



# CITY OF MYRTLE CREEK

P.O. BOX 940, 207 NW PLEASANT ST., MYRTLE CREEK OR 97457

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*"Where Nature Is Your Neighbor"*

## MYRTLE CREEK CODE REVIEW BOARD REGULAR MEETING

June 09, 2025  
5:00 PM

City Hall Council Chambers  
207 NW Pleasant Street

### **AGENDA**

#### **1. CALL TO ORDER / ROLL CALL**

**Chair:** Robert Brooker

**Board Members:** Jamie McElmurry, Julie Sproul, Tim Sproul

**Council Liaisons:** Luke Dillon, Diana Larson

#### **2. PLEDGE OF ALLEGIANCE**

#### **3. APPROVAL OF MEETING MINUTES**

3.1 May 12, 2025 Meeting Minutes

#### **4. PUBLIC PARTICIPATION - MATTERS OF PUBLIC CONCERN**

Any person may discuss matters of general public concern, which fall within the purview of the Code Review Board, except that matters which are subject to quasi-judicial proceedings may not be discussed under this item of the agenda.

#### **5. Old Business –**

5.1. Chapter 9 – Public Peace, Morals and Welfare

#### **6. NEW BUSINESS –**

#### **7. GOOD OF THE ORDER**

#### **8. ADJOURNMENT**

♣ ♣ AMERICANS WITH DISABILITIES NOTICE ♣ ♣

As part of public policy, the City of Myrtle Creek will attempt to provide public accessibility to services, programs, and activities. If accommodation is needed to participate at this meeting, please contact the City of Myrtle Creek at 541-863-3171, at least 48 hours prior to the scheduled meeting time.



# CITY OF MYRTLE CREEK

## REGULAR MEETING OF THE CODE REVIEW BOARD

**DATE:** May 12, 2025

**PLACE:** 207 NW Pleasant St., Myrtle Creek, Oregon

**PRESIDING OFFICER:** Robert Brooker

**BOARD MEMBERS PRESENT:** Jamie McElmurry, Julie Sproul, Tim Sproul, Councilor Diana Larson (via conference call), Councilor Luke Dillon late arrival 5:30 PM

**BOARD MEMBERS ABSENT:**

A quorum was present throughout the meeting.

**STAFF IN ATTENDANCE:** City Administrator Lonnie Rainville, City Recorder Joanna Bilbrey, Police Chief Jonathan Brewster

**CALL TO ORDER:** Chair Robert Brooker called the meeting for May 12, 2025, to order at 5:00 PM

### ROLL CALL/PLEDGE OF ALLEGIANCE

#### APPROVAL OF MINUTES

Motion was made by Julie Sproul to approve the April 28, 2025, regular meeting minutes as presented. Motion seconded by Jamie McElmurry. Discussion: No further discussion was had. Vote: YES: Jamie McElmurry, Tim Sproul, Julie Sproul. Motion passed unanimously.

#### Public Presentations

No public presentations.

#### OLD BUSINESS

##### Chapter 9

Chief Jonathan Brewster was present to review suggested changes to the code that he had given to the board:

Removing marijuana because it is not a controlled substance in the ORS.

Changing the hours for permitted camping to specific hours so that it is not up to interpretation.

Adding jail time to fine for homelessness to match Roseburg

Chief Brewster suggested adding code for public urination.

Changing wording used for protrusible.

Question as to why a burn barrel is not allowed. Burn Barrel definition is broad and not literally a barrel. Change title to Outdoor burning

Penalty – Chief Brewster suggested to add penalty and he will speak with the Judge for guidance.

Jumping back to 9:05 need to look at adding language for time for noise aside from construction.

**NEW BUSINESS**

No new business presented.

**GOOD OF THE ORDER**

No items presented.

**ADJOURNMENT**

Chair Robert Brooker adjourned the May 12, 2025, Code Review Board meeting at 5:50 pm.

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Robert Brooker, Chair

ATTEST:

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Joanna Bilbrey, City Recorder

## **Chapter 9.05**

### **CRIMINAL CODE**

#### Sections:

[9.05.010 Oregon Criminal Code adopted.](#)

[9.05.020 Drinking in public places.](#)

[9.05.030 Unnecessary noise.](#)

[9.05.040 Curfew for minors.](#)

[9.05.050 Discharge of weapons.](#)

[9.05.060 Storage of discarded vehicle.](#)

[9.05.070 Drug paraphernalia.](#)

[9.05.080 Fireworks.](#)

[9.05.090 Notices and advertisements.](#)

[9.05.100 Offenses outside city limits.](#)

[9.05.110 Separate violations.](#)

[9.05.120 Penalties.](#)

[9.05.130 Nuisance abatement.](#)

[9.05.140 Application of state statutes.](#)

[9.05.150 Prohibited camping.](#)

**[9.05.160 Public Urination](#)**

**[9.05.170 EXCLUSION FROM PUBLIC LAND.](#)**

#### **9.05.010 Oregon Criminal Code adopted.**

(1) Chapters [133](#), [153](#), [161](#), [162](#), [163](#), [164](#), [165](#), [166](#), [167](#), [471](#) and [475](#) ORS and ORS [480.110](#) through [480.165](#) and [480.990](#)(5), or as amended, except for any offense classified as a felony under state law, are hereby adopted by reference. Violation of an adopted provision of those chapters is an offense against the city.

