

The Heart of Homelessness

CHAPTER 2

...What rights and responsibilities do the homeless have, what limitations are placed on the City of Woodstock, and what has the City done so far to address the issue?

You may think: *“People who are homeless do not pay property taxes like the rest of us and yet taxpayers are paying for efforts to provide assistance and manage inappropriate behavior like drinking, panhandling, fighting, lewd behavior, and saying or yelling inappropriate things to people who are walking or driving by. They are generally creating a public disturbance. They can’t just gather and sit or stand around our City streets and parks, creating an uninviting or threatening environment after we have invested so much into making our City an attractive community. That’s loitering and it’s all illegal.”*

Here are the facts: Homelessness is not illegal. In fact, the State of Illinois adopted a *Homeless Bill of Rights* on August 22nd, 2013 which states, *“No person's rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless. Such a person shall be granted the same rights and privileges as any other citizen of this State.”* Here are some of the rights of the homeless that are protected by the *Homeless Bill of Rights*:

- **The right to use and move freely in public spaces**, including but not limited to public sidewalks, public parks, public transportation, and public buildings, in the same manner as any other person and without discrimination on the basis of his or her housing status.
- **The right to equal treatment** by all state and municipal agencies, without discrimination on the basis of housing status.
- **The right to a reasonable expectation of privacy** in his or her personal property to the same extent as personal property in a permanent residence.
- **The right to emergency medical care** free from discrimination based on his or her housing status.

Homeless people are also entitled to the same privileges and protections enshrined in the U.S. Constitution. As citizens, they still are protected by such constitutional guarantees as the right to due process, First Amendment freedoms, freedom to travel and freedom from cruel and unusual punishment. Their civil rights must be a consideration in any efforts the community takes to address the challenges associated with the homeless.

Why can't we keep homeless people out of our City or move them on?

This question is not new. It has been posed and evaluated by units of local government multiple times over the years and, as a result, has been the subject of various court cases. In the end, many court decisions shape our understanding of the rights of people who are homeless, as well as define what local units of government can and cannot do when addressing issues surrounding the homeless population. For example, regardless of what we may hear, units of government do not have the authority to force people who are homeless to move out of a community, to force them to take a bus or train and leave the area, or to stand at entry ways to a community such as train stations and refuse them entry. Here are a few examples of cases limiting the regulation of loitering, freedom of movement and panhandling:

- People have a right to “be” or “exist” and loitering laws do not supersede that right; *City of Chicago v. Morales*, 527 U.S. 41 (1999)...*“the freedom to loiter for innocent purposes is part of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment. We have expressly identified this ‘right to remove from one place to another according to inclination’ as ‘an attribute of personal liberty’ protected by the Constitution....”*
- You cannot punish people for existing in a community by forcing them to leave; *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1563 (S.D. Fla. 1992)... *“As long as the homeless...do not have a single place where they can lawfully be, the ordinances...effectively punish them for something for which they may not be convicted under the eighth amendment--sleeping, eating and other innocent conduct. Accordingly, the court finds that defendant's conduct violates the eighth amendment ban against cruel and unusual punishment.”*
- People have a right to ask for money; *Norton v. City of Springfield*, 768 F.3d 713 (7th Cir. 2014) and *Norton v. City of Springfield* 806 F.3d 411 (7th Cir. 2015)...Rejecting Springfield’s anti-panhandling ordinance; finding that a prohibition on panhandling was a content based regulation of free speech.

So what can we do?

The bottom line is that everyone in the United States and the State of Illinois has certain rights, regardless of housing status. Everyone also has a civic *responsibility* to conduct themselves appropriately and in accordance with the law, regardless of age, gender, marital status, disability, housing status or any other designating factor. The challenging question of the ages, however, has been, ‘appropriate in whose eyes?’ and that question has been the subject of many discrimination cases. Just because individuals do not dress, appear or live how and where we think they should does not mean their behavior is inappropriate in a manner that can be controlled through government action.

It is a matter of finding the balance between protecting peoples’ rights while simultaneously holding people accountable for inappropriate behavior and illegal activity. First, it is important to acknowledge that not all people who are homeless conduct themselves inappropriately or engage in illegal activity. As in most social situations, a handful of people are responsible for 90% or more of the inappropriate or illegal activity which must be addressed by law enforcement. The vast majority of people who are homeless are law abiding individuals who act responsibly. Again, it is not illegal to be homeless.

It is also important to understand the distinction between inappropriate behavior and illegal activity. While the following behaviors may be considered inappropriate and undesirable by most, they are not illegal:

- Catcalling, profanity and yelling derogatory language or slurs at passersby; this is certainly disturbing, and in some instances frightening, but it is largely protected under Freedom of Speech, unless or until it crosses the line into threatening speech or behavior. It is also important to note that such activity occurs from both sides. While we are disturbed by individuals of the homeless population who yell inappropriate comments at passing cars,

we also experience occupants of passing cars yelling unprovoked comments at people who are homeless. It is inappropriate at all levels, but not illegal unless it crosses the line into assault or battery.

