

ORDINANCE NO. 5094

AN ORDINANCE AMENDING SECTION 17.03 OF THE MCMINNVILLE MUNICIPAL CODE, ZONING ORDINANCE, GENERAL PROVISIONS.

RECITALS:

WHEREAS, 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.

WHEREAS, 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.

WHEREAS, on August 13, 2019, the McMinnville City Council adopted Ordinance No. 5078, developing a new code compliance program for the City of McMinnville in section 2.50 of the McMinnville Municipal Code; and

WHEREAS, the City would like to coordinate the enforcement of its Zoning Ordinance (Title 17 of the McMinnville Municipal Code) with this new code compliance program; and

WHEREAS, Section 17.03 of Title 17 of the McMinnville Municipal Code governs general provisions, including code enforcement of the city's Zoning Ordinance; and

WHEREAS, a public hearing was held before the McMinnville Planning Commission on July 16, 2020, after due notice had been provided in the local newspaper on July 7, 2020. At the July 16, 2020 Planning Commission public meeting, after the application materials and a staff report were presented and testimony was received, the Planning Commission closed the public hearing. After deliberation, the Planning Commission voted to recommend approval of G 5-20, to the McMinnville City Council; and

WHEREAS, the City Council, being fully informed about said request, found that the Comprehensive Plan Text Amendments conformed to the applicable Comprehensive Plan goals and policies, as well as the McMinnville Zoning Ordinance, based on the material submitted by the McMinnville Planning Department and the findings of fact and conclusionary findings for approval contained in Exhibit A; and

WHEREAS, the City Council having received the Planning Commission recommendation and staff report, and having deliberated;

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

- 1. That the Council adopts the Decision, Findings of Fact, and Conclusionary Findings, as documented in Exhibit A for G 5-20; and
- 2. That Section 17.03 of the McMinnville Municipal Code, Zoning Ordinance, General Provisions is amended as provided in Exhibit B; and
- 3. That this Ordinance shall take effect 30 days after its passage by the City Council.

Passed by the Council this 28th day of July, 2020, by the following votes:

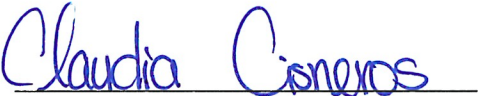
Ayes: Drabkin, Garvin, Geary, Menke, Peralta, Stassens

Nays: _____



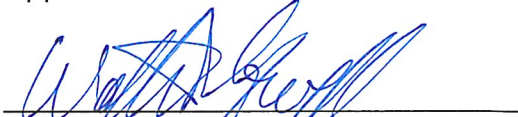
MAYOR

Attest:



City Recorder

Approved as to form:



City Attorney

EXHIBIT A



**CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128**

503-434-7311
www.mcminnvilleoregon.gov

DECISION, CONDITIONS OF APPROVAL, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF LEGISLATIVE AMENDMENTS TO THE MCMINNVILLE CITY CODE, TITLE 17, CHAPTER 17.03, GENERAL PROVISIONS.

DOCKET: G 5-20

REQUEST: The City of McMinnville is proposing to amend Title 17, Chapter 17.03 of the McMinnville Municipal Code, General Provisions, to align the enforcement of Title 17 with the city's new code compliance program.

LOCATION: N/A

ZONING: N/A

APPLICANT: City of McMinnville

STAFF: Heather Richards, Planning Director

HEARINGS BODY: McMinnville Planning Commission

DATE & TIME: July 16, 2020. Meeting held virtually via Zoom meeting software, Zoom Online Meeting ID 942 3599 8716.

DECISION-MAKING BODY: McMinnville City Council

DATE & TIME: July 28, 2020. Meeting held virtually via Zoom meeting software.

PROCEDURE: The application is subject to the legislative land use procedures specified in Sections 17.72.120 - 17.72.160 of the McMinnville Municipal Code.

CRITERIA: Amendments to the McMinnville Zoning Ordinance must be consistent with the Goals and Policies in Volume II of the Comprehensive Plan and the Purpose of the Zoning Ordinance.

APPEAL: The Planning Commission will make a recommendation to the City Council. The City Council's decision on a legislative amendment may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date written notice of the City Council's decision is mailed to parties who participated in the local proceedings and entitled to notice and as provided in ORS 197.620 and ORS 197.830, and Section 17.72.190 of the McMinnville Municipal Code.

DECISION

Based on the findings and conclusions, the McMinnville City Council **APPROVES** the legislative zoning text amendments (G 5-20).

