

**ORDINANCE NO. 5137**

**AN ORDINANCE AMENDING TITLES 2.50, CODE COMPLIANCE, AND 8.10, PUBLIC NUISANCES, OF THE MCMINNVILLE MUNICIPAL CODE.**

**RECITALS:**

**WHEREAS**, the City of McMinnville in an effort to provide for the welfare, safety and health of the citizens of the City of McMinnville established a public nuisance code; and

**WHEREAS**, the City of McMinnville in order to ensure timely and uniform enforcement of the code established a procedure wherein the ordinances of the City is enforced; and

**WHEREAS**, in 2018, the City of McMinnville elected to amend and update the public nuisance code and code compliance procedures in order to maintain transparency and efficiency; and

**WHEREAS**, since 2018, the City of McMinnville has encountered some property owners who habitually have code violations on their property; and

**WHEREAS**, to maintain efficiency, the City of McMinnville would like to enact a provision in the code in Chapter 2.50, Code Compliance, for habitual code offenders; and

**WHEREAS**, since 2018, staff has identified several housekeeping amendments necessary for further transparency and efficiency in enforcing the code; and

**WHEREAS**, the City of McMinnville would like to amend Chapter 8.10, Public Nuisances, to address the housekeeping code issues; and

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

1. That Chapter 2.50, Code Compliance, and Chapter 8.10, Public Nuisance, of the McMinnville Municipal Code are amended as provided in Exhibit A to this Ordinance.
2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 8<sup>th</sup> day of August, 2023 by the following votes:

Ayes: \_\_\_\_\_ Chenoweth, Garvin, Menke, Payne \_\_\_\_\_

Nays: \_\_\_\_\_

  
\_\_\_\_\_  
MAYOR

Approved as to form:

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

Attest:

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

**EXHIBITS:**

- A. Amendments to Chapter 2.50 and 8.10 of the McMinnville Municipal Code

## EXHIBIT A

### PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE

New proposed language is represented by **bold font**, deleted language is represented by ~~strikethrough font~~.

## Chapter 2.50 CODE COMPLIANCE

[...]

#### 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 30 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 [2.50.510\(A\)](#), then the violation will be deemed proved and no further appeal of the notice of code violation will be allowed. (Ord. 5078 §1 (Exh. 1 (part)), 2019).
- G. If any person in charge of the premises and the owner of the premises (or registered agent) has previously been issued a notice of violation twice or more within a 12-month period of a specified violation of Chapter 8.10, then the mailing and posting requirements may be omitted for the issuance of a civil penalty.**

[...]

#### **2.50.310. Notice of civil penalty.**

- A. Upon finding that a code violation exists and has not been voluntarily corrected within 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. If any person in charge of the premises and the owner of the premises (or registered agent) has previously been issued a notice of violation twice or more within a 12-month period for a specified violation of Chapter 8.10, then the city manager or designee may immediately impose a civil penalty.**
- C.** 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.
- D.** 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.
- E.** 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.
- F.** 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 30 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.

- G.** 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.
- H.** If the owner or other responsible person fails to appeal the notice of civil penalty in compliance with the procedures set forth at Section [2.50.510\(A\)](#), the amount of the civil penalty will be deemed final and no further appeal of the notice of civil penalty will be allowed. (Ord. 5078 §1 (Exh. 1 (part)), 2019).

## **Chapter 8.10 PUBLIC NUISANCES**

[...]

### **8.10.140. Attractive nuisances.**

- A. A person in charge of a premises must not permit, allow or cause to exist any attractive nuisance that could cause injury or death to children playing on the premises.
- B. For the purposes of this section, “attractive nuisance” includes but is not limited to the following substances, conditions or acts:
1. Unguarded machinery, equipment or other devices attractive, dangerous and accessible to children.
  2. Lumber, logs or piling placed or stored in a manner as to be attractive, dangerous and accessible to children, except for materials that are stored in conjunction with authorized construction projects that have employed reasonable safeguards to prevent injury or death to playing children.
  3. Vacant or unoccupied buildings or structures that are open, unlocked, or otherwise accessible **or undeveloped property that is being trespassed upon, vandalized, or otherwise being used for unlawful activities or without authorization from the Owner.**
  4. Containers accessible to children with a capacity of more than one cubic foot and a door or lid that locks or fastens when closed and that cannot be easily opened from the inside, unless said containers are securely locked shut.
- C. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 6 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

