



## ORDINANCE 2172

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, REPEALING CHAPTER 34, ARTICLE 9 AND CHAPTER 20, ARTICLES 1 AND 2 OF THE BOZEMAN MUNICIPAL CODE, AND ESTABLISHING CHAPTER 2, ARTICLE 8, DIVISION 2 PROHIBITING CAMPING ON PUBLIC PROPERTY AND THE PUBLIC RIGHT-OF-WAY AND AUTHORIZING THE ESTABLISHMENT OF A PERMIT SYSTEM FOR LIMITED CAMPING ON CITY RIGHT OF WAY FOR PERSONS EXPERIENCING HOMELESSNESS.

WHEREAS, the City of Bozeman (the "City") is authorized by the City Charter and Montana law to establish programs and laws to protect public 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, in 2024, the Supreme Court of the United States reversed and remanded the decision in *Johnson v. City of Grants Pass* and overruled the decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), holding the enforcement of generally applicable laws regulating camping on public property does not constitute cruel and unusual punishments prohibited by the Eighth Amendment; and

WHEREAS, currently approximately 150 recreational vehicles, campers, vans and other vehicles on the public right-of-way are used for residences and related storage of personal property, 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 debris removal, street cleaning, and 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 the Commission finds it necessary for the health, safety, and welfare of all residents to prohibit camping on public property and the public rights-of-way subject to limited permitted exceptions.

WHEREAS the Commission finds establishing a permit system can provide a lawful place for persons adhering to the rules to reside for a limited period of time while actively taking steps to connect with services or obtain transitional and permanent housing.

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

#### Section 1

That the entirety of current Chapter 20, Articles 1 and 2 of the Bozeman Municipal Code are hereby repealed and the division reserved.

## Section 2

That the entirety of current Chapter 34, Article 9 of the Bozeman Municipal Code is hereby repealed and the division reserved.

## Section 3

That under Chapter 2, Article 8 of the Bozeman Municipal Code a new Division 2 shall be created and shall be codified as follows:

Division 2: Prohibitions on City Property.

Sec. 2.08.200. – Definitions

Sec. 2.08.210. – Camping Prohibited

Sec. 2.08.220. – Permit Required for Camping on Public Right-of-Way

Sec. 2.08.230. – Violation and Penalty; Abatement

Sec. 2.08.200 – Definitions.

A. The following words and phrases, whenever used in division, 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, use, or occupy or otherwise inhabit camp facilities.
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. "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. 2.08.210 – Camping Prohibited.

Camping is prohibited on city owned property, easements granted to the city for any purpose, public rights-of-way regardless of the legal status of the right-of-way, and on property leased by

the city. In limited circumstances permits to camp may be approved pursuant to 26.02.050 and this article.

Sec. 2.08.220 - Permit Required for Camping on Public Right-of-Way.

A. Permits.

1. The city manager is authorized to issue and revoke permits to camp on the public right-of-way. The city manager may adopt administrative rules to implement a permit system for persons experiencing homelessness to camp on constructed streets within a right of way. The administrative rules may include, but are not limited to, establishing permit eligibility requirements, location requirements, conditions for permit compliance, and procedures for revoking a permit. The city commission may establish a fee for permits by resolution.
2. A person experiencing homelessness may apply for a permit to camp on a street within a public right-of-way. The granting of a permit to camp establishes a privilege to use the right-of-way for the purpose stated in the permit.
3. Permits may be issued for only the following camp facilities: vehicles as defined in 36.01.020 and recreational vehicles designed for use as temporary living quarters or camping, motor homes, camping trailers, tent trailers, truck campers, and camper vans.
4. The city manager may designate streets open to permitted camping that comply with the place restrictions in this article. The city manager may close public streets that may otherwise be open to permitted camping after posting a 72-hour notice.
5. A permit to camp shall not exceed 30 days. Renewals will be considered on a case-by-case basis.