////////////////////////////////////
DECISION: APPROVAL
////////////////////////////////////



City Council: _____
Scott Hill, Mayor of McMinnville

Date: 7/29/2020

Planning Commission: 
Roger Hall, Chair of the McMinnville Planning Commission

Date: July 30, 2020

Planning Department: 
Heather Richards, Planning Director

Date: 7/30/2020

I. Application Summary:

The City of McMinnville is proposing to amend Title 17, Chapter 17.03 of the McMinnville Municipal Code (MMC), General Provisions, to align the enforcement of Title 17 with the city's new code compliance program.

II. CONDITIONS OF APPROVAL

None.

III. FINDINGS OF FACT – PROCEDURAL FINDINGS

1. Notice of the application and the July 16, 2020 Planning Commission public hearing was published in the News Register on Tuesday, July 7, 2020, in accordance with Section 17.72.120 of the Zoning Ordinance.
2. On July 16, 2020, the Planning Commission held a duly noticed public hearing to consider the request.

IV. FINDINGS OF FACT – GENERAL FINDINGS

3. Title 17 of the MMC provides the code provisions for zoning and development regulations for the City of McMinnville.
4. Chapter 17.03, entitled, General Provisions, provides the methodology for enforcing the provisions of Title 17.
5. Historically, the City of McMinnville has used a municipal court process for code compliance and enforcement, however on August 13, 2019, the McMinnville City Council adopted Ordinance no. 5078, amending the McMinnville Municipal Code to establish a civil code enforcement process that is more efficient.

V. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application.

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

Citizen Involvement

GOAL X 1 TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

Finding: Goals X 1 is satisfied by this proposal in that the proposed modifications were reviewed at a public hearing by the McMinnville Planning Commission on July 16, 2020.

EXHIBIT B



CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128

503-434-7311
www.mcminnvilleoregon.gov

**PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE –
Chapter 17.03, General Provisions**

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

Chapter 17.03

GENERAL PROVISIONS

- 17.03.010 Title.
- 17.03.020 Purpose.
- 17.03.025 Consistency with Plan and Laws**
- 17.03.030 Severability.
- 17.03.040 ~~Interpretation—More restrictive provisions govern.~~
Provisions of this Code Declared to Be Minimum Requirements
- 17.03.050 Compliance with provisions required.
- 17.03.055 Conditions of Approval**
- 17.03.060 ~~Enforcement.~~
Revocation – Conditions Violated.
- 17.03.070 Inspection and Right-of-Entry.
- 17.03.080 ~~Violation—Procedure—Penalty.~~
Enforcement
- 17.03.090 ~~Legal Proceedings as Alternative Remedy.~~
Violations.
- 17.03.100 **Legal Proceedings as Alternative Remedy**

17.03.010 Title. The ordinance codified in Chapters 17.03 (General Provisions) through 17.74 (Review Criteria) of this title shall be known as “The McMinnville Zoning Ordinance ~~of 1981.~~” (Ord. 4920, §2, 2010; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.03.020 Purpose. The purpose of the ordinance codified in Chapters 17.03 (General Provisions) through 17.74 (Review Criteria) of this title is to encourage appropriate and orderly physical development in the city through standards designed to protect residential,

commercial, industrial, and civic areas from the intrusions of incompatible uses; to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services; to provide adequate open space, desired levels of population densities, workable relationships between land uses and the transportation system, adequate community facilities; and to provide assurance of opportunities for effective utilization of the land resources; and to promote in other ways public health, safety, convenience, and general welfare. (Ord. 4920, §2, 2010; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.03.025 Consistency with Plan and Laws. Each development and use application and other procedure initiated under this title shall be consistent with the adopted Comprehensive Plan of the City of McMinnville, the provisions of this title, and all other applicable local ordinance, State laws and regulations.

17.03.030 Severability. Where any word, phrase, clause, sentence, paragraph, or section, or other part of these regulations is held invalid by a court of competent jurisdiction, that judgment shall affect only that part held invalid and shall not impair the validity of the remainder of these regulations. (Ord. 4920, §2, 2010).

17.03.040 Provisions of this Code Declared to Be Minimum Requirements.

A. Minimum Requirements Intended. The provisions of this title are minimum requirements adopted for the protection of the public health, safety and general welfare.

B. Most Restrictive Requirements Apply. Where the conditions and requirements imposed by any provision of this Title are less restrictive, vary from or conflict with other provisions of this title or of any other ordinance, resolution or regulation, the provisions which are most restrictive or the highest standard shall govern. When requirements of this title vary from or conflict with other provisions of the McMinnville Municipal Code, the more specific provision shall prevail over a more general provision.