### **8.10.180. Construction dust and debris.**

- A. A person in charge of a premises that is being developed for construction or where construction is in progress must not permit, allow or cause to exist any construction **dust and** debris of any kind to blow, spread, or otherwise disseminate from the premises onto nearby properties or public ways.
- B. For the purposes of this section, “construction **dust and** debris” includes, but is not limited to, lumber, roofing materials, cans, glass, bottles, garbage, trash, **dirt, rocks** and any other materials brought onto the property or created by or through construction, remodeling, **excavation** or demolition activities.

- C. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

#### **8.10.210. Fences.**

- A. A person in charge of a premises must not permit, allow or cause to exist:
1. A fence located in a required front yard of the premises that exceeds three feet in height, as measured from grade, unless the fence either:
    - a. Conforms to the front yard setback requirements set forth in Title [17](#) of this code; or
    - b. Is set back to the front building line of the existing building.
  2. A fence located in a required exterior side yard of a corner lot premises that exceeds three feet in height, as measured from grade, unless the fence:
    - a. **Is compliant with clear vision requirements per Section 17.54.080;**
    - b. Is not more than six feet in height, as measured from grade; and
    - c. The planning director or designee has authorized construction of the fence.
  3. A fence located in a required interior side or rear yard of the premises that exceeds seven feet in height, as measured from grade.
  4. A fence on any portion of the premises that exceeds seven feet in height, as measured from grade, unless the fence is authorized by a building permit issued by the city.
  5. A fence located in a sloped property that exceeds 10 feet in height, as measured from the downhill side of the fence.
- B. The height restrictions set forth in subsection [A](#) of this section do not apply to public utility fences or to chain link fences enclosing schools and public playgrounds.
- C. A person in charge of a premises must not permit, allow or cause to exist an electric fence:
1. Along any sidewalk or public way abutting the premises; or
  2. Along the boundary of any real property abutting the premises.
- D. A person in charge of a premises must not permit, allow or cause to exist barbed wire on any fence:
1. Along any sidewalk or public way abutting the premises in a residential or commercial zone; or
  2. Unless placed on top of a fence that is not less than six feet, six inches in height, as measured from grade, on a premises used for public utilities or located in an industrial zone.
- E. A person in charge of a premises must not permit, allow or cause to exist a fence on the premises that is structurally unstable, or otherwise determined by the city manager or designee to be injurious or detrimental to the public health, welfare or safety.
- F. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

#### **8.10.220. Graffiti.**

- A. A person in charge of a premises must not permit, allow or cause the premises to be a graffiti nuisance property.
- B. For the purposes of this section, the following definitions apply:
  - 1. "Graffiti" means any inscription, word, figure, design painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property without the prior authorization of the owner of the property, and/or is not allowed per the McMinnville City Code, regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.
  - 2. "Graffiti nuisance property" means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, from any other public or private property or from any premises open to the public, ~~and if the graffiti has remained for at least 10 days.~~
- C. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

