

ORDINANCE 2147

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, ADOPTING REGULATIONS FOR CAMPING ON CITY RIGHT OF WAY.

WHEREAS, the City of Bozeman (the “City”) is authorized by the City Charter and Montana law to establish programs and laws to protect public the health, safety and welfare of the residents of Bozeman; and

WHEREAS, pursuant to its [Charter](#), the Montana Constitution, and state law, the City may exercise any power not prohibited by the constitution, law or charter and neither the Montana Constitution, state law, or the City Charter prohibits the City Commission from adopting this Ordinance; and

WHEREAS, pursuant to [§7-14-4101, MCA](#), the City has the authority to prevent the encumbering of streets, sidewalks, alleys or public grounds with obstacles or materials; and

WHEREAS, the United States Supreme Court has long recognized that a municipality has the right to regulate the use of city streets to assure the safety and convenience of the people in their use, and further, that governmental authorities have the duty and responsibility to keep their streets open and available for movement (*Cox v. Louisiana*, 379 U.S. 536 (1965)); and

WHEREAS, in 2019, the United States Ninth Circuit Court of Appeals (Ninth Circuit) issued its decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), holding in part that the Cruel and Unusual Punishments Clause of the Eighth Amendment “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter;” and

WHEREAS, in 2022, the Ninth Circuit issued its decision in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), holding local ordinances violated the Eighth Amendment to the extent the ordinances prohibited individuals from taking minimal measures to keep warm and dry while sleeping (including sleeping in vehicles); and

WHEREAS, currently there are approximately 200 recreational vehicles, campers, vans and other vehicles on the public right-of-way throughout the city wherein people are residing or using the right-of-way for additional storage, and the Commission finds this Ordinance necessary to ensure the public rights-of-way intended for the purposes of travel for all residents are unencumbered, that street maintenance including snow removal can occur as needed, that solid waste or other waste does not accumulate impacting the health of residents or negatively impact stormwater systems, and to balance community interests and concerns; and

WHEREAS it necessary for the health, safety, and welfare of all residents of the City and users of the public rights-of-way to align the municipal code with federal law and provide appropriate time, place and manner restrictions on the use of the public right-of-way for camping.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That the Bozeman Municipal Code is amended as follows to add a new Article to Chapter 34:

Article 9. Camping on Public Right-of-Way.

Sec. 34.09.010 Definitions.

- A. The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. “Camping” or “camp” means to pitch, erect, create, inhabit, use, or occupy camp facilities in, or otherwise inhabit, the public right-of-way.
 2. “Camp facility” or “camp facilities” include but are not limited to tents, huts, temporary shelters, structures, vehicles as defined in 36.01.020, recreational vehicles with or without motive power designed for use as temporary living quarters or camping, motor homes, camping trailers, tent trailers, truck campers, camper vans, structures, or any other item used for the purpose of camping.
 3. “A person experiencing homelessness” means a person that does not have the means to acquire their own shelter and who does not otherwise have access to shelter or transitional housing.
 4. “Public right-of-way” means all real property (including property owned in fee or obtained through easement or dedication) administered by the city and which is used for transportation purposes, including streets, roads, bridges, alleys, sidewalks and boulevards, trails, paths, and other public ways.

Sec. 34. 09.020 Camping on Public Right-of-Way is Prohibited.

- A. Camping on the public right-of-way within city limits is prohibited, except as provided in subsections B and C of this section.

