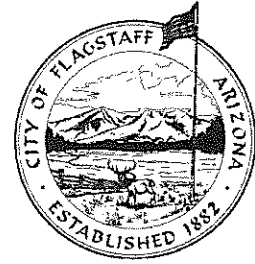


CITY OF FLAGSTAFF STAFF SUMMARY REPORT



To: The Honorable Mayor and City Council
From: Deputy Chief Kevin Treadway, Police Department
(556-2304)
Date: September 28, 2009
Meeting Date: October 20, 2009

Title: Consideration of Ordinance No. 2009-15: An ordinance amending Flagstaff City Code Title 6, Police Regulations, Chapter 1, General Offenses, Section 6-01-001-0022, Camping on Public Property within the City Limits to clarify its purpose and clarify its application.

Recommended Action:

At the October 20th, 2009 Council Meeting: Read Ordinance No. 2009-15 for the first time by title only.

At the November 3rd, 2009 Council Meeting: Read Ordinance No. 2009-15 for the final time by title only.
Adopt Ordinance No. 2009-15.

ACTION SUMMARY:

DISCUSSION:

Background/History:

Prior to enacting Section 6-01-001-0022 of the City Code, a person was allowed to camp anywhere in the City except a public park and not be subject to prosecution for camping. Prior to the adoption of this ordinance, police and prosecutors used alternate theories of criminal responsibility, such as trespassing, to prosecute the individual actually doing the camping. This approach is ineffective in that alternate violations are only tangentially related to the actions the City is seeking to prohibit. The proposed amended camping ordinance narrowly targets the specific actions the City is seeking to prohibit, thereby protecting the public's right to the healthy and safe use and enjoyment

of City owned public property that is not intended nor maintained for living accommodation purposes.

Since the adoption of Flagstaff City Code Section 6-01-001-0022, the Flagstaff police department has carefully and judiciously enforced the camping ordinance primarily during high fire danger season. The ordinance remains a tool for officers to warn the public that camping on City property is not allowed, asking for voluntary compliance, and providing contact information for local social service providers. In rare instances where persons disregard the initial warning, arrests have been made. In most of these cases, the charge of camping is accompanied by other criminal charges such as warrants, littering, disorderly conduct, etc.

In May, 2009, the City Council again discussed this issue and directed that the item be returned for further discussion following the summer recess. Since that time, staff has met to continue to discuss this ordinance and have recommended three additional changes which have been incorporated into the attached amended ordinance. These changes include the verbiage at the end of paragraph A which states: "Nothing in this ordinance is meant to imply that homelessness is illegal in Flagstaff".

The second change is found in paragraph B with the addition of verbiage that states camping means the use of City property OR ANY UNIMPROVED, UNDEVELOPED COUNTY, STATE OR FEDERAL PROPERTY for living accommodation purposes..... The addition of this language followed research by the City Attorneys Office as well as meetings with representatives of the Forest Service. Research reveals that State Trust Land and approximately 14,000 acres of Forest Service property is located within City limits. As it is difficult for officers to determine exactly whether an incident is on forest service property, county owned or city owned property, it is recommended that this language be included in this ordinance. Per Federal Order 04-112R dated August 3, 1995, the Forest Service has deemed campfires and camping on Forest Service property located within the incorporated limits of Flagstaff is illegal.

The third and final amendment since last discussed is the inclusion of section F which reads "Necessity, as defined in ARS 13-417, is a defense to prosecution under this section.

Key Considerations:

The current version of this ordinance has come under fire as an anti-homeless ordinance. The purpose of this ordinance, in both its current form and in the proposed amendments, is not to criminalize the status of homelessness, but to deal with the public health and safety issues that arise when public property is used for camping, (for example sanitation and fire issues), regardless of whether the person doing the camping has an alternate dwelling. The proposed amendments to the ordinance clarify this purpose in a manner supported by the courts. Camping on public property is the prohibited activity, not the status of the person doing the camping. This ordinance addresses camping only on city owned property

because the Land Development Code already addresses camping on private property. Camping on private property will continue to be enforced through the Land Development Code.

