

ORDINANCE NO. 5078

An Ordinance amending Title 2 of the McMinnville Municipal Code, creating Chapter 2.50 establishing a civil code enforcement process.

RECITALS:

In order to preserve the health, welfare and safety of the community, the City has adopted various civil code provisions that govern the conduct of business and personal activities within the City, which are codified in the McMinnville Municipal Code.

The city desires to ensure compliance with these non-criminal provisions of the code by establishing a fair, transparent and efficient process for identifying and enforcing civil code violations, separate from the process currently used to enforce criminal code violations.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The amendments to the MMC set forth in the attached Exhibit 1, are incorporated into this Ordinance by this reference.
2. This ordinance will take effect September 12, 2019.

Passed by the Council August 13, 2019, by the following votes:

Ayes: Geary, Menke, Peralta, Stassens

Nays: Garvin

Approved August 13, 2019.

Effective Date: September 12, 2019

  
MAYOR

Approved as to form:

Attest:

  
CITY ATTORNEY

  
CITY RECORDER

# ORD 5078 - Exhibit 1

## Chapter 2.50 CODE COMPLIANCE

### Table of Contents

2.50.010	Applicability of Chapter .....	1
2.50.020	Definitions.....	2
2.50.110	Identification and Investigation.....	2
2.50.120	Notice of Code Violation.....	3
2.50.210	Corrective Action by Responsible Person.....	4
2.50.220	Corrective Action by Compliance Officer .....	4
2.50.230	Obtaining a Corrective Action Warrant.....	5
2.50.240	Executing a Corrective Action Warrant .....	6
2.50.250	Notice and Collection of Corrective Action Costs .....	6
2.50.260	Corrective Action Remedies Not Exclusive.....	7
2.50.310	Notice of Civil Penalty.....	7
2.50.320	Civil Penalty Classification Levels .....	8
2.50.510	Protests and Appeals.....	9

### 2.50.010 Applicability of Chapter

- A. The provisions of this chapter apply to the enforcement of civil code provisions identified in the following portions of the McMinnville Municipal Code, including all plans, permits, or licenses adopted or issued pursuant to such provisions :
1. All chapters of Title 5 (Business Taxes, Licenses and Regulations)
  2. All chapters of Title 8 (Health and Safety)
  3. All chapters of Title 17 (Zoning) and all ordinance adopted pursuant to Title 17 or the McMinnville Comprehensive Plan, regardless of whether such ordinance are codified in the McMinnville Municipal Code.
- B. Notwithstanding the provisions of subsection (A) of this section, the provisions of this chapter do not apply to the enforcement of any violation identified as a misdemeanor or for which the punishment may include any term of imprisonment, or to any criminal, traffic or parking laws, including the laws set forth in the following Titles of the McMinnville Municipal Code:
1. Title 9 – Public Peace, Morals and Welfare
  2. Title 10 – Vehicles and Traffic

## 2.50.020 Definitions

As used in this chapter:

- A. "Code" or "McMinnville Municipal Code" means the provisions of all ordinances adopted by the City Council, regardless of whether codified into the McMinnville Municipal Code, that are subject to the provisions of this Chapter, as described in Section 2.50.010.
- B. "Code Violation" means any substance, condition or action that violates any requirement or prohibition set forth in the McMinnville Municipal Code, including the terms and conditions of any permit, license, or other grant of authority issued or executed pursuant to the provisions of such Code.
- C. "Compliance Officer" means any person designated by the City Manager or designee as having responsibility for enforcing the civil provisions of the McMinnville Municipal Code.
- D. "Corrective Action" means an action that is necessary and sufficient to bring any substance, condition or action into compliance with the provisions of the McMinnville Municipal Code.
- E. "Exigent Circumstances" means any circumstances that would cause a reasonable person to believe that immediate entry on a premises or other relevant action is necessary to prevent:
  - 1. physical harm to persons or property;
  - 2. destruction of evidence; or,
  - 3. other consequences that would improperly frustrate legitimate code compliance efforts.
- F. "Person" means a natural person, firm, partnership, association or corporation.
- G. "Person in charge of a premises" means an owner, agent, occupant, guest, tenant, lessee, contract purchaser, contractor, employee, squatter, or any other person having possession or control of a premises, or supervision over a construction project on a premises.
- H. "Post" or "Posting" means the action of physically placing or affixing a notice authorized or required to be posted by this chapter to any portion of the premises in a manner likely to be seen by any responsible person. In the event that the premises is occupied, posting of notice may be accomplished by personal delivery to any person in charge of the premises.
- I. "Premises" means any publicly or privately owned building, lot, parcel, real estate, land or portion of land, whether improved or unimproved.
- J. "Responsible person" means any person that is responsible for permitting, allowing, or causing to exist any substance, condition or action that is prohibited by the provisions of provisions of the McMinnville Municipal Code.
- K. "Warrant" or "administrative warrant" means a written order issued by the McMinnville Municipal Court Judge, authorizing entry onto a premises for the purpose of carrying any of the provisions of this Chapter related to the investigation or correction of a code violation.

