

ORDINANCE 21-06

**TO AMEND TITLE 2 (“ADMINISTRATION AND PERSONNEL”) OF THE
BLOOMINGTON MUNICIPAL CODE**

Re: Adding Chapter 2.87 (Protections for People Experiencing Homelessness)

- WHEREAS, on January 22, 2020, outreach workers counted 334 persons in Monroe County who were homeless, as reported in the Region 10 Point-in-Time Homeless Count for 2020; and
- WHEREAS, in January 2021, local street outreach workers from Beacon, Inc. conducted surveys by name with unsheltered individuals, identifying 39 individuals sleeping in or near Seminary Park and estimating that another 20 to 25 individuals were sleeping in camps elsewhere in Bloomington; and
- WHEREAS, according to members of the South Central Housing Network, the above referenced number of unsheltered persons is substantially greater than during past winters, possibly due to the COVID-19 pandemic and related economic hardship; and
- WHEREAS, research¹ from national experts suggests that the number of persons who experience homelessness at some point during the year is around three times greater than the number counted during an annual point-in-time count, such as the January 22, 2020 count; and
- WHEREAS, the estimated number of persons in Monroe County who experience homelessness during the course of a year may be around 1,000 persons; and
- WHEREAS, according to members of the South Central Housing Network, Bloomington and Monroe County experience, at times, a shortage of shelters that can accommodate all people in the community experiencing homelessness; and
- WHEREAS, according to members of the South Central Housing Network, Bloomington and Monroe County experience, at times, a shortage of transitional housing and permanent housing for those experiencing homelessness; and
- WHEREAS, persons experiencing homelessness may, at times, be ineligible for or prohibited from certain shelters, or otherwise feel uncomfortable going to certain emergency shelters; and
- WHEREAS, the United Nations Universal Declaration of Human Rights (1948), Article 25(1), states, “*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services;*” and
- WHEREAS, all persons experiencing homelessness should be entitled to protection from arbitrary and capricious treatment by local government;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA THAT:

SECTION 1. A new Chapter, Chapter 2.87, shall be added to the Bloomington Municipal Code. The new Chapter shall be entitled “Protections for People Experiencing Homelessness” and shall be inserted into the Table of Contents for the Title 2 and shall read as follows:

¹ Shinn, M., & Khadduri, J. (2020). *In the midst of plenty: Homelessness and what to do about it*. Chichester: Wiley Blackwell.

Sections:

2.87.010	Purpose and intent
2.87.020	Definitions
2.87.030	Protections in the event of displacement

Sec. 010. Purpose and intent

No person should suffer unnecessarily or be subject to unfair discrimination or arbitrary treatment based on their housing status. It is the intent of this Chapter to lessen the adverse effects and conditions caused by a lack of housing.

Sec. 020. Definitions

For purposes of this Chapter:

“Camp” means a place in an outdoor public park (excluding equipment, courts, sidewalks, paths, and performance venues during performance season) or other public space as designated in section 030(h) below, with temporary accommodations of tents or other structures in which homeless persons have been sleeping overnight.

“Emergency” means a situation when one or both of the following conditions exist:

- (1) A camp being used by homeless persons has accumulated food waste, human waste, or other litter to a degree that the Monroe County Public Health Department or other public health authority determines that the camp presents a public health hazard to the residents of the camp or the public that cannot adequately be redressed by less disruptive clean-up measures;
- (2) A failure to act could immediately lead to serious harm to public health or safety.

“Homeless” or “person experiencing homelessness” has the definition set forth at 24 CFR Sections 91.5 582.5, and 583.5.

“Permanent housing” has the definition set forth at 24 CFR Section 578.3.

“Transitional housing” has the definition set forth at 24 CFR Sections 91.5.