Community Benefits and Considerations:

This ordinance assists officers in addressing the nuisance and unregulated camping on city owned property. For years, police officers have observed numerous social issues surrounding unregulated or unauthorized camping including significant amounts of litter such as food waste, food packaging, discarded pornography, evidence of stolen property, discarded alcoholic beverage containers, paraphernalia used to smoke, inject or otherwise ingest illicit drugs, cigarette butts, human and animal waste and campfires that pose a significant fire danger to both people and property. Often camps are located near or adjacent to residential neighborhoods and commercial centers in close proximity with pedestrian traffic. It is not uncommon for the police department to receive calls from citizens who express concerns regarding panhandling, intoxicated reveling and other illicit activities in and around camping areas. The ability of officers to address these issues will enhance the overall health, safety, and aesthetic appeal of the City. In addition, the City will conserve the resources normally expended in the cleaning and restoration of these camp sites. Further, and perhaps most importantly, prohibiting illegal camping will aid in the prevention of wild land fire, eliminating the danger posed by illegal campfires.

Community Involvement:

Staff members from the Flagstaff fire department have expressed their support for police patrols of the urban interface area in and around Flagstaff in order to proactively address the fire danger posed by individuals who start campfires for warmth and cooking.

Financial Implications:

The amendments in this ordinance are not anticipated to change the number of illegal camping cases charged by the police, prosecuted by prosecutors and heard by the Courts, and therefore there are no financial implications for this amendment.

Options and Alternatives:

Adopt the proposed amendment to this ordinance.

Revise the ordinance further.

Leave the ordinance as originally drafted.

Repeal the ordinance.

Attachments/Exhibits:

Ordinance No. 2009-15.
US Forest service Order No. 04-112R and attachment



Division Director

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS/CONTRACTS	_____	_____	IGAS	_____
<u>SW</u>	LEGAL	<u>10/27/09</u>	_____	_____	_____

DATE OF COUNCIL APPROVAL: _____

ORDINANCE NO. 2009-15

AN ORDINANCE AMENDING FLAGSTAFF CITY CODE TITLE 6, POLICE REGULATIONS, CHAPTER 1, GENERAL OFFENSES, SECTION 6-01-001-0022, CAMPING ON PUBLIC PROPERTY WITHIN THE CITY LIMITS TO CLARIFY ITS PURPOSE AND CLARIFY ITS APPLICATION.

WHEREAS, the City Council finds that use of City Property for camping purposes has a detrimental effect on the public's health, safety, and welfare through increased fire danger, littering, and misappropriation of public space for personal use; and

WHEREAS, the City Council wishes to clarify the scope of the prohibited activities; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The City Council hereby amends the Flagstaff City Code Title 6, Police Regulations, Chapter 1, General Offenses, Section 6-01-001-0022, as follows:

SECTION 6-01-001-0022 CAMPING ON PUBLIC PROPERTY WITHIN CITY LIMITS:

A. PURPOSE:

The purpose of this Section to provide for the safety, harmonious use, and well-being of all users of city property by prohibiting the storage of personal belongings and placement of structures on public property for living accommodation purposes, and by preventing the fire dangers, littering, overuse of public property, and other misappropriation of public space for personal use associated with urban camping within the city limits. Although no single activity automatically triggers the application of this ordinance, the activities shall be considered as a whole in determining whether it reasonably appears, in light of all the circumstances, that a person conducting these activities is using public property for camping purposes, whether recreational or as a primary living space. Nothing in this ordinance is meant to imply that homelessness is illegal in Flagstaff.

