



To the Mayor and Members of the City Council

April 6, 2021

Page 1 of 2

SUBJECT: ENFORCING ORDINANCES AND REMEDIATING CAMPSITES ON PRIVATE PROPERTY

Addressing campsites on private property is first and foremost the responsibility of the private property owner. In cases where encampments are erected on vacant land and/or where a property owner does not live/work locally, the City may receive and respond to a citizen complaint and/or initiate a response based on operation/historical activity. Citizens can, and do, report camps to the Police Department (trespass and criminal activity), Fire Department (large fires/medical calls), Code Compliance Department (clean-up), Homeless Liaison Officer and Directions Home (social services) and others. No matter which department receives the report, it is shared with the others and a collaborative response is initiated.

A private property owner may largely eliminate trespassing encampments on his or her own property by giving notice that entry is forbidden by one of several methods, including oral or written communication by the owner, or by posting "no trespassing" or "no entry" signs on the property. A fence or other enclosure may also be considered notice. Those individuals who refuse to leave the property after receiving notice may be reported to the Police Department for enforcement of the Criminal Trespass statute. The Police Department is authorized to arrest those suspected of committing the offense. In most cases, criminal trespass is a Class B misdemeanor carrying a penalty of a fine up to \$2,000 or up to 180 days in jail.

In late 2019, City Council passed a Camping Ordinance (23-21 Unlawful Camping) that addresses concerns with the difficulty of locating owners to enforce the trespassing law. In part, the ordinance stipulates:

- (b) *Prohibition.* It shall be unlawful for any person to camp upon any:
 - (1) Non-residential private property without possessing authorization of the property owner or the owner's agent;
 - (2) Residential private property that has no permanent dwelling, or that is lacking a potable water source and toilet facilities, without possessing authorization of the property owner or the owner's agent; or
 - (3) Residential private property that has a permanent dwelling and both potable water source and toilet facilities, without possessing authorization of the property owner or the owner's agent.

Generally speaking, staff proactively look for and address homeless camps since early intervention is key to timely abatement. However, during the pandemic response, the Centers for Disease Control and Prevention recommended the homeless be given greater leeway to live outdoors as opposed to congregate living indoors where the viral spread would be riskier. In this regard, staff have been more lenient in some open space and public areas, but have continued to enforce camping along major highways and residential areas. In residential areas, the new camping ordinance has been helpful.

When the City is made aware of a camp, through observation or report by the owner or other resident, the Homeless Liaison Officer will contact Directions Home who coordinates with a variety of outreach groups in order to offer social services and support to the affected individuals. Running parallel to this process, the Code Compliance Department will initiate a formal procedure known as the "Camp Posting and Cleaning Guidelines."

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Page 2 of 2

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As part of the process, Code Compliance contacts the property owner. While the City cannot gift public services, Code Compliance will provide assistance (such as the removal and disposal of items) to property owners when the clean-up, posting and other services are likely to reduce the probability of future camps. This saves the City money by responding to fewer violations over time and increases public safety to nearby residents and businesses. If the owner does not respond/comply, Code Compliance initiates the nuisance abatement process.

This abatement process allows the City to, after giving ten days' notice to the property owner, enter the property and abate the nuisance. The Nuisance Abatement Division may sometimes need up to seven days after the expiration of the ten-day notice period to complete the abatement. However, nuisances which present an immediate danger to the health, life or safety of any person or to the environment may be abated by the City without notice. After abating the nuisance, the City may then charge the expenses for the abatement to the owner. If the expenses are not paid, the City also has the ability to obtain a lien against the offending property. (The most common nuisances associated with encampments are Depositing Filth on Public and Private Property, Discharge of Liquid Waste, Storage of Discarded, Used and Broken Items and Littering.)

Encampments on private property which occur with the consent of the property owner are more difficult for the City to mitigate. Individuals camping on private property with the consent of the property owner are not committing Criminal Trespass. In such cases, the City has both criminal and civil mechanisms in place to encourage property owners to revoke their consent of encampments and to better maintain their properties in compliance with the City's ordinances. In addition to the previously discussed nuisance abatement process, the City may also issue criminal citations for violations of the City's zoning and other ordinances to the owners of the properties on which the encampments and nuisances are located. For those property owners who fail to comply, the City may also turn to civil remedies and seek penalties and injunctive relief under Chapter 54 of the Local Government Code. The statute specifically allows a municipality to pursue a civil action against a property owner to enforce ordinances related to zoning or public health and safety. When successful, a Chapter 54 lawsuit allows the City to recover a civil penalty of up to \$1,000 per day for a violation of an ordinance. The City may also obtain injunctive relief—prohibiting the owner from specific conduct which violates the ordinance or requiring specific conduct that is necessary for compliance with the ordinance. Properties that harbor habitual criminal activity may also be subject to lawsuits brought under Chapter 125 of the Texas Civil Practice and Remedies Code. It allows the City to file a lawsuit against the owner of a property which maintains a common nuisance, as defined by the statute.

For more information, please contact Brandon Bennett (Code Compliance) (817) 392-6322, Tara Perez (Directions Home) (817) 392-2235, Chris Mosley (Legal) (817) 392-7603 or Deputy Chief Robert Alldredge (Police) (817) 392-4131

David Cooke
City Manager