## 2.50.110 Identification and Investigation

- A. Upon the receipt of a complaint or the proactive observance of any City employee, a Compliance Officer is authorized to investigate and determine whether a code violation exists by gathering and documenting evidence, as appropriate to the nature of the alleged violation.
- B. When the entry on private property is necessary or desirable for the identification or investigation of the code violation, a Compliance Officer is authorized as follows:

1. A Compliance Officer is authorized to enter onto public or private premises that is open to the public at all reasonable times to determine whether a code violation exists.
2. A Compliance Officer is authorized to enter onto a private premises that is not open to the public at reasonable times to determine whether a code violation exists when the Compliance Officer:
  - a. Has received permission from any person in charge of the premises;
  - b. An administrative warrant has been issued pursuant to the provisions of this chapter authorizing entry for inspection of the premises;
  - c. Determines that an emergency or other exigent circumstances exist requiring immediate entry.
- C. An Administrative Search Warrant may be issued by the Municipal Court Judge upon the oath and application of a Compliance Officer, which must include a sworn affidavit showing probable cause for the entry and inspection by stating the purpose and extent of the proposed inspection, citing the chapter(s) of the McMinnville Municipal Code that serve(s) as the basis for the inspection, and giving information concerning the code violation in question and/or the premises on which it is located.
- D. A person must not interfere with or attempt to prevent a Compliance Officer from entering onto any premises when such entry is authorized by the provisions of this section.

#### 2.50.120 Notice of Code Violation

- A. If the City Manager or designee is satisfied that a code violation exists, the Compliance Officer will cause a Notice of Code Violation to be posted on the premises, or at the site of the code violation, directing the responsible person to correct the code violation.
- B. At the time of posting, the Compliance Officer must also cause a copy of the Notice of Code Violation to be forwarded by certified mail, postage prepaid, to any person in charge of the premises and to the owner of the premises (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Yamhill County. If the mailed Notice of Code Violation is returned as undeliverable or is unclaimed by the property owner, it will not preclude the city from taking enforcement or corrective actions as described in this chapter.
- C. The Notice of Code Violation must contain:
  1. A description of the real property, by street address or otherwise, on which the code violation exists.
  2. A description of the code violation found to exist by the Compliance Officer.
  3. A determination of whether the code violation presents an immediate threat to the public health, welfare or safety.
  4. A direction to correct the code violation within 10 days from the date of notice.
  5. If the code violation is for a public nuisance described in Chapter 8.10, a statement that unless the code violation is corrected by the deadline, the City may correct the code violation and assess the full cost of corrective action, including administrative charges, against all responsible persons and that such corrective action costs will become a lien on the property if not paid in full within thirty days of invoicing.
  6. A statement that failure to correct a code violation may warrant imposition of a civil penalty upon all persons responsible for the code violation.

7. A statement that the owner or any responsible person may protest the Notice of Code Violation by giving written notice to the City Manager within 10 days from the date of the notice, together with a written statement as to why a code violation does not exist.
- D. Upon completion of the posting and mailing of the Notice of Code Violation, the Compliance Officer must execute and place on file with the City Manager or designee a certificate stating the date and place of the mailing and posting.
- E. If the Compliance Officer meets all requirements for posting and mailing the Notice of Code Violation set forth in this Section, then the failure of any person to receive actual notice will not void any code compliance process set forth in this Chapter.
- F. If the owner or other responsible person fails to appeal the Notice of Code Violation in compliance with the procedures set forth at Section 2.25.510(A), then the violation will be deemed proved and no further appeal of the Notice of Code Violation will be allowed.

