



## Staff Report

For City Council Meeting - 12/6/2023

***Subject - Ordinances/Resolutions - Ordinance #940 An Ordinance Regulating the Operation of the Water System of the City of Gearhart, Governing Responsibilities, Establishing Fees, and Providing Penalties for Violations Thereof***

**Synopsis:** Gearhart's outdated water ordinance contained inconsistencies due to repealed and updated sections, with many listed fees deemed unrealistic for associated costs. When adjusting water rates, the decision was made to repeal the entire ordinance and its revisions, opting for a fresh start with a new one, maintaining separate rates. The repeal, along with August's water rate increase, received council approval. The attached draft of Ordinance #940 outlines fees and policies considered fair and relevant by the staff.

***Council Options:***

- 1) Motion to approve Ordinance #940 reading once by the title only;
- 2) Make changes and motion to approve as amended;
- 3) Take other action desired by the Council.

**Recommendation:** Staff recommends Council motion to approve Ordinance #940 reading once by title only.

***Recommended Motion***

Move to approve Ordinance #940 reading once by title only to reinstate a Gearhart Water Ordinance with updated, current provisions.

**Legal Analysis:** Although water rates can be promptly updated through resolution, the City requires a comprehensive water ordinance addressing standard water billing fees, processes, and liabilities. If approved tonight, the ordinance will undergo a second read in January. Upon approval, it will take effect 30 days later.

**Financial Analysis:** As identified within various sections of the ordinance. The fee amounts suggested were derived from researching Gearhart operating costs and neighboring municipality water ordinances and their processes.

Respectfully Submitted,

Chad



## **ORDINANCE NO. 940**

AN ORDINANCE REGULATING THE OPERATION OF THE WATER SYSTEM OF THE CITY OF GEARHART, GOVERNING RESPONSIBILITIES, ESTABLISHING FEES, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

**WHEREAS**, the City recognizes that a water operations ordinance establishes a legal framework, providing the municipality with the authority necessary for compliance with local, state, and federal regulations, thereby ensuring the maintenance of water quality and safeguarding public health; and

**WHEREAS**, operational guidelines ensure consistency and efficiency through clear procedures and operational policies, outlines specific protocols for meter installation, service pipe maintenance, shut-off procedures, and emergency handling, contributing to the consistent and efficient conduct of water operations; and

**WHEREAS**, consumer protections and trust building are paramount in understanding the significance of an ordinance in defining the rights and responsibilities of both the municipality and consumers, including details on billing, dispute resolution, and consequences of non-compliance, thus providing clear guidelines that protect consumers and foster trust in the municipal water system; and

**WHEREAS**, fee structure and financial management are essential, emphasizing the importance of fee regulation within the ordinance to establish a structured fee system for water services, including penalties for late payments or service interruptions, ensuring financial sustainability and covering the costs associated with water operations;

**NOW, THEREFORE**, the municipality enacts a water operating ordinance that affirms the commitment to safe water services, public health, environmental stewardship, and community trust. The City of Gearhart ordains as follows:

### **ARTICLE I - DEFINITIONS**

#### **Section 1. Definitions.**

As used in this ordinance, the following terms shall have the meanings indicated:

- 1.1 “City” means the City of Gearhart.
- 1.2 “Connection” means the pipeline and related facilities such as the curb stop, meter and meter box, all used to extend water service from a main to premises, the laying thereof and the tapping of the main. Where services are divided at the curb or property line to serve several customers, each such branch service shall be deemed a separate service.
- 1.3 “Consumer” means any natural person, corporation, association, firm, partnership, or

legal entity who is financially responsible for City water service. May include the owner, tenant or occupant of the property to which service will be or is supplied.

