

## **ORDINANCE NO. 5123**

### **AN ORDINANCE AUTHORIZING A CITY SERVICES CHARGE AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of McMinnville provides numerous general services funded by the General Fund of the city including but not limited to police, fire and ambulance services, library services, parks and recreation services, planning and development services, homeless and housing support services and administrative services dedicated to serving and protecting the public; and

**WHEREAS**, the City Council has determined that the current level of public services in McMinnville exceeds the capacity of the City General Fund to pay the costs of providing such services; and

**WHEREAS**, the City Council has determined that to ensure the continuation of such essential service, there is a need for additional funding resources; and

**WHEREAS**, public services are available for every developed property in the City; and

**WHEREAS**, the City has the authority to impose new fees to assure the continuation of essential non-proprietary services as determined by the City Council; and

**WHEREAS**, the City Council has solicited public comment and testimony regarding the proposed fee most recently on August 23, 2022; and

**WHEREAS**, the City Council finds it in the best interest of the community to create and implement a city services charge;

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

Section 1. PURPOSE OF CITY SERVICES CHARGE. The purpose of the city services charge is to provide funding for public services funded by the General Fund of the city. Public services safeguard, facilitate, and encourage the health, safety, and welfare of the residents and enterprises of the City of McMinnville. Stable and reliable public general services provide a multitude of economic and social benefits to the public, including, but not limited to:

- A. Protection of life and property;
- B. Reduction in the incidence of crime;
- C. Dependable response by First Responders;

- D. Recreation and Literacy Services; and
- E. Economic Development and support for businesses; and
- F. Support of persons in need of shelter and emergency services; and
- G. Various other general services of benefit to the public.

The McMinnville City Council finds and determines the necessity of this city services charge to provide a funding mechanism to help pay for the benefits of general public services and to provide an acceptable level of services to the community.

Section 2. DEFINITIONS. For purposes of this Ordinance, the following mean:

A. Non-Residential Unit. A Premise or a portion of a Premise not used for personal, domestic accommodation in independent living facilities. A Non-Residential Unit includes, but is not limited to, governmental, not-for-profit, business, commercial and industrial enterprises. Each portion of a Non-Residential Unit that has permanent provisions for distinct and defined access to an individual enterprise shall be considered as a separate Non-Residential Unit. Enterprises that provide senior living, assisted living, nursing care and similar services exclusively shall be considered non-residential.

B. Premise or Premises. A parcel or portion of a parcel of land within the corporate limits of the City of McMinnville that receives a direct or indirect benefit from public services. It is presumed that a Premise receives a direct or indirect benefit from public services if the Premise is developed. A Premise is presumed to be developed if served by general water service, or electric service or has improvements, including, but not limited to buildings, parking lots or outdoor storage.

C. Residential Unit. A Premise or a portion of a Premise with one or more rooms in a building or portion thereof designed for or that provides complete independent living facilities for one or more persons and includes permanent provisions for sleeping, cooking and sanitation. An accessory or ancillary residential unit on a Premise shall be considered as a separate residential unit. In Premises with two or more apartments, condominiums, mobile homes, or other residential units, each residential unit shall be considered as a separate residential unit for purposes of calculating the city services charge.

D. Residential Electrical Service. Electrical Service Residential electrical service shall be as defined for billing purposes by the McMinnville Water and Light Department, in its current electric service rate schedule.

E. General Service Water Account. A general service water account shall be as defined by the McMinnville Water and Light Department in its current water service rate schedule.

Section 3. ESTABLISHMENT OF CITY SERVICES CHARGE.

A. Except as exempted below, beginning at the earliest with the October 2022 utility bills, a city services charge is established and imposed upon all Premises within the McMinnville City limits.

B. Premises owned by the City of McMinnville are subject to the payment of any city services charge.

C. This Section Reserved.

D. The city services charge for each residential and non-residential electrical service utility account or for each general service water utility account shall be established by resolution as shown on any Resolution Adopting City Service Charge rates.

E. Residential Units and Non-Residential Units that are the basis for calculating the city services charge do not in any way create an obligation of the property or Premises and the obligation to pay the city services charge is a personal obligation of the customer responsible for payment of the City utility account. No lien will attach to any Premise because of the nonpayment of the city services charge.

F. All developed properties receive a direct or indirect benefit from public services. Unless specifically exempted, the city services charge applies to all City of McMinnville utility accounts, including those that serve local, state and federal governments, and to utility accounts that serve Premises that are entitled to an exemption from or deferral of ad valorem property taxes.

G. The city services charge described herein is not subject to the property tax limitations of Article IX, Sections 11b and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.

Section 4. AMOUNT OF CITY SERVICES CHARGE. The amount of the city services charge shall be set or modified by McMinnville Council Resolution. In addition, the Council may set by Resolution fees for extra services required in collecting delinquent customer accounts for the city services charge.

Section 5. ADJUSTMENT OF CITY SERVICES CHARGE. The amount of the city services charge shall automatically increase annually based upon the September CPI-U West C index figure published by the federal government. The adjustment shall not exceed five percent in one year. The City Council may elect to defer all or any portion any such increase by Resolution of the City Council.