### 2.50.210 Corrective Action by Responsible Person

- A. All responsible persons must correct all violations described in the notice of code violation not later than the date set forth in the notice, or the date set forth in any final order or judgment issued on appeal.
- B. If a responsible person admits responsibility for the violation, they may submit a Voluntary Compliance Plan for correcting the violation to the Compliance Officer within ten (10) days after posting and mailing of the notice of violation. The Compliance Plan must contain the following:
  1. The Responsible Person's name, mailing address, telephone number and email address.
  2. A written admission of responsibility for the violation;
  3. A detailed plan for correction of the violation(s) over a reasonable period of time;
  4. Written consent for the Compliance Officer or their designee to enter the premises for the purpose of:
    - a. Verifying compliance with the terms of the Compliance Plan; or
    - b. Taking actions to correct the violation upon determining that the terms of the Compliance Plan have not been met.
- C. The Compliance Officer will review the Voluntary Compliance Plan and may approve the plan as presented, approve a modified plan, or reject the plan, at their discretion. The decision of a Compliance Officer regarding whether to accept, reject or modify a Voluntary Compliance Plan is final and not subject to appeal.

### 2.50.220 Corrective Action by Compliance Officer

- A. The City may enter a premises as provided in this Section, and may take all necessary actions to correct code violation, whenever a Responsible Person fails to take corrective action as described in MMC 2.50.210(A), or upon the determination by a Compliance Officer that a person has failed to comply with the terms of a Voluntary Compliance Plan approved pursuant to Section MMC 2.50.210(C). Except when the Compliance Officer has received consent from a responsible person or as provided in subsection (B) of this section, a Corrective Action Warrant is required before a Compliance Officer may enter the premises.



- B. If the violation for which a Notice of Code Violation has been issued is determined to be an immediate threat to the public health, welfare or safety, and is not corrected within the specified timeframe, the City Manager may order the code violation to be corrected without a warrant. The following non-exclusive list of code violations may be corrected by the city without a warrant:
  - 1. Any structural element that has been significantly compromised as determined by the City Building Official or designee, and not governed by any other section of this code.
  - 2. Any fire hazard as determined by the Fire Marshall or designee, and not governed by any other section of this code.
  - 3. Any public nuisance violation identified Chapter 8.10, as determined by a Compliance Officer to present an immediate threat to the public health, welfare or safety, including but not limited to violations involving rat harborage and weed abatement.
- C. The McMinnville Municipal Court is authorized to issue a Corrective Action Warrant authorizing any Compliance Officer to make searches and seizures reasonably necessary to enforce any provision of the McMinnville City Code pertaining to code violations.

### 2.50.230 Obtaining a Corrective Action Warrant

- A. Every warrant authorized by this section must be supported by affidavit or sworn testimony establishing probable cause to believe that a code violation has occurred, describing:
  - 1. The applicant's status in applying for the warrant;
  - 2. The premises to be entered;
  - 3. A statement of the violation to be corrected;
  - 4. The ordinance or regulation requiring or authorizing the corrective action;
  - 5. The basis for taking the corrective action;
  - 6. A statement that consent to enter onto the property to correct the violation has been unsuccessfully sought from a responsible person or other facts and circumstances that reasonably justify the failure to seek or inability to obtain such consent.
- B. Probable cause to issue a warrant will be found when:
  - 1. There is reasonable belief that a code violation exists with respect to the premises;
  - 2. The City has complied with the Notice requirements set forth in Section 2.50.120; and,
  - 3. The time period for the owner or other responsible person to correct the violation has passed.
- C. The court may, before issuing a corrective action warrant, examine the applicant and any other witness under oath and must be satisfied of the existence of grounds for granting such application. If the court is satisfied that cause for correcting the violation(s) exists and that the other requirements for granting the application are satisfied, the court must issue the corrective action warrant, particularly describing the person or persons authorized to execute the warrant, the premises to be entered, and a statement of the general corrective actions that may be taken.
- D. In issuing a corrective action warrant, the court may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described premises to remove any person or obstacle and to assist a Compliance Officer in any way necessary to enter the premises to correct the violation.

## 2.50.240 Executing a Corrective Action Warrant

- A. *Occupied Property.* In executing a Corrective Action Warrant, the person authorized to execute the warrant must, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant must be left with the occupant or the person in possession. The warrant is not required to be read aloud.
- B. *Unoccupied Property.* In executing a warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person. In such case a copy of the warrant must be conspicuously posted on the property.
- C. *Return.* A warrant must be executed within 30 days of its issue and returned to the court by whom it was issued within 30 days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant, unless executed, is void.
- D. A person must not interfere with or attempt to prevent a Compliance Officer from entering onto any premises when such entry is authorized by the provisions of this section.
- E. The City Manager has the final authority to decide whether or not to enter onto a premises to correct or abate a code violation in each particular case.

