



City of Brockton

Office of the Mayor

ROBERT F. SULLIVAN, ESQ.

Mayor

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CITY CLERK'S OFFICE
BROCKTON, MA

To the members of City Council,

With the power granted to the Mayor under Part I, Subpart A, Section 55 of the City Ordinances, I hereby veto Council Order #437: *An Ordinance Prohibiting Loitering in Public Places* and Council Order #436: *An Ordinance Prohibiting Camping on Public Property*.

While I commend the efforts of the City Council to find solutions to the problems related to the unhoused population, these Ordinances do not provide any solution to these problems. Rather, these Ordinances violate the constitutional rights of our residents to occupy public spaces throughout our City. I cannot support any ordinance that seeks to criminalize homelessness.

I ask that you consider the following amendments to Council Order #436: *An Ordinance Prohibiting Camping on Public Property*, so as not to harm the majority of our unhoused who are trying their best to survive.

- **Remove Section 3. *Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited* from the text of this Ordinance.** This section remains legally unclear, and unenforceable for areas such as parks, where it is reasonable to assume someone may sleep.
- **Specify the Enforcement Agency & removal process:** This Ordinance provides no clarity as to who is responsible for enforcement, blurs the line between Social Services and Ordinance enforcement, and provides no guidance to any department on best practices when it comes to removal of structures and campsites.
- **Define vacancy:** In Section 5.A(d), the Ordinance says that *All personal property must be collected and removed from the campsite by the individual. The City is not responsible for any property left after a campsite is vacated.* This is lacking an understanding of when a campsite is determined to be vacated. For this ordinance to be effective and to prevent legal action, we need to identify when a campsite is determined to be vacated.
- **Posted Notice:** This ordinance fails to clarify if the written letter distributed for 24-hour notice is considered the same as posted signage. For this Ordinance to move forward, we must define properly what constitutes posted notice, and how that differs from signage.
- **Remove All Fines:** In Section 8, the penalty for violations after the 1st violation is a fine of two hundred dollars (\$200.00) per violation. This is a punitive measure that is not grounded in the reality of the unhoused. Any sanctions given as a violation of this Ordinance must not be criminal, as any criminal charge can drastically affect one's access to housing. Fining those who are in violation of this Ordinance fails to consider the cost

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the City will accrue in trying to enforce compliance, and overworks our departments with providing a penalty we know will not be paid. For this reason, I recommend removing all fines, and moving away from criminal or punitive action against those in violation of this Ordinance.

- **Time of No Shelter:** Unlike the majority of other Ordinances across the Commonwealth, including Boston's Mass & Cass Ordinance, the City of Brockton has failed to consider that for much of the year, shelters are often over capacity and unable to take in additional people. This Ordinance must include language that prohibits unjust enforcement of this Ordinance when services are unable to be provided.

Regarding Council Order #437: *An Ordinance Prohibiting Loitering in Public Places*, the courts have already determined that public citizens have the right to occupy public spaces such as buildings, streets, sidewalks, bridges, alleys, parks, or plazas without fear of punitive action. Freedom to loiter for innocent purposes is protected by the Fourteenth Amendment. *See e.g., City of Chicago v. Morales*, 527 U.S. 41 (1999); *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965); *Commonwealth v. Carpenter*, 325 Mass. 519 (1950); *Commonwealth v. Williams*, 395 Mass. 302 (1985). A prohibition of such loitering may also violate the First Amendment's protection of freedom of assembly. *See Coates v. City of Cincinnati*, 402 U.S. 611 (1971). Additionally, although not found unconstitutional, the Massachusetts Court of Appeals held that the mere violation of the Springfield loitering ordinance was insufficient to justify a search conducted by the Springfield police officers. *Commonwealth v. Pierre*, 53 Mass.App.Ct. 215 (2001).

Council Order #437: *An Ordinance Prohibiting Loitering in Public Places* provides no protection to the City or its enforcement agencies from claims against them, and further provides no real enforcement process or guidelines for enforcement to an appropriate agency. Additionally, this Ordinance seems to have been created with the sole purpose of targeting the unhoused population, who have nowhere to go to get off the streets, and institutes a fine that the unhoused have no way of paying.

As the Mayor of all citizens of Brockton, I cannot support these measures. During my tenure as Mayor, I have long said that I am the Mayor of all people of Brockton. My team has spent countless hours working with local law enforcement, nonprofit organizations, business owners, and city departments to try to find the most effective and humane way to mitigate the public health and safety concerns related to homelessness. These Ordinances do not provide that, and groups the majority of our unhoused into the same population as the few who cause disturbances in our community. I urge you to amend Council Order #436: *An Ordinance Prohibiting Camping on Public Property* to put humanity at the forefront, and provide common sense policy changes to this good-natured effort and to uphold the veto of Council Order #437: *An Ordinance Prohibiting Loitering in Public Places*, as these sanctions lack logic, follow through, or proper

enforcement measures to supplement the sentiment it creates. I urge you to think about the ramifications that these Ordinances *will* have, rather than the relief they *could* have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. F. Sullivan', followed by a long, sweeping horizontal line that extends to the right.

Robert F. Sullivan, Esq.

Mayor

City of Brockton