(2) The provisions of Chapter 161 ORS, or as amended, relating to defense, burden of proof, general principles of criminal liability, parties, and general principles of justification apply to offenses defined and made punishable by this chapter.

(3) Except where the context clearly indicates a different meaning, definitions appearing in the general definition and other particular sections of chapters adopted by subsection (1) of this section are applicable throughout this chapter. [Ord. 645 § 1, 1993].

#### **9.05.020 Drinking in public places.**

No person shall drink or consume alcoholic liquor in or on a street, alley, mall, parking lot or structure, public grounds or other public place, or in a motor vehicle in any such place, unless the place has been licensed for that purpose by the Oregon Liquor Control Commission, except that consumption of alcoholic liquor may be permitted in a park by permit issued by the city council. [Ord. 645 § 2, 1993].

#### **9.05.030 Unnecessary noise.**

No person shall create or assist in creating or permit the continuance of unreasonable noise in the city. The following enumeration of violations of this section is not exclusive but is illustrative of some unreasonable noises.

(1) Keeping an animal that, by loud and frequent continued noise, disturbs the comfort and repose of a person in the vicinity.

(2) Using an engine, thing or device that is so loaded, out of repair or operated in such a manner as to create a loud or unnecessary grating, grinding, rattling or other noise.

(3) Using a mechanical device operated by compressed air, steam or otherwise, unless the noise created by it is effectively muffled.

(4) Construction, excavation, demolition, alteration or repair of a building between the hours of 9:00 p.m. and 7:00 a.m., except by special permit granted by the city.

(5) Using or operating a musical instrument, radio, stereo, television, car radio or stereo, loudspeaker or sound-amplifying device, or any other similar device so loudly that it disturbs persons in its vicinity, or in a manner that makes it a public nuisance. However, on application of the city council, permits may be granted to broadcast music, news, speeches or general entertainment. [Ord. 645 § 3, 1993].

#### **9.05.040 Curfew for minors.**

**Commented [LR1]:** Did not amend as the intro states this is not an exclusive list to be used for illustrative purposes

(1) No minor under 18 years of age shall be on a street, highway, park, alley or other public place on Sunday through Thursday between the hours of 10:00 p.m. and 5:00 a.m. the following morning, or on Friday and Saturday between midnight and 5:00 a.m. the following morning, unless:

(a) The minor is accompanied by a parent, guardian or other person 21 years of age or over and authorized by the parent or by law to have custody of the minor;

(b) The minor is engaged in a lawful pursuit or activity which requires the minor's presence upon the street, highway, park, alley or other public place; or

(c) The minor is emancipated under ORS [419B.550](#) through [419B.558](#).

(2) No parent, guardian or other person having legal custody of a minor under the age of 18 years shall permit the minor to be in violation of this section.

(3) Any police officer is authorized to take a minor violating this section into custody as provided by ORS [419C.080](#).

(4) No parent, guardian, or other person having legal custody of a minor taken into police custody as provided in subsection (3) of this section shall refuse to come immediately and take custody of the minor upon being notified to do so by the police.

(5) Violation of this section is punishable by a fine not to exceed \$100.00. [Amended during 2012 recodification; Ord. 645 § 4, 1993].

#### **9.05.050 Discharge of weapons.**

Except at a firing range approved by the city council, no person other than a peace officer acting in the line of duty shall fire or discharge a gun or weapon inside city limits, including a spring- or air-actuated pellet gun, BB gun, cross-bow, bow and arrow, slingshot, peashooter, or any weapon that propels a projectile by use of gunpowder or other explosive, jet or rocket propulsion. [Ord. 645 § 5, 1993].

#### **9.05.060 Storage of discarded vehicle.**

No person shall store or permit the storing of a discarded vehicle upon private property within the city for more than 72 hours unless the vehicle is completely enclosed within a building or unless it is in connection with a lawfully conducted business enterprise dealing in junked vehicles.

For the purposes of this section, a discarded vehicle is a vehicle that ~~does not have an unexpired license plate lawfully affixed to it or is in one or more of the following conditions~~**A**

vehicle having an expired license plate affixed to it or having one or more of the following conditions:

- (1) Inoperative.
- (2) Wrecked.
- (3) Dismantled or partially dismantled to the extent as to not be legally or physically operable on a public road.
- (4) Abandoned.
- (5) Junked.

