



City Council Meeting Agenda

Tuesday, September 26, 2023

6:15 p.m. – City Council EXECUTIVE SESSION –(CLOSED TO THE PUBLIC)

7:00 p.m. – City Council Regular Meeting

REVISED 09/25/2023

Welcome! The public is strongly encouraged to participate remotely but there is seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself.

The public is strongly encouraged to relay concerns and comments to the Council in one of three ways:

- Email at any time up to **12 p.m. on Monday, September 25th** to claudia.cisneros@mcminnvilleoregon.gov
- If appearing via telephone only please sign up prior by **12 p.m. on Monday, September 25th** by emailing the City Recorder at claudia.cisneros@mcminnvilleoregon.gov as the chat function is not available when calling in zoom;
- Join the zoom meeting use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide your First and Last name, Address, and contact information (email or phone) to the City.**

You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331, Frontier 29 or webstream here:

mcm11.org/live

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/81482370883?pwd=yMBINbZlnYLzqwETCZRSRQ43Q90nAj.1>

Zoom ID: 814 8237 0883

Zoom Password: 552385

Or you can call in and listen via Zoom: 1-253- 215- 8782

ID: 814 8237 0883

6:15 PM – CITY COUNCIL EXECUTIVE SESSION – (NOT OPEN TO THE PUBLIC)

1. CALL TO ORDER
2. **EXECUTIVE SESSION PURSUANT TO ORS 192.660(2)(e):** To conduct deliberations with persons designated by the governing body to negotiate real property transactions. **AND Executive Session pursuant to ORS 192.660(2)(f):** To consider information or records that are exempt by law from public inspection.
3. ADJOURNMENT OF EXECUTIVE SESSION

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND SEATING AT CIVIC HALL

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE

3. PROCLAMATION

- a. Indigenous People's Day Proclamation
- b. McMinnville MADE Day in conjunction with The National Manufacturing Day Proclamation

4. INVITATION TO COMMUNITY MEMBERS FOR PUBLIC COMMENT –

The Mayor will announce that interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3 minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.

5. PRESENTATIONS

- a. ~~Commercial Property Assessed Clean Energy (CPACE) Presentation by Patty Herzog from MEDP.~~
(Removed on 09.25.2023)
- a. McMinnville Economic Development Partnership (MEDP) Annual Presentation.

6. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports

7. CONSENT AGENDA

- a. Consider **Resolution No. 2023-57**: A Resolution approving code compliance liens on properties to recover unpaid civil penalty citations.
- b. Consider the request from Abuela's Nuestra Cocina Inc. for Commercial Full on-premises, OLCC Liquor License located at 226 NE 3rd Street. **(Added on 09.25.2023)**
- c. Consider the request from MAC Plaza LLC. for Commercial Full on-premises, OLCC Liquor License located at 500 SE Adams Street. **(Added on 09.25.2023)**

8. ORDINANCE

- a. Consider the second reading of **Ordinance No. 5138**: An Ordinance Repealing Chapter 9.20.30, Chapter 9.32.20, and Chapter 9.24.20 of the McMinnville Municipal Code and Amending Chapter 9.24.40 of the McMinnville Municipal Code.

9. ADJOURNMENT OF REGULAR MEETING

PROCLAMATION

WHEREAS, the city of McMinnville recognizes Indigenous People Day ; and

WHEREAS, this city wishes to honor the fact that the community of McMinnville is built upon the traditional homelands of the Yamel band of the Kalapuya Peoples and affirms the legal rights of the nine federally recognized tribal nations in the State of Oregon and all Indigenous Peoples everywhere; and

WHEREAS, Indigenous Peoples' Day was first proposed in 1977 by a delegation of Native Nations to the United Nations sponsored International Conference on Discrimination against Indigenous Populations in the Americas; and