#### **8.10.230. Hazardous and noxious vegetation.**

- A. A person in charge of a premises that abuts a public way must not permit, allow or cause to exist vegetation on the premises that:
  - 1. Is a hazard to pedestrian use of a public sidewalk or is a hazard to bicycle or vehicular use of a public or private street by impeding passage or vision per Sections [17.54.080](#) and [17.58.120\(D\)](#), **including street trees, private trees and all other landscaping and vegetation**;
  - 2. Obstructs drainage facilities in the public way, including but not limited to roadside ditches, street curbs and gutters, catch basins or culverts;
  - 3. Has roots that have cracked or displaced a sidewalk, curb or street; or
  - 4. Is a weed, grass or dead plant more than 10 inches high and is located the area between the property line and the back edge of curb or the edge of an improved roadway or right-of-way.
- B. A person in charge of a premises must not permit, allow or cause to exist vegetation on the premises that is a weed or grass more than 10 inches high at any time during the year.
- C. The prohibition described in subsection [B](#) of this section does not apply to the following types of vegetation unless the vegetation obstructs, blocks, or impedes any visual sight lines or signs required to ensure safe and efficient vehicular and pedestrian movement upon city streets, or the vegetation creates a safety hazard as determined by the city manager or designee:
  - 1. Agricultural grasses that are not a fire hazard and are actively used for grazing livestock;
  - 2. Crops that are being commercially grown;
  - 3. Areas identified by the McMinnville zoning ordinance as open space or natural resource areas;
  - 4. Portions of lots used for flower or vegetation gardens, or shrubbery;
  - 5. Naturally wooded or native forest remnant area;
  - 6. Wetlands;
  - 7. Lands within a designated 100-year floodplain;
  - 8. Lands encumbered by conservation easements;



9. Public parks or private or municipal golf courses;
  10. Drainage ponds or ditches designed to meet city stormwater conveyance requirements;
  11. Any vegetation that the city manager or designee determines would not create a public hazard or otherwise be detrimental to the public safety, health or welfare of the public. In making this determination, the city manager may seek input from the fire chief, fire marshal, or other appropriate staff. The city manager may also place appropriate conditions upon such approval.
- D. A person in charge of a premises must not permit, allow or cause to exist vegetation on the premises that the city manager or designee has declared to be a fire hazard or potential fire hazard to other properties.
  - E. A person in charge of a premises must not permit, allow or cause to exist the growth of noxious vegetation on the premises. As used in this section, “noxious vegetation” means all plants identified by the city manager or designee on an official list of noxious vegetation maintained by the city’s code compliance office, which may incorporate by reference all or part of any existing list developed by any state or county entity, including the plant varieties listed in Oregon Department of Agriculture Noxious Weed Policy and Classification System.
  - F. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

#### **8.10.260. Noise.**

- A. A person in charge of a premises must not permit, allow or cause to exist any loud, disturbing or unnecessary noise that is injurious or detrimental to the health, safety or peace of other persons or property.
- B. It is prohibited for any person on a public way to cause to exist any loud, disturbing or unnecessary noise that either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of other persons or property.
- C. For the purposes of this section, noise exceeding the following thresholds when measured 25 feet from the source if in the right-of-way or 25 feet from the property line if the source is on private property, is presumed to be a nuisance in violation of subsection [A](#) of this section:

<b>ZONE</b>	<b>7:00 a.m. to 8:00 p.m.</b>	<b>8:00 p.m. to 7:00 a.m.</b>
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Light Industrial	70 dBA	65 dBA
Industrial	80 dBA	75 dBA

- D. For the purposes of this section, “loud, disturbing or unnecessary noise” includes but is not limited to the following substances, conditions or acts:

1. *Animals and Birds.* The keeping of any bird or animal that disturbs the comfort and repose of any person in the vicinity by causing frequent or long continued noise;
2. *Dog Barking.* The keeping of a dog that barks for more than 10 minutes during any one-hour period when such barking is audible off the premises of the dog's owner or keeper;
3. *Animal Bells.* The attaching of a bell to any animal or allowing a bell to remain on any animal that is disturbing to any person in the immediate vicinity;
4. *Vehicle Noises.* The use of any vehicle or engine, either stationary or moving, in a manner that causes or creates any loud or unnecessary grating, grinding, rattling or other noise, including the discharge in the open air of the exhaust of any steam engine, internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke;
5. *Horns and Signaling Devices.* The sounding of any horn or signaling device on any vehicle on any street, public or private place, except as a necessary warning of danger;
6. *Nonemergency Signaling Devices.* The sounding of any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place for more than 10 consecutive seconds in any hourly period, except that the reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the city for traffic control purposes are exempt;
7. *Construction Noise.* The erection, including excavation, demolition, alteration or repair, of any building in residential districts, other than between the hours of 7:00 a.m. and 8:00 p.m., except upon special permit granted by the city manager or designee;
8. *Noise Sensitive Areas: Adjacency to Schools, Churches and Hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court of justice while the same are in use, or adjacent to any hospital or institution for the care of the sick or infirm which unreasonably interferes with the operation of such institution, or which disturbs or unduly annoys patients;
9. *Loudspeakers, Amplifiers, Public Address Systems and Similar Devices.* The use or operation of any automatic or electric piano, phonograph, radio, television, loudspeaker or any instrument for sound producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance; provided, however, that upon application to the city manager, permits may be granted to responsible persons or organizations to broadcast programs of music, news, speeches or general entertainment;
10. *Blowers and Similar Devices.* The operation of any noise-creating blower, power fan, power tools, or any internal combustion engine in a manner the operation of which causes noise due to the explosion of operating gases or fluids:
  - a. In a residential district or noise sensitive areas between the hours of 8:00 p.m. and 7:00 a.m.; and
  - b. ~~In a manner that can be heard by persons on nearby residential property.~~
11. *Commercial Establishments Adjacent to Residential Property.* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or



under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m., that is plainly audible to persons on any nearby residential property.

- E. The prohibition described in this section do not apply to:
  - 1. Activities occurring within the scope of any permit issued by the city under the provisions of the McMinnville Municipal Code;
  - 2. Emergency response activities;
  - 3. Vehicles performing repairs or upgrades in the right-of-way, including but not limited to street sweeping, sewer cleaning, construction and maintenance activities occurring between the hours of 7:00 a.m. and 8:00 p.m.
- F. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

#### **8.10.300. Sidewalks.**

- A. A person in charge of a premises must maintain all sidewalks adjacent to that premises in good repair and safe condition.
- B. A person in charge of a premises must not permit, allow or cause to exist on a public sidewalk adjoining the premises any defective or dangerous condition that impedes the public use of the sidewalk, including but not limited to the following:
  - 1. Any accumulations of snow and/or ice on sidewalks on commercial property.
  - 2. Sand or cinders (except when temporarily used to cover ice), rocks, leaves, **moss** or other debris.
  - 3. Cracks, holes, unevenness that impairs pedestrian traffic per the Americans with Disability Act (ADA) standards.
  - 4. Drainage, drainpipes or a drainage system that permits, allows or causes water accumulating on the premises to flow or be carried across the sidewalk.
  - 5. Property, debris, **parking of motor vehicles or trailers**, or any other accumulation or activity.
- C. A person in charge of a premises must not permit, allow or cause to exist on a public sidewalk adjoining the premises any substance, condition or act that the city manager or designee deems injurious or detrimental to the public health, welfare or safety.
- D. A person in charge of a premises must not permit, allow or cause to exist any dumping or storage of dirt, sand, rocks, gravel, bark dust, or other similar material on any sidewalk adjacent to the premises.
- E. A person in charge of a premises must not permit, allow or cause to exist any ice or snow to fall onto any public way adjacent to the premises from any building or structure located on the premises.
- F. The city is not liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks caused by ice, snow, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt or other similar conditions.
- G. All sidewalk repairs made by any person must be performed in accordance with all requirements of the city.
- H. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The

amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

#### **8.10.320. Trees.**

- A. A person in charge of a premises must not permit, allow or cause to exist a dead or decaying tree to stand on the premises that is a hazard to the public or to persons or property on or near the premises.
- B. A person in charge of a premises must not permit, allow or cause to exist a tree that is diseased or insect infested, if the disease or infestation:
  - 1. Compromises the tree's health or longevity;
  - 2. Is capable of being transmitted to other trees; and
  - 3. Is a hazard to persons, trees or property located on any public way or real property adjacent to the premises.
- C. A person in charge of a premises must not permit, allow or cause to exist a tree with broken or detached branches on the premises that are a hazard to the public or to persons or property on or near the premises. Any action regarding the tree must be in compliance with City tree regulations, including Chapter 17.58.**
- D. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).