



## Staff Report

For City Council Meeting - 5/3/2023

### ***Subject - Ordinance/Resolutions - Ordinance #939 - An Ordinance Amending the Municipal Code to Regulate Camping Activities on City Property***

**Synopsis:** The City has been working with attorney Chad Jacobs of Beery Elsner & Hammond LLP to revise our current camping ordinance to both help address concerns over the City's growing houseless population and remain compliant with the ruling of HB 3115 out of Boise's 9th Circuit Court. The court ruled that enforcement of anti-camping ordinances against individuals experiencing homelessness violates the Eighth Amendment of the U.S. Constitution if no alternatives to sleeping in public are available. Cities were given until July 1, 2023 to review and update local ordinances and rules that regulate sitting, lying, sleeping, or keeping warm and dry outdoors on public property. The attached Ordinance #939 will bring the City into compliance, along with providing clarity of definitions and designating needed time, place, and manner restrictions.

#### ***Council Options:***

- Motion to approve Ordinance #939 reading once by the title only;
- Motion to approve Ordinance #939 reading twice by title only and declaring an emergency;
- Take other action desired by Council.

**Recommended Motion:** Staff recommends Council read Ordinance #939 twice by title only and declare an emergency due to the July 1 deadline.

**Legal Analysis:** The City's existing Camping Ordinance (#660) will be repealed. Reading twice by title only and declaring an emergency will put new Ordinance #939 into effect immediately.

**Financial Analysis:** N/A

Respectfully Submitted,

Chad

**ORDINANCE NO. 939**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE TO REGULATE CAMPING  
ACTIVITIES ON CITY PROPERTY**

WHEREAS, The City of Gearhart desires to allow individuals and families that are temporarily experiencing the effects of homelessness to camp in relatively safe and sanitary locations while they are actively seeking access to stable and affordable housing; and,

WHEREAS, The City desires to establish codes related to camping in the City to allow for legal camping during reasonable time periods, while protecting sensitive areas of the City that are disproportionately impacted by the negative effects of such activity; and,

WHEREAS, The City desires to discourage camping in areas where such activities fundamentally undermine the public's ability to use that public property for its intended purpose and create unsafe and unsanitary living conditions, which can threaten the general health, welfare and safety of the City and its inhabitants; and,

WHEREAS, The City encourages the active participation of all concerned persons, organizations, businesses and public agencies to work in partnership with the City and the homeless community to address the short- and long-term impacts of homelessness in the community.

NOW, THEREFORE, the City of Gearhart ordains as follows:

**Section 1.** Ordinance No. 660 is hereby repealed.

**Section 2.** A new Chapter 94 “Camping on Public Property” as set forth in Exhibit A is added to Title IX of the City of Gearhart Code of Ordinance

**Section 3.** This ordinance is effective 30 days after adoption

Passed by the City Council of the City of Gearhart this \_\_\_ day of \_\_\_\_ 2023.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

Signed and approved by the Mayor of the City of Gearhart this \_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
Mayor Kerry Smith

Attest:

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City Administrator, Chad Sweet

## EXHIBIT A

### CHAPTER 94. CAMPING ON PUBLIC PROPERTY

#### §94.01 Title.

This Ordinance shall be known as the Camping on Public Property Ordinance of the City of Gearhart.

#### §94.02. Purpose

It is found and declared that:

- A. From time-to-time persons establish campsites on sidewalks, public rights-of-way, under bridges, and so forth;
- B. Such persons, by such actions at times create unsafe and unsanitary living conditions which pose a threat to the peace, health, and safety of themselves and the community;
- C. Camping, lying, or sleeping on a playground, park, or sports field fundamentally undermines the public's ability to use that public property for its intended purpose;
- D. Camping, lying, or sleeping on rights of way, or in a manner that obstructs sidewalks prevents the public's ability to use that public property for its intended purpose and can in some situations result in imminent threats to life;
- E. These regulations are meant strictly to regulate the use of publicly owned property, and are not intended to regulate activities on private property; and
- F. The enactment of this provision is necessary to protect the peace, health, and safety of the City and its inhabitants.