B. In addition to any administratively adopted rules, camping permits are prohibited in the follow locations:

1. Adjacent to or immediately across from any parcel or lot containing a residential dwelling including lots or parcels with multi-household dwellings;
2. Within 100 feet of a public entrance of any commercial business or non-profit organization;
3. Adjacent to or immediately across from the boundary of any public park, or public or private cemetery;
4. 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;
5. Any location in violation of any posted parking signs or painted curbs prohibiting parking or otherwise limiting the hours of parking, including signed street closures;

6. Within a bike lane, street median, sidewalk, or public pathway or trail; and
  7. Within 50 feet of a waterway, wetland, or other sensitive lands.
- C. In addition to any administratively adopted rules, permitted campers must comply with the following:
1. All permitted camp facilities that are vehicles or were originally designed to be driven under their own power, must be operational capable of being started and driven under their own power. All permitted camp facilities that were originally designed to be towed must be capable of being towed and the permittee must have the means to tow the camp facility upon demand of the city;
  2. 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;
  3. No waste, sewage, debris, trash, personal items, or additional vehicles or trailers may be discarded of or stored in the right of way;
  4. No fires are permitted within the public right-of-way; and
  5. Only generators rated not to exceed 60 decibels are permitted to be operated on the right-of-way. Generators must be stored and located on a paved surface. Fuel must be in containers designed for the fuel stored therein.

#### Sec. 2.08.230 Violation and Penalty; Abatement.

- A. A violation of 2.08.210 is a misdemeanor punishable by a fine not to exceed \$500 or by a term of imprisonment in the county jail not to exceed 10 days, or both. Each day a violation occurs constitutes a separate offense.
- B. A person who is granted a permit to camp on the right-of-way and fails to comply with any provision 2.08.220 shall be guilty of a misdemeanor punishable by a fine not to exceed \$100. Each day a violation occurs constitutes a separate offense.
- C. Any person, or principal of a company or entity that directly or indirectly rents, sublets, provides, or exchanges for a service, a camp facility to a person to reside on the public right-of-way shall be guilty of a misdemeanor by a fine not to exceed \$500 or by a term of imprisonment in the county jail not to exceed 10 days, or both. Each day a violation occurs constitutes a separate offense.
- D. The city may abate or cause to be abated any unpermitted camp facility, property, or other personal items in the public right-of-way by conspicuously posting a 72-hour notice of abatement. After the 72-hour notice period, any items remaining will be considered abandoned and subject to disposal. No notice is required to abate waste, debris, trash, or

abate a condition impeding traffic or when the condition poses an imminent risk to public health or safety.

- E. The city may abate or cause to be abated any permitted or unpermitted camp facility being used for camping in a location prohibited by 2.08.220 B 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.
- F. The city may seek the costs of abatement including the costs of towing and impoundment be assessed against the owner as restitution in criminal case or as part of a judgement in a civil proceeding.
- G. This article may be enforced by any city law enforcement officer or code enforcement officer. Determinations regarding abatement or emergency removal without notice shall be made by the director of transportation and engineering or the director of parks and recreation, as appropriate.

#### Section 4

That Chapter 26 Article 2 Section 26.02.030 A of the Bozeman municipal Code be amended as follows:

Sec. 26.02.030. Park prohibitions.

- A. It is unlawful for any person in a park or in or adjacent to a recreational facility to:
  - 1. - 15. ...
  - 16. Camp outside of the authorized park hours established pursuant to 26.02.200 without first obtaining a reservation permit pursuant to this article. Camping overnight in a park or in or adjacent to a recreational facility is punishable by 2.08.230;
  - 17. – 27. ...

#### Section 5

Sunset.

Section 2.08.220 and Sections 2.08.230 B and E shall expire on October 1, 2025. A permit issued and effective prior to October 1, 2025, remains effective for the duration of the permit. In no event will camping be permitted after November 1, 2025. The City Attorney may issue a codification order removing the above from the Bozeman Municipal Code.

## Section 6

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 7

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 8

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 9

Codification.

The provisions of Section 3 shall be codified as appropriate in Chapter 2, Article 8 of the Bozeman Municipal Code. The provision of Section 4 shall be codified as appropriate in Chapter 26 Article 2 of the Bozeman Municipal Code.

Section 10

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 8<sup>th</sup> day of October 2024.

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TERENCE CUNNINGHAM  
Mayor

ATTEST:

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MIKE MAAS  
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 22nd of October, 2024. The effective date of this ordinance is November 21, 2024.

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TERENCE CUNNINGHAM  
Mayor

ATTEST:

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MIKE MAAS  
City Clerk

APPROVED AS TO FORM:

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GREG SULLIVAN  
City Attorney