Sec. 030. Protections in the event of displacement

- (a) For purposes of subsections (a) through (g) of this section, the term “city” refers to all city departments, including but not limited to Parks and Recreation, Public Works, and the Bloomington Police Department. Before the city may displace a person experiencing homelessness from a camp, the city must give at least fifteen (15) days’ written notice to the person experiencing homelessness living in the camp, to the Region 10 Continuum of Care Board (known as the South Central Housing Network), and to the Bloomington Common Council. However, if the Mayor, the Mayor’s designee, or the Chief of Police makes a written determination that an emergency exists, the city may give as much notice as is reasonable under the circumstances. Such written determination shall be made available to the public online and communicated with the Bloomington Common Council and the Region 10 Continuum of Care Board. Posting of a conspicuous written notice near the camp will satisfy this notice requirement, but all reasonable efforts should be made to provide individualized verbal notice to the person(s) experiencing homelessness as well. The notice provided under this subsection shall include the date the city expects to displace the person(s) experiencing homelessness.
- (b) Upon issuing the notice described in subsection (a), the city will collaborate with the Region 10 Continuum of Care Board in order to work with relevant service providers, faith-based organizations, and/or volunteers to ensure that the persons to be displaced are offered available transitional housing or permanent housing, and any necessary wrap-around services for which they are eligible. Any transitional or permanent housing offered must be a Continuum of Care program approved by the Indiana Housing and Community Development Authority.

- (c) If there is sufficient available housing as described in subsection (b) for all persons to be displaced, the city may proceed with closing the camp after providing the notice required in subsection (a). The city may proceed in this manner even if any persons experiencing homelessness refuse the assistance offered.
- (d) If there is insufficient available housing as described in subsection (b) to meet the needs of all displaced persons experiencing homelessness in a camp scheduled to be closed by the city, the city must wait until there is sufficient available housing before it can close the camp. However, if the city makes a written determination under subsection (a) that an emergency exists, the city does not need to wait until there is sufficient available housing before it can close the camp.
- (e) If a fifteen-day notice period, pursuant to subsection (a), elapses and the city does not displace the persons experiencing homelessness from the camp, then the city must give a minimum of 48 hours' notice to the persons to be displaced, the Region 10 Continuum of Care Board and the Bloomington Common Council in the manner described in subsection (a) before proceeding with any displacement in subsequent days.
- (f) If a person experiencing homelessness is to be displaced from a camp, the city, through the department of public works or other city department, must, to the extent reasonable, maintain and catalogue their nonperishable personal items, including but not limited to, clothing, blankets, tents, medical supplies, identification documents, birth certificates, and other personal documents and effects, in a safe and secure place for a minimum of 60 days. After 60 days, if the city has made reasonable efforts to notify the displaced person, including by working in collaboration with the Region 10 Continuum of Care Board, the city may securely dispose of any unclaimed personal items. For purposes of this subsection, the obligations to maintain and catalogue personal items shall be limited to those items that may fit entirely within one 96-gallon container per displaced person.
- (g) The city may designate certain limited areas on public property where camps are allowed, and the requirements of BMC 2.87 shall apply only in those areas, provided that the designated areas are within one (1) mile of an organization that provides prepared meals at least five (5) days per week for people experiencing homelessness, allow adequate space for persons experiencing unsheltered homelessness, and include access to restrooms.

SECTION 2. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2021.

 JIM SIMS, President
 Bloomington Common Council

ATTEST:

 NICOLE BOLDEN, Clerk
 City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2021.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2021.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance is sponsored by Councilmember Flaherty, Councilmember Rosenbarger, and Councilmember Piedmont-Smith, and amends the Bloomington Municipal Code to add a new Chapter 2.87 entitled “Protections for People Experiencing Homelessness.” The new chapter includes procedures to be followed by the city before displacing individuals experiencing homelessness from certain public spaces. The procedures applicable to the city would include a notice requirement, collaboration with relevant service providers, a prohibition on displacing individuals if there is insufficient available housing, storage of personal property, and the ability to designate certain limited areas where these procedures would apply.

MEMORANDUM

To: Members of the Bloomington Common Council
From: Matt Flaherty, Isabel Piedmont-Smith, Kate Rosenbarger
Subject: Ordinance 21-06
Date: February 12, 2021

In recent months, there has been renewed attention in our community on people experiencing homelessness who are camping in public spaces. Ideally, every person in our community would have safe and accessible housing. Nobody thinks it is ideal for people to sleep in tents, especially during the winter. However, the reality is that some people temporarily lack housing and may be unable to go to emergency shelters. Ordinance 21-06 focuses on finding a short-term solution for these people by ensuring a legal place for them to sleep if they have no other options.

