



698 PACIFIC WAY • P. O. Box 2510 • GEARHART, OREGON 97138 • (503) 738-5501

TO: HONORABLE MAYOR COCKRUM AND COUNCIL MEMBERS

FROM: CHIEF OF POLICE

SUBJECT: VIOLATION OF OATH OF OFFICE


On August 4, 2021, at the Gearhart Council meeting, the council voted 3-2 to make the Fire Chief position a non-elected officer which technically amends section 11 of the city charter. This action will cause violation of section 44 and thus causing the violation of Oath of Office.

It is unfortunate that the City Attorney was unable to articulate to the council options for action concerning this issue before the vote. However, the City Attorney clearly pointed out that the Charter trumps the simple rule that was being used to remove citizen voters from the City Charter amendment process.

Hopefully, the action taken by the three (3) council members was just mere negligence and will be corrected at the September 1, 2021, council meeting by rescinding the council's prior amendment action. Rescinding the amendment does not wipe it away nor will it correct the harm that has been done; but, it will discontinue any further harm going forward. It would be prudent that the city council take no action concerning the Fire Chief position using the new amendment before the next council meeting.

Mere negligence of one's action is one thing and is probably common in small city council governments. Intentionally or knowingly violating an Oath of Office can be viewed as Official Misconduct, which is a matter for another government agency to review.


Jeffrey J. Bowman
Chief of Police

 COPY

OATH OF OFFICE

STATE OF OREGON

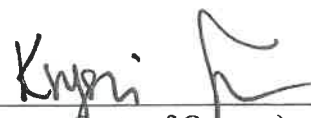
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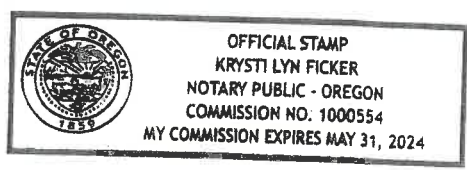
County of Clatsop

I, Paulina Cockrum, do solemnly swear that I will support the Constitution of the United States of America, and the Constitution and laws of the State of Oregon, and that I will faithfully and honorably conduct myself as Mayor, for the City of Gearhart, to which I have been elected, to the best of my ability so help me God.

x 
Paulina Cockrum

Subscribed and sworn to before me this 2nd day of Dec.2020


(Notary- State of Oregon)
My Commission Expires: 05-31-24



 COPY

OATH OF OFFICE

STATE OF OREGON

ss.

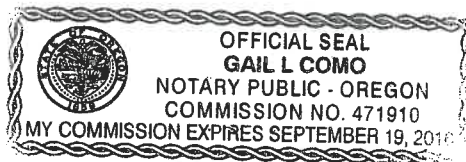
County of Clatsop

I, KERRY SMITH, do solemnly swear that I will support the Constitution of the United States of America, and the Constitution and laws of the State of Oregon, and that I will faithfully and honorably conduct myself in the office of Council Position 1, for the City of Gearhart, to which I have been elected, to the best of my ability so help me God.


KERRY SMITH

Subscribed and sworn to before me this 3rd
day of December, 2014.


(Notary- State of Oregon)
My Commission Expires: Sept. 19, 2016



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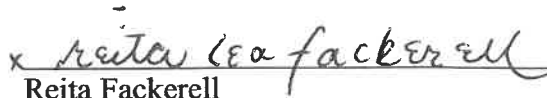
OATH OF OFFICE

STATE OF OREGON

ss.

County of Clatsop

I, Reita Fackerell, do solemnly swear that I will support the Constitution of the United States of America, and the Constitution and laws of the State of Oregon, and that I will faithfully and honorably conduct myself in Position 2, for the City of Gearhart, to which I have been elected, to the best of my ability so help me God.


Reita Fackerell

Subscribed and sworn to before me this 2nd
day of Dec.2020


(Notary- State of Oregon)
My Commission Expires: 05-31-2024



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OATH OF OFFICE

STATE OF OREGON

ss.

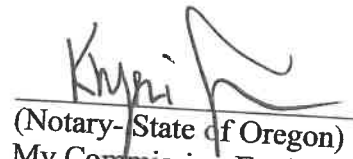
County of Clatsop

I, BRENT WARREN, do solemnly swear that I will support the Constitution of the United States of America, and the Constitution and laws of the State of Oregon, and that I will faithfully and honorably conduct myself in Position 3, for the City of Gearhart, to which I have been elected, to the best of my ability so help me God.