#### § 94.03. Definitions

As used in this Ordinance, the following terms and phrases shall have the meaning set forth herein:

**CAMP** or **CAMPING**. To pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

**CAMPSITE**. Any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.

**CAMP FACILITIES**. Includes, but are not limited to, tents, bivouacs, huts, other temporary or portable shelters, and vehicles or recreation vehicles. Staying within a vehicle for a combined period of more than three hours between 9:00 p.m. to 8:00 a.m. creates a rebuttable presumption that the vehicle is being used as a camp facility regardless of whether there is other evidence of camp paraphernalia.

**CAMP PARAPHERNALIA**. Includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or other sleeping matter, or non-city designated cooking facilities and similar equipment.

**FIRE.** Includes, but is not limited to, open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or other sources of heat including gas heaters.

**NATURAL AREA.** Any land designated as a riparian corridor, flood plain or drainage area, water quality sensitive area, vegetated corridor, sensitive habitat, or significant natural area by any government entity, including the City of Gearhart, Clatsop County, the State of Oregon or the United States Government.

**PARKING LOT.** A developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material.

**PUBLIC PROPERTY.** Any real property, land or structure owned, leased or managed by a public agency, including public rights-of-way and utility easements. A public agency includes, but is not limited to the City of Gearhart, Clatsop County, and Oregon Department of Transportation.

**PUBLIC RIGHTS-OF-WAY.** All City-owned or controlled rights-of-way, whether in fee title or as a hold of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular, pedestrian, or other means, and any planter strip or landscape area located adjacent to or contained within streets that is part of the public right-of-way.

**STORE or STORAGE.** To put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location unattended.

**PARK AREAS.** Publicly owned grounds operated under the supervision of the City of Gearhart whether within or outside of the corporate limits of the City of Gearhart providing outdoor passive and active recreation opportunities.

#### §94.04. Prohibited Camping.

- A. Except as expressly authorized by the Gearhart City Code, it shall be unlawful for any person to camp on any public property.
- B. This section does not prohibit sitting, lying or sleeping on or within public property in a manner that does not create a camp or constitute camping, so long as such use does not obstruct the public right-of-way or access to buildings or parking lots for their usual and customary purposes.
- C. This Section does not prohibit individuals experiencing homelessness from camping on public property from 9:00 p.m. to 8:00 a.m. subject to the manner and place restrictions set forth in subsection (D) and (E) below as well as any other restrictions lawfully imposed by the owner of the public property. Except for areas designated by the City Administrator or the Administrator's designee, camp facilities and paraphernalia may not be stored on public property when camping is otherwise prohibited.
- D. The following manner restrictions apply to individuals experiencing homelessness camping on public property:

1. Individuals experiencing homelessness who are engaged in camping on public property may use the minimal amount of camp facilities and camp paraphernalia necessary to protect the individual from the elements in order to keep warm and dry.
2. An individual experiencing homelessness camping on public property under this subsection may maintain essentials for living but may not store their personal property on public property while engaged in camping unless such storage is essential to living while camping. Items prohibited by this subsection, include but are not limited to vehicle tires, lawn mowers, scrap metal, more than one operable bicycle per camper, bicycle components not associated with an individual bicycle, gasoline, generators, lumber, household furniture, more than one propane tank, or other combustible materials.
3. Items presenting a danger to others, including uncontained sharps, uncontained human waste or unauthorized connections or taps to private or public utilities are prohibited.
4. Any tent or tarpaulin used under this subsection to keep warm and dry may not exceed 50 square feet in surface area.
5. At no time may an individual experiencing homelessness place or build huts, temporary shelters, lean-tos, shacks, or any other structures on public property for the purposes of keeping warm and dry.
6. Obstruction or attachment of camp facilities or paraphernalia to public infrastructure or private property structures, including bridges or bridge infrastructure, fire hydrants, utility poles, streetlights, traffic signals, signs, fences, trees, vegetation, vehicles or buildings is prohibited.
7. At no time may fire be used to keep warm and dry under this subsection.
8. Dumping of gray water (i.e. wastewater from bathwater, sinks and cooking) or black water (sewage) on public property is prohibited. Any person using a trailer or other recreational vehicle that contains a gray or black water tank must have and be able to provide to the City evidence of the tanks being emptied at a proper and legal facility within the last 96 hours (four days).
9. Digging, excavation, terracing of soil, or other alteration of public property, or damage to vegetation or trees is prohibited.
10. Activity punishable under Oregon Revised Statute as a crime including but not limited to assault, arson, burglary, coercion, criminal mischief, escape, failure to report as sex offender, harassment, homicide, interfering with a peace officer, invasion of privacy, kidnapping, offensive loitering, prostitution, public indecency, reckless burning, reckless endangering, resisting arrest, robbery or sex abuse is prohibited.
11. Vehicle camping, including camping occurring in recreational vehicles, must comply with all other applicable laws and regulations, including parking or storage restrictions found in the Gearhart City Code.
12. A camp, camping or camp facilities and paraphernalia may not obstruct any portion of any street, bike lane, or bike path intended for travel for vehicle, bicycle, pedestrian or other legal mode of travel or impair unobstructed use thereof.

