

**ORDINANCE NO. 24-12**

**AN ORDINANCE AMENDING TITLE 4, POLICE REGULATIONS, CHAPTER 1, MISDEMEANOR CODE, ARTICLE 5, OFFENSES INVOLVING PROPERTY, BY ADDING SECTION 4-1-5-5, PUBLIC CAMPING, OF THE VILLAGE OF MANTENO MUNICIPAL CODE**

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WHEREAS, estimates provide that, in 2020, there were approximately 10,431 Illinoisans experiencing homelessness. ILL. OFF. TO PREVENT & END HOMELESSNESS, ILL. DEP'T HUM. SERVS., HOME ILLINOIS: ILLINOIS' PLAN TO PREVENT AND END HOMELESSNESS (2022), available at <https://perma.cc/QV8K-3XGK>; and,

WHEREAS, a 2022 study by the United States Department of Housing and Urban Development ("HUD") estimated that 9,212 people were experiencing homelessness in Illinois in January 2022, with an estimated 20.6% of those homeless persons being unsheltered, meaning they have no form of shelter on which to rely. OFF. POL'Y DEV. & RSCH., U.S. DEP'T HOUS.& URB. DEV., PIT ESTIMATES OF HOMELESSNESS IN THE U.S. (2022), available at <https://www.huduser.gov/portal/sites/default/files/xls/2007-2022-PIT-Counts-by-State.xlsx>; and,

WHEREAS, the estimates provided by the HUD "likely underestimate the size of the homeless population because identifying people experiencing homelessness is inherently difficult." U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-433, HOMELESSNESS: BETTER HUD OVERSIGHT OF DATA COLLECTION COULD IMPROVE ESTIMATES OF HOMELESS POPULATION (2020), available at <https://perma.cc/7ZUQ-U5CE>; and

WHEREAS, the American Public Health Association has recognized homelessness as a public health issue, since research shows that homeless individuals: (1) suffer "higher mortality rates and chronic disease loads" than non-homeless populations; (2) "overuse emergency services, leading to higher costs for treatment" for all persons; and (3) with no form of shelter "can exacerbate conditions such as diabetes and hepatitis C . . . ." *Housing and Homelessness as a Public Health Issue*, Am. Pub. Health Ass'n (Nov. 7, 2017), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>; see also Bernard Beall et al., *Invasive Pneumococcal Disease Clusters Disproportionally Impact Persons Experiencing Homelessness, Injecting Drug Users, and the Western United States*, 226 J. Infectious Diseases 332 (2022), available at <https://doi.org/10.1093/infdis/jiac058> (finding that "invasive pneumococcal disease" was "disproportionally represented" in the homeless population when compared against populations not experiencing homelessness); and,

WHEREAS, the U.S. Interagency Council on Homelessness has noted that people "who experience homelessness die nearly 30 years earlier than the average American—and often from easily treatable illnesses." *Homelessness Data & Trends*, U.S.

INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/guidance-reports-data/data-trends> (last visited July 15, 2024); and,

WHEREAS, the Village of Manteno (“Village”) is an Illinois municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and

WHEREAS, Section 1-2-1 of the Illinois Municipal Code (65 ILCS 5/1-2-1), provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and,

WHEREAS, Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1) empowers the corporate authorities of the municipality to pass ordinances to regulate any matter that is expressly within the powers granted to the municipality by making the violation a misdemeanor punishable by up to six (6) months of incarceration; and,

WHEREAS, Section 1-1-10 of the Illinois Municipal Code (65 ILCS 5/1-1-10) empowers the corporate authorities of the municipality to exercise all powers granted to it expressly, by necessity, by the Illinois Municipal Code, by Illinois statute, or by the Illinois Constitution; and,

WHEREAS, Section 11-20-5 of the Illinois Municipal Code (65 ILCS 5/11-20-5) empowers the corporate authorities of each municipality to “do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases”; and,

WHEREAS, Section 11-60-2 of the Illinois Municipal Code (65 ILCS 5/11-60-2) empowers the corporate authorities of each municipality to define, prevent and abate nuisances; and,

WHEREAS, Section 3-102 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-102) (“Tort Immunity Act”) obligates the Village to “exercise ordinary care to maintain public property in a reasonably safe condition”; and,

WHEREAS, the Tort Immunity Act generally immunizes municipalities from damages claims where the public property was not being used in the manner intended and permitted by the municipality. *See Wojdyla v. City of Park Ridge*, 148 Ill. 2d 417, 421–22 (1992) (*quoting* 745 ILCS 10/3-102(a)) (“Thus, for a pedestrian to be protected in the present circumstances by the statute, he must be an intended and permitted user of the property under the control of the city.”); and,