## 2.50.250 Notice and Collection of Corrective Action Costs

- A. The owner, all persons in charge of the premises, and all other Responsible Persons are jointly and severally liable for all costs associated with corrective actions taken by the City, including administrative costs, warrant costs, and attorney fees.
- B. The City Manager or designee must keep an accurate record of the full cost recovery expense incurred by the City for all corrective actions.
- C. After the code violations have been determined by the City to be corrected, the City Manager or designee must cause a Notice of Corrective Action Costs to be posted on the premises, or at the site of the code violation.
- D. At the time of posting, the City Manager or designee must also cause a copy of the Notice of Corrective Action Costs to be forwarded by certified mail, postage prepaid, to any person in charge of the premises and to the owner of the premises (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Yamhill County.
- E. The Notice of Corrective Action Costs must contain:
  - 1. A copy of the Notice of Code Violation and any Final Orders issued in the matter;
  - 2. The total costs of corrective actions due and payable within thirty (30) days of the Notice of Corrective Action Costs;
  - 3. Notification that the costs of corrective actions will become a lien against the premises if not paid when due; and
  - 4. Notification that if any owner or other responsible person objects to the Notice of Corrective Action Costs, a written protest must be filed with the City Manager within ten (10) days from the date of the notice.

- F. Collection and Abatement Costs.
  1. The costs listed in the Notice of Corrective Action Costs will become delinquent if not paid within thirty (30) days of the date of the notice or within ten (10) days of the date set forth in any final order or judgment issued on appeal of the Cost Notice, whichever comes later.
  2. Assessment of the delinquent Correction Action Costs must be made by City Council resolution to be entered in the docket of city liens. When the entry is made, it will constitute a lien on all real property on which the corrective action occurred.
  3. The lien will be enforced in the same manner as liens for street improvements, as described in Chapter 3.12, and will bear interest at the rate of nine percent per year, accruing from the date of the entry of the lien into the lien docket.
- G. If the Compliance Officer meets all requirements for posting and mailing the Notice of Corrective Action Costs set forth in this Section, then the failure of any person to receive actual notice will not void the assessment of any corrective action costs.
- H. If the owner or other responsible person fails to appeal the Notice of Corrective Action Costs in compliance with the procedures set forth at Section 2.25.510(A), then the cost assessment shall be deemed proved and no further appeal of the Notice of Corrective Action Costs will be allowed.

### 2.50.260 Corrective Action Remedies Not Exclusive

- A. The correction of code violations and the assessment of any costs associated with corrective actions are not a penalty, but are an additional remedy.
- B. The imposition of a civil penalty does not relieve a person of the duty to correct a code violation or pay all corrective action costs assessed by the City.
- C. The correction of a code violation within ten (10) days of the date of the Notice of Code Violation or the Final Order issued upon any appeal of the Notice, will relieve a Responsible Person from the imposition of any civil penalty under this Chapter.

### 2.50.310 Notice of Civil Penalty

- A. Upon finding the a Code Violation exists and has not been voluntarily corrected within ten (10) days of the date of the Notice of Code Violation or the Final Order issued upon appeal of the Notice, the City Manager or designee may impose a civil penalty
- B. Each day that a code violation continues to exist will constitute a separate violation and a new civil penalty may be assessed for each consecutive day the violation continues without correction.
- C. The Compliance Officer shall cause the Notice of Civil Penalty to be posted on the premises and forwarded by certified mail, postage prepaid, to any person in charge of the premises and the owner of the premises (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Yamhill County.
- D. If the certified Notice of Civil Penalty is returned as undeliverable or is unclaimed by any person, it will not preclude the city from imposing a civil penalty as described in this chapter.
- E. The Notice of Civil Penalty must contain the following:



1. A description of the real property, by street address or otherwise, on which the code violation exists.
  2. A description of the code violation found to exist by the Compliance Officer.
  3. A copy of the Notice of Code Violation and any Final Orders issued in the matter.
  4. A statement indicating whether the code violation has been corrected or is considered a continuing violation subject to the imposition of a daily civil penalty.
  5. A calculation of the total amount of the civil penalty or, in the case of a continuing violation, the amount of civil penalty that has accrued as of the date of the Notice.
  6. A statement that the amount of the civil penalty may become a lien on the premises if not paid in full within thirty days of invoicing.
  7. A statement that the owner or any responsible person may protest the Notice of Civil Penalty by giving written notice to the City Manager within 10 days from the date of the notice, together with a written statement as to why the civil penalty should be modified or not assessed.
- F. If the Compliance Officer meets all requirements for posting and mailing the Notice of Civil Penalty set forth in this Section, then the failure of any person to receive actual notice will not void the assessment of any Civil Penalty.
- G. If the owner or other responsible person fails to appeal the Notice of Civil Penalty in compliance with the procedures set forth at Section 2.25.510(A), the amount of the civil penalty will be deemed final and no further appeal of the notice of civil penalty will be allowed.