WHEREAS, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples on December 16, 2010, and the Declaration recognizes that "indigenous peoples have suffered and continue to suffer from historic injustices as a result of their colonization and dispossession of their lands, territories and resources"; and

WHEREAS, the City recognizes the many contributions made to our community through Indigenous Peoples' knowledge, labor, spirituality, technology, science, philosophy, arts and the cultural contribution that shaped the character of McMinnville; and

WHEREAS, the City of McMinnville has a responsibility to oppose the systematic racism towards Indigenous Peoples in the United States, which perpetuates high rates of poverty and income inequality, exacerbates disproportionate health, education, and social stability; and

WHEREAS, that the City of McMinnville shall continue its efforts to promote the prosperity and well-being of any Native American, Alaska Native, and Indigenous community; and that Indigenous Peoples' Day shall be used to reflect upon the ongoing struggles of Indigenous People on this land, to celebrate the thriving culture and value that Indigenous Peoples add to our city; and

WHEREAS, that the City of McMinnville encourages all businesses, organizations, and public institutions to recognize Indigenous Peoples' Day.; and

NOW, THEREFORE, I, Remy Drabkin, Mayor of McMinnville, do hereby proclaim Monday, October 9, 2023 as:

Indigenous People's Day

IN WITNESS WHEREOF, I have hereunto set my hand, this twenty-six day of September, in the year two thousand twenty-three.

Remy Drabkin, Mayor

Amended on 09.27.2023
3 of 20



PROCLAMATION

Whereas, manufacturing and traded sector companies make a very significant contribution to the national, state and local economy; and

Whereas, our community is fortunate to be the home of nearly 100 world-class manufacturing and traded sector companies featuring a multitude of products made in the City of McMinnville and 340 throughout Yamhill County; and

Whereas, these companies add to the vitality and prosperity of our community by employing nearly 2,200 people in McMinnville alone and nearly 6,000 employees throughout Yamhill County. Manufacturing has a revenue impact of \$327M in the City of McMinnville and nearly \$1B in revenue impact throughout Yamhill County.

Now, therefore, I, Remy Drabkin, by the virtue of the authority vested in me as the Mayor of the City of McMinnville, do hereby proclaim October 6, 2023, as

McMinnville | MADE Day in conjunction with The National Manufacturing Day

In Witness Whereof, I have hereunto set my hand and caused the Official Seal of the City of McMinnville to be affixed this 26th day of September 2023.

Remy Drabkin, Mayor

PROCLAMATION

Whereas, Rich Leipfert was hired as Fire Chief by the City of McMinnville on July 1, 2008; and

Whereas, Fire Chief Leipfert leaves big shoes to fill at the city to lead – first, foremost, and always – in humble service to the Community; and

Whereas, Fire Chief Leipfert selflessly made sure to leave the City of McMinnville better than he found it, and sacrificed a lot of blood, sweat and tears to ensure it; and

Whereas, Fire Chief Leipfert has a gift for using humor to effectively defuse tension; and

Whereas, Fire Chief Leipfert could always be counted on to provide innovative solutions to address perplexing challenges; and

Whereas, Fire Chief Leipfert is a kind-hearted, trusted, reliable member of the Executive Team; and

Whereas, Fire Chief Leipfert has displayed true dedication to providing outstanding Fire and EMS services to McMinnville community; and

Whereas, Fire Chief Leipfert has been a reliable, collaborative, and welcoming colleague who is always available to lend a listening ear; and

Whereas, Fire Chief Leipfert's commitment to equity and inclusion supported women in leadership roles among fire chiefs; and

Whereas, Fire Chief Leipfert's commitment to equity and inclusion brought forth the McMinnville Fire Department Pride shirt and women in fire department and association leadership roles; and

Whereas, Fire Chief Leipfert has supported the enhancement of local fire and emergency services through modern practices and programs; and

Whereas, Fire Chief Leipfert has shown visionary leadership throughout his fire service tenure; and

Whereas, Fire Chief Leipfert has shown steadfast dedication to service throughout challenging situations; and

Whereas, Fire Chief Leipfert's sense of service and commitment to the community is valued by the community members of the City of McMinnville.