B. PROHIBITION:

It is unlawful for any individual to camp on public property within the Flagstaff city limits unless specifically authorized by law. For the purpose of this section, the term ~~the term~~ "campingING" means ~~to reside on any~~ the use of public any city property or any undeveloped, unimproved county, state, and federal property for living accommodation purposes, including, but not limited to, activities such as:

- (1) Sleeping activities or making preparations to sleep including the laying down of bedding for the purpose of sleeping;

- (2) Storing personal belongings;
- (3) Making any fire, other than in a fire or barbecue pit provided by the City for such use;
- (4) Using any tent, shelter, vehicle, or other structure for sleeping;
- (5) Cooking, other than in a fire or barbecue pit provided by the City for such use

The above listed activities shall constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting such activities, are in fact using the area for living accommodation purposes, either as recreational camping or as a primary living space, and regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. "Camping" shall be distinguished from those short term uses such as napping and picnicking that are characterized by brief and intermittent use of city property for recreational purposes during daylight hours. ~~Nothing in this section shall be construed or interpreted as applying solely to homeless persons.~~

- C. No person shall be arrested for a violation of this ordinance unless the person continues to engage in such conduct after warning by any police officer or authorized representative of the government entity responsible for such public property, or unless such property has been conspicuously posted with a warning of the provisions of this ordinance.
- D. For the purpose of this section "publicity property" shall mean all real property including appurtenances thereon which is owned, leased, or controlled by the City and shall include all improved or unimproved land, all public right of ways including trails, easements, public sidewalks and public parking lots.
- E. A violation of this section is a class 34 misdemeanor. Each day that a violation of this section continues shall constitute a separate offense.
- F. Necessity, as set forth in ARS 13-417, is a defense to prosecution under this Section.

SECTION 2. The City Council directs the City Clerk to make all necessary changes to the Flagstaff City Code to conform the language of the Code to the terms of this Ordinance.

SECTION 3. If any section, subsection, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this ____ day of _____, 2009.

MAYOR

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ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

ORDER

CAMPING/CAMPFIRES PROHIBITED

COCONINO NATIONAL FOREST

Pursuant to 36 Code of Federal Regulations, Section 261.50 (a) and (b), the following acts are prohibited on the area, roads, and trails, described in this order within the Coconino National Forest until further notice.

- (1) Camping. 36 CFR 261.58 (e).
- (2) Building, maintaining, attending, or using a fire, campfire, or stove fire. 36 CFR 261.52 (a).

Campfire: means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes. Fire includes campfire.

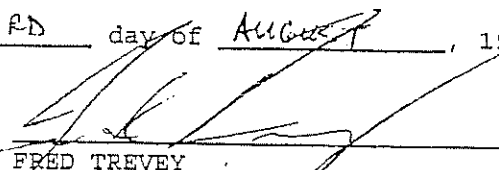
Stove fire: means a campfire built inside an enclosed stove or grill, or a portable brazier, including wood and charcoal fires.

Pursuant to 36 CFR, Section 261.50 (e), the following persons are exempt from this order:

- (1) Persons with a permit (authorization in writing by a forest officer) specifically authorizing the otherwise prohibited act or omission;
- (2) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty.
- (3) Persons with a pressurized liquid or gas stove.
- (4) Persons at Forest Service developed recreation sites, or areas posted by authorized Forest officers.

This Order affects Coconino National Forest System lands surrounding or near the City of Flagstaff Corporate boundary *(as shown on the attached Exhibit A); as well as the Mormon Lake Ranger District, specifically portions of the north shore of upper and lower Lake Mary located in Townships 19 and 20 North, Ranges 8 and 9 East, Sections 1, 5, 6, 8, 17, 18, 20, 21, 27, 34, 35, 36.

Done at Flagstaff, Arizona this 3RD day of August, 1995.


 FRED TREVEY
 Forest Supervisor
 Coconino National Forest

Violations of these prohibitions is punishable by a fine of not more than \$5000 for an individual, or \$10,000 for a person other than an individual, or imprisonment for not more than 6 months or both.