### 2.50.320 Civil Penalty Classification Levels

- A. The penalty for committing a code violation that is subject to the provisions of this Chapter is a civil penalty. The amount of the Civil Penalty will be established by City Council resolution.
- B. Code Violations are classified for the purpose of assessing a civil penalty into the following categories:
1. Class 1 code violations;
  2. Class 2 code violations;
  3. Class 3 code violations;
  4. Class 4 code violations;
  5. Class 5 code violations;
  6. Class 6 code violations;
  7. Class 7 code violations;
  8. Class 8 code violations;
  9. Unclassified code violations as described in subsection (B); and,
  10. Specific fine code violations, as described in subsection (C).
- C. The violation of any code provision that is subject to this chapter and that does not specify the classification of the code violation is an unclassified code violation. An unclassified code violation may be assessed a civil penalty in lieu of a fine as a class 3 code violation, except that when a code violation is classified in accordance with ORS 153.012, then:
1. A Class A violation may be assessed a civil penalty as a Class 3 code violation;
  2. A Class B violation may be assessed a civil penalty as a Class 4 code violation;

3. A Class C violation may be assessed a civil penalty as a Class 5 code violation; and,
  4. A Class D violation may be assessed a civil penalty as a Class 6 code violation.
- D. The violation of any code provision that is subject to this chapter, and that specifies a specific fine amount or maximum fine amount, may be assessed a civil penalty in lieu of the fine, in a daily amount not to exceed the specific fine.

## 2.50.510 Protests and Appeals

### A. Protest to the City Manager

1. An owner or other responsible person of a premises may protest a Notice of Code Violation issued pursuant to MMC 2.50.120, a Notice of Corrective Action Costs issued pursuant to MMC 2.50.250, or a Notice of Civil Penalty issued pursuant to MMC 2.50.310 by submitting a written protest to the City Manager within ten (10) days of the date of the Notice.
2. The written protest must, at a minimum, contain the following information:
  - a. The name, mailing address, telephone number and email address of the person submitting the protest;
  - b. A description of the real property, by street address or otherwise, on which the code violation is alleged to exist;
  - c. A written statement, and all supporting evidence, specifying the basis for the protest.
3. The City Manager will review the Notice and the Protest, together with all supporting evidence in the record, and will issue a final order that either upholds, amends, or dismisses the findings and determination set forth in the Notice.
4. If the City Manager issues a Final Order that upholds or amends the Notice, the owner or responsible person must comply with the terms of the order within 10 days from the date of the order.

### B. Appeal to the Hearings Officer

1. An owner or other responsible person of a premises may dispute a Final Order issued by the City Manager pursuant to subsection (A) of this section, by submitting a written appeal to the City Recorder within ten (10) days of the date of the Final Order. A Hearings Officer will preside over the appeal hearing.
2. The written appeal must, at a minimum, contain the following information:
  - a. The name, mailing address, telephone number and email address of the person submitting the protest;
  - b. A description of the real property, by street address or otherwise, on which the code violation is alleged to exist;
  - c. A written statement, and all supporting evidence, specifying the basis for appealing the City Manager's Final Order.
3. Subject to the requirements of this code section, the McMinnville Hearings Officer may adopt additional procedures for the conduct of any hearings before them, but at a minimum, must allow:
  - a. Each party to introduce evidence, including rebuttal evidence, that is relevant to prove or refute any matter raised in the underlying Notice or City Manager's Final Order; and,

- b. An opportunity for each party to cross-examine all witnesses who testify.
- 4. Following the close of the record, the McMinnville Hearings Officer will issue a decision within ten (10) days that either upholds, amends, or dismisses the City Manager's Final Order.
- 5. If the Hearings Officer decision upholds or amends the City Manager's Final Order, then the Hearings Officer's Final Order must include:
  - a. A brief statement of the findings of fact;
  - b. The amount of any assessed corrective action costs, civil penalties, and associated administrative costs;
  - c. The date by which any costs and assessments must be paid; and,
  - d. An order directing the Responsible Person to correct the code violation, pay the assessed corrective action costs or pay the assessed civil penalty, as appropriate to the nature of the appeal;
- 6. If the Hearings Officer decision dismisses the City Manager's Final Order, then the Hearings Officer's Final Order must include:
  - a. An order that any incurred fees be refunded; and,
  - b. An order that all costs of the abatement will be dismissed or refunded.
- C. Appeal of Hearings Officer's Final Order. Any party to the appeal may obtain review of the Hearings Officer's Final Order by writ of review pursuant to ORS Chapter 34.