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| TRANSMITTAL MEMORANDUM |
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TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Acting City Manager

DATE: August 25, 2022

RE: **Report from Ketchikan Police Department on Response to Disorderly Conduct and Open Container Offenses**

Attached for City Council review is a transmittal memorandum prepared by Police Chief Jeffrey Walls concerning the Ketchikan Police Department's response to disorderly conduct and open container offences committed by homeless individuals. This report was prepared at the request of Councilmember Gass, who requested such information as a future agenda item.

Chief Walls will attend the City Council meeting of September 1, 2022, to address any questions and/or concerns that City Council members may have.



KETCHIKAN POLICE DEPARTMENT

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TO: Lacey Simpson, Acting City Manager

FROM: Jeffrey Walls, Chief of Police 

DATE: August 22, 2022

RE: **Homeless Issues Relative to Disorderly Conduct and Open Containers**

The purpose of this memo is to address and educate the City Council on concerns discussed during the August 18, 2022 City Council meeting, regarding the homeless and police response. It will specifically discuss the enforcement of the municipal ordinance on Disorderly Conduct – Disturbing the Peace.

Homelessness is often wrongly seen as an issue that law enforcement should be tasked with handling. Unfortunately, this is not the case as law enforcement only has two tools to deal with the issue of the homelessness. Law enforcement can either arrest or temporarily make the homeless move in order for areas to be cleaned. Criminalizing homelessness is unconstitutional and only makes the problem worse for the City. All individuals have the same rights and if anyone decides they would like to live on the street, they can do so without violating any laws. What we see with most of our homeless is very typical of most cities. We have homeless that have had a bad turn of luck and are working to get back on their feet and then there are those homeless who have resistance to assistance. The latter tends to be our problem homeless and most have substance abuse, mental health problems or a combination of both. They take up a majority of our calls and most have medical issues related to their addictions or mental illness. These individuals when they do commit crimes punishable by arrest are either refused due to their medical condition or released in less than 24 hours. In order to address the homeless problems we need a whole community approach. We will not arrest our way out of this situation.

For the month of July, the City handled 22 calls for service associated with First City Homeless Shelter. Those calls included the following complaints: 7 medical complaints, 4 assistance rendered / welfare checks, 4 disorderly conduct complaints, 4 suspicious activity may involve drug use, 2 trespassing complaints, and 1 civil complaint. With only 7 of the calls being handled by EMS and Fire,

the Police Department handles the bulk of the complaints involving our homeless. For the month of July we arrested 10 individuals for Disorderly Conduct – Disturbing the Peace complaints. Below is the municipal code for Disorderly Conduct – Disturbing the Peace, which includes open containers. Also included for understanding is the possible fine and punishment for this offense. Note that they are released within 24hrs.

Disorderly Conduct -Disturbing the Peace

9.04.010 Certain acts declared misdemeanors. [Q](#) [SHARE](#)

(a) *A person who does any of the following is guilty of a misdemeanor :*

(1) In a public place repeatedly or continuously shouts, blows a horn, plays a musical or recording or amplifying instrument, or otherwise generates loud noises intending to disturb or acting with reckless disregard for the peace and privacy of others, or, in a private place, engages in the same conduct with the same intent or reckless disregard, having been informed by another that the conduct is disturbing the peace and privacy of others not in the same place;

(2) In a public place when a criminal offense has occurred, refuses to comply with a lawful order of the police to disperse, or in a private place refuses to comply with an order of the police to leave a premises in which he has neither a right of occupancy nor the express invitation to remain of the person having the right of possession;

(3) In a public or private place challenges another to fight, or engages in fighting other than in self-defense; or

(4) In a public or private place acts in a violent or tumultuous manner toward another whereby a person of common intelligence would reasonably be put in fear of safety of his life, limb, or health;

(5) In a public or private place acts in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;

(6) In a public or private place by acts of violence interferes with another's pursuit of a lawful occupation;

(7) In a public or private place addresses abusive language or threats to any person present which creates a clear and present danger of violence;

(8) *In a public place assembles together with two or more persons with intent to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out such unlawful purpose;*

(9) (A) *Knowingly consumes any alcoholic beverage, or knowingly possesses an open container of any alcoholic beverage, in any public carrier, or in any business establishment offering goods or services to the public, or in any other public place,*

(B) *Subsection (a)(9)(A) of this section shall not apply to the premises of a business establishment licensed to dispense alcoholic beverages for consumption on its premises,*

(C) *As used in this section "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption;*

(10) *Damages, befouls, or disturbs public property or property of another so as to create an unhealthy or physically offensive condition;*

(11) *In a public place willfully exposes his sexual organs or private parts; or in a private place willfully exposes his sexual organs or private parts where such exposure can be seen from a public or private place and is annoying or offensive to any other person or persons;*

(12) *In a public or private place unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, or otherwise assaults or commits assault.*

(b) *In a prosecution under subsection (a)(1) of this section:*

(1) *If the loud noise constitutes speech, the content of speech or evidence of specific words used by the defendant is admissible in evidence against him only as permitted by court rule;*

(2) *In this section a noise is a "loud noise" if, considering the nature and purpose of the defendant's **conduct** and the circumstances known to the defendant, including the nature of the location and the time of day or night, the **conduct** involves a gross deviation from the standard of **conduct** that a reasonable person would follow in the same situation.*

"Loud noise" also includes noises which are loud enough to inhibit the ability of the average person in the same or adjacent place to speak freely. Noise does not include speech to the extent that the speech is constitutionally protected.