NOW, THEREFORE, I, Remy Drabkin, Mayor of the City of McMinnville do hereby proclaim **September 26, 2023** as

Fire Chief Rich Leipfert Day

in the City of McMinnville and urge the community to reflect on the passion and leadership of this caring and community-minded Fire Chief who is leaving a legacy behind.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the OFFICIAL Seal of the City of McMinnville to be affixed this 26th day of September, 2023.

Remy Drabkin, Mayor

Added on 09.27.2023
1 of 1

Amended on 09.27.2023
5 of 20

From: [Jessica Payne](#)
To: [Claudia Cisneros](#)
Subject: FW: city ordinance re: public safety
Date: Tuesday, September 12, 2023 8:15:16 PM

Jessica Payne
Pronouns: She, her, hers
Ward 3 City Councilor
What ward do I live in? Find out

(971) 517-0957
jessica.payne@mcminnvilleoregon.gov

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address are public records of the City of McMinnville and may be subject to public disclosure; the same is true for text communication sent to the phone number above. This e-mail is subject to the State of Oregon Retention Schedule.

-----Original Message-----

From: Loretta M Johnson <[REDACTED]>
Sent: Tuesday, September 12, 2023 8:05 PM
To: Remy Drabkin <Remy.Drabkin@mcminnvilleoregon.gov>; Adam Garvin <Adam.Garvin@mcminnvilleoregon.gov>; Sal Peralta <Sal.Peralta@mcminnvilleoregon.gov>; Chris Chenoweth <Chris.Chenoweth@mcminnvilleoregon.gov>; Kellie Menke <Kellie.Menke@mcminnvilleoregon.gov>; Zack Geary <Zack.Geary@mcminnvilleoregon.gov>; Jessica Payne <Jessica.Payne@mcminnvilleoregon.gov>
Subject: city ordinance re: public safety

This message originated outside of the City of McMinnville.

Listening now to the City Counsel meeting this evening, 9/12/23, I was first disappointed that there was no mention of the requested bicycle lanes to Joe Dancer Park. Secondly I was relieved to hear discussion about our problems with safety issues and the transient population. I am glad there will be work to establish an ordinance that will bring needed safety and protection. My request is that this be fast-tracked, not allowing this to drag on because time is of the essence since daily there are instances of threat to the safety and welfare of our community. Please act quickly.

Lastly, I would ask that in these meetings, you are aware how easy it is to lose track of what you are saying when there are far too many words used to say or make a simple point. And the use of word fillers like uh and and are distracting and make it very difficult at times to follow.

Thank you very much for your service to our community and your contribution of your time and effort.
David and Loretta Johnson
McMinnville, Oregon

STAFF REPORT

DATE: September 26, 2023
TO: McMinnville City Council
FROM: Nic Miles, Code Compliance Officer
SUBJECT: Resolution No. 2023-57, Unpaid Citations and Abatement Costs

STRATEGIC PRIORITY & GOAL:



COMMUNITY SAFETY & RESILIENCY

Proactively plan for & responsively maintain a safe & resilient community.

OBJECTIVE/S: Build a community culture of safety (consider safety best practices)

Report in Brief:

This is the consideration of Resolution No. 2023 - 57, approving liens on property that have not paid for the costs associated with property nuisance abatements or citations per Section 8.10 of the McMinnville Municipal Code. These liens represent the few property nuisances that were not able to be resolved voluntarily.

