeks to enforce the prohibitions herein, either through citation, warning, or removal of personal property, the City's agent shall provide the person affected with information regarding available resources that may be useful to the person. Such resources include housing, temporary or alternate shelter, rehabilitation, food banks, and other social services.

(b) To aid in providing resources to affected persons, the City shall provide a list of available resources and their associated non-profit organization and governmental entities.

(c) No citation shall be issued, nor any criminal penalty imposed, under this Article 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.

(d) Any person who may otherwise be subject to a fine under Section 1120.07 shall, upon notification to the Municipal Court that the person is in need of treatment for substance abuse or mental health, be entitled to an alternative sentence as described in Section 1120.07. 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 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, or both, 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.

1120.09. 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.

PASSED by Council of the City of Clarksburg on **FIRST READING** on this 17th day of October, 2024.

PASSED by Council of the City of Clarksburg on **SECOND AND FINAL READING**, following a public hearing, on this ____ day of November, 2024.

MAYOR JAMES MALFREGEOT

ATTEST:

ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM

RICHARD R. MARSH
CITY ATTORNEY