

ORDINANCE NO. 783

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating Chapter 9.15 of the Lakewood Municipal Code entitled “Occupation of Public Property”.

WHEREAS, pursuant to Article XI, Section 11 of the Washington Constitution and RCW 35A.11.020, the City of Lakewood is authorized to regulate public property; and

WHEREAS, public property is intended to be used by the public for public purposes, including daily City operations, park recreational use, pedestrian, bicycle and vehicular transportation and other public uses; and

WHEREAS, there is an awareness that when the unhoused population does not have available overnight shelter, public property can be unavailable to the general public for its intended purposes; and

WHEREAS, the City of Lakewood has expanded its human services programs by dedicating 1% of its general fund to growing its partnerships with local non-profit organizations for the purpose of improving its coordination of existing services, including programs specifically related to improving the lives of the unhoused residents of the city; and

WHEREAS, in partnership with Pierce County and the City of Tacoma the City of Lakewood allocated \$1,000,000 to the Low Income Housing Institute (LIHI) Hosmer Housing LLC, to acquire and convert property to an emergency shelter for homeless households (Aspen Court, for example); and

WHEREAS, in *Martin v City of Boise*, 920 F. 3d 584 (9th Cir. 2019), the Ninth Circuit Court of Appeals held that the Eighth Amendment to the United States Constitution prohibits cities from enforcing ordinances criminalizing camping on public property when there is no available shelter; and

WHEREAS, in *Johnson v City of Grants Pass, United States Court of Appeals, Ninth Circuit, Nos. 20-35752, 20-35881 decided September 28, 2022* the Ninth Circuit Court of Appeals held that ordinances that operate to make it “nearly impossible” to sleep outside with any form of bedding or shelter, or in a vehicle, on public land violate the Cruel and Unusual Punishment clause of the constitution; and

WHEREAS, this Ordinance makes it unlawful to occupy and store personal property on public property overnight, but suspends enforcement against those experiencing homelessness if overnight shelter is not available; and

WHEREAS, the City Council finds that the regulatory requirements within this ordinance are necessary to promote public health, safety and welfare by preserving public use of public spaces for which they are intended; and

WHEREAS, illegal camping alongside Lakes, Rivers, Waterways, Creeks and Streams, including but not limited to Shoreline Environments protected under the adopted Shoreline Management Program; and Critical Areas and Resource Lands Regulations (wetlands, critical

aquifer recharge areas, fish and wildlife habitat areas), under the adopted Critical Areas Ordinance (collectively referred to hereinafter as “Protected Waters” as shown on the attached map), contributes to littering and human waste being found in and around the Protected Waters; and

WHEREAS, Protected Waters can serve as habitat for Endangered Species Act species; and

WHEREAS, critical habitat supporting endangered species is degraded by the litter and human waste that are a component of illegal camping; and

WHEREAS, the City’s critical areas preservation section of its Shoreline Master Program specifically calls out concern for “any activity which would destroy the natural vegetation; result in a significant change in critical habitat, water temperature, physical, or chemical characteristics; or alter natural contours and/or substantially alter existing patterns of tidal, sediment, or storm water flow on any land which meets the classification standards for any critical area,”; and

WHEREAS, illegal camping alongside the Protected Waters and impacting the associated watershed affects not only public health and safety generally, but also specific Tribal treaty fishing rights, and the ability of Tribes to practice the Treaty protected right to harvest and consume fish and shellfish; and

WHEREAS, prohibiting illegal camping within 200 feet of the Protected Waters will protect the integrity of the Protected Waters, and protect the Tribal members and their fishing rights as well as the local community who enjoy and recreate along these protected waters.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. A new chapter of the Lakewood Municipal Code, Chapter 9.15, entitled “Occupation of Public Property” is hereby created.

Section 2. That Section 9.15.010 entitled “Purpose” is hereby created to read as follows:

It is the purpose of this chapter to promote public health, safety, and welfare by preserving for public use public spaces.

Section 3. That Section 9.15.015 entitled “Definitions” is hereby created to read as follows:

“Available overnight shelter” means a public or private facility, with an available overnight space, open to person(s) experiencing homelessness at no charge, which must be located within a 15-mile radius with the starting point of Lakewood City Hall, and to which the city facilitates transport.

“Occupy” means to evidence an intent to remain in a place, at least overnight. Intent can be evidenced by setting up tents, shelter, or bedding, for example.

“Personal property” means an item(s) recognizable as belonging to a person, has apparent utility or value in its current condition, and is not hazardous.

