Ordinance No. 2024-4435

AN ORDINANCE AMENDING
TITLE 1, "ADMINISTRATION", AND TITLE 4, "PUBLIC HEALTH AND SAFETY",
OF THE VILLAGE OF BARRINGTON VILLAGE CODE
PROHIBITING PUBLIC CAMPING IN THE VILLAGE OF BARRINGTON

WHEREAS, estimates provides 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 https://perma.cc/QV8K-3XGK; and

WHEREAS, a 2022 study by the United States (U.S.) Department of Housing and Urban Development 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 U.S. Department of Housing and Urban Development "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-policyu-statements/policydatabase/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 Barrington is a Home Rule Illinois municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and

WHEREAS, pursuant to Section 1-1-4 of the Illinois Municipal Code (65 ILCS 5/1-1-4), the Village of Barrington has those powers conferred upon it by the Illinois Municipal Code; and

WHEREAS, the 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 Village 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 Village 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) obligates the Village to "exercise ordinary care to maintain public property in a reasonably safe condition." *Bubb v. Springfield Sch. Dist. 186*, 167 Ill. 2d 372, 377 (1995) (citing 745 ILCS 10/3-102); and

WHEREAS, the Local Governmental and Governmental Employees 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 Corporate Authorities of the Village have determined 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 of public concerns that public camping creates; and

WHEREAS, the Corporate Authorities of the Village have also determined that it is necessary and advisable to revise Chapter 14, "Fees, Charges, Deposits, and Other Amounts Payable to the Village", of Title 1, "Administration", of the Barrington Village Code to establish certain penalties for violation(s) of the Village's regulations relative to public camping as set forth herein:

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington, Cook and Lake Counties, Illinois, in exercise of the authority of this Village as a Home Rule unit, 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 in their entirety.

SECTION 2: Section 1-14-1, "Enumerated", of Chapter 14, "Fees, Charges, Deposits, and Other Amounts Payable to the Village", of Title 1, "Administration", of the Village of Barrington Village Code, and specifically, Title 4, "Public Health and Safety", thereof shall be and is hereby amended, in relevant part, by the addition of a new Section 4-9-9, which shall be inserted in numerical order and shall read as follows (insertions are underlined and deletions are interlined):

TITLE 4 – PUBLIC HEALTH AND SAFETY

Type	Village Code Section	Description	Amount	
* * * *				
Penalty for Violation of Chapter 9	4-9-9	Penalty for violation of Chapter 9 of Title 4. As a substitute for any monetary penalty assessed pursuant to Section 4-9-9, and if consented to by the Village, the penalty assessed to any person found in violation of this Chapter may be that said person may be ordered by a court of competent jurisdiction or by a Village Administrative Adjudication hearing	Penalty for the first violation within a rolling 24-month period	$75.00 per day. A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.
			Penalty for a second violation within a rolling 24-month period	$150.00 per day. A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.
			Penalty for a third violation within a rolling 24-month period	$250.00 per day. A separate offense of this Chapter shall be deemed committed on each day

		officer to engage in public service by removing litter from and/or by cleaning Village rights-of-way and/or other property of the Village for an amount of time that, if the person found to have violated this Chapter 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 Chapter.		on which a violation occurs or continues.
			Penalty for a fourth violation within a rolling 24-month period	$500.00 per day. A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.
			Penalty for a fifth violation within a rolling 24-month period	$750.00 per day. A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.
			Penalty for a sixth or subsequent violation within a rolling 24-month period	$750.00 per day and/or incarceration for a period not exceeding the maximum time allowed pursuant to Section 1-2-9 of the Illinois Municipal Code (65 ILCS 5/1-2-9). A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.
* * * *				

SECTION 3: Title 4, "Public Health and Safety", of the Barrington Village Code is hereby amended by the addition of a new Chapter 9, "Regulation of Public Camping", which shall read as follows:

"Chapter 9
Regulation of Public Camping

4-9-1: Definitions. The following definitions shall apply to this Chapter:

A. "Bedding" means a sleeping bag, or any other material, used for bedding purposes.

B. "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.

C. "Exempt Personal Property" means items which would otherwise constitute Personal Property pursuant to this Chapter, but which (i) has no apparent utility or monetary value; (ii) Personal Property which is 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) any items of food which can reasonably be expected to spoil or otherwise perish within the next 30 days.