Background:

In October 2019, City Council voted to approve amendments to Title 2 and Title 8 of the McMinnville Municipal Code. Those updates provided code compliance staff with more efficient tools for addressing property maintenance and health and safety concerns in an expeditious time frame. Since that time, code compliance staff has continued to resolve most complaints through voluntary compliance. For those property owners who do not voluntarily comply, the City will abate the property and then invoice the property owner for the full costs of the abatement including staff time. Per Section 2.50.250(F) of the McMinnville Municipal Code, if the property owner refuses to pay the invoice, the City has the right to lien the property for the unpaid invoice per the McMinnville Municipal Code after City Council approval. Resolution No. 2023-57 represents unpaid civil penalty citations and corrective action costs for four properties with unpaid invoices from citations or abatements in June – August 2023.

Discussion:

Unpaid Abatement Costs and Citations:

1200 NW St. Andrews Point

Animals and Animal Excrement: \$250 Citation

- Code compliance staff received complaints a dog that resides at this property was roaming freely in the neighborhood and on an adjacent private golf course.

675 NW Conrad Court

Hazardous and Noxious Vegetation: \$1032.93 Abatement

- Code compliance staff was notified that the grass and weeds at this property had become overgrown and presented a fire hazard and were also obstructing the public right-of-way.

696 NW Fenton Street

Debris, Junk and Garbage: \$2648.84 Abatement

- Code compliance staff received complaints from a neighbor that the residents at this property were hoarding garbage, junk, and debris. The accumulation of waste created a public health hazard and allowed for the harborage of rats.

Attachments:

- Resolution No. 2023-57.

Fiscal Impact:

Placing these unpaid citations as liens against the properties will result in eventual full cost recovery, including administrative time and resources.

Recommendation:

Staff recommends that these unpaid citations and corrective action costs be placed on the lien docket.

"I MOVE TO APPROVE RESOLUTION NO. 2023-57"

RESOLUTION NO. 2023-57

A Resolution approving code compliance liens on properties to recover unpaid civil penalty citations.

RECITALS:

WHEREAS, On August 13, 2019, the McMinnville City Council adopted Ordinances No. 5078 and 5079, amending the McMinnville Municipal Code to restructure the code compliance program with an emphasis on efficiency, timeliness, voluntary compliance, and the ability to abate properties and issue civil penalties when voluntary compliance was not achieved; and

WHEREAS, per Section 2.50.250(F) of the McMinnville Municipal Code, if the city needs to obtain a correction action warrant to abate properties that were not voluntarily abated for public safety, health, and welfare, the city can bill the property owner for the full cost recovery of that abatement; and

WHEREAS, per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the full costs of the correction action within thirty (30) days, the City Council can lien the property by resolution; and

WHEREAS, per Section 2.50.310 of the McMinnville Municipal Code, the city can issue a Notice of Civil Penalty to the property owner; and

WHEREAS, per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the civil penalties within thirty (30) days, the City Council can lien the property by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, that the following properties have been assessed either corrective action costs or civil penalties that after due process and notification, the property owners have refused to pay within thirty (30) days and are now approved to be recorded as liens on the property:

Property Address	Violation Type	Amount of Lien
1200 NW St. Andrews Point	Civil Penalty Citation	\$250.00
675 NW Conrad Court	Unpaid Corrective Action Costs	\$1032.93
696 NW Fenton Street	Unpaid Corrective Action Costs	\$2648.84

Adopted by the Common Council of the City of McMinnville at a meeting held the 26th day of September 2023 by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of September 2023.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

Final Action:

Approved ☐ Disapproved ☐

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: Abuela's Nuestra Cocina Inc.
BUSINESS LOCATION ADDRESS: 226 NE 3rd Street
LIQUOR LICENSE TYPE: Commercial

Is the business at this location currently licensed by OLCC

Yes

No



If yes, what is the name of the existing business:

Hours of operation: N/A

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:

(list any exemptions)