“Public entity” is the state, county, any municipal corporation, or other taxing district and includes any and all divisions and subdivisions thereof, including but not limited to entities

referred to throughout state law as follows: agency, district, general purpose government, governmental entity, governmental body, instrumentality, local agency, local government, local governmental entity, local public agency, local public body, municipal corporation, municipality, political subdivision, public agency, public body, public body corporate and politic, public corporation, quasi-municipal corporation, special district, special purpose district, taxing district, and units of government; and

“Public property” means all parks, streets, rights-of-way, sidewalks and any other property in which a public entity has a property interest.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, or to place or leave in a location regardless of the length of time; the defining characteristic is that the items are not in use and not discarded; they are on public property for future use by the owner.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. Wetlands are specifically protected under the City’s Shoreline Management Program and Critical Areas Ordinance.

Section 4. That Section 9.15.020 entitled “Unlawful occupation of public property” is hereby created to read as follows:

Unless caused by city action, or otherwise authorized by city code, city contract or permit, it shall be unlawful for any person to occupy public property.

Section 5. That Section 9.15.025 entitled “Unlawful storage of personal property on public property” is hereby created to read as follows:

A. Unless caused by city action, or otherwise authorized by city code, city contract or permit, it shall be unlawful for any person to store personal property on any public property overnight.

B. Removal of Personal Property. The city may remove unlawfully stored personal property after the city provides necessary notice and an opportunity to be heard. The city shall facilitate their storage of personal property if required by law.

Section 6. That section 9.15.027 entitled “Protection against harm to Protected Waters” is hereby created to read as follows:

No person may cause harm to any Protected Waters in the city of Lakewood or the natural areas that buffer these Protected Waters. No person may do any of the following on any public property abutting Protected Waters:

1. Build or erect a structure of any type along the Protected Waters or drive a nail or other object into any tree or other natural vegetation for the purpose of building a shelter or any other structure, or for affixing an object to any tree or other natural vegetation.
2. Dig on the banks of any Protected Waters.
3. Move boulders, destroy vegetation, pave roads or paths, or otherwise reconfigure the natural landscape or other City-approved development on the banks of any Protected Waters.
4. Drive, park or bring any vehicle onto any portion of the banks of any Protected Waters that is not designated for vehicle traffic and/or parking.
5. Discharge garbage, refuse, or human or animal waste along the banks or into any Protected Waters.

Section 7. That Section 9.15.030 entitled “Enforcement” is hereby created to read as follows:

The city shall not enforce the provisions of Lakewood Municipal Code 9.15.020 or 9.15.025 against persons experiencing homelessness if there is no available overnight shelter that can be used by that particular person. If available overnight shelter is available, the shelter space must be offered to the person(s) experiencing homelessness, along with other available human services. Only if the shelter space is refused can the provisions of Lakewood Municipal Code 9.15.020 and 9.15.025 be enforced against persons experiencing homelessness.

Section 8. That Section 9.15.035 entitled “Rules” is hereby created to read as follows:

The Chief of Police is hereby authorized to adopt rules, regulations, administrative policies, and procedures for implementing the provisions of this chapter.

Section 9. That Section 9.15.040 entitled “Penalty for violations” is hereby created to read as follows:

A. Violation of any of the provisions of this chapter is a misdemeanor, and shall be punished as follows:

1. First Offense. Any person violating any of the provisions of this chapter shall, upon conviction of such violation, be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

2. Second Offense. Any person who violates any of the provisions of this chapter, upon conviction of such violation, a second time within a five-year period shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment. One hundred dollars of the fine and one day of imprisonment shall not be suspended or deferred.

3. Third or Subsequent Offense. Every person who violates any of the provisions of this chapter, upon conviction of such violation, a third or more times within a five-year period shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment. Five hundred dollars of the fine and five days' imprisonment shall not be suspended or deferred.

4. Prior to imposing any fine for violation of this chapter, the court shall make an inquiry as to a person's ability to pay. If a person is unable to pay the monetary penalty set forth in subsection (A)(1), (2) or (3) of this section, the court is explicitly authorized to order performance of community service or work crew in lieu of a monetary penalty.

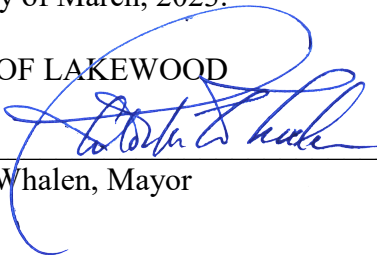
Section 10. The implementation of this ordinance shall be applied to any individuals who occupy public property illegally. The offer of assistance, including food and available shelter shall be documented.

Section 11. Severability. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 12. Effective Date. That this Ordinance shall be in full force and effect thirty (30) days after publication of the Ordinance Summary.

ADOPTED by the City Council this 20th day of March, 2023.