Section 6. DEDICATED FUNDS.

Money received from the city services charge shall be used for any or all purposes funded by the City General Fund as determined each year during the budget process. The city services charge shall not be used for any other

governmental or proprietary functions of the City, and shall not accrue to or be available to the McMinnville Water and Light Department except to the extent of any actual cost of billing and collection costs incurred. Any revenues in excess of actual expenses as identified in the budget process shall be carried forward to the next year's General Fund budget.

Section 7. BILLING.

A. The customer(s) responsible for paying the City utility account is responsible for payment of the city services charge. For non-utility Premises, the property owner as set forth in the Yamhill County tax records shall be the responsible party.

B. The City shall collect the city services charge by adding the city services charge to the utility bill of each customer in the City of McMinnville. For non-utility accounts, the billing shall be mailed to the property owner's address as set forth in the County property records, unless such owner requests the billing be sent to a different address.

C. If a residential Premise has more than one utility account, the city services charge for the Premises shall be calculated for each Residential Unit on the Premise at the multi-family dwelling unit rate. Non-residential premise city service charges shall be based on water utility meters, whether one or more separate businesses operate on that premise.

D. Charges for electricity, water, wastewater and city services charge, may be billed on the same utility bill. If full payment of utility billing is not made, payment shall be applied in the following order:

i. Electricity fee, Sewer fee and Water fee as normally allocated by the McMinnville Water and Light Department from such combined payment; and then to the:

ii. City Services Charge.

E Pursuant to ORS 294.316(7), the Water and Light Department is a municipal utility operating under a separate Commission without ad valorem tax support. Pursuant to a billing services agreement between the City and the McMinnville Water and Light Department, the City may authorize the McMinnville Water and Light Department to perform the city service charge billing function at cost. The McMinnville Water and Light Department will continue to operate without General Fund support from the city service charge and shall otherwise keep Water and Light Department funds separate and apart from the General Fund.

Section 8. PAYMENT DUE DATE. The city services charge shall be due the same date as the utility bill.

Section 9. ADJUSTMENT OF ACCOUNTS.

A. Customers who believe their city services charge, as applied to their Premise, is not within the intent of this Ordinance may request, in writing, a review of their city services charge by the Finance Director. The Finance Director may initiate a review of a customer's city services charge.

i) If a customer's charge is reduced as a result of this review, the corrected city services charge shall begin with the next billing.

ii) If a customer's charge is increased as a result of this review, the corrected city services charge shall begin with the next billing.

B. If an existing customer has not been billed for the city services charge, the city services charge shall begin with the next billing and the customer may be billed retroactively, not to exceed one year.

C. Customers not satisfied with the results of the review by the Finance Director may appeal the Finance Director's decision to the McMinnville City Manager who shall determine, by preponderance of the evidence, whether the Finance Director's decision should be upheld or reversed, or upheld in part and reversed in part. A Notice of Appeal must be in writing and physically delivered to the Finance Director no later than fourteen (14) calendar days from the date of the Finance Director's decision. The hearing before the McMinnville City Manager shall be conducted no later than twenty (20) days from the date of the appeal, unless a different date is stipulated by the City and the customer, or good cause is shown for setting the matter forward. Testimony at the hearing shall be taken upon oath or affirmation of the witnesses. The City Manager shall consider only the matters set forth in the Notice of Appeal. The Findings and Decision of the City Manager shall be served upon the customer by first class mail within ten (10) days after the hearing concludes. The City Manager decision shall be effective ten (10) days following the date of the decision. The Findings and Decision of the City Manager shall be final and conclusive, subject only to writ of review under ORS 34.010 to 34.100, which shall be the sole remedy.

D. The Finance Director may write off closed accounts and retroactive bills if it is in the best interest of the City and may write off refunds, unless the customer requested otherwise, if the cost of making the refund would exceed the amount of the refund.

#### Section 10. DELINQUENCY.

A. A city services charge is delinquent if payment in full is not received on or before the due date.

B. If a customer's utility account is delinquent for city services charge only, and that delinquency does not exceed sixty (60) days, the City may not discontinue electric or water services billed on that account. However, the City may refuse to restore utility service or services to the Premises if the delinquent city services charges and other costs incurred are not paid.

C. Delinquent amounts owing may be collected by all legal means, including, but not limited to the referral or assignment to a collection agency.

Section 12. EMERGENCY. The City Council for the City of McMinnville deems it necessary for the preservation of the health, peace and safety of the City of McMinnville that this Ordinance take effect at once, and therefore an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage by the Council and approval by the Mayor.

ENACTED by the City Council on the 13th day of September, 2022, by the following votes:

Ayes: Geary, Garvin, Menke, Peralta

Nayes: Chenoweth, Payne

Abstained: \_\_\_\_\_

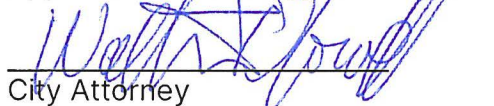
Absent: \_\_\_\_\_

DATED and signed by the Mayor this 13<sup>th</sup> day of September, 2022.



\_\_\_\_\_  
MAYOR

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Attest:

  
\_\_\_\_\_  
City Recorder