Tritech Records Management System Check: Yes ☒ No ☐

Criminal Records Check: Yes ☒ No ☐

Recommended Action: Approve ☒ Disapprove ☐



Chief of Police / Designee

City Manager / Designee



OREGON LIQUOR & CANNABIS COMMISSION
LIQUOR LICENSE APPLICATION

Instructions

1. **Complete and sign** this application.
2. Prior to submitting this application to the OLCC, send the completed application to **the local government for the premises address** to obtain a recommendation.
 - If the premises street address is within a city's limits, the local government is the city.
 - If the premises street address is not within a city's limits, the local government is the county.
3. You can submit the application if:
 1. You have WRITTEN documentation showing the date the local government received the application or;
 2. The local government has provided you their recommendation.
4. **Email the application that contains the local government recommendation or proof of submission to:**
OLCC.LiquorLicenseApplication@Oregon.Gov.
5. **Do not** include any license fees with your application packet (fees will be collected at a later time).
When it's time to pay the license fee you must pay the full yearly fee for the current license year (the license fee will not be prorated). If you pay in the last quarter of your license year you must also pay the yearly fee for the next license year.

License Request Options - Please see the general definitions of the license request options below:

- **New Outlet:** The licensing of a business that does not currently hold an active liquor license.
- **Change of Ownership:** The request to completely change the licensee of record at a licensed business.
- **Greater Privilege:** The request to replace a Limited On-Premises sales license with a Full On-Premises sales license.
- **Additional Privilege:** The licensee currently holds an active liquor license at the premises and that same licensee would like to request to add an **additional** different liquor license type at that same premises location.

Additional Information

Applicant Identification: Please review [OAR 845-006-0301](#) for the definitions of "applicant" and "licensee" and [OAR 845-005-0311](#) to confirm that all individuals or entities with an ownership interest (other than a waivable ownership interest, per OAR 845-005-0311[6]) in the business have been identified as license applicants on this document. If you have a question about whether an individual or entity needs to be listed as an applicant for the license, discuss this with the OLCC staff person assigned to your application.

Premises Address: This is the physical location of the business and where the liquor license will be posted.

Applicant Signature(s): Each individual listed in the [applicant information box](#) on page 2 (entity or individuals applying for the license) must sign the application.

If an applicant listed in the applicant information box on page 2 is an entity (such as a corporation or limited liability company), at least one individual who is authorized to sign for the entity must sign the application.

Applicant/Licensee Representative(s): In order to make changes to a license or application or to receive information about a license or application by someone other than the applicant/licensee you must:

- Complete the below [Authorized Representative](#) area on page 2 as the applicant/licensee and/or
- Provide a Power of Attorney document showing the permissions allowable on the behalf of the applicant/licensee with this submission

Please note that applicants/licensees are responsible for all information provided on this form, even if an authorized representative or individual with authority signs on behalf of the applicant.

For help with this application or any related documents or processes, email olcc.alcohollicensing@oregon.gov.

LIQUOR LICENSE APPLICATION

Page 1 of 4

Check the appropriate license request option:

☒ New Outlet | ☐ Change of Ownership | ☐ Greater Privilege | ☐ Additional Privilege

Select the license type you are applying for.

More information about all license types is available [online](#).

Full On-Premises

- ☒ Commercial
☐ Caterer
☐ Public Passenger Carrier
☐ Other Public Location
☐ For Profit Private Club
☐ Nonprofit Private Club

Winery

- ☐ Primary location
Additional locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th

Brewery

- ☐ Primary location
Additional locations: ☐ 2nd ☐ 3rd

Brewery-Public House

- ☐ Primary location
Additional locations: ☐ 2nd ☐ 3rd

Grower Sales Privilege

- ☐ Primary location
Additional locations: ☐ 2nd ☐ 3rd

Distillery

- ☐ Primary location
Additional tasting locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th ☐ 6th

☐ Limited On-Premises

☐ Off Premises

☐ Warehouse

☐ Wholesale Malt Beverage and Wine

LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

After providing your recommendation, return this application to the applicant WITH the recommendation marked below

City/County name:

(Please specify city or county)