- Public drunkenness; while the consumption of alcohol in the public way is prohibited by local ordinance, it is not illegal to be inebriated in the public way. Exceptions center around activity associated with inebriation such as driving while intoxicated, blocking the public way by being passed out across a sidewalk or in the street, creating a public disturbance such as fighting or making excessive noise.
- Passive panhandling; standing at a street corner with a sign asking for assistance, placing a hat on the sidewalk as an invitation for a financial contribution, or engaging in a street performance with a sign that donations are being sought, are not illegal activities and recent case law has indicated this is very difficult behavior to regulate.
- Placing possessions on or around public benches and facilities; while perhaps unsightly, it is not illegal to place bags, coats, and personal property on public benches or facilities, unless the placement of such property blocks the public way.

Despite the above limitations on regulation, ***the City can and does prohibit certain behaviors in public spaces***, including:

- **Drinking in the public way**; local ordinances prohibit the consumption of alcohol upon or about any street, sidewalk, public thoroughfare or other public property (the public way) within the City limits as well as within parks, unless otherwise authorized by the City Council. Further, it is unlawful for any person to possess any alcoholic liquor not sealed in its original container in the public way, unless otherwise authorized.
- **Public urination and defecation**; local ordinances prohibit a person from urinating or defecating on the public way, or on any outdoor public property, or on any outdoor private property. The provision does not apply to appropriately authorized, maintained and enclosed portable toilet facilities.
- **Littering**; it is unlawful for any person to deposit garbage or other similar refuse in any street, alley or public way or upon any private property, unless such garbage or other similar refuse is placed in proper receptacles.
- **Blocking the public way**; it is unlawful for a person to create or maintain any obstruction of any street, alley, sidewalk or other public way, except as specifically authorized. Further, it is unlawful to erect or maintain any building or structure which encroaches upon any street, alley, sidewalk or public place.
- **Aggressive panhandling**; while a recent Supreme Court decision has made it more difficult to specifically regulate panhandling...or any specific speech based on its content...the law still does not permit any type of behavior that crosses the line from protected speech (such as passive panhandling) to speech that is accompanied by behavior that is more akin to assault or battery. Thus, prohibitions should still stand on what is often referred to as *Aggressive Panhandling* which includes speech that is *accompanied* by the touching of the solicited person without that person's consent or other types of threatening behavior; intentionally blocking the entrance to any vehicle or building; dangerously stepping into the main traveled portion of a city street or highway with the intention of soliciting a

donation from the driver of or passenger in an automobile without first obtaining a permit for such activity; making any statement, gesture or other communication that would cause a reasonable person to feel threatened, fearful or compelled; or cleaning the windows on a motor vehicle in traffic on a public street or on private property without permission from the owner or occupant of the vehicle. Additionally, disturbing the peace in the course of panhandling is also considered aggressive and unlawful.

However, in order to be fined or arrested for these illegal activities, Police Officers must have probable cause and charges must be made. That means:

- A Police Officer must witness the illegal activity and file charges on behalf of the City;
- A witness to or victim of the illegal activity must be willing to press charges and evidence they were a witness to or victim of the illegal activity; or
- A Police Report must have been filed following an incident of illegal activity and subsequent investigation provides the required evidence to forward charges.

The City's Police Department does *not* have the right to fine or arrest an individual for illegal activity based upon hearsay or because someone thinks an individual should be arrested or believes the behavior should be illegal when it is not.

Understanding the City has the responsibility through its professional Police Department to comply with all federal, state and local laws and standards, the City of Woodstock has worked with legal counsel and the McHenry County State Attorney's Office to identify and carefully craft defensible ordinances that find the balance between protecting peoples' rights and simultaneously holding people accountable for inappropriate behavior and illegal activity. Accordingly, ***the City has amended the Woodstock City Code by adding or amending the following ordinances:***

- Title 6, Chapter 2, Section 6.2.6 Regulating Extended Use of Parks and City Owned Facilities;
- Title 4, Chapter 9, Section 4.9.10 Prohibiting Outdoor Urination and Defecation;
- Title 6, Chapter 2, Section 6.2.6 Regulating Smoking and Drinking in Parks and City Owned Facilities; and
- Title 6, Chapter 2, Section 6.2.C. Creating New Rules Regarding Use of and Prohibited Activities at the Train Depot.

The City Code is available for reference by going to the City's website at www.woodstockil.gov, opening the 'Your Government' tab at the top of the banner and then scrolling down and clicking on the 'City Code.'

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