~~**17.03.040 Interpretation—More restrictive provisions govern. Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by any other provisions of this title or of any other ordinance, resolution, or regulation, the provisions which are more restrictive shall govern. (Ord. 4920, §2, 2010; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).**~~

17.03.050 Compliance with provisions required. A lot may be used and a structure or part of a structure constructed, reconstructed, altered, occupied, or used only as this title permits. Construction, alteration, maintenance or use of any building or structure or land division or transfer in violation of this codes is prohibited. Except to the extent that this code provides decision-making authority to others, City planning staff shall administer this code and shall apply the standards and criteria in this to all applications for approval required or authorized by this code. Any use of land in violation of this code is declared to be a nuisance.(Ord. 4920, §2, 2010; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.03.055 Conditions of Approval. The Planning Director, Planning Commission, the City Council or the Hearings Officer when acting as the hearing authority, may impose conditions of approval on any planning action to modify that planning action

to comply with the criteria of approval or to comply with other applicable City ordinances. Such conditions shall be binding on the approved planning action, and a violation of a condition imposed by the hearing authority shall be a violation of this ordinance, and subject to all the penalties thereof.

17.03.060 Revocation – Conditions Violated. Any zoning permit or planning action granted in accordance with the terms of this title may be revoked if any of the conditions or terms of such permit or action are violated or if any law or ordinance is violated in connection therewith.

17.03.070 Inspection and Right-of-Entry. Whenever the Planning Director or their designee they shall have cause to suspect a violation of any provision of this ordinance, or when necessary to investigate an application for or revocation of any zoning approval under any of the procedures prescribed in this ordinance, officials responsible for enforcement or administration of this ordinance, or their duly authorized representatives, may enter onto any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant unless a warrant authorizing entry and inspection for a zoning violation is first obtained from the court. A warrant shall not be issued unless good and sufficient grounds based upon reliable evidence is shown by the officials responsible for enforcement and administration of this ordinance. (A secured building means a building having doors and windows capable of locking, fully enclosed, and occupied.) No owner or occupant or agent thereof shall, after reasonable notice and opportunity to comply, refuse to permit such entry. (Ord. 4920, §2, 2010)

17.03.080 Enforcement. The Planning Director or their designee, ~~or in his absence the Building Official,~~ shall have the power and duty to enforce the provisions of this ordinance. A person aggrieved by an enforcement action of the Planning Director or their designee may appeal that action per the process outlined in Chapter 2.50.510 of the McMinnville Municipal Code. ~~An appeal from a ruling by him regarding the requirements of this ordinance may be made only to the Planning Commission. (Ord. 4920, §2, 2010)~~

17.03.090 Violations.

- A. Any use of land in violation of this title shall be and hereby is declared to be unlawful and a public nuisance, including but not limited to the following:
 - 1. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this title.
 - 2. Any use of land, building or premise established, conducted, operated or maintained contrary to the provisions of this title.
 - 3. Offering for public view any use of land, building, or premise established, conducted, operated without a valid land use approval or otherwise maintained contrary to the provisions of this tile.
- B. All violations that are public nuisances will be noticed and abated per the process and procedures outlined in Chapter 2.50 of the McMinnville Municipal Code.
- C. If the violation is deemed to be a public nuisance, in addition to any corrective action ordered by the City, a person found to have violated the

provisions of this Chapter 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 2 Code Violation.

- D. If the violation is deemed to be an immediate public safety hazard, in addition to any corrective action ordered by the City, the amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 1 violation.
- E. The penalties and remedies provided in this section are not exclusive and are in addition to other penalties and remedies available under City ordinance or state statutes.
- F. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to this code shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

~~17.03.080 Violation Procedure Penalty.~~

- ~~A. A uniform complaint, or citation to appear, may be issued to the owner or occupier of property being used in violation of this ordinance, requiring said owner or occupier to appear in court regarding a violation of the zoning ordinance;~~
- ~~B. A trial shall be heard before the judge without a jury. No appeal from the decision may be taken. The standard of proof required shall be by a preponderance of the evidence;~~
- ~~C. A person convicted of violating a provision of this ordinance shall, upon conviction, be punished by a fine of not more than five hundred dollars for each day that the violation continues;~~
- ~~D. A violation of this title shall be considered a separate offense for each day that the violation continues;~~
- ~~E. In the event the owner/occupier fails to pay any fine imposed upon conviction of a violation, the court may issue a Show Cause Order to the individual so charged and require his presence in court to set forth the reasons for said failure to pay. If good and sufficient reasons do not exist, the court may request the City Council to adopt an ordinance making the amount a lien against the property. (Ord. 4920, §2, 2010)~~

~~17.03.100090~~ Legal Proceedings as Alternative Remedy. In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered or used, or land is, or is proposed to be, used in violation of this title, the building or land thus in violation shall constitute a nuisance, and the City may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful location, construction, maintenance, repair, alteration, or use. (Ord. 4920, §2, 2010)