- 1.4 “Cost” means the cost of labor, material, transportation, supervision, engineering, bonding obligations and all other necessary overhead expenses.
- 1.5 “Cross-Connection” means any physical and/or potential connection between the piping system from the City service and that of any other water supply that is not, or cannot be, approved safe and potable for human consumption, whereby water from the unapproved source may be forced or drawn into the City distribution mains.
- 1.6 “Council” means the governing body of the City of Gearhart.
- 1.7 “Main” means a water line in a street, highway, alley, or easement used for public and private fire protection and for general distribution of water.
- 1.8 “Owner” means the person owning in fee, or the person in whose name the legal title to the property appears by deed duly recorded in the County Clerk Recording office, or the person in possession of the property or buildings under claims of, or exercising acts or ownership over same, for themselves, or an executor, administrator, guardian, or trustee of the owner.
- 1.9 “Person” means an individual or a company, association, co-partnership, or public or private corporation.
- 1.10 “Premises” means a lot or parcel of real property under one (1) ownership, except where there are well- defined boundaries or partitions such as fences, hedges, or other restrictions preventing the common use of the property by the several tenants, in which case each portion shall be deemed separate premises. Apartment houses, condos and office buildings may be classified as single premises.
- 1.11 “Water Department” means the City of Gearhart and/or the City of Gearhart Public Works Department performing functions related to the City water service, the Public Works Director, and other duly authorized representative(s).
- 1.12 “Water Service” means water service and facilities rendered for normal domestic, commercial, and industrial purposes on a permanent basis, and the water available therefore.

## **ARTICLE II - GENERAL PROVISIONS**

### **Section 1. Title.**

This ordinance shall be known in short title as the “water operating ordinance” of the City of Gearhart.

### **Section 2. Use for Purposes Applied for Only.**

No person supplied with water service from the City water system shall be entitled to use it for any purpose other than as defined, or to supply water to any other person(s) or property.

**Section 3. Permit for Connections.**

It shall be unlawful for any person to attach or detach from any City water main or service pipe or to interfere in any manner with such pipes or mains without first having obtained written consent of the City Water Department. Such attachment or detachment shall be performed by the Water department, or if permission granted, by a licensed plumber retained by the City Water Department. All such attachments and detachments will be at the expense of the property owner.

**Section 4. Connections with Water Main.**

When a permit for water service has been obtained and paid for with the Building Department, there shall be installed a saddle, corporation cock, service pipe, curb stop, angle stop, meter, and meter box. No service pipe under ¾" shall be allowed. The main tap and service pipe not to exceed fifty feet (50') shall be installed by the City Water Department. Challenging installations may incur additional costs, as determined by the Water Department. Any service pipe over fifty feet (50') in length shall be in addition to the tapping fees established separately via resolution, and billed accordingly. Payment of tapping fees are due prior to installation with excess tapping fees due within (10) days of installation.

**Section 5. Meters.**

The City Water Department may at any time install a meter at the owner's expense for measuring water according to the established meter rates. If the meter fails to register properly, the consumer shall be charged on the basis of the average metered consumption for the four months preceding the failure of the meter. The meter will be immediately replaced by the City Water Department. No person unless authorized by the City Water Department shall in any manner tamper, connect, disconnect, repair or otherwise disturb any water meter after installation. The consumer shall be responsible that the meter remains free from obstructions for the purpose of reading, inspection, or repair. All new services will be metered by a meter size determined by the Public Works Director. The meter must remain accessible for reading. If the meter is covered by landscaping, rain water, or other, or is generally inaccessible for any other reason including but not limited to fencing, animals, or parking, the appropriate blocking fee will be charged pursuant to Article IV. Section 4. of this ordinance due to re-read.

**Section 6. Maintenance of Service Pipes.**

It shall be the duty of owners to keep the service pipes and connections within their premises in good repair at their own expense. The owner shall be liable for all damages which may result from their failure to do so. The only exception to the consumer being liable for all damages is if a cause of water loss can be found, proof of repair furnished in the form of parts/labor receipts or

invoices, and a documented drop in consumption units. The amount due caused by unusual circumstances may be reduced by forty percent (40%) by the City Administrator. Such connections shall be protected from frost. All City of Gearhart installed water service lines will be maintained by the City Water Department up to the meter or curb stop. The owner is responsible for all water related expenses beyond the meter.

**Section 7. Water Shut Off Due to Waste.**

When water is discovered as being wasted due to leaking pipes, defective fixtures or other, the water shall be shut off and the owner and/or consumer notified. The water will be turned on by the City's water department upon notification by the owner of the deficiency being corrected. While a turn off fee will be waived in these circumstances, a turn on fee will be charged pursuant to Article IV. Section 4. of this ordinance.

**Section 8. Water Shut Off for Repairs.**

The water may at any time be shut off from the mains, without notice, for repairs or other necessary purposes, and the City of Gearhart will not be responsible for any consequent damage. The City will make a viable effort to notify affected consumers whenever possible. Any time an owner and/or consumer needs water service shut off for repair, only the City Water Department is allowed to shut the water off at the meter, and both turn off and turn on fees will be charged pursuant to Article IV. Section 4. of this ordinance. Premises with a shut off valve installed at the dwelling unit and therefore not needing meter shut off assistance are exempt from fees.

**Section 9. Access to Premises for Inspection.**

The City Water Department shall have access at proper hours of the day to all parts of buildings and premises in which water may be delivered from the City system for the purpose of inspecting the condition of water pipes.

**Section 10. Backflow and Cross-Connections.**

The City of Gearhart enacted a separate ordinance regulating the control of backflow and cross-connections to protect the public potable water supply, promote elimination or control of existing cross-connections, and provide for maintenance of a continuing program of cross-connection control.

10.1 The City holds cross-connection agreements (MOU's) with both the City of Warrenton and the City of Seaside. These agreements are evaluated annually and identify the terms on which additional water is provided to the City of Gearhart.

**Section 11. Interference with Water Mains and Accessories.**

It shall be unlawful for any person to injure, destroy, or interfere with any water main, water pipe, service box, hydrant, or other accessories of the water system. Permission shall be obtained from the Water Department prior to any street or public way repair involving change in location of water main or possible damage to the water system, mains, or appurtenances. Upon completion of construction, all such water mains and appurtenances shall be replaced in an approved manner and the streets and sidewalks shall be restored as nearly as possible to their former condition.

**11.1 Interruption in Service.**

The City shall not be liable for interruption of service or shortage of water where such is not proximately caused by the negligence of the City, its agents or employees.

**Section 12. Special Uses.**

For other uses or service not herein mentioned, water will be furnished by special Contract.

**Section 13. Authority of City.**

All parts of the water system through which water is served, except pipes beyond the meter, are under the exclusive control of the City. The City has the right to limit or restrict the use of water. All water of the City of Gearhart is for the exclusive use of the citizens, residents and businesses of the City of Gearhart first.

**Section 14. Water Rate Schedule.**

The City of Gearhart established a water rate schedule via resolution itemizing rates inside and outside Gearhart city limits based on meter size, minimum consumption units, and overages over the allowed minimums.

**Section 15. Tapping Fees.**

The City of Gearhart established tapping fees via resolution based on meter size. Per Article II. Section 4. of this ordinance, payment of flat tapping fees are due prior to installation with excess tapping fees due within (10) days of invoice date.

**Section 16. Separability.**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

**ARTICLE III - NOTICES**

**Section 1. Notices to Consumers.**

Notices from the City to a consumer will normally be given in writing and either delivered or mailed to the last known address. Where conditions warrant, and in emergencies, the City may result in notification either by telephone or email.

- 1.1 Types of Notice:
  - 1.1.1 Water Billing - due the 20th, bi-monthly
  - 1.1.2 Final Billing - due 18 days after the final billing date
  - 1.1.3 Tapping Invoice - due 10 days after invoice date
  - 1.1.4 Past Due Warning Notice - remit within 2 weeks of due date
  - 1.1.5 Past Due Door Hanger Shut Off Warning - issued 1 week to due date
  - 1.1.6 Past Due Shut Off Door Hanger - issued morning of shut off
  - 1.1.7 Collection Notice - in arrears 6 months or more

**Section 2. Notices from Consumers.**

Notice from the consumer to the City may be given by an authorized representative in writing where necessary:

- 2.1 At City Hall- 698 Pacific Way, Gearhart, OR
- 2.2 Emailed to- [water@cityofgearhart.com](mailto:water@cityofgearhart.com)
- 2.3 Mailed to- P.O. Box 2510, Gearhart, OR 97138

**ARTICLE IV - WATER ACCOUNTS**

**Section 1. Application for Water.**

Application for the use of water shall be made by the consumer upon verbal agreement with written documentation by the City of Gearhart. The consumer shall agree to conform to the provisions of this ordinance and the regulations of the City of Gearhart Water Department. Further, no application shall be approved by the City of Gearhart to any consumer so long as there may be violations of this ordinance or liabilities owed to the City of Gearhart Water Department. In the event the consumer fails to remit monies owed and the premises goes up for sale or transfer, the water lien attached lies solely with the owner of the premises.