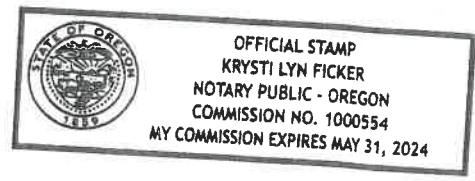


(print name) BRENT WARREN

Subscribed and sworn to before me this 2nd day of Dec. 2020


(Notary - State of Oregon)

My Commission Expires: 05-31-24



 COPY

OATH OF OFFICE

STATE OF OREGON

ss.

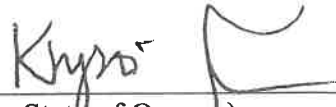
County of Clatsop

I, Dan Jesse, do solemnly swear that I will support the Constitution of the United States of America, and the Constitution and laws of the State of Oregon, and that I will faithfully and honorably conduct myself in Position 4, for the City of Gearhart, to which I have been elected, to the best of my ability so help me God.

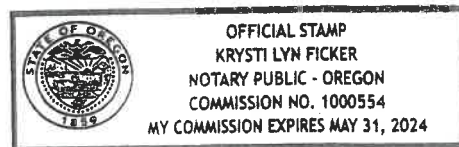


Dan Jesse

Subscribed and sworn to before me this 2nd
day of Dec.2020



(Notary- State of Oregon)
My Commission Expires: 5-31-2024



**GEARHART, OREGON
CHARTER TABLE OF CONTENTS**

Section

Chapter I. Name and Boundaries

- 1 Title of enactment
- 2 Name of city
- 3 Boundaries

Chapter II. Powers

- 4 Powers of the city
- 5 Construction of charter

Chapter III. Form of Government

- 6 Where powers vested
- 7 Council
- 8 Council members
- 9 Mayor
- 10 Officers
- 11 Non-elected officers
- 12 Salaries
- 13 Qualifications of officers

Chapter IV. Council

- 14 Meetings
- 15 Quorum
- 16 Record of proceedings
- 17 Proceedings to be public
- 18 Mayor's function at council meetings
- 19 President of the council
- 20 Vote required

Chapter V. Powers and Duties of Officers

- 21 Mayor
- 22 Municipal judge
- 23 Treasurer

Gearhart - Charter

Chapter VI. Elections

- 24 Regulation of elections
- 25 Tie votes
- 26 Commencement of terms of office
- 27 Oath of office
- 28 Nominations

Chapter VII. Vacancies in Office

- 29 What creates vacancy
- 30 Filling vacancies

Chapter VIII. Ordinances

- 31 Enacting clause
- 32 Mode of enactment
- 33 When ordinances take effect
- 34 Referendum

Chapter IX. Public Improvement

- 35 Condemnation
- 36 Improvements
- 37 Special assessments
- 38 Contracts

Chapter X. Miscellaneous Provisions

- 39 Utility funds
- 40 Debt limits
- 41 Existing ordinances continued
- 42 Repeal of previously enacted provisions
- 43 Time of effect of charter
- 44 Procedure for amendment

CHARTER

To provide for the government of the City of Gearhart, Oregon, Clatsop County, Oregon; and to repeal all charter provisions of the City enacted prior to the time that this charter takes effect.

Be it enacted by the people of the City of Gearhart, Clatsop County, Oregon:

CHAPTER I. NAME AND BOUNDARIES

Section 1. Title of Enactment.

This enactment may be referred to as the City of Gearhart Charter of 1987.

Section 2. Name of City.

The municipality of the City of Gearhart, Clatsop County, Oregon will continue to be a municipal corporation with the name "City of Gearhart."

Section 3. Boundaries.

The City will include all territory encompassed by its boundaries as they now exist or hereafter are modified by voters, by the Council, or any other agency with legal power to modify them. The Treasurer will keep in his/her office at the City Hall at least two (2) copies of this charter in each of which will maintain an accurate, up-to-date description of the boundaries. The copies and description will be available for public inspection at any time during regular office hours of the Treasurer.

CHAPTER II. POWERS

Section 4. Powers of the City.

The City will have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this charter

specifically enumerated each of those powers, including the power and authority to purchase, or acquire by condemnation or otherwise, or to lease, for such term as the Council may find appropriate, which need not be limited to five (5) years, such property, real and personal, as may be needed for public use; in purchasing property, to enter into lease-purchase agreements or other contracts of purchase which may extend for no more than a five (5) year period; to obtain options; and to mortgage for the term of the purchase as security for the purchase price the property being purchased. In exercising this power and authority, only the payments to be made during the year in which the purchase, condemnation, lease, lease purchase, option, or purchase price mortgage is entered into shall be considered for the purposes of applying the debt limitation thereto.