Date application received: 9/19/2023

Optional: Date Stamp Received Below

- ☐ Recommend this license be granted
☐ Recommend this license be denied

Printed Name

Date

Abuela's Nuestra Cocina

Trade Name



Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: MAC Plaza LLC
BUSINESS LOCATION ADDRESS: 500 SE Adams St
LIQUOR LICENSE TYPE: Commercial

Is the business at this location currently licensed by OLCC

Yes No



If yes, what is the name of the existing business:

Hours of operation: N/A

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:
(list any exemptions)

Tritech Records Management System Check: Yes ☒ No ☐

Criminal Records Check: Yes ☒ No ☐

Recommended Action: Approve ☒ Disapprove ☐

Chief of Police / Designee

City Manager / Designee



OREGON LIQUOR & CANNABIS COMMISSION LIQUOR LICENSE APPLICATION

Instructions

1. **Complete and sign** this application.
2. Prior to submitting this application to the OLCC, send the completed application to **the local government for the premises address** to obtain a recommendation.
 - If the premises street address is within a city's limits, the local government is the city.
 - If the premises street address is not within a city's limits, the local government is the county.
3. You can submit the application to the OLCC if:
 1. You have **WRITTEN** documentation showing the date the local government received the application or;
 2. The local government has provided you their recommendation.

ALL forms and documents must be a PDF attachment

4. **Email the PDF application that contains the local government recommendation or proof of submission to:** OLCC.LiquorLicenseApplication@Oregon.Gov.
5. **Do not** include any license fees with your application packet (fees will be collected at a later time).
When it's time to pay the license fee you must pay the full yearly fee for the current license year (the license fee will not be prorated). If you pay in the last quarter of your license year you must also pay the yearly fee for the next license year.

License Request Options - Please see the general definitions of the license request options below:

- **New Outlet:** The licensing of a business that does not currently hold an active liquor license.
- **Change of Ownership:** The request to completely change the licensee of record at a licensed business.
- **Greater Privilege:** The request to replace a Limited On-Premises sales license with a Full On-Premises sales license.
- **Additional Privilege:** The licensee currently holds an active liquor license at the premises and that same licensee would like to request to add an **additional** different liquor license type at that same premises location.

Additional Information

Applicant Identification: Please review [OAR 845-006-0301](#) for the definitions of "applicant" and "licensee" and [OAR 845-005-0311](#) to confirm that all individuals or entities with an ownership interest (other than a waivable ownership interest, per OAR 845-005-0311[6]) in the business have been identified as license applicants on this document. If you have a question about whether an individual or entity needs to be listed as an applicant for the license, discuss this with the OLCC staff person assigned to your application.

Premises Address: This is the physical location of the business and where the liquor license will be posted.

Applicant Signature(s): Each individual listed in the [applicant information box](#) on page 2 (entity or individuals applying for the license) must sign the application.

If an applicant listed in the applicant information box on page 2 is an entity (such as a corporation or limited liability company), at least one individual who is authorized to sign for the entity must sign the application.

Applicant/Licensee Representative(s): In order to make changes to a license or application or to receive information about a license or application by someone other than the applicant/licensee you must:

- Complete the below [Authorized Representative](#) area on page 2 as the applicant/licensee and/or
- Provide a Power of Attorney document showing the permissions allowable on the behalf of the applicant/licensee with this submission

Please note that applicants/licensees are responsible for all information provided on this form, even if an authorized representative or individual with authority signs on behalf of the applicant.

For help with this application or any related documents or processes, email olcc.alcohollicensing@oregon.gov.

LIQUOR LICENSE APPLICATION

Page 1 of 4

Check the appropriate license request option:

☒ [New Outlet](#) | ☐ [Change of Ownership](#) | ☐ [Greater Privilege](#) | ☐ [Additional Privilege](#)

Select the license type you are applying for.

More information about all license types is available [online](#).

