

AN ORDINANCE OF THE CITY OF EUREKA REPEALING AND REPLACING
SECTION 93.02 OF TITLE IX, CHAPTER 93 – PARKS AND RECREATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

Title IX, Chapter 93, Section 93.02 is *repealed* in its entirety as follows:

~~(A) Except as provided herein, no person shall camp in any public or private space or public or private street, except in areas specifically designated for such use. **CAMP** shall mean residing in or using a public or private space for living accommodation purposes, such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire or using any tents, regularly cooking meals, or living in a parked vehicle. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using a public space as a living accommodation regardless of his/her intent or the nature of any other activities in which he/she might also be engaging. **PRIVATE** shall mean affecting or belonging to private individuals, as distinct from the public generally. All police officers are hereby charged with the enforcement of the camping provisions of this chapter~~

~~(B) For the purpose of this section:~~

~~(1) **PUBLIC SPACE.** Shall include the following areas:~~

~~(a) Any public park or public bench.~~

~~(b) Any public parking lot or public area improved or unimproved.~~

~~(2) **PUBLIC STREET.** Shall include any public street or public sidewalk including public benches.~~

~~(3) **PRIVATE SPACE.** Shall include the following areas:~~

~~(a) **Any private park or private beach.**~~

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~~(b) Any private parking lot or private area improved or unimproved.~~

~~(4) **PRIVATE STREET.** Shall include any private street or alley including private benches.~~

~~(C) Camping on private property shall be lawful if the owner of the private property is present at all times that the camping is occurring and if the camping is occurring accessory to a permitted residential use on property which is zoned for a residential purpose only. However, notwithstanding this exemption, if the camping is creating or maintaining a nuisance, as defined in the Eureka Municipal Code, it shall be unlawful.~~

Section 2.

Title IX, Chapter 93, Section 93.02 is hereby added to the Eureka Municipal Code as follows:

(A) Statement of Purposes:

The City Council finds that:

The streets, parks, public buildings and grounds, and other public areas in the City of Eureka should be readily accessible and available to residents and the public at large. Public property within the City is not specifically designed for the purposes of camping or overnight sleeping activities and so does not have the facilities necessary to protect the property from overuse and unsanitary conditions potentially injurious to public health. The use of public property for camping purposes interferes with the rights of others to use the areas for the purposes for which they were intended, such as transportation, municipal operations, recreation, and open space.

There is no specific site or sites that should be designated for camping because it is the experience of the City of Eureka and other municipalities that sites where camping is continuous or camping populations are numerous become public health, environmental degradation, and policing problems.

Camping activities may constitute a public health and safety hazard when conducted without the proper security and sanitary facilities and precautions. The necessity to clean up, repair or remediate public property that has been used for unlawful camping may result in substantial costs to the public.

This ordinance must be interpreted not to criminalize any person based on their status as a homeless individual. To that end, whenever an issue of interpretation arises, this Section must be interpreted in a manner consistent with the holding in *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584.

The law enforcement response to a violation of this Section should prioritize the City of Eureka's restorative justice and diversion programs in preference to citations for infractions when offenders are willing and able to participate in those programs.

(B) Definitions. As used in this section:

- (1) **ACCOMMODATION** means a place that is protected from the elements and offers sleeping and restroom facilities and that does not require a person to forego the exercise of any State or Federal Constitutional right in order to stay there.
- (2) **AVAILABLE** means obtainable by the specific person taking into account that person's characteristics and circumstances.
- (3) **TO CAMP or CAMPING** means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.
- (4) **CAMP FACILITIES** means tents, huts, lean-tos, vehicles, vehicle camping outfits or temporary shelters, cook stoves or fire pits, however constructed.
- (5) **CAMP PARAPHERNALIA** means bedrolls, tarpaulins, cots, beds, mattresses, sleeping bags, hammocks, camp stoves or cooking implements or similar materials.
- (6) **PUBLIC PROPERTY** means any property owned or leased by any public entity or agency, whether Federal, State or local.
- (7) **PROHIBITED PLACE** means each of the following places:
 - a. the Sequoia Park Zoo;
 - b. the Eureka Municipal Golf Course
 - c. all City parks;
 - d. the area 75 feet from the centerline of any officially-designated Recreational or Multi-use Trail on City property;
 - e. the Downtown/Old Town Business District as defined in Appendix A to this Section;

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- f. the Northern Gateway Business District A, as defined in Appendix B to this Section;
- g. the Waterfront Business District, as defined in Appendix C to this Section;
- h. the Henderson Center Business District, as defined in Appendix D to this Section;

(8) ***PROHIBITED TIME OF DAY*** means the time between 30 minutes after sunrise and 30 minutes before sunset. ***EXCEPTION:*** Subject to the Prohibited Place and Private Property restrictions, and the restrictions of Section 130.11 and 130.13 of this code, a person who is involuntarily camping lawfully may remain in place through the course of the day when the weather is actively raining or snowing or the temperature is below 40 degrees Fahrenheit as of 30 minutes after sunrise.

(9) ***VOLUNTARY CAMPING*** means camping for which no City permit has been issued, on any public property within the City, at such time as there is an accommodation available to the person that that person refuses to avail him/her or their self of for any reason that is unrelated to the person's exercise of a First Amendment or other state or federal constitutional right.

(10) ***INVOLUNTARY CAMPING*** means camping at such time as there is no accommodation accepting homeless persons within the City that is available to that same person.

(C) Unlawful camping:

(1) It is unlawful and a public nuisance to camp voluntarily, occupy camp facilities or use camp paraphernalia in, on or under any public property, except as permitted by an exception approved expressly or by Policy adopted by the City Council.

(2) It is unlawful and a public nuisance, whether voluntarily or involuntarily, to camp, occupy camp facilities or use camp paraphernalia in, on or under any public property in a prohibited place or during the prohibited time of day.

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(3) It is unlawful and a public nuisance, whether voluntarily or involuntarily, to camp, occupy camp facilities or use camp paraphernalia on public or private property in a manner that meets the definition of Obstructive Conduct found in Section 130.11 or obstructs rights-of-way under Section 130.13 of the Eureka Municipal Code.

(D) Involuntary camping — when and where lawful:

Involuntary camping on public property is lawful when and where it is not otherwise unlawful under subdivision (C), above.

(E) Camping on Private property:

Camping on private property is lawful if the owner of 50% or more of the fee interest in the property is present at all times the camping is occurring, and if the camping is occurring accessory to an existing permitted residential use on the property, and the property is zoned for residential use only. Notwithstanding the foregoing exemption, if the camping is creating or maintaining a nuisance as defined in this Code or is without the express written consent of an owner of 50% or more of the fee interest in the property, then it is unlawful. On lands not described above in respect to permitted use and zoning, unless the land is specifically zoned and approved for camping, all other camping on private property is unlawful and a nuisance.

(F) Penalty

A violation of this Section is an infraction and is subject to the following penalties:

(1) A fine not exceeding \$25.00 for a first violation;

(2) A fine not exceeding \$35.00 for a second violation of this Section within one year of a prior violation;

(3) A fine not exceeding \$50.00 for each additional violation of this Section within one year of two prior violations.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the _____ day of _____, 2021 by the following vote:

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AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

Kim Bergel, Mayor Pro Tem

THE ABOVE ORDINANCE WAS PRESENTED TO THE MAYOR on the ____ day of _____, 2021, and hereby approved.

Susan Seaman, Mayor

Approved as to Administration:

Approved as to form:

Miles Slattery, City Manager

Robert N. Black, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the ____ day of _____, 2021.

Pamela J. Powell, City Clerk