

CLERK'S OFFICE
APPROVED

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Department of Law
For reading: August 31, 2010

Date: 9-14-10 ANCHORAGE, ALASKA
AO No. 2010-63

1 **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION**
2 **15.20.020 REGARDING ABATEMENT OF ILLEGAL CAMPSITES AS PUBLIC**
3 **NUISANCES.**
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6 **THE ANCHORAGE ASSEMBLY ORDAINS:**
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8 **Section 1.** Anchorage Municipal Code section 15.20.020 is hereby amended to
9 read as follows:

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11 **15.20.020 Public nuisances prohibited; enumeration.**
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- 13 A. No person shall allow, maintain or permit a public nuisance to exist
14 or allow, maintain or permit recurrence of a public nuisance. Such
15 existence, allowance, maintenance, permitting or recurrence of a
16 public nuisance is a violation of this chapter.
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18 B. Public nuisances include, but are not limited to, the following acts
19 and conditions:
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23 15. *Illegal campsites.* An illegal campsite is an area where one or
24 more persons are camping on public land in violation of Chapter
25 25.70 or any other provision of this code. An illegal campsite is
26 subject to abatement by the municipality. The municipal official
27 responsible for an abatement action may accomplish the
28 abatement with the assistance of a contractor, association or
29 organization. Notwithstanding any other provision of this
30 chapter, the following procedure is required to abate an illegal
31 campsite:
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- 33 a. At least five full business days prior to beginning the
34 removal of an illegal campsite, a notice of campsite
35 abatement shall be posted on each tent, hut, lean-to, or
36 other shelter designated for removal, or, if no structure
37 for shelter exists, a notice shall be affixed in a
38 conspicuous place near the bedding, cooking site, or
39 other personal property designated for removal. The
40 notice shall:
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- i. State the approximate location of the campsite, the code provision under which the campsite is illegal, that the campsite may be removed at any time after a specified date without further notice, and that any personal property remaining is abandoned and shall be disposed of as waste. [A NOTICE OF CAMPSITE ABATEMENT SHALL NOT BE INVALID FOR FAILURE TO IDENTIFY THE CORRECT CODE PROVISION, IF THE CAMPSITE IS ILLEGAL UNDER A DIFFERENT LOCAL OR STATE LAW THAN THE ONE STATED ON THE NOTICE.]
 - ii. Also be given orally to any persons in or upon the illegal campsite or who identifies oneself to the responsible official as an occupant of the campsite.
 - iii. State the process for filing an appeal, and include the address and facsimile number for the administrative hearing office.

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- b. Within 24 hours after posting the notice of campsite abatement, the municipal official responsible for posting is directed to inform the director of the department of health and human services, or a designee, of the notice posting and illegal campsite location, and the department of health and human services is directed to provide written or electronic notification to community social service agencies within the first work day after receipt of the notice. The purpose of the notices under this subsection is to encourage and accommodate the transition of campsite occupants to housing and the social service community network. Failure of notice under this subsection shall not invalidate the abatement. To facilitate the social service community network, the notice will include:

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- i. The location of the camp; and
 - ii. The date for removal; and
 - iii. An estimate of the number of structures to be removed and of the number of residents of the camp.

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- c. Before abatement, the responsible municipal official shall verify whether an appeal of the notice of campsite abatement was filed with the administrative hearing office within the applicable time period. If no timely appeal was

1 filed removal of the campsite may proceed forthwith. If
2 an appeal to the hearing officer was timely filed, the
3 municipality shall either:
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5 i. stay abatement of the campsite area until a
6 decision is issued, or
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8 ii. remove all personal property and store it until a
9 decision is issued. If stored, a written notice of
10 the whereabouts of such property and a contact
11 phone number shall be served on the appellant or
12 posted in the area of the removed campsite.
13 Stored property may be released to the appellant
14 prior to a decision.
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16 d. At the time removal is to begin, if any individuals are
17 present at the campsite, they shall be verbally notified the
18 campsite is illegal and to be removed forthwith. Prior to
19 actual removal:
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21 i. The individuals shall be given at least 20 minutes
22 to gather their personal property and disperse
23 from the area; and
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25 ii. The responsible municipal official or persons
26 working under their authority shall not prevent
27 individuals claiming personal property from
28 removing that property immediately, unless the
29 personal property is unlawful or otherwise
30 evidence of criminal activity.
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32 e. If there is no stay on abatement in effect [IS NOT STAYED
33 BY THE FILING OF A NOTICE OF APPEAL], personal property
34 remaining at the illegal campsite after the notice period
35 and the 20-minute wait period expire is abandoned and
36 may be disposed of as waste.
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38 f. Exceptions:
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40 i. Nothing in this section shall prevent a peace
41 officer from conducting an investigation, search, or
42 seizure in a manner otherwise consistent with the
43 state and federal constitutions, or federal, state or
44 local law.
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46 ii. Nothing in this section shall prevent lawful
47 administrative inspection or entry into an illegal
48 campsite, nor prevent clean-up of garbage, litter,
49 waste or other unsanitary conditions on public

1 land at any time.