WHEREAS, in *City of Grants Pass, Oregon v. Johnson*, 603 U.S. \_\_\_, 144 S. Ct. 2202 (2024), the United States Supreme Court held that the criminalization of “public camping,” as defined in the City of Grants Pass’s ordinance, did not unconstitutionally

infringe on the Eighth Amendment rights of homeless and otherwise unhoused persons within said City; and,

WHEREAS, in *Johnson*, the United States Supreme Court acknowledged that homelessness is a “complex and serious social issue” whose “causes are many” and which “cries out for effective responses” to combat it. *Johnson*, 603 U.S. \_\_\_, slip op. at 10, 34; and,

WHEREAS, in *Johnson*, the United States Supreme Court relied heavily on the “stepwise” escalation of penalties in Grants Pass’s ordinance to uphold its constitutionality. *Id.* at 11, 16–17; and,

WHEREAS, in view of the foregoing, the President and Board of Trustees of the Village of Manteno believe that it is appropriate, necessary and in the best interests of the Village and its residents, that the Village implement a Public Camping Prohibition and related enforcement mechanisms, to address the myriad public concerns that public camping creates.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Manteno, as follows:

### **Section 1**

The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

### **Section 2**

That Title 4, Police Regulations, Chapter 1, Misdemeanor Code, Article 5, Offenses Involving Property, of the Village of Manteno Municipal Code, be amended by adding Section 4-1-5-5, Public Camping, to read as follows:

#### **4-1-5-5: PUBLIC CAMPING.**

(A) Definitions. The following definitions apply to this Section:

1. “Bedding” means a sleeping bag, or any other material, used for bedding purposes.
2. “Campsite” means any physical space that is not within an established structure, where Bedding 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.

3. "Exempt Personal Property" means items which would otherwise constitute Personal Property under the terms of this Section, but which (i) have no apparent utility or monetary value; (ii) are unsanitary to store or otherwise maintain; (iii) any weapon possessed illegally; (iv) drug paraphernalia; (v) items appearing to be stolen or otherwise appearing to be evidence of a crime; (vi) items which the person cannot demonstrate the requisite lawful authority to possess; and (vii) items of food which can reasonably be expected to spoil or otherwise perish within the next 30 days.
4. "Personal Property" means any item reasonably recognizable as belonging to a person and having apparent utility or monetary value, except for Exempt Personal Property.
5. "Public Camping" means to cause or participate in the establishment of, or the act of remaining in or at, a Campsite.

(B) Public Camping Prohibited. Public Camping is hereby declared to be a nuisance within the Village of Manteno. Except for parcels of property otherwise specifically designated by the Village for camping purposes, property located within the corporate boundaries of the Village of Manteno is neither intended nor permitted to be used for the purpose of Public Camping. The following is strictly prohibited in the Village of Manteno:

1. Sleeping, or otherwise engaging in Public Camping, on a public sidewalk, street, alley, lane, other public right-of-way, park, bench, or any other publicly owned property, or on or under any bridge or viaduct, at any time.
2. Sleeping, or otherwise engaging in Public Camping, in any pedestrian or vehicular entrance to public or private property abutting a public right-of-way.
3. Sleeping, or otherwise engaging in Public Camping, on any real property owned or otherwise maintained by the Village.
4. Parking a vehicle overnight within the Village for the purpose of sleeping or otherwise engaging in Public Camping in said vehicle. Parking or leaving a vehicle parked for two consecutive hours, and/or remaining within a public vehicle on any property under the jurisdiction of the Village for the purpose of Public Camping, for two consecutive hours without permission from the Village President and Board of Trustees, between the hours of midnight and 6:00 a.m. shall be considered a violation of this Section.

(C) Exceptions. Notwithstanding the foregoing, it shall not be a violation to engage in Public Camping when done: (i) in a manner specifically authorized by this Code; (ii) after a formal declaration of the Village in emergency circumstances; or, (iii) upon resolution of the President and Board of Trustees of the Village, the same may exempt a special event from the prohibitions of this Section, if the President and Board of Trustees of the Village finds such exemption to be in the public interest and consistent with the goals and objectives of the Village, and with such conditions imposed as the President and Board of Trustees of the Village deems necessary. Any conditions imposed will include a condition requiring that the applicant provide evidence of adequate insurance coverage and agree to indemnify the Village for any liability, damage or expense incurred by the Village as a result of the activities of the applicant. Any findings by the President and Board of Trustees of the Village shall specify the exact dates and location covered by the exemption.

