



ORDINANCE 2023-007

ADOPTING THE SHERWOOD CAMPING CODE, CHAPTER 9.54

WHEREAS, in 2013, the City of Sherwood adopted a camping code via Ordinance 2013-008; and

WHEREAS, recent court decisions in *Martin v. Boise* and *Johnson v. Grants Pass* held that prohibiting camping in the absence of shelter violates a person's constitutional rights, but that a city may adopt reasonable time, place, and manner restrictions upon camping; and

WHEREAS, in 2021, the Oregon legislature passed House Bill 3115, codifying the *Boise* decision and requiring that all municipal regulation of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place, and manner prior to July 1, 2023; and

WHEREAS, the intent of this ordinance is to enhance the livability, including health and safety, for all community members as well as to protect the environment, community assets and infrastructure of Sherwood; and

WHEREAS, camping in certain sensitive and high-risk areas creates a danger to the public, the environment, and persons experiencing homelessness; and

WHEREAS, camping in or near certain locations or infrastructure prevents the public's ability to use those locations for their intended purpose and may result in imminent threats to life safety; and

WHEREAS, when shelter is not available, this ordinance allows a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces in a safe way, as designed and intended.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Sherwood Municipal Code Chapter 9.54 is repealed in its entirety and replaced by the attached Exhibit 1.

Section 2. This Ordinance shall become effective 30 days from its adoption.

Duly passed by the City Council this 20th of June, 2023.



Tim Rosener, Mayor

6/20/2023
Date

Attest:



Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Standke	<u>Absent</u>	_____
Giles	<u>✓</u>	_____
Scott	<u>✓</u>	_____
Young	<u>✓</u>	_____
Brouse	_____	<u>✓</u>
Mays	<u>✓</u>	_____
Rosener	<u>✓</u>	_____

Chapter 9.54 REGULATION OF CAMPING IN OR UPON CITY PROPERTY AND AREAS OPEN TO THE PUBLIC

9.54.010 Purpose.

This chapter is enacted to promote and protect the health, safety and welfare of the city's residents as well as property within the city through the regulation of camping on or near areas open to the public as well as on or near vacant lots in order to address the adverse impacts of such activities including crime victimization, littering, public urination, public defecation, public intoxication, theft of water and electricity, verbal and physical assaults, trespass onto adjacent public and private properties, vandalism, property damage, fire hazards, and harassment or intimidation of occupants, employees, and/or customers.

9.54.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. Alternative shelter. A shelter space or other indoor space available to a person experiencing homelessness.
- B. Area open to the public. An outdoor area on private property within the city and that is intended for public access including but not limited to private streets, alleyways and pedestrian ways, and common areas such as parking lots and picnic areas of schools, medical facilities, apartment houses, office and industrial buildings, service stations, churches and retail shopping centers. An "area open to the public" also includes a vacant or unimproved lot or parcel that, while not intended for public access, is not fenced or otherwise restricts direct public access to the lot or parcel. "Area open to the public" does not include those areas of improved private real property that are not open to the public such as a residential property including the yard.
- C. Camp or Camping. The use of an area as temporary quarters for the purposes of staying warm and dry, surviving,, sleeping or residing.
- D. Campsite. Any place where one or more persons have established temporary living accommodations by use of camp facilities and/or camp paraphernalia.
- E. Camp Facilities. Include, but are not limited to, tents, huts, temporary shelters, lean-tos, shacks, or any other structures, vehicles or parts thereof.
- F. Camp Paraphernalia. Includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.
- G. City Property and Public Rights-Of-Way. Includes any property owned by the City of Sherwood or its Urban Renewal Agency, and any street, public utility easement, or the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas.

- H. Person experiencing homelessness. A person who lacks a fixed, regular and adequate nighttime residence.
- I. Person without alternative shelter. A person experiencing homelessness without access to alternative shelter.
- J. Public right of way. Any thoroughfare or area intended, designed, or used for vehicular or pedestrian traffic.
- K. Walk Zone. Those certain areas and locations specifically designated by the Sherwood School District pursuant to ORS 327.043 where school bus services is not available for students.

9.54.030 Regulation of camping.

Unless otherwise authorized by this code or by declaration of the mayor and/or city manager in emergency circumstances, it is a violation for any person to camp in or upon any area open to the public, city property, or public right(s) of way.

9.54.040 Time, place, and manner restrictions.

- (A) Notwithstanding section 9.54.030, a person without alternative shelter may camp only if all of the following time, place, and manner regulations are met.
- (B) **Time regulations.** A person without alternative shelter may camp between the hours of 9PM and 7AM. After 7AM, a person without alternative shelter shall dismantle the campsite and remove all personal property and camp paraphernalia from the campsite.
- (C) **Place regulations.** A person without alternative shelter may camp in or upon city property, however, a person without alternative shelter may not camp in or upon the following places at any time, unless specifically excepted below:
 - (1) within an area zoned for institutional and/or public use;
 - (2) within any residential zone, within fifty (50) feet of any residential zone and within fifty (50) feet of a residential structure regardless of zoning;
 - (3) within 1,000 feet of any school;
 - (4) within any Sherwood School District Walk Zone;
 - (5) in a manner reducing the clear, continuous sidewalk width to less than four (4) feet;
 - (6) within any Sensitive Area and/or Vegetated Corridor as those terms are defined by Clean Water Services in Chapter 1.03 of its General Requirements and Administrative Provisions, as may be amended from

time to time;

- (7) within 500 feet of the City of Sherwood Police Department;
- (8) within the Old Town District.
- (9) Notwithstanding the place restrictions contained within SMC 9.54.040(C), the City Manager may, after consultation with Council, determine an appropriate place for camping upon City Property.