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3 iii. Where exigent circumstances posing a serious
4 risk to human life and safety exist, the abatement
5 of a campsite may proceed without prior notice.
6 Personal property removed under this paragraph
7 may only be disposed of in accordance with
8 chapter 7.25 or other applicable code provision.
9 Written notice of the whereabouts of such
10 property and a contact phone number shall be
11 posted in the area of the former campsite.

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13 iv. When the public land where an illegal campsite is
14 located is clearly posted with no trespassing
15 signage, no camping signage, or as not being
16 open to the public, including posting of closed
17 hours, the abatement of the campsite may
18 proceed without additional notice, and after the
19 occupants of the illegal campsite are provided at
20 least one hour to remove their personal property.
21 Personal property located on and removed from
22 no trespassing areas of public land without
23 additional notice under this exception may only be
24 disposed of in accordance with chapter 7.25 or
25 with the procedures of this subsection
26 15.20.020B.15.

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28 g. The right of action provided in section 15.20.130D. is not
29 available when the public nuisance is an illegal campsite
30 located on public property.

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32 h. *Appeal procedure.* A posted notice of campsite
33 abatement is final if a campsite occupant does not file a
34 notice of appeal under section 3.60.035 with the
35 municipal administrative hearing office by the date
36 indicated on the notice. To be filed with the
37 administrative hearing office, the notice of appeal must
38 be received prior to the time and date on the posted
39 notice after which abatement may commence. An
40 appeal is filed with the administrative hearing office upon
41 receipt of a written notice mailed or transmitted by
42 facsimile, or upon personal appearance of an appellant
43 camper with a written or verbal request to appeal. Upon
44 receiving a notice of appeal, the administrative hearing
45 office shall schedule a hearing as soon as practicable
46 and no later than five (5) business days following receipt
47 of the appeal. The notice of the administrative hearing
48 shall be served on the appellant personally, by mail or
49 facsimile if such information for that purpose is provided

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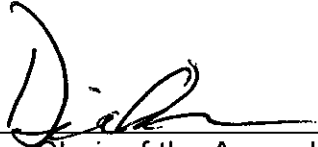
by the appellant, or posted at the same place or area where the notice of abatement being appealed was posted. The administrative hearing shall not proceed unless there is proof of service or posting at least two (2) business days prior to the hearing. Proof of service or posting may be submitted by affidavit, and may be accomplished by any municipal employee or a person qualified for service of process under the Alaska court rules. [THE ISSUES AT THE HEARING ARE WHETHER (I) THE CAMPSITE IS ILLEGAL AND (II) ALL THE PROPERTY FOUND THEREON MAY BE DISPOSED OF AS WASTE FORTHWITH.] If the administrative hearing officer affirms the notice of campsite abatement, the abatement is stayed for at least two days after the date of distribution of the decision. After this automatic stay the municipality may proceed to abate the campsite [WITHOUT DELAY] and all personal property found thereon disposed of as waste. Except as otherwise provided in this subsection, the appeal hearing shall be conducted as a quasijudicial proceeding under chapter 3.60. When an appeal is taken to the superior court, the appellant may obtain a stay of proceedings to enforce the notice of abatement by following the procedures set forth in Alaska Rule of Appellate Procedure 603(a).

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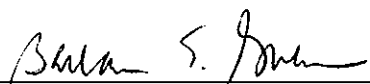
(GAAB 16.68.110, 18.15.020, 18.15.030, 18.20.030, 18.20.060; CAC 8.10.020, 8.10.050; AO No. 113-76; AO No. 78-48; AO No. 79-63; AO No. 93-173(S), § 3, 2-24-94; AO No. 95-42, § 3, 3-23-95; AO No. 2001-145(S-1), § 12, 12-11-01; AO No. 2003-130, § 4, 10-7-03; AO No. 2009-83(S), § 2, 7-7-09)

Section 2. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 14th day of September, 2010.