- 1.1 Owner / Authorized Agent Responsibility.

The owner / authorized agent shall be responsible for all accumulated charges in the event that the consumer moves without having paid all outstanding water charges owed to the City. In the event that the consumer's water is scheduled to be turned off due to non-payment, both the owner / authorized agent and the tenant shall be notified of the impending shut-off. All unpaid charges shall be assessed to the owner / authorized agent. The owner / authorized agent and the consumer are jointly and severally liable for all water charges, including user charges, fees, penalties and interest.

**Section 2. Water Bills, When Payable.**

Water charges are invoiced bi-monthly and are payable within 30 days of invoice date, or in advance, to the City of Gearhart Water Clerk. All metered accounts shall be due and payable on or before the 20th of the month due. A penalty may be imposed on accounts in arrears. Accounts in arrears after (6) months may be turned over to collections and water service shut off. Further, a violation of the rules and regulations and/or the terms of this ordinance, will result in the water being shut off and a turn off fee charged pursuant to Article IV. Section 4. of this ordinance. If water has been shut off due to arrears, a turn on fee pursuant to Article IV. Section 4. of this ordinance, and the balance both must be paid for water to be turned on.

- 2.1 The City will accept cash, check, money order, or certain credit cards for payment. The City provides paper and paperless billing. The City offers autopay and one-time payments. The City can accept payment in person, via phone, or electronically online.
- 2.2 Consumers that request a seasonal account status where water is shut off for months at a time are still responsible for the allowable minimum billed when a meter is in the ground and considered active. Both turn off and turn on fees will be charged pursuant to Article IV. Section 4. of this ordinance.

**Section 3. Penalties.**

All penalty fees will be added to the active consumers’ water account. For consumers past due, a warning notice will be sent. If payment is not received within two weeks of the due date, a door hanger shut off warning will be issued, and fee charged pursuant to Article IV. Section 4. of this ordinance. If payment has not been received by the past due invoice due date, the water will be shut off, and both door hanger shut off and turn off fees will be charged pursuant to Article IV. Section 4. of this ordinance.

Once payment has been made, a turn on fee will be charged pursuant to Article IV. Section 4. of this ordinance in order to restore service. Per Article II. Section 13. of this ordinance, accounts in arrears after (6) months may be turned over to collections. Per Article IV. Section 1. of this ordinance, in the event the consumer fails to remit monies owed and the premises goes up for sale or transfer, the water lien attached lies solely with the owner of the premises. Therefore, the City reserves the right to contact the owner if a consumer is in arrears.

- 3.1 Repeated violations of the ordinance may be deemed as a failure to comply and may result in a fine of \$500 per occurrence per day in accordance with Gearhart Zoning Code Article 15 - Remedies.

**Section 4. Fee Schedule.**

As cited throughout this ordinance:

Turn On	\$25.00
Turn Off	\$25.00
Emergency Turn On/Off (after hours)	\$125.00



Re-Read - Blocking	\$20.00
Re-Read - Blocking w/ Removal of Materials	\$200.00
Past Due - Yellow Door Hanger Shut Off Warning	\$20.00
Past Due - Yellow Door Hanger Shut Off	\$20.00
Returned Check Fee	\$50.00

**Section 5. Discontinuance of Service.**

A consumer may discontinue water service by verbal agreement or written documentation to the City of Gearhart. Until such agreement is made, the consumer shall be held responsible for all services rendered at the premises. If the consumer fails to remit monies owed, the water lien attached lies solely with the owner of the premises.

Passed by the City Council of Gearhart this \_\_\_\_ day of \_\_\_\_\_, 2023.

Yeas: \_\_\_\_\_  
 Nays: \_\_\_\_\_  
 Absent: \_\_\_\_\_  
 Abstain: \_\_\_\_\_

Approved and signed by the Mayor of Gearhart this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
 Mayor Kerry Smith

ATTEST:

\_\_\_\_\_  
 ATTEST: City Administrator, Chad Sweet