- B. A city employee with authority to enforce this article must refer a person experiencing homelessness camping on the public right-of-way to an available shelter facility or other available temporary housing. A person experiencing homelessness may only camp on the public right-of-way when a shelter facility or other temporary housing is not available.
- C. If space in a shelter facility or other temporary housing is not available, a person camping on the public right-of-way must comply with the following:
1. Time: No camping may occur in the same location on the public right-of-way for more than 30 consecutive days. No camp facilities may be located or used for camping in the same location or on the same street on the public right-of-way for more than 30 consecutive days. After 30 consecutive days a camp facility must be moved to a different named street.
 - a. A person experiencing homelessness may apply to the city manager for written permission to exceed the length of time restrictions described above.
 - b. Factors the city manager may consider in granting permission include but are not limited to the location of the camp facilities, the person's employment status, site conditions, and the person's connections to social services and the community.
 2. Place: Camping on the public right-of-way is prohibited, regardless of the availability of shelter space, in the following locations:
 - a. Adjacent to or immediately across from any parcel or lot containing a residential dwelling including lots or parcels with multi-household dwellings;
 - b. Within 100 feet of a public entrance of any commercial business or non-profit organization;
 - c. Adjacent to or immediately across from the boundary of any public park;
 - d. Adjacent to or immediately across from any parcel or lot containing any public or private school, including secondary, elementary, or preschool, or any lot or parcel containing a daycare;
 - e. Any location in violation of any posted parking signs or painted curbs prohibiting parking or otherwise limiting the hours of parking;
 - f. Within a bike lane, street median, sidewalk, or public pathway or trail.
 3. Manner:
 - a. All camp facilities and their immediate area must be maintained in a clean and orderly manner. A clean and orderly manner includes, but is not limited to, all waste, debris and trash must be in a container and personal items, when not actively being used, must be stored inside a camp facility.
 - b. No waste, sewage, debris, trash, personal items, or additional vehicles or trailers may be discarded of or stored in the right of way.

- c. No fires are permitted within the public right-of-way.
- d. Generators must be stored and located on a paved surface. Fuel must be in containers designed for the fuel stored therein.
- e. Camping on the paved surface of any street in a tent, tarp, or in only sleeping bags, blankets, or other rudimentary forms of protection from the elements, is prohibited.
- f. No structures may be built or maintained on the public right-of-way pursuant to 34.02.050.

Sec. 34.09.030 Violations; penalties

A violation of 34.09.020 shall be a municipal infraction pursuant to Chapter 24, Article 2 of this Code subject to the following:

- A. Each violation of 34.09.020 shall be punishable by a civil penalty not to exceed twenty-five dollars. Each day a violation occurs constitutes a separate offense.
- B. In addition to the requirements of 24.02.030B, the city must prove by clear and convincing evidence that three warnings were given to the person prior to the issuance of the first municipal infraction under any subsection of Sec. 34. 09.020C.
- C. If unsanitary conditions exist, the city may abate or cause to be abated any waste, debris, trash, structure, tent, property, or item in the public right-of-way by conspicuously posting a 72-hour notice of abatement. After the 72-hour notice period, any property remaining will be considered abandoned and subject to disposal. No notice is required to abate a condition impeding traffic or when the condition poses an imminent risk to public health or safety.
- D. The city may remove or cause to be removed any camp facility in violation of 34.09.020.C.2 after posting a notice on or near the camp facility for at least 24 hours prior to removal. No notice is required if the camp facility is impeding traffic or poses an imminent risk to public health or safety.
- E. In the event a camp facility belonging to a person experiencing homelessness is towed or impounded by the city, no fees will be associated with the first or second towing or impoundment. In the event the city tows or causes to be towed a camp facility belonging to a person experiencing homelessness three (3) or more times due to violations of this article, costs of towing and impoundment may be assessed against the owner.
- F. This Article may be enforced by any city law enforcement officer, code enforcement officer, parking enforcement officer or other employee upon written designation by the city manager. Determinations regarding abatement or emergency removal without notice shall be made by the director of transportation and engineering or their designee.

Section 2

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this Ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of

the City of Bozeman not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 3

Savings Provision.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 4

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 5

Codification.

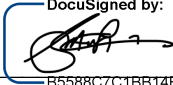
The provisions of Section 1 shall be codified as appropriate in Chapter 34 of the Bozeman Municipal Code.

Section 6


Effective Date.


This Ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 19th day of September, 2023.

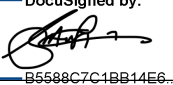
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CYNTHIA L. ANDRUS
Mayor

ATTEST:


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MIKE MAAS
City Clerk


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FINALLY PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading at a regular session therefor held on the 24th day of October 2023.

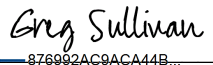
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CYNTHIA L. ANDRUS
Mayor

ATTEST:

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MIKE MAAS
City Clerk

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APPROVED AS TO FORM:

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GREG SULLIVAN
City Attorney