CITY OF LAKEWOOD




Jason Whalen, Mayor

Attest:

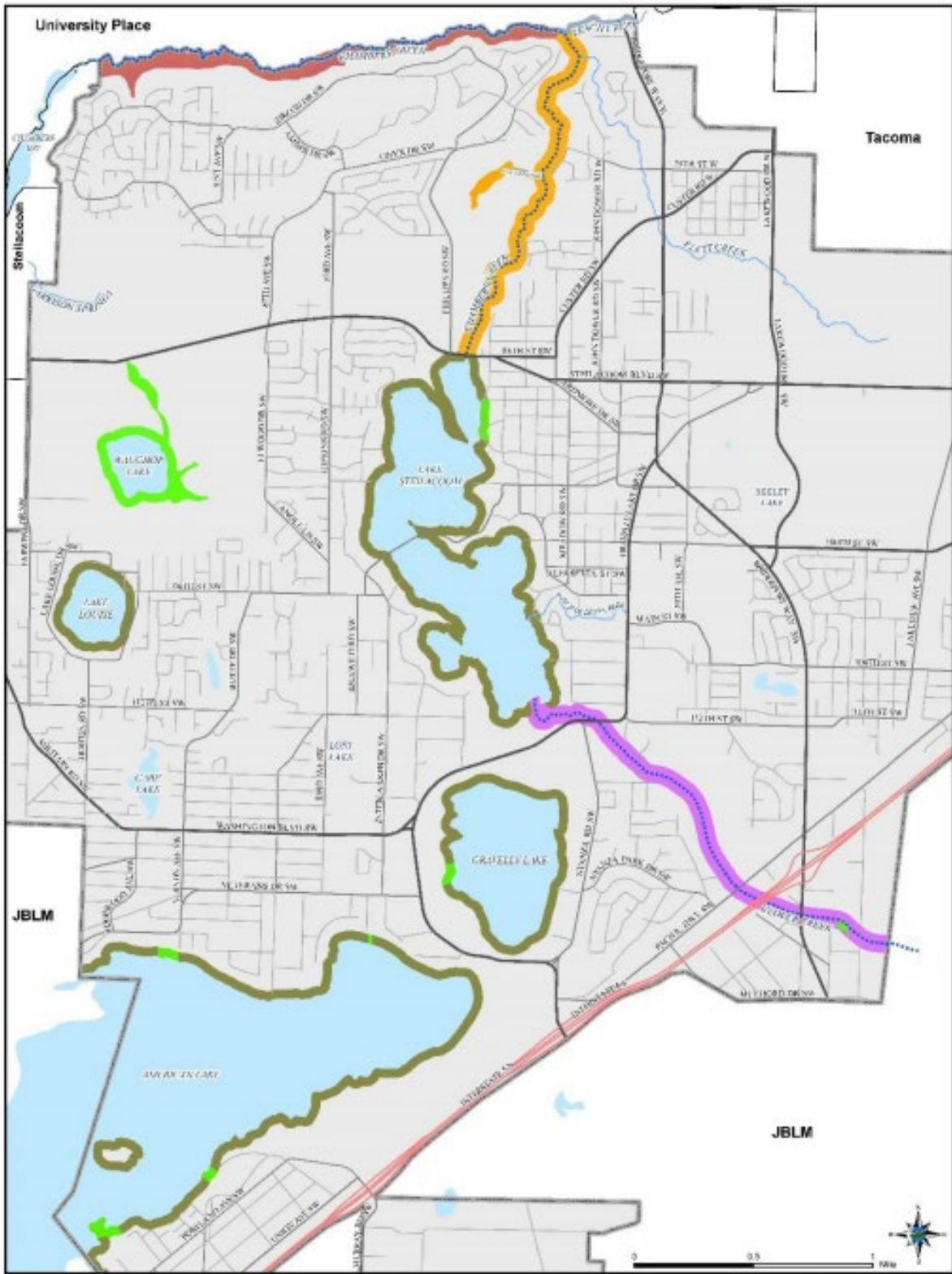


Briana Schumacher, City Clerk

Approved as to Form:



Heidi Ann Wachter, City Attorney



**City of Lakewood Shoreline Master Program
Figure 1: Environment Designations**



- Legend**
- Consistency Environment
 - Natural Environment
 - Shoreline Residential Environment
 - Urban Park Environment
 - Urban Stream Protection Environment
 - Streams (Designated Aquatic Environment)
 - Aquatic Environment
 - Lakewood City Boundary
 - Surrounding Jurisdictions



Shoreline jurisdiction and watershed boundaries depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning only. Additional specific information may be needed to confirm verify information shown on this map.

This project was prepared with care by City of Lakewood Department of Finance and Information Systems GIS. City will absolve liability for any inaccuracies which may present. This is not a survey. Data was collected at different accuracy levels by various sources. Call 253-112-2899 for further information.

Map created: January 26, 2009
Updated: April 09, 2019

Figure 1