- E. Except as expressly authorized by the Gearhart City Code, it is unlawful at all times for any person to camp, setup or maintain a campsite in or upon the following areas:
1. All Park Areas;
  2. Ridge Path, beaches and within the dunes overlay zone
  3. All sidewalks where a minimum of six (6) feet of a clear, continuous width cannot be maintained while camping is occurring;
  4. All city owned or maintained parking lots;
  5. Underneath roadways or bridges that are not open to the public;
  6. Any area that creates an impairment to emergency ingress or egress including within 10 feet of any building entrance or exit;
  7. Any area that creates an impairment to emergency response including within 10 feet of any fire hydrant, utility pole, or other utility, fire gate/bollards, or public infrastructure used for emergency response;
  8. All real property and public rights-of way (including sidewalks) located within primary residential zones [RA, R1, R2, R3, RCPD, P/SP];
  9. Within 50 feet of any building being used for residential purposes.
  10. All Natural Areas;
  11. Within 250 feet of a school or day care center;
  12. Any public property that is not open to the public; or
  13. Any public property that is not outdoors, including restrooms.
- F. The Council may, by resolution, allow camping on specifically identified public property that would otherwise be prohibited by this Section. Should the Council adopt a resolution authorized by this subsection, the City will publish a copy of the Resolution on its website. Any camping permitted by such a resolution must comply with the time and manner restrictions set forth in this Section.
- G. Notwithstanding the provisions of this Section, including all time, place and manner restrictions, the City Administrator or the Administrator's designee may temporarily authorize camping on any public property in whatever time, place and manner as necessary to address emergency needs that arise due to extreme weather events, natural disasters or other special circumstances that are consistent with established council goals including but not limited to permitted special events.
- H. All individuals experiencing homelessness camping on public property as permitted by this section do so at their own risk, and nothing in this code creates or establishes any duty or liability for the city or its officers, employees or agents, with respect to any loss related to bodily injury (including death) or property damage

#### §94.05 Collection of Camping Paraphernalia

Camping paraphernalia stored or left on public property in violation of the Gearhart City Code and collected by the City shall be held by the City for a minimum of 90 days. Individuals may claim their property, without a fee, by contacting the City within the 90 days. The City may immediately discard any items that have no apparent utility or are in an unsanitary condition. Weapons, controlled substances other than prescription medication, and items that appear to be either stolen or evidence of a crime shall be retained and disposed of by the Gearhart Police Department in accordance with applicable legal requirements for the property in question.

## § 94.06 Enforcement

- (A) The City of Gearhart recognizes the social nature of the problem of individuals experiencing homelessness camping on public property and has amended this code and policy to ensure the most humane treatment for removal of homeless individuals from camping sites on public property. The City of Gearhart will follow all legal requirements when clearing established campsites and enforcing this Chapter including providing any notice required by law and requesting the involvement of social services agencies to facilitate a humane transition whenever feasible.
- (B) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of the Gearhart City Code.
- (C) The City Administrator or the Administrator's designee is authorized as the person in charge of public property owned or controlled by the City for the purposes of trespassing an individual who is camping in violation of this Chapter. A person who fails to obey a lawful order from the City Administrator or the Administrator's designee to cease camping in violation of this Code may be trespassed from the City-owned or controlled public property in question. An individual trespassed under this subsection may be given a citation in lieu of arrest or may be arrested for criminal trespass in the second degree (ORS 164.245).
- (D) In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by this Ordinance or other provisions of this code shall constitute a public nuisance and may be abated in accordance with applicable law.
- (E) To the extent reasonably possible, the municipal court shall prioritize matters related to enforcement of the Camping on Public Property Ordinance over all other matters.