(c) In this section a "public place" is a place where the public is permitted to assemble, enter or pass through, whether publicly or privately maintained, including but not limited to places of accommodation, transportation, business and entertainment, or any other place which is not a private place. (Ord. 1404 § 1, 1998; Ord. 1073 § 1, 1986; Ord. 778 § 1, 1973)

9.04.030 Penalty. !J SHARE

Any person who violates any provision of this chapter, or performs any unlawful act as defined in this chapter, or fails to perform any act required by this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$1,500 or imprisonment for not more than 24 hours, or both such fine and imprisonment. (Ord. 1824 § 1, 2016; Ord. 1528 § 1, 2005; Ord. 839 § 1, 1975; Ord. 778 § 1, 1973)

Unfortunately, what is too often missed is the amount of work that is being done by law enforcement to address the homeless problem through alternative responses. The Ketchikan Police Department does more for the homeless than any other city organization. We engage the homeless 24 hours a day, 7 days a week. We provide transportation, food and social work on a regular basis. Right now we have homeless individuals that no shelter, and no hospital will take because of prior behavior. In the same breath, the jails will not incarcerate them on misdemeanor offenses because of their physical or mental condition. Most of our homeless function with a much higher level of alcohol in their system making them an instant refusal and requiring a medical release from the hospital. That being said, we are unable to sit an officer down with a subject at the hospital until their alcohol levels lower enough to be accepted in the jail. For a misdemeanor offense like disorderly conduct – disturbing the peace, they would be released before we would receive medical clearance at the hospital for them.

In particular, we have been dealing with a homeless female who is an alcoholic in need of hip replacement but refuses to follow the rules at the shelters or stop drinking in order to get a new hip. The hospital refuses to take her because her only need is a hip replacement. She gets around by having others push her in a wheel chair. She will find places out of sight and drink until she is in a drunken stupor and then begins screaming for help. We are called; we move her and remove any alcohol she has on her person. The Department of Corrections will not take her because of her medical condition. With no facilities available or willing to take her we give her as much assistance as we can until she is sober enough to go her own. This turns into a revolving door for us and is very frustrating to everyone involved.

We need a whole community approach to resolve our homeless issues. I would suggest looking at the United States Interagency Council on Homelessness (USICH.gov), and Alaskan Housing Finance Corporation (AHFC.US) for alternative ideas.

We can learn cautionary tales from cities that have made efforts to address their homeless population with tax dollars. It has become a lucrative business within large cities bringing in millions of dollars but providing very little for the people it was intended to help, along with exacerbating the problem by increasing the number of homeless. San Francisco doubled their spending on homeless and have more permanent supportive housing units per capita than any other city but have seen a 13% increase in homeless when the national numbers were decreasing. Housing alone will not address this problem; ancillary services are needed for substance abuse and mental healthcare.

Respectfully Submitted,

Chief Jeffrey H. Walls
Ketchikan Police Department

CITY ATTORNEY'S FILE

Acting City Manager Simpson supplied the Council with a copy of the report of significant activities for the office of the City Attorney for the Month of July 2022

FUTURE AGENDA ITEMS

Councilmember Gass said he would like staff to convene the Cooperative Relations Committee with the Ketchikan Gateway Borough, to partner with them to turn the lot on Bawden Street into a basketball court. He stated there is enough room for a basketball court and a few parking spaces. He informed he would like a report from the Police Chief on what our enforcement policy is regarding open container and disorderly conduct laws. Lastly, he asked for an ordinance to reduce Mayor and Council pay by \$100 for regular and special meetings.

Mayor Kiffer asked for a show of hands to ask staff for the report from the Police Chief and an ordinance to reduce Mayor and Council compensation, and at least four hands were shown.

Councilmember Bradberry questioned if we could create a non-profit trash bin fee that would offer a slight discount for non-profits. She said she would like to see an analysis, and if it is feasible, to offer that. Secondly, she would like to establish an email communication policy in regards to communication amongst the Council and staff to avoid the potential breach of the Open Meetings Act.

Clerk Stanker said she would work with Councilmember Bradberry to review and create an email policy.

Councilmember Mahtani said he would like to have the First City Homeless Shelter staff present what policies and procedures they have in place to help control the issues occurring outside of their building.

Acting City Manager Simpson said she has met with two of the First City Homeless Shelter (FCHS) board members, and said with the Council's permission, she would like representatives of FCHS to attend the next City Council meeting to verbally give an update and answer questions.

Councilmember Kistler said she would like a discussion relative to simplifying the issues between going from one tax rate to another.

Councilmember Gage said several years ago there was discussion on building a parking garage across the street from City Hall up to Edmonds Street, and would like to reconsider doing that, with the possibility of finding funding for the project.

MAYOR AND COUNCIL COMMENTS

Councilmember Mahtani thanked staff. He felt they had a good discussion tonight and concluded all of the issues went well.

Councilmember Gass stated he was really impressed with the work from the Fire Department for getting that funding. He said regarding the homeless shelter, there is some validity to the issues the Council has heard about. He said the Council needs to start looking at some options or revisit the funding policy the City has with that organization. He informed he has heard a lot of comments regarding the facility being open 24-hours and maybe the hours need to be reduced going forward. He continued, he drives past the shelter driving to and from work every day and it is total anarchy, and the Council is going to have to make some tough decisions.