Legend




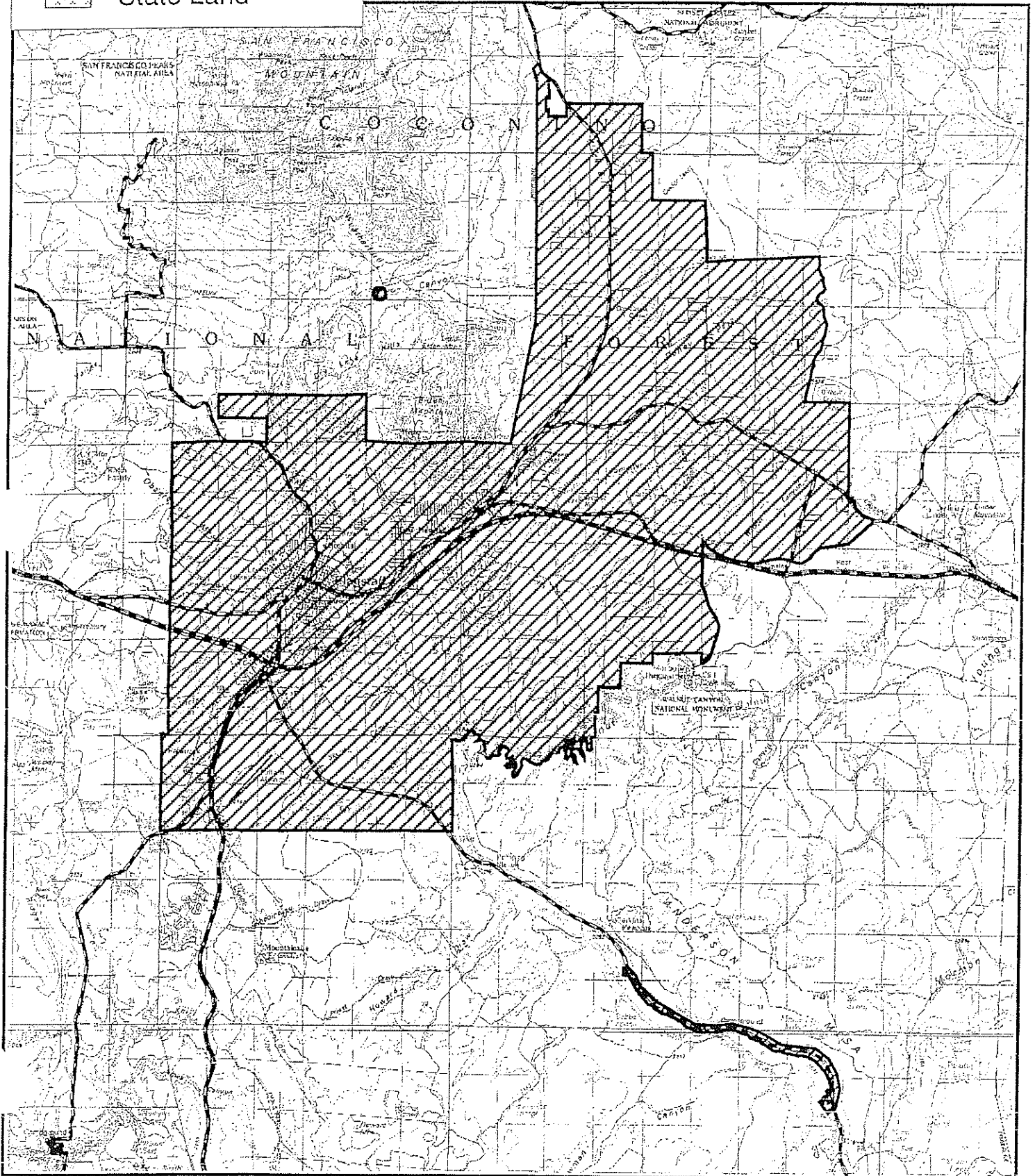
-  Restricted Area
-  Private Land
-  State Land

EXHIBIT A
ORDER NO. 04-112-R
COCONINO NATIONAL FOREST
PEAKS AND MORMON LAKE RANGER DISTRICTS

CAMPING / CAMPFIRES PROHIBITED
T 19 and 20 N, R 8 and 9 E



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