Full On-Premises

- ☒ Commercial
- ☐ Caterer
- ☐ Public Passenger Carrier
- ☐ Other Public Location
- ☐ For Profit Private Club
- ☐ Nonprofit Private Club

Winery

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th

Brewery

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Brewery-Public House

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Grower Sales Privilege

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Distillery

- ☐ Primary location
- Additional tasting locations: (Use the DISTT form [HERE](#))

☐ Limited On-Premises

☐ Off Premises

☐ Warehouse

☐ Wholesale Malt Beverage and Wine

LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

After providing your recommendation, return this application to the applicant WITH the recommendation marked below

City OR County name: (not both)

(Please specify city **OR** county)

Date application received: 9/22/2023

Optional: Date Stamp Received Below

- ☐ Recommend this license be granted
- ☐ Recommend this license be denied
- ☐ No Recommendation/Neutral

Printed Name

Date

Signature

MAC Plaza LLC

Trade Name



STAFF REPORT

DATE: August 31, 2023
TO: Mayor and City Councilors
FROM: Matt Scales, Police Chief
SUBJECT: Consideration of McMinnville City Ordinance No. 5138

Report in Brief:

During the last 6 months there has been discussion with respect to McMinnville Municipal Code (MMC) sections that on the surface appeared to be unconstitutional. Within the last couple of months, interim City Attorney Walt Gowell and I met to discuss several sections of the municipal code, and identified three municipal codes which are very likely unconstitutional and unenforceable in whole or in part under current binding law. Also, we identified McMinnville Municipal Code, 9.24.040 relating to public indecency, as needing an amendment to be enforceable as written. The proposed amendment removes outdated language and tracks with existing Oregon statutory public indecency categories set out in ORS 163.465.

Background:

Within the last couple of months, interim City Attorney Walt Gowell and I met to discuss several portions of the municipal code, and identified three municipal codes which were unconstitutional and unenforceable in whole or in part under current binding law. Lastly one McMinnville Municipal Code, 9.24.040, was identified as needing to be amended. The proposed amendment removes outdated language to track with existing law public indecency categories set out in ORS 163.465.

The following McMinnville Municipal Code (MMC) is recommended to be repealed as unconstitutional and thus unenforceable.

9.20.030 Soliciting drinks.

No female person shall frequent, loiter, or be employed in a tavern, bar, nightclub or cocktail lounge for the purpose of soliciting a male person to purchase drinks. No proprietor of such an establishment shall allow the presence in the establishment of a person who violates the provisions of this section. This section does not apply to female persons regularly employed as barmaids or waitresses while on duty. (Ord. 3623 §57, 1972).

This so-called “B Girl” Ordinance is likely a reflection of similar municipal ordinances which historically sought to inhibit prostitution and the inducement of alcohol intoxication at establishments formerly referred to as Speak Easies. The limitation of the restriction on solicitation to female persons has been held to violate the federal 14th Amendment guarantee of Equal Protection. The advent of liquor liability statutes has largely replaced these types of ordinances in recent years.

9.24.020 Accosting for deviate purposes.

No person shall, while in public place, invite or request another person to engage in deviate sexual intercourse. (Ord. 3623 §21, 1972).

This ordinance focuses on the public solicitation of “deviate” intercourse (impliedly) by homosexual, lesbian or other persons, and is likely unconstitutional as being void for vagueness and violative of the Equal Protection Clause of the Federal 14th Amendment. The actual activity in public, is already incorporated into the amended Public Indecency ordinance below. In addition, the former Oregon Revised Statute version of this type of anti-solicitation code was ruled unconstitutional by the Oregon State Court of Appeals in 1981 by the case **State v. Tusek**. That case ruled that the state law targeted protected free speech by making illegal the public solicitation of what are lawful private acts, thus infringing on free speech rights of Oregonians.