This ordinance proposes adding a new chapter, entitled “Protections for People Experiencing Homelessness,” to Title 2 of Bloomington Municipal Code. The ordinance addresses several areas of concern related to unhoused community members, as described below.

BACKGROUND

This ordinance is modeled after a 2016 ordinance passed with bipartisan support by the Indianapolis City-Council Council.¹ Over the past several months, we have developed the ordinance while in direct consultation with people experiencing homelessness, the Bloomington Homeless Coalition, area homelessness service providers, and city staff. The Region 10 Continuum of Care Board,² also known as the South Central Housing Network, considered a draft of the ordinance at a board meeting, voting to support the ordinance. A letter of support is expected soon, pending review of the final draft of the ordinance. We believe that people with lived experience of homelessness and the professionals working in homelessness services are best suited to inform the issues covered by Ordinance 21-06.

CONTENT OF ORDINANCE

First, the ordinance sets procedures the city must follow if it displaces people experiencing homelessness from a public park, as it did in the Seminary Park area in December 2020 and January 2021. More specifically, the ordinance specifies the following:

- a uniform approach to how the city provides notice prior to displacing any unhoused person from public parks, including communication with the Bloomington Common Council and the Region 10 Continuum of Care Board;
- the protection and storage of personal property of any displaced person with limits as described in section 2.87.030(f); and
- the need for transitional housing or permanent housing to be available and offered to unhoused persons prior to displacement.

¹ Title I, Chapter 231, Article V of Indianapolis City-County Code. https://library.municode.com/in/indianapolis_-_marion_county/codes/code_of_ordinances?nodeId=TITIORAD_CH231DEMEDE_ARTVPRHO

² This is the board sanctioned by the Indiana Housing and Community Development Authority for our region, representing area sheltering agencies that comply with IHEDA standards. <https://www.in.gov/ihcda/4147.htm>

Second, the ordinance addresses a simple, if challenging, question that the sponsors believe it is essential to answer. Specifically, when a person experiencing homelessness is unable to go to a shelter (e.g., if they have been prohibited or if a shelter is full), where are they legally allowed to spend the night? The longstanding de facto answer seems to be nowhere at all, even if in practice the government may at times look the other way while people sleep in parks or in the woods.

We believe that as a matter of human rights and dignity, unhoused residents need a designated area of public space where they are allowed to sleep if unable or unwilling to go to an emergency shelter. This is something other cities provide, and there are at least two possible approaches:

- One approach, which Indianapolis has taken, is to allow unhoused persons to legally sleep anywhere in public space, with some exceptions. Ordinance 21-06 takes a similar overarching approach, but further limits this space to public parks, with some exceptions.
- Another possible approach is to designate specific locations of public property where people experiencing homelessness are allowed to sleep. Section 2.87.030(g) would allow the city to designate such an area or areas, thus limiting where Chapter 2.87 would apply. Any designated space must have access to restrooms and be within one mile of an organization providing prepared meals for people experiencing homelessness.

LONGER-TERM SOLUTIONS

We also recognize the importance of working towards better long-term solutions to homelessness. We welcome the renewed focus in the community on implementing evidence-based solutions, such as housing first policies. Specifically, a Housing Insecurity group, headed by Tina Peterson from the Community Foundation of Bloomington & Monroe County and Efrat Feferman from the United Way of Monroe County, is leading community efforts to make homelessness rare, brief, and non-repeating. However, this group has not been tasked with the questions raised above, and the group leaders do not think the group is well suited to address them.

People experiencing homelessness are among the most vulnerable of our Bloomington neighbors. We need a whole-community approach to addressing all aspects of homelessness, including the tragic situation where someone has no bed in which to sleep for the night.

Code of Federal Regulations - Definitions.

Homeless - [§ 91.5](#), [§ 582.5](#), [§ 583.5](#)

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

Permanent housing - [§ 578.3](#)

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Transitional housing - [§ 91.5](#)

A project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living within 24 months, or a longer period approved by HUD. For purposes of the HOME program, there is no HUD-approved time period for moving to independent living.