D. "Personal Property" means any item reasonably recognizable as belonging to a person and having apparent utility or monetary value, except for Exempt Personal Property.

E. "Public Camping" means to cause or participate in the establishment of, or the act of remaining in or at, a Campsite.

4-9-2: Public Camping Declared to be a Nuisance. Public camping, as the term is defined herein, is hereby declared to be a nuisance within the Village of Barrington for the reasons identified herein.

4-9-3: Regulation of Public Camping Necessary to Promote Public Health. In an effort to address the public health concerns identified above, the Corporate Authorities of the Village hereby declare it necessary or expedient for the promotion of health or the suppression of diseases, to regulate Public Camping, as that term is defined herein, within the Village's corporate limits.

4-9-4: Public Camping Not Intended Use of Public Property. Except for those parcels of property hereafter specifically designated by the Corporate Authorities of the Village in any subsequent amendment to this Village Code, the Village hereby declares that none of its property is permitted to be used nor intended to be used for Public Camping, as the term is defined herein.

4-9-5: Public Camping Prohibited.

A. No person may sleep, nor otherwise engage in Public Camping, on a public sidewalk, street, alley, lane, other public right-of-way, park, public bench, or any other publicly-owned property, nor on or under any bridge or viaduct, at any time.

B. No person may sleep, nor otherwise engage in Public Camping, in any pedestrian or vehicular entrance to public or private property abutting a public right-of-way.

C. No person may sleep, nor otherwise engage in Public Camping, on any real property owned or otherwise maintained by the Village.

D. No person may park a vehicle overnight within the Village for the purpose of sleeping or otherwise engaging in Public Camping in said vehicle.

E. For the purposes of this Section, the act of 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 between the hours of sunset and 6:00 a.m. of the next day, shall be considered a violation of this Chapter.

4-9-6: Exceptions to Prohibition. 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 approval by Corporate Authorities of the Village or by the Village Manager, the same may exempt a special event from the prohibitions of this Section, if the Corporate Authorities of the Village or the Village Manager find 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 Corporate Authorities of the Village or by the Village Manager deem necessary. Any conditions imposed shall 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 written determination by the Corporate Authorities of the Village or by the Village Manager shall specify the exact dates and location covered by the exemption.

4-9-7: Removal of Campsite. Removal of a Campsite in violation of this Chapter may occur under the following circumstances:

A. 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 stated in subparagraphs 1-4 below. If such immediate removal is undertaken, the basis for causing the immediate removal of such Campsite should be adequately documented by the appropriate person(s).

1. immediate removal of the Campsite is necessary to maintain access to a property;
2. immediate removal of the Campsite is necessary to maintain the sanitary condition of a property;
3. immediate removal of the Campsite is necessary because the Campsite is an obstruction to any public right-of-way; or,
4. immediate removal of the Campsite is necessary because the Campsite poses a risk to the health and safety of the Village and its residents.

B. Upon any action pursuant to Section 4-9-7 as set forth 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 Chapter so said agency may determine whether or not it would be appropriate to offer its services to those persons.

C. 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, may be removed by the appropriate person(s) acting on behalf of the Village.

D. No portion of this Chapter 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, and/or items which the person cannot demonstrate the requisite lawful authority to possess, may be retained and stored as evidence.

4-9-8. Disposition and Release of Personal Property.

A. All Personal Property removed from any Campsite which is not Exempt Personal Property shall be stored by the appropriate law enforcement agency of the Village for a minimum of 30 days, during which time it shall be reasonably available for and released to an individual confirming ownership.

B. All Exempt Personal Property may be disposed of or retained as evidence by the appropriate law enforcement agency of the Village.

4-9-9. Penalty; Mitigation.

A. The penalty for any person's first violation of this Chapter within a rolling twenty-four (24) month period shall be $75.00.