_____ Chair of the Assembly

ATTEST:


_____ Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2010-63

Title: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION
15.20.020 REGARDING ABATEMENT OF ILLEGAL CAMPSITES AS
PUBLIC NUISANCES.

Sponsor: MAYOR
Preparing Agency: Department of Law
Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:	(In Thousands of Dollars)				
	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>
Operating Expenditures					
1000 Personal Services					
2000 Non-Labor					
3900 Contributions					
4000 Debt Service					
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp					

PUBLIC SECTOR ECONOMIC EFFECTS:

None.

PRIVATE SECTOR ECONOMIC EFFECTS:

None.

Prepared by: Dean T. Gates

Telephone: 343-4545

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 476-2010

Meeting Date: August 31, 2010

1 **From: MAYOR**

2
3 **Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE**
4 **SECTION 15.20.020 REGARDING ABATEMENT OF ILLEGAL**
5 **CAMPSITES AS PUBLIC NUISANCES.**
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7 On July 15, 2010, the superior court held a hearing on the plaintiff's motion for a
8 temporary restraining order (TRO) requesting the Municipality of Anchorage be
9 enjoined from enforcing AO 2010-43(S) in *Dale Engle, et al., v. Municipality of*
10 *Anchorage and Mark Mew*, Case No. 3AN-10-7047CI. The judge concluded the
11 plaintiffs raised some serious and substantial questions about the constitutionality of
12 certain provisions of the ordinance. A TRO hearing does not make a final
13 conclusion about constitutionality, but only determines if the constitutional questions
14 and concerns are serious and legitimate. The court issued the TRO and later
15 converted it to a preliminary injunction which will remain in effect until the conclusion
16 of the superior court case or until modified by the judge.
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18 The amendments offered in the attached ordinance revise language to address
19 some of the concerns identified by the court at the TRO hearing. Specifically, the
20 amendments do the following: (1) delete the harmless error allowance in identifying
21 the correct code provision that renders the posted campsite illegal, p. 2, lines 7-11;
22 (2) clarifies the appeal to the hearing officer activates an automatic stay, p. 3, lines
23 2 and 32; (3) removes the specific issues for the hearing officer, allowing parties to
24 raise any relevant issues, p. 5, lines 9-12; (4) adds an automatic stay of at least two
25 days after the hearing officer issues a decision, p. 5 lines 13-15; and (5) adds
26 specific reference to court rules for requesting a stay during an appeal to superior
27 court, p. 5 lines 20-24. The last two amendments are modeled after language in the
28 Alaska Court Rules. These amendments should strengthen the ordinance and
29 further demonstrate the Administration's resolve to address the important public
30 safety concerns presented by illegal campsites and facilitate their removal, with
31 respect and due regard for the rights of occupants.
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33 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**
34 **AMENDING ANCHORAGE MUNICIPAL CODE SECTION 15.20.020 REGARDING**
35 **ABATEMENT OF ILLEGAL CAMPSITES AS PUBLIC NUISANCES.**
36

37 Prepared by: Dean T. Gates, Assistant Municipal Attorney
38 Approved by: Dennis A. Wheeler, Municipal Attorney
39 Concur: George J. Vakalis, Municipal Manager
40 Respectfully submitted: Daniel A. Sullivan, Mayor

Content ID: 009344

Type: Ordinance - AO

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION

Title: 15.20.020 REGARDING ABATEMENT OF ILLEGAL CAMPSITES AS PUBLIC NUISANCES.

Author: maglaquijp

Initiating Dept: Legal

Keywords: Illegal campsites abatement

Date Prepared: 8/25/10 12:07 PM

Director Name: Dennis Wheeler

Assembly Meeting Date: 8/31/10

Public Hearing Date: 9/14/10

Workflow Name	Action Date	Action	User	Security Group	Content ID
Clerk_Admin_SubWorkflow	8/26/10 2:44 PM	Exit	Joy Maglaqui	Public	009344
MuniManager_SubWorkflow	8/26/10 2:44 PM	Approve	Joy Maglaqui	Public	009344
MuniManager_SubWorkflow	8/26/10 9:44 AM	Checkin	Joy Maglaqui	Public	009344
Finance_SubWorkflow	8/25/10 4:53 PM	Approve	Lucinda Mahoney	Public	009344
OMB_SubWorkflow	8/25/10 2:53 PM	Approve	Cheryl Frasca	Public	009344
Legal_SubWorkflow	8/25/10 12:13 PM	Approve	Dean Gates	Public	009344
AllOrdinanceWorkflow	8/25/10 12:12 PM	Checkin	Dean Gates	Public	009344