Section 5. Construction of Charter.

In this Charter no mention of a particular power will be construed to be exclusive or to restrict the scope of powers which the City would have if the particular power were not mentioned. The Charter will be liberally construed to the end that the City may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to State laws and to the municipal home rule provisions of the state constitution. All powers are continuing powers.

CHAPTER III. FORM OF GOVERNMENT

Section 6. Where Powers Vested.

Except as this charter provides otherwise, all powers of the City shall be vested in the Council.

Section 7. Council.

The Council will be composed of a mayor and four (4) Council members, elected in the City at large and by position number. Each position will bear a number running from one (No. 1) through four (No. 4), and any candidate for Council will, starting with his/her nomination petition, designate the number of the Council seat to which he/she seeks election; further, one (1) candidate may run for only one position at an election.

The Council members whose terms of office expire with the end of 1986 will be assigned seat numbers 1 and 3; the Council members whose terms of office expire the end of 1988 will be assigned seat numbers 2 and 4. Within the scope of the preceding provision, the Council will forthwith determine by lot the numbers to be assigned to the elected Council members, at the first meeting of December immediately following the election.

Section 8. Council Members.

The term of office of each Council member in office when this charter is adopted will continue for the term for which each was elected. At each subsequent biennial general election the number of Council members to be elected to fill vacancies pursuant to Section 30 of this charter will be elected.

Section 9. Mayor.

At the biennial general election held in 1988 and every four (4) years thereafter, a mayor shall be elected for a term of four (4) years. The term of office of the mayor incumbent at the time this charter is adopted will continue until the first regular Council meeting in December 1988.

Section 10. Officers.

The officers of the City are a mayor, four (4) council persons, auditor, treasurer, city attorney, municipal judge and police chief.

Section 11. Non-Elected Officers.

Non-elected officers will be appointed and may be removed by the mayor with the consent of the Council at any time for cause. The Council may combine any two (2) or more appointive offices. The Council may designate any appointive officer to supervise any other appointive officer except the municipal judge in the exercise of his/her judicial functions.

Section 12. Salaries.

The compensation for the services of each non-elected officer and employee will be the amount affixed by the Council.

Section 13. Qualifications of Officers.

No person will be eligible for an elective office of the City unless at the time of election this person is a qualified elector within the meaning of the State constitution and had resided in the City during the twelve (12) months immediately preceding the election. The Council will be final judge of the qualifications and election of its own members. Unless waived by a majority vote of the entire Council, member of any committee, board, or commission will be a resident of the City.

CHAPTER IV. COUNCIL**Section 14. Meetings.**

The Council will hold a regular meeting at least once each month in the City at a time and a place which it designates. It will adopt rules for the government of its members and proceedings. The Mayor upon his own motion may or at the request of two (2) members of the council will, by giving notice thereof to all members of the council then in the City, call a special meeting of the council for a time not earlier than forty-eight (48) hours after the notice is given. Special emergency meetings of the Council may also be held at any time by the common consent of all members of the Council.

Section 15. Quorum.

A majority of the members of the council including the mayor will constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in a manner proved by ordinance.

Section 16. Record of Proceedings.

The council will cause a record of its proceedings to be kept.

Section 17. Proceedings to be Public.

No action of the Council will have legal effect unless the motion for the action and the vote by which it is disposed of take place at proceedings open to the Public.

Section 18. Mayor's Function at Council Meetings.

The Mayor will be chairman of the Council and preside over its deliberations. He/she will cast a vote on all questions before the City Council. He/she will have authority to preserve order, enforce the rules of the council and determine the order of business under the rules of the Council.
(Amended General Election 11/3/92 - Measure 56)

Section 19. President of the Council.

At its first meeting after this charter takes effect and thereafter at its first meeting of each odd-numbered year, the Council will elect a President of the Council from its membership. In the mayor's absence from a Council meeting, the President of the Council will preside over it. Whenever

the mayor is unable to perform the functions of his/her office, the President of the council will act as mayor.

Section 20. Vote Required.

Except as this charter otherwise provides, the concurrence of a majority of a quorum present at/and voting at a Council meeting will be necessary to decide any question before the Council.

CHAPTER V. POWERS AND DUTIES OF OFFICERS

Section 21. Mayor.

The mayor will appoint the committees provided by the rules of the Council. He/She will sign all records of proceedings approved by the Council and counter sign all orders on the treasury. He/She will have no veto power and will sign all ordinances passed by the Council within three (3) days after their passage. After the Council approves a bond of a City officer or a bond for license, contract, or proposal, the mayor will endorse the bond.