B. The penalty for any person's second violation of this Chapter within a rolling twenty-four (24) month period shall be $150.00.

C. The penalty for any person's third violation of this Chapter within a rolling twenty-four (24) month period shall be $350.00.

D. The penalty for any person's fourth violation of this Chapter within a rolling twenty-four (24) month period shall be $500.00.

E. The penalty for any person's fifth violation of this Chapter within a rolling twenty-four (24) month period shall be $750.00.

F. The penalty for any person's sixth or subsequent violation of this Chapter within a rolling twenty-four (24) month period shall be a monetary penalty of $750.00 or incarceration for a period not exceeding the maximum time allowed pursuant to Section 1-2-9 of the Illinois Municipal Code (65 ILCS 5/1-2-9).

G. As a substitute for any monetary penalty assessed pursuant to Paragraphs A-F above, and if consented to by the Village, the penalty assessed to any person found in violation of this Chapter may be that said person may be ordered by a court of competent jurisdiction or by a Village Administrative Adjudication hearing officer to engage in public service by removing litter from and/or by cleaning Village rights-of-way and/or other property of the Village for an amount of time that, if the person found to have violated this Chapter 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 Chapter

H. 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 Chapter, including but not limited to seeking incarceration of said person for a period of time that conforms with Section 1-2-9 of the Illinois Municipal Code (65 ILCS 5/1-2-9).

I. In the imposition of any penalty pursuant to this Chapter, the penalty shall 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 Chapter.

J. A separate offense of this Chapter shall be deemed committed on each day on which a violation occurs or continues.

K. In addition to any other remedy provided by law or this Chapter, any person found in violation of this section may be immediately removed from the premises where the Campsite is located."

SECTION 4: Repeal of Conflicting Provisions. All ordinances, resolutions and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

SECTION 5: Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid

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VILLAGE OF BARRINGTON

ORDINANCE NO. 2024-4435

AN ORDINANCE AMENDING
TITLE 1, "ADMINISTRATION", AND TITLE 4, "PUBLIC HEALTH AND SAFETY",
OF THE VILLAGE OF BARRINGTON VILLAGE CODE
PROHIBITING PUBLIC CAMPING IN THE VILLAGE OF BARRINGTON

(RE: Chapter 14, "Fees, Charges, Deposits, and Other Amounts Payable to the Village",
of Title 1, "Administration",
and
A New Chapter 9, "Regulation of Public Camping", of
Title 4, "Public Health and Safety")

ADOPTED BY THE

CORPORATE AUTHORITIES

OF THE

VILLAGE OF BARRINGTON, ILLINOIS

THIS 9th DAY OF September, 2024

Published in pamphlet form by authority of the Corporate Authorities of the Village of Barrington, Cook and Lake Counties, Illinois, this 9th day of September, 2024.

application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 6: Headings/Captions. The headings/captions identifying the various sections and subsections of this Ordinance are for reference only and do not define, modify, expand or limit any of the terms or provisions of this Ordinance.

SECTION 7: The Corporate Authorities of the Village intend that this Ordinance will be made part of the Village Code and that sections of this Ordinance can be renumbered or re-lettered and the word "Ordinance" can be changed to "Section", "Article", "Chapter", "Paragraph", or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors can be corrected with the authorization of the Village Attorney, or his or her designee.

SECTION 8: Publication. The Village Clerk is directed by the Corporate Authorities of this Village to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code (65 ILCS 5/1-2-4).

PASSED THIS 9th DAY OF September, 2024, BY ROLL CALL VOTE AS FOLLOWS:

AYES: Trustees Lohmeyer, Sholeen, Wondrasek, Duncan, Moran, Prigge and President Darch

NAYS: None

ABSENT: None

ABSTAIN: None

RECUSE: None

APPROVED THIS 9th DAY OF September, 2024

Karen Y. Darch, Village President

ATTESTED AND FILED THIS
9th DAY OF September, 2024

Tony Ciganek, Village Clerk [Seal]

PUBLISHED IN PAMPHLET FORM THIS 9th DAY OF September, 2024.

Village of Barrington CORPORATE SEAL Cook & Lake Counties, IL