(D) **Manner regulations.** A person without alternative shelter may camp if the person complies with all of the following manner regulations:

- (1) A person without alternative shelter may not obstruct pedestrian traffic along a public right-of-way or into private property and businesses adjacent to a public right-of-way. For purposes of this section, a person without alternative shelter is presumed to obstruct pedestrian traffic if a person reduces the path of travel to less than forty-eight (48) inches in width.
- (2) A person without alternative shelter shall not start or maintain any fire for the purpose of burning any combustible material(s) in or around a campsite.
- (3) A person without alternative shelter shall not use a gas heater in or around a campsite.
- (4) A person without alternative shelter shall not accumulate, discard, or leave behind, in, or around a campsite any rubbish, trash, garbage, debris, unsanitary or hazardous material, or any other refuse.
- (5) A person without alternative shelter shall not cause to be left at a campsite any human or animal feces.
- (6) A person without alternative shelter shall not camp within ten (10) feet of another campsite.
- (7) A person without alternative shelter shall not erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material or materials in or around a campsite. For purposes of this section, a “permanent or temporary fixture or structure of any material or materials” does not include a tent, tarpaulin, or other similar item used for a shelter that is readily portable and occupies a footprint equal to or less than forty-eight (48) square feet.
- (8) A person without alternative shelter shall not dig, excavate, terrace soil, alter the ground or infrastructure, cause environmental damage, or damage vegetation or tress in or around a campsite.

9.54.050 Enforcement responsibility and authority.

The city police department and the city manager, or person designated by the city manager, are jointly charged with the enforcement of this chapter.

9.54.060 Variances.

- A. Any person may apply for a:
 - 1. Class A variance to camp in an area open to the public for up to fourteen (14) days in duration; or
 - 2. Class B variance to Camp in an area open to the public for fifteen (15) or more days in duration.
- B. A person, entity or organization may apply for a variance under subsection (A) on behalf of multiple individuals or person(s).
- C. Notwithstanding any other provision of this chapter, the chief of police, the city manager or the city manager's designee may permit a person to camp in areas open to the public provided:
 - (1) A situation exists that necessitates the need to camp in the area open to the public;
 - (2) The use of the area open to the public for camping purposes will not, on balance be unduly detrimental to the public health, safety or welfare; and
 - (3) The owner or person or entity legally controlling occupancy of the area open to the public has consented to the camping.

9.54.070 Variance application.

- A. An applicant for a variance shall submit the following information on a form approved by the city:
 - 1. A reference to the provision in this chapter from which the variance is sought;
 - 2. The reason(s) why the variance is necessary;
 - 3. A general description of the physical characteristics of the area open to the public for which a variance is sought;
 - 4. The variance's time period;
 - 5. The signed consent from the owner or person or entity legally controlling occupancy of the area open to the public for which the variance is sought;
 - 6. Any other supporting information the city manager or city council may reasonably require to allow consideration of the conditions set forth in section 9.52.100.
- B. The applicant for a Class A variance shall submit the application to the city manager or the city manager's designee. The applicant for a Class B variance shall submit the application to the city recorder, who shall place the matter on the agenda for a forthcoming city council meeting.

9.54.080 Public notification for Class B variance.

The applicant for a Class B variance shall post notice along the nearest public road at the boundaries of the property containing the area open to the public for which the variance is sought so that the notice is visible from the public road, publish notice thereof in a newspaper of general circulation in the city and post on the city's website. Posted notice on the property and website shall be at least seven (7) days prior to the public hearing with published notice completed at least four (4) days prior to the hearing. Notice under this section shall state the date the council will consider the application, the nature and substance of the variance to be considered, and that written comments on the application may be filed with the city recorder before the meeting at which the application is to be considered.

9.54.090 Variance review.

The city manager, city manager's designee may grant a Class A variance.

City council may grant a Class B variance.

If requested by the applicant the city manager may extend a Class A variance by up to fifteen (15) calendar days if council cannot consider a Class B variance because of scheduling issues.

The city manager, city manager's designee or city council may grant a variance, after considering the written application for variance and any written comments submitted when it appears the following conditions exist:

- A. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance; and
- B. The granting of the application will not be unduly detrimental to the public health or safety or welfare.

9.54.100 Variance decision.

- A. The city manager or the manager's designee shall grant or deny a Class A variance within five (5) days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
- B. The city council shall grant or deny a Class B variance within thirty (30) days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.
- C. The city manager, city manager's designee or city council may impose such limitations, conditions and safeguards as deemed appropriate, so that the spirit of the chapter will be observed, and the public safety, health and welfare are secured. A violation of any such condition or limitation constitutes a violation of this chapter.
- D. A decision to grant or deny the variance shall be in writing and state the reasons for the decision. The city council or city manager shall notify the applicant of the decision and shall make it available to any person who submitted written comments on the application.

9.54.110 Review.

The decision of the city manager, city manager's designee or the city council to grant or deny a variance is final. Such decisions may be reviewed pursuant to ORS 34.010 to 34.100 (writ of review).

9.54.120 Civil penalties.

A person who violates any provision of this chapter is subject to a civil penalty (Class C violation) for each day a violation occurs.