Section 22. Municipal Judge.

The municipal judge, whether another City officer, a state court, or another appropriate person, will be the judicial officer of the City; and the functions of the municipal judge and the municipal court may be fulfilled by a state court when so appointed and designated by the Council. He will hold, within Clatsop County, Oregon, a court known as municipal court for the City of Gearhart, Clatsop County, Oregon. The court will be open for the transaction of judicial business at times and at such places specified by the Council. All area within the City will be within the territorial jurisdiction of the court. The municipal court will exercise original and exclusive jurisdiction of all offenses defined and made punishable by ordinances of the City and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by ordinances of the City. The court will have authority to issue process for the arrest of any person accused of an offense against the ordinances of the City, to commit any such person to jail or admit him to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause before him to compel obedience to such subpoenas, to issue any process necessary to carry into effect the judgements of the court, and to punish witnesses and others for contempt of court. When not governed by ordinances of this charter, all proceedings in the municipal court for the violation of a City ordinance will be governed by the applicable general laws of the state governing justices of the peace and justice courts, or by the general laws of the state governing the state court designated or appointed by the Council.

Section 23. Treasurer.

The treasurer will serve ex officio as secretary to the Council, attend all its meetings unless excused therefrom by the mayor, keep an accurate record of its proceedings, and sign all orders on the treasury, along with the mayor or, in the absence of the mayor, the council president. In the treasurer's absence from a Council meeting, the mayor will appoint a clerk of the Council pro tem who, while acting in the capacity, will have all the authority and duties of the treasurer.

CHAPTER VI. ELECTIONS**Section 24. Regulation of Elections.**

Except as this charter provides otherwise and as the Council provides otherwise by ordinances relating to elections, the general laws of the state will apply to the conduct of all City elections, recounts of the returns therefrom, and contests thereof.

Section 25. Tie Votes.

In the event of a tie vote for candidates for an elective office, the successful candidate will be determined by a public drawing of lots in the manner prescribed by the Council.

Section 26. Commencement of Terms of Office.

The term of office of a person elected at a regular City election will commence the first Council meeting of December immediately following the election.

Section 27. Oath of Office.

Before entering upon the duties of his/her office, each officer will take an oath affirming that he/she will support the constitution and laws of the United States and of Oregon and that he/she will faithfully perform the duties of his/her office.

Section 28. Nominations.

A qualified elector who has resided in the City during the 12 months immediately preceding an election may be nominated for an elective City office to be filled at the election. The nomination will be by a petition that specified the office sought and will be in a form prescribed by the Council. The petition will be signed by the number of citizens according to State law. No elector will sign more than one

petition for each office to be filled at the election. If he/she does so, his/her signature will be valid only on the first sufficient petition filed for the office. The signatures to a nomination petition need not all be appended to one (1) paper, but to each separate paper of the petition will be attached an affidavit of the circulator thereof, indicating the number of signers of the paper and stating that each signature appended thereto was made in his/her presence and is the genuine signature of the person whose name it purports to be. Opposite each signature will be stated the signer's place of residence, identified by its street number or other sufficient designation. All nomination papers comprising a petition will be assembled and filed with the recorder as one instrument not earlier than 120 nor 90 days before the election or as required by state and county laws or regulations. The treasurer will make a record of the exact time at which each petition is filed. If the petition is insufficient in any other particular, the treasurer will return it immediately to the person who filed it certifying in writing wherein the petition is insufficient. The deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed, within the regular time for filing nomination petitions. The treasurer will notify an eligible person of his/her nomination, and that person will file with the recorder his/her written acceptance of nomination, in such form as the Council may require, within five days of notification or nomination. Upon receipt of the acceptance of nomination, the treasurer will cause the nominee's name to be printed on the ballots. The petition of nomination for a successful candidate at an election will be preserved in the office of the treasurer until the term of office for which the candidate is elected expires.

CHAPTER VII. VACANCIES IN OFFICE

Section 29. What Creates Vacancy.

An office will be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony, other offense pertaining to his/her office, or unlawful destruction of public records, resignation, recall from office; removal of residency from the City; or ceasing to possess the qualifications for the office; upon the failure of the person elected or appointed to the office to qualify therefore within ten (10) days after the time for his/her term of office to commence; or in the case of a mayor or Council member, upon his/her absence from the City for 30 days without the consent of the Council or upon his/her absence from the City for thirty (30) days without consent of the Council or upon his/her absence from meetings of the Council for sixty (60) days without like consent, and upon a declaration by the Council of the vacancy.