9.32.020 Begging.

No person shall accost another in a public place for the purpose of soliciting alms. This section shall not apply to persons granted permits in accordance with city ordinances relating to the regulation and licensing of solicitors and peddlers. (Ord. 3623 §11, 1972).

Courts have repeatedly defended panhandling as a First Amendment right, as long as it doesn’t turn overly aggressive or interfere with traffic. Panhandling Ordinances have been held unconstitutional where they conflict with fundamental rights including free speech rights. The Supreme Court has also made clear that poverty, standing alone, is not a suspect classification. Harris v. McRae, 448 U.S. 297, 323, 100 S.Ct. 2671, 65 L.Ed.2d 784 (1980). However, a classification based on poverty or wealth can become a suspect classification, subject to more rigid scrutiny than other classifications, when such classification interferes with a fundamental constitutional right. The ordinance above purports to ban aggressive public solicitation, but fails to tie the restriction to any specified public safety purpose or other criteria as to what it means to “accost”. This ordinance in its current form arguably makes the annual activities of the Salvation Army’s Christmas bell ringers illegal. While the ordinance can, in theory, be made to withstand constitutional scrutiny, other public laws governing safety or public thoroughfares are more commonly used to curtail unsafe solicitation.

The following McMinnville Municipal Code (MMC) Is recommended to be amended removing outdated language and adding language present in state law.

9.24.040 Public Indecency

No person shall, while in or in view of a public place, perform:

- A. Act of sexual intercourse;
- B. ~~An act of deviate intercourse (recommended for deletion)~~
- B. ~~An act of masturbation (recommended for inclusion)~~ or oral or anal sexual intercourse;
- C. An act of exposing his or her genitals with the intent of arousing the sexual desire of themselves or another person.

The proposed amended language removes language which is vague, and almost certainly violates the Equal Protection Clause of the 14th Amendment. The amendment also incorporates the prohibition of public masturbation which is currently a part of ORS 163.465 and can be added to the McMinnville Ordinance.

Question:

Does the City Council wish to consider adoption of Ordinance No. 5138 repealing Chapter 9.20.30 Chapter 9.32.20 and Chapter the MMC 9.24.40 and amending Chapter 9.24.40 of the McMinnville Municipal Code.

Attachments:

Proposed ordinance No.5138

Recommendation:

The interim City Attorney and I recommend review and Council consideration of Ordinance #5138.

ORDINANCE NO. 5138

**AN ORDINANCE REPEALING CHAPTER 9.20.30, CHAPTER 9.32.20, AND
CHAPTER 9.24.20 OF THE MCMINNVILLE MUNICIPAL CODE AND
AMENDING CHAPTER 9.24.40 OF THE MCMINNVILLE MUNICIPAL CODE.**

RECITALS:

WHEREAS, the Police Chief has referred three existing Municipal Code Sections most recently re-adopted in 1972 to the Interim City Attorney for review as to their constitutionality pursuant to existing law; and

WHEREAS, The Interim City Attorney has reviewed the constitutionality of such three existing Municipal Code provisions and found each, in his opinion to be unconstitutional and unenforceable in whole or in part under current binding law; and

WHEREAS, the City Council desires to amend the McMinnville Municipal Code to repeal in their entirety or amend each of such specified unconstitutional Municipal Code sections.

**NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF
CARLTON ORDAINS AS FOLLOWS:**

Section 1. McMinnville Municipal Code Chapters 9.20.30, 9.24.020, and 9.32.20 are hereby repealed in their entirety.

Section 2. Chapter 9.24.20 of the McMinnville Municipal Code is hereby amended to read as follows:

"9.24.040 Public Indecency

No person shall, while in or in view of a public place, perform:

- A. Act of sexual intercourse;
- B. An act of masturbation or oral or anal sexual intercourse;
- C. An act of exposing his or her genitals with the intent of
arousing the sexual desire of themselves or another person."

Section 3. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 26th day of September, 2023 by the following votes:

Ayes: _____

Nays: _____

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder