

ORDINANCE NO. 5891

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING TITLE 6, CHAPTER 10 OF THE MESA CITY CODE ENTITLED “PUBLIC PARK REGULATIONS.”

WHEREAS, a majority of cities have laws restricting camping in public spaces and nearly forty percent have one or more laws prohibiting camping citywide; however, *Martin v. Boise*, a 2018 U.S. Ninth Circuit Court of Appeals case, resulted in limiting or preventing municipalities across the western United States from enforcing these laws, forcing many cities to allow large encampments on city property or face the threat of federal litigation or a judicial injunction.

WHEREAS, the U.S. Supreme Court recently heard the case of *City of Grants Pass v. Johnson* (144 S.Ct. 2202). Grants Pass, Oregon took a multifaceted approach to the homelessness crisis, including the adoption of ordinances placing certain restrictions against encampments on public property. In its ruling, the U.S. Supreme Court acknowledged the complexity of issues surrounding homelessness and that, even with expanded shelter capacity and other public services, unsheltered populations continue to grow. The Supreme Court ultimately upheld the Grants Pass ordinances as constitutional, effectively overruling *Martin v. Boise*, by finding, in pertinent part, that the ordinances do not criminalize the status of a person being homeless, rather they forbid actions like occupying a campsite on public property for maintaining a temporary place to live.

WHEREAS, as a part of the City of Mesa’s multifaceted approach to address homelessness, the City created its “Off the Streets” program, a temporary housing program with strong support services, but issues surrounding camping on public property remain. The City of Mesa currently has prohibitions in its Public Park Regulations (Title 6, Chapter 10 of the Mesa City Code) related to camping in City parks; however, an amendment to the camping regulations is an appropriate tool to assist the City’s Off the Streets program by modifying the requirements related to camping in City parks and right-of-way adjacent to City parks. To address camping on other City property, the Mesa City Code currently contains provisions that generally prohibit the blocking of City right-of-way by lying, sleeping, or remaining in a sitting position except in the case of an emergency (MCC 6-1-17) and a new city ordinance specific to public (urban) camping on City property outside of City parks and right-of-way adjacent to City parks is proposed.

WHEREAS, as a part of the camping changes to the Public Park Regulations, there are other fitting amendments to make to the regulations, including decreasing the penalties for certain violations and making additional modifications as set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

<p>Text written in BOLD ALL CAPS indicates additional or new language.</p> <p>Text written in strike through indicates deletions.</p>

SECTION 1: Title 6, Chapter 10, Section 2 (Definitions) of the Mesa City Code is amended by adding or modifying the below definitions. Any definitions in MCC 6-10-2 not set forth below remain unchanged.

6-10-2: Definitions

ADJACENT RIGHT-OF-WAY: MEANS RIGHT-OF-WAY (AS DEFINED IN MESA CITY CODE 9-1-1) ADJACENT TO A PARK.

BEER: As defined in A.R.S. § 4-101, as amended.

“CAMP” or “CAMPING”: ~~The use of a park as a temporary or permanent place of dwelling, lodging, residence, or as a living accommodation. Indications of camping may include, but are not limited to, burning a fire, carrying on cooking activities, storing personal belongings, laying down bedding for sleeping, or using tents or temporary structures for shelter, sleeping, or storing of personal belongings. Such activities constitute camping when it reasonably appears under the circumstances that a person is using the area as a living accommodation, no matter how temporary.~~ **MEANS TO ESTABLISH TEMPORARY OR PERMANENT LIVING ACCOMMODATIONS IN A PARK OR ADJACENT RIGHT-OF-WAY. INDICATIONS OF CAMPING INCLUDE LAYING DOWN BEDDING, USING CAMP PARAPHERNALIA, ERECTING TEMPORARY STRUCTURES FOR SHELTER, SLEEPING, STORING PERSONAL BELONGINGS, BURNING A FIRE, COOKING OR PREPARING FOOD, LIVING IN A PARKED MOTOR OR RECREATIONAL VEHICLE, OR REMAINING FOR PROLONGED OR REPETITIOUS PERIODS OF TIME IN A MANNER NOT ASSOCIATED WITH ORDINARY RECREATIONAL USE OF A PARK. AN ACTIVITY SHALL CONSTITUTE CAMPING WHEN IT REASONABLY APPEARS, IN LIGHT OF ALL THE CIRCUMSTANCES, THE PERSON, IN CONDUCTING THE ACTIVITY, ARE IN FACT USING THE AREA FOR THE PURPOSE OF LIVING ACCOMMODATIONS, REGARDLESS OF THE INTENT OF THE PARTICIPANTS OR THE NATURE OF ANY OTHER ACTIVITIES IN WHICH THEY MAY ALSO BE ENGAGING. FOR THE PURPOSES OF CLARITY, THE TERM “CAMP” OR “CAMPING” IN THIS CHAPTER 10 DOES NOT REFER TO THE MERE USE OF CITY-INSTALLED COOKING FACILITIES OR EQUIPMENT, THE POSSESSION OR TRANSPORTATION OF CAMPING PARAPHERNALIA, OR THE USE OF A BLANKET FOR RESTING ABSENT OTHER EVIDENCE OF LIVING ACCOMMODATIONS.**

CAMPING PARAPHERNALIA: MEANS ANY ACCESSORY, EQUIPMENT, OR ITEM COMMONLY USED TO ASSIST SOMEONE TO CAMP, INCLUDING TARPAULINS, COTS, BEDS, BEDDING, SLEEPING BAGS, HAMMOCKS, TENTS, BLANKETS, AND COOKING EQUIPMENT.

ESTABLISH: SETTING UP OR MOVING EQUIPMENT, SUPPLIES, OR MATERIALS TO CAMP OR OPERATE CAMP FACILITIES.

STORE: MEANS TO PUT ASIDE OR ACCUMULATE FOR USE WHEN NEEDED, TO PUT FOR SAFEKEEPING, TO PLACE OR LEAVE IN A LOCATION.

SECTION 2: Title 6, Chapter 10, Section 4 (Prohibited Activities and Restrictions) of the Mesa City Code is amended as set forth below.

6-10-4: Prohibited Activities and Restrictions

It is ~~unlawful~~ **A VIOLATION OF THIS CHAPTER** for a person in a park to engage in any of the prohibited activities or to violate any of the restrictions set forth in this Section, unless otherwise allowed pursuant to the Subsections below:

- (A) **Pollution of Water.** No person shall throw, discharge, or otherwise place or cause to be placed in the water of any fountain, pond, lake, stream, swimming pool, splashpad, or other body of water in or adjacent to a park, or any stream, storm, sewer, or drain flowing into such water any refuse or substance, matter, liquid, or solid, that may result in the pollution of water.
- (B) **Refuse.** No person shall dump, deposit, abandon, or leave refuse in a park except within an appropriate receptacle.
- (C) **Items for Donation or Distribution.** No person shall dump, deposit, abandon, or leave unattended in a park any food, beverage, clothing, or any item intended for donation or distribution.
- (D) **Restroom Facilities.** No person shall urinate or defecate in a park except in a urinal or toilet provided for such purposes within a designated restroom facility.
- (E) **Bathing, Swimming, or Wading.** No person shall bathe, swim, or wade in any water or waterway, splashpad, or any restroom facility in or adjacent to a park except at places designated by the Director for such purposes and in compliance with the regulations ~~established~~ **DETERMINED** by the Director.
- (F) **Boating.** No person shall bring or operate any boat, raft, or other watercraft, whether motor-powered or not, upon any water in a park except at places designated for boating by the Director and in accordance with applicable regulations ~~established~~ **DETERMINED** by the Director, which may include separate requirements or allowances for motorized and non-motorized watercrafts.
- (G) **Golfing.** No person shall use any portion of a park for golfing purposes except at places designated for golfing by the Director and in compliance with the regulations ~~established~~ **DETERMINED** by the Director.
- (H) **Motorized Vehicles, Power-driven Mobility Devices.** No person shall drive, ride, or operate a motorized vehicle in a park except upon public roadways, designated parking areas, or within areas designated for such purposes by the Director. The prohibition in this Subsection shall not apply to City-owned vehicles or vehicles authorized by the City to operate in a park such as utility and maintenance vehicles and emergency and public safety vehicles. The Director shall have the authority to limit the use of power-driven mobility devices in parks when deemed necessary and in compliance with the ADA and AzDA.
- (I) **Non-motorized Vehicles, Manual Mobility Devices.** No person shall operate or ride a skateboard, roller skates, inline skates, bicycle, scooter, or any other type of rolling non-motorized vehicle in a park: (1) where such activity is specifically prohibited by posted notice; (2) on any brickwork, paver work, ornamental surface, picnic table, bench, playground, equipment, surface or area specifically designed for ADA access, fountain area, planter, or sculpture; or (3) in an unsafe manner so as to infringe upon or endanger the safety of themselves or the general public. A person operating a non-motorized vehicle in a park shall obey all posted traffic control signs and notices. The prohibitions in this Subsection shall not

apply to a manual mobility device except where the Director limits the use of manual mobility devices in parks when deemed necessary by the Director and in compliance with the ADA and AzDA.

(J) **Parked Vehicles, Vehicle Maintenance and Repair.** No person shall perform any maintenance or repair to any motorized vehicle or non-motorized vehicle within a park, including assembly, disassembly, washing, waxing, oil change, and engine tune-up, except for emergency maintenance or repair to remove the vehicle from the park. An unattended vehicle left in a park between the hours of 10:00 P.M. and sunrise may be impounded.

(K) **Horses.** No person shall bring a horse into a park except on a designated bridle trail or path, equestrian area, or other area designated by the Director for horses. If horses are permitted in an area of a park, a horse shall: (1) be thoroughly broken, properly restrained, ridden with due care, and shall not be allowed to graze or go unattended, and (2) not be hitched to any rock, tree, shrub, fence, or park improvement not intended for hitching horses. This Subsection shall be interpreted, applied, and enforced in compliance with the ADA and AzDA, with legally required exceptions made for miniature horses.

(L) **Dogs.** A person with a dog in their care or custody in a park shall: (1) keep the dog under their physical control and restrain the dog on a leash not greater than six feet (6') in length, except when the dog is otherwise under the control of a person and (a) the dog is within a fully enclosed and designated off-leash area of a designated dog park, or (b) the dog is actively engaged in obedience training during a session, class, or program the dog is currently enrolled in, or (c) a dog that is engaged in obedience training previously graduated from an obedience training school; (2) immediately dispose of the dog's waste in an appropriate receptacle; (3) immediately remove the dog from the park if it exhibits aggressive behavior that evidences a threat of injury; (4) ensure the dog is vaccinated against rabies in accordance with A.R.S. § 11-1010 and wearing tags in accordance with A.R.S. § 11-1008; and (5) comply with the animal control laws of the Mesa City Code Title 6, Chapter 4. The prohibitions in this Subsection shall not apply to dogs utilized by the Mesa Police Department. This Subsection shall be interpreted, applied, and enforced in compliance with the ADA and AzDA, with legally required exceptions made for a "service animal" as that term is defined by the ADA.

(M) **Other Animals.** Except with respect to horses and dogs as provided in Subsections 6-10-4(K) and 6-10-4(L), no person shall bring into a park any animal except in designated areas clearly marked by signs permitting such use or in areas approved by the Director, such as an animal show, petting zoo, educational event, or obedience or training class. In all cases, if animals are permitted in a park, they shall be under the control of a person at all times.

(N) **Models and Drones.** No person shall use or operate in a park any drone or radio-controlled or non-radio-controlled model, including a model aircraft, model boat, and model motorized car, except at places designated for such use by the Director and in accordance with the applicable regulations ~~established~~ **DETERMINED** by the Director, which may have separate requirements or allowances for radio-controlled or non-radio controlled models or drones. The provisions of this Subsection shall be interpreted, applied, and enforced in compliance with the applicable State laws for the specific activity occurring in a park.

(O) **Glass Containers.** No person in a park shall possess or have custody of a glass container of any kind or description.

(P) **Disfiguration or Removal of Improvements.** No person shall **DAMAGE**, deface, disfigure, injure, tamper with, displace, or remove any equipment or improvements owned or maintained by the City in a park, including, but not limited to, turf grass, landscape material,

electrical equipment, wiring, playground equipment, picnic table, bench, fire pit, grill, paving, water fountain, public utility line, sign, monument, marker, fencing, and restroom fixture.

(Q) Disfiguration or Removal of Natural Resources. No person shall disfigure, displace, remove, or excavate, as applicable, any soil, rock, stone, sand, tree, shrub, cactus, plant material, or other natural resource of any description in a park.

(R) Harming, Removing, or Releasing Animals. No person shall harm, remove from, or release into a park any animal or wildlife.

(S) Fires. No person shall start or sustain a fire in a park except for the combustion of charcoal in a fire pit, grill, or other improvement as designated and approved for such use by the Director. This Subsection shall not prohibit the burning of wood in a fireplace located at Falcon Field park.

(T) Iceblocking and Water Sliding. No person shall engage in iceblocking or erect or engage in any water sliding activity in a park except as designated and approved for such use by the Director.

(U) Shopping Carts. No person shall operate, maintain, possess, store, abandon, or leave unattended a shopping cart in a park.

(V) Camping. No person shall camp ~~in a park unless the park or area therein is specifically authorized by the Director for camping, or the person possesses a permit pursuant to Section 6-10-6 allowing camping in a park or an area therein. If any item used for camping is left unattended or abandoned in a park, the City may confiscate and discard the item in accordance with applicable law. This Subsection does not apply to temporary structures set up by a governmental agency or relief workers during a disaster or emergency.~~ **ESTABLISH OR MAINTAIN CAMPING FACILITIES, OR USE OR STORE CAMPING PARAPHERNALIA IN A CITY PARK OR ADJACENT RIGHT-OF-WAY.**

(1) THIS SECTION DOES NOT APPLY TO:

(A) TEMPORARY STRUCTURES OR CAMPS SET UP BY A GOVERNMENT AGENCY OR RELIEF WORKERS DURING A DISASTER OR EMERGENCY SITUATION.

(B) ACTIVITIES APPROVED BY THE DIRECTOR OR CITY THAT RECEIVE A SPECIAL EVENT LICENSE, SPECIAL USE PERMIT, OR OTHER PERMIT OR PERMISSION.

(2) IF ANY CAMPING PARAPHERNALIA OR ITEM USED FOR CAMPING IS LEFT UNATTENDED OR ABANDONED IN A PARK, THE CITY MAY CONFISCATE AND DISCARD THE ITEM IN ACCORDANCE WITH APPLICABLE LAW.

(3) NOTHING IN THIS SUBSECTION IS INTENDED TO INTERFERE WITH OTHERWISE LAWFUL AND ORDINARY USES OF PARK PROPERTY OR ADJACENT RIGHT-OF-WAY.

(W) Fishing. No person shall fish in a body of water in a park that is not designated by the Director for fishing. A person fishing in a park shall comply with the regulations of the Arizona Department of Game and Fish including licensure and bag limit requirements. No person shall use a magnetic fishing device in a park.

(X) Marijuana. No person shall acquire, possess, consume, purchase, sell, cultivate, manufacture, produce, store, transfer, or distribute marijuana or marijuana products in a park. The terms used in this subsection that are not defined in this chapter shall have the definitions prescribed by Mesa City Code 6-25-2, as amended, as applicable.

(Y) Engaging in Business Activities. No person shall engage in any business activity of a peddler, solicitor, mobile food vendor, or other vendor offering for sale or selling any goods or services in a park unless: (1) the person is engaging in the business activity at a special event with a permit issued pursuant to Section 6-10-6, and (2) the person has all required licenses for the lawful operation of the business activity, including applicable licenses issued pursuant to Title 5 of the Mesa City Code, and all required health permits from the Maricopa County Health Department. The provisions of this Subsection shall be interpreted, applied, and enforced in compliance with the applicable State laws for the specific business activity occurring in a park.

(Z) Miscellaneous. No person shall bring into or use in a park a sling shot, BB gun, pellet gun, paint ball gun, firework, rocket, ignition or combustion-powered launching device, hot air balloon, javelin, shot-put, discus, paraglider, windsailing equipment, jousting equipment, archery equipment, or fencing equipment, unless a permit is obtained for that specific use.

(AA) Endangerment of or Interference with Health, Safety, Welfare, and Recreation. No person shall commit any act in a park which endangers the health, safety, or welfare of themselves or of the general public or that unreasonably interferes with a person's reasonable and lawful recreation, use, or enjoyment of a park.

(BB) Interference with City Duties and Events. No person shall interfere with the Director, Administrator, police officer, park ranger, or City staff in the performance of their duties or in the enforcement of any provision of this Chapter. No person shall unreasonably interfere with a permitted use or any City-approved event in a park.

SECTION 3: Title 6, Chapter 10, Section 8 (Enforcement and Penalty) of the Mesa City Code is amended as set forth below.

6-10-8: Enforcement and Penalty

(A) The Director, Administrator, park rangers, and police officers shall, in connection with their duties imposed by law, diligently enforce the provisions of this Chapter. **EACH DAY OF VIOLATION CONTINUED SHALL BE A SEPARATE OFFENSE, PUNISHABLE AS DESCRIBED, WHETHER OR NOT THE PROVISION STATES THAT A VIOLATION IS UNLAWFUL.**

(B) CIVIL OFFENSES

(1) **A VIOLATION OF SECTIONS 6-10-4 (B), (F), (G), (I), (O), OR (T) IS A CIVIL OFFENSE. A VIOLATION OF SECTION 6-10-4(L) IS A CIVIL OFFENSE IF THE VIOLATION IS FOR THE FAILURE TO IMMEDIATELY DISPOSE OF DOG'S WASTE IN AN APPROPRIATE RECEPTACLE.**

(2) **CIVIL OFFENSES ARE PUNISHABLE BY A FINE OF TWO HUNDRED AND FIFTY DOLLARS (\$250) FOR EACH VIOLATION.**

(C) CLASS 3 MISDEMEANORS. A VIOLATION OF SECTIONS 6-10-4 (C), (E), (J), (K), (M), (U), OR (V) IS A CLASS 3 MISDEMEANOR.

(D) CLASS 2 MISDEMEANORS. A VIOLATION OF SECTION 6-10-4 (W) IS A CLASS 2 MISDEMEANOR.

(E) CLASS 1 MISDEMEANORS.

(1) ANY VIOLATION OF THIS CHAPTER THAT IS NOT CLASSIFIED AS A CIVIL VIOLATION, CLASS 3 MISDEMEANOR, OR CLASS 2 MISDEMEANOR IS A CLASS 1 MISDEMEANOR.

(2) A VIOLATION OF SECTION 6-10-4(L) IS A CLASS 1 MISDEMEANOR IF NOT OF THE TYPE SPECIFICALLY CLASSIFIED AS A CIVIL VIOLATION IN SUBSECTION (B)(1) ABOVE.

~~(B-F)~~ The Director, park rangers, and police officers shall have the authority to direct to leave ~~or eject~~ from a park a person who, while in a park, violates any provision of this Chapter or any other law or regulation, or who engages in any disorderly or disruptive behavior. It is unlawful for a person to remain in a park or return to the same park within twenty-four (24) hours after being directed to leave ~~or ejected~~. A person directed to leave ~~or ejected~~ shall be informed at the time of the request to leave or ejection that re-entry into the park is prohibited for at least twenty-four (24) hours.

~~(C) The Director, park rangers, and police officers shall have the authority to seize and confiscate any property, thing, or device, in accordance with applicable law, that is used or in a park in violation of this Chapter.~~

~~(D-G)~~ Park rangers and police officers shall have the authority to issue citations and warnings for violations of this Chapter. ~~Citations shall be issued in accordance with A.R.S. § 13-3903, as amended.~~ **, EXCEPT THAT PARK RANGERS SHALL NOT MAKE AN ARREST. PURSUANT TO A.R.S. § 9-500.03, PARK RANGERS ARE EMPOWERED TO ISSUE CITATIONS FOR VIOLATIONS OF THIS CHAPTER.**

~~(E) A person who violates any provision of this Chapter, whether or not the provision states that a violation is unlawful, shall be charged with a Class One Misdemeanor. If found guilty, such person may be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.~~

SECTION 4: POLICE POWERS AND DUTIES. Nothing in this Ordinance shall be interpreted to limit any police officer powers and duties established by law, including the ability of a police officer to effectuate an arrest for a criminal violation of Title 6, Chapter 10.

SECTION 5: RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 6: EFFECTIVE DATE. The effective date of this Ordinance will be thirty (30) days following adoption by the Mesa City Council.

SECTION 7: PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties incurred, or proceedings begun before the effective date of this Ordinance.

SECTION 8: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of any material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 2nd day of December, 2024.

APPROVED:

Mayor

ATTEST:

City Clerk