Section 30. Filling Vacancies.

Vacant elective city offices shall be filled by appointment by a majority vote of the remaining members of the Council. The appointee's term of office begins immediately on appointment and continues through the unexpired term of his or her predecessor.

CHAPTER VIII. ORDINANCES**Section 31. Enacting Clauses.**

The enacting clause of all ordinances hereafter enacted will be, "The City of Gearhart ordains as follows:".

Section 32. Mode of Enactment.

(1) Except as the second and third paragraphs of this section provide to the contrary, every ordinance of the Council will, before being put upon its final passage, be read fully and distinctly in open Council Meeting on two (2) different days.

(2) Except as the third paragraph of this section provides to the contrary, an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council members present, upon being read first in full and then by title.

(3) Any of the readings may be by title only if no council member present at the meeting request to have the ordinance read in full or if a copy of the ordinance is provided for each Council member and three (3) copies are provided for public inspection in the office of the City Treasurer not later than one week before the first reading of the ordinance and if notice of their availability is given forthwith upon the filing by written notice posted at the City Hall and two (2) other public places in the City or by advertisement in a newspaper of general circulation in the City. An ordinance enacted after being read by title alone may have no legal effect if it differs substantially from its terms as it was thus filed prior to such reading, unless each section incorporating such a difference is read fully and distinctly in open Council meeting as finally amended prior to being approved by the Council.

(4) Upon the final vote on an ordinance, the ayes and nays of the members will be taken and entered in the record of proceedings.

(5) Upon the enactment of an ordinance the auditor will sign it with the date of its passage and his/her name and title of office, and within three (3) days thereafter the mayor will sign it with the date of his/her signature, his/her name and the title of his/her office.

Section 33. When Ordinances Take Effect.

An ordinance enacted by the Council will take effect on the thirtieth day after its enactment. When the Council deems it advisable, however, an ordinance may provide a later time for it to take effect, and in case of an emergency, it may take effect immediately.

Section 34. Referendum.

The initiative and referendum powers reserved to the people by the state constitution, are hereby further reserved to the legal voters of the City.

CHAPTER IX. PUBLIC IMPROVEMENT**Section 35. Condemnation.**

Any necessity of taking property for the City by condemnation will be determined by the Council and declared by resolution of the Council describing the property and stating the uses to which it will be devoted.

Section 36. Improvements.

The procedure for making, altering, vacating, or abandoning a public improvement shall be governed by general ordinances or, to the extent not so governed, by the applicable general laws of the state. Action on any proposed public improvement declared by a majority of the Council to be needed at once because of an emergency may be suspended for six (6) months upon a remonstrance thereto by the owners of two-thirds of the land to be specially assessed therefor. In this section "owner" will mean the record holder of legal title or, where land is being purchased under a land sale contract recorded or verified to the treasurer in writing by the record holder of legal title to the land, the purchaser will be deemed the "owner".

Section 37. Special Assessments.

The procedure for levying, collecting, and enforcing the payment of special assessments for public improvements or other services to be charged against real property will be governed by state law and general ordinance.

Section 38. Contracts.

Except as authorized by state law, all city contracts shall be based on competitive bids unless otherwise authorized by the Council.

CHAPTER X. MISCELLANEOUS PROVISIONS**Section 39. Utility Funds.**

Funds and assessments deposited into the water fund will be used exclusively for the water department.

Section 40. Debt Limits.

Except by consent of the voters, the City's voluntary floating indebtedness will be \$100,000.00. For the purposes of calculating the limitation, however, the legally authorized debt of the City in existence at the time this charter takes effect shall not be considered. All City Officials and employees who create or officially approve any indebtedness in excess of this limitation will be jointly and severally liable for the excess.

Section 41. Existing Ordinances Continued.

All ordinances of the City consistent with this charter and in force when it takes effect will remain in effect until amended or repealed.

Section 42. Repeal of Previously Enacted Provisions.

All charter provisions of the City enacted prior to the time that this charter takes effect are hereby repealed.

Section 43. Time of Effect of Charter.

This charter shall take effect, if approved by the voters, five (5) days following the official canvass of votes cast at the March 31, 1987 election.

Section 44. Procedure for Amendment.

Amendments to this charter may be proposed by the City Council by resolution duly adopted at any regular meeting of the Council, and when so adopted the same shall be submitted to a vote of the legal voters of the City upon the date of any election in the State of Oregon which may be held after giving notices as provided in this charter. This charter may also be amended by proposal therefor under the initiative provision of Oregon statutes by a petition duly signed by the appropriate number of qualified electors.