(D) Removal of Campsite and Personal Property. The Village may cause the removal of a Campsite in violation of this Section under the following circumstances:

1. Prior to removing a Campsite, the Village shall post a notice, 24 hours in advance of the removal, unless immediate removal of the Campsite is deemed to be necessary for one of the reasons in subparagraphs i-iv below. The Village may cause the immediate removal of a Campsite for the following reasons, and the basis for causing the immediate removal of such Campsite should be adequately documented by the appropriate person(s):

i. Immediate removal of the Campsite is necessary to maintain access to a property;

ii. Immediate removal of the Campsite is necessary to maintain the sanitary condition of the property;

iii. Immediate removal of the Campsite is necessary because the Campsite is an obstruction to any public right-of-way; or

iv. Immediate removal of the Campsite is necessary because the Campsite poses a risk to the health and safety of the Village and its residents.

2. Upon any action pursuant to paragraph (D)(1) above, the person causing such action to be taken shall inform an appropriate agency delivering social services to homeless individuals in the Village of the location of the Campsite and the persons found to be in violation of

this Section, so said agency may determine whether or not it would be appropriate to offer its services to those persons.

3. If a 24-hour notice has been posted, and the 24-hour notice period has passed, then the Campsite, as well as all Personal Property thereon shall be removed by the appropriate person(s) acting on behalf of the Village.
4. No portion of this Section shall be construed to prohibit any person found to be engaging in Public Camping from removing their Personal Property from the Campsite; however, such Personal Property that constitutes Exempt Personal Property and which a reasonably prudent law enforcement officer, exercising the applicable constitutional standard, would conclude that said Exempt Personal Property constitutes items appearing to be stolen or otherwise appearing to be evidence of a crime, or items which the person cannot demonstrate the requisite lawful authority to possess, may be retained and stored as evidence.

(E) Disposition and Release of Personal Property.

1. All Personal Property removed from any Campsite which is not Exempt Personal Property shall be stored by the police department for a minimum of thirty (30) days, during which time the Personal Property shall be reasonably available for and released to an individual confirming ownership.
2. All Exempt Personal Property may be disposed of or retained as evidence by the Village police department.

(F) Penalty; Mitigation.

1. The penalty for any person's first violation of this Section within a rolling twenty-four (24) month period shall be \$75.
2. The penalty for any person's second violation of this Section within a rolling twenty-four (24) month period shall be \$150.
3. The penalty for any person's third violation of this Section within a rolling twenty-four (24) month period shall be \$350.
4. The penalty for any person's fourth violation of this Section within a rolling twenty-four (24) month period shall be \$500.
5. The penalty for any person's fifth violation of this Section within a rolling twenty-four (24) month period shall be \$750.

6. The penalty for any person's sixth or subsequent violation of this Section within a rolling twenty-four (24) month period may be a monetary penalty of \$750 or incarceration for a period not exceeding the maximum time allowed pursuant to Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1).
7. As a substitute for any monetary penalty assessed pursuant to paragraphs 1-6, above, and if consented to by the Village, the penalty assessed to any person found in violation of this Section may be that said person must engage in public service by cleaning the rights-of-way and other public facilities of the Village for an amount of time that, if the person found to have violated this Section was being paid the minimum wage under Illinois law, the amount paid for that person's labors would have been equal to the monetary penalty assessed under this Section.
8. The Village is hereby empowered to exercise all powers afforded to it, at law or in equity, to collect any fines assessed against a person pursuant to this Section, including but not limited to seeking incarceration of said person for a period of time that conforms with Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1).
9. Penalties imposed under this Section may be mitigated by whether or not the person immediately removed all Personal Property and litter, including but not limited to bottles, cans, and garbage, from the Campsite after the person was informed that the person was in violation of this Section
10. A separate offense of this Section shall be deemed committed on each day on which a violation occurs or continues.
11. In addition to any other remedy provided by law or this Section, any person found in violation of this Section may be immediately removed from the premises where the Campsite is located.

### **Section 3**

If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

### **Section 4**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.



**Section 5**

This ordinance shall be immediately in full force and effect after the passage, approval, and publication. This ordinance is authorized to be published in pamphlet form.

PASSED by the Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 16<sup>th</sup> day of September, 2024.

DEPOSITED with the Village Clerk this 16<sup>th</sup> day of September, 2024.

*Robin Batka by Darla Hurley*  
ROBIN BATKA, Village Clerk *Deputy VC*

APPROVED by me this 16<sup>th</sup> day of September, 2024.

*Timothy O. Nugent*  
TIMOTHY O. NUGENT, Village President

I DO HEREBY CERTIFY that this Ordinance was, after its passage and approval, published in pamphlet form by authority of the Village of Manteno, in accordance with law, this 16<sup>th</sup> day of September, 2024.

*Robin Batka by Darla Hurley*  
ROBIN BATKA, Village Clerk *Deputy VC*