Discarded vehicles include major parts of vehicles, including, but not limited to, bodies, engines, transmissions and rear ends. [Ord. 645 § 6, 1993].

#### **9.05.070 Drug paraphernalia.**

(1) Definitions. For the purpose of this section, the following words, terms and phrases shall mean:

Controlled Substance. ORS [475.005](#)(6) is adopted for the purpose of defining the term “controlled substance.”

“Drug paraphernalia” means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this section. It includes, but is not limited to:

- (a) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (b) Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (c) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
- (d) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used or intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled substances;

~~(g) Separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;~~

(h) Blenders, bowls, containers, spoons and mixing devices used or intended for use in packaging small quantities of controlled substances;

(i) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects used or intended for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used or intended for use in injecting controlled substances into the human body;

(l) Objects used or intended for use in ingesting, inhaling, or otherwise introducing ~~marijuana, cocaine, hashish, or hashish oil~~ controlled substances into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish head, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips. Meaning objects used to hold burning material, ~~such as a marijuana cigarette~~, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;



(xi) Chillums;

(xii) Bongs;

(xiii) Ice pipes or chillers;

(m) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(i) Statements by an owner or by anyone in control of the object concerning its use;

(ii) The proximity of the object, in time and space, to a direct violation of this section;

(iii) The proximity of the object to controlled substances;

(iv) The existence of any residue of controlled substances on the objects;

(v) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this section; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section should not prevent a finding that the object is intended for use as a drug paraphernalia;

(vi) Instructions, oral or written, provided with the object concerning its use;

(vii) Descriptive materials accompanying the object which explain or depict its use;

(viii) National and local advertising concerning its use;

(ix) The manner in which the object is displayed for sale;

(x) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(xi) Direct or circumstantial evidence of the ratio of sale of the object(s) to the total sales of the business enterprise;

(xii) The existence and scope of legitimate uses for the object in the community;

(xiii) Expert testimony concerning its use.

(2) Possession of Drug Paraphernalia. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance except upon prescription of a licensed physician, dentist, or other

person authorized to prescribe the same under the law of the state of Oregon. Any person who violates this subsection shall be fined not more than \$500.00.

(3) Manufacture or Delivery of Drug Paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this section. Any person who violates this subsection shall be fined not more than \$750.00.

(4) Delivery of Drug Paraphernalia to a Minor. Any person 18 years of age or over who violates subsection (3) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least three years his junior shall be fined not more than \$1,000.

(5) Advertisement of Drug Paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Any person who violates this subsection shall be fined not more than \$250.00. [Ord. 645 § 7, 1993].

#### **9.05.080 Fireworks.**

The following sections of the Oregon fireworks law are adopted by reference and made a part of this chapter: ORS [480.110](#), [480.120](#), [480.130](#), [480.140](#)(1) and [480.150](#). [Ord. 645 § 8, 1993].

#### **9.05.090 Notices and advertisements.**

No person shall attach or cause to be attached a placard, bill, advertisement or poster upon real or personal property, whether public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to, or repeal of, any city regulation of the use and location of signs. [Ord. 645 § 9, 1993].

#### ~~**9.05.100 Offenses outside city limits.**~~

~~This chapter applies to acts committed on property owned or leased by the city that is outside the corporate limits of the city. [Ord. 645 § 10, 1993].~~

#### **9.05.110 Separate violations.**

**Commented [LR2]:** Attorney and Chief Comments indicate this should be removed.

When, in any city ordinance, an act is prohibited or is made or declared to be unlawful or an offense, or doing an act is required, or the failure to do an act is declared to be unlawful or an offense, each day a violation continues constitutes a separate offense. [Ord. 645 § 11, 1993].

#### **9.05.120 Penalties.**

Unless another section of this chapter prescribes penalties for violation of that section, violation of a provision of this chapter is otherwise punishable by a fine not to exceed \$500.00; except, however, that if a violation of a provision of this chapter is identical to a state statute with a lesser penalty, punishment shall be limited to the lesser penalty prescribed in state law. [Ord. 645 § 12, 1993].

#### **9.05.130 Nuisance abatement.**

No provision of this chapter shall preclude abatement of a nuisance as provided in the city's nuisance ordinance. [Ord. 645 § 13, 1993].

#### **9.05.140 Application of state statutes.**

Provisions of the Oregon Criminal Code relating to defenses, burden of proof, general principles of criminal liability, parties, and general principles of justification apply to offenses defined and made punishable by this chapter. [Ord. 645 § 15, 1993].

#### **9.05.150 Prohibited camping.**

(1) Definitions.

"Camp" or "camping" means to set up or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary or permanent place to live/reside. Using or maintaining a fire or stove without other evidence of a temporary place to live/reside shall also be considered camping.

"Campsite" means any place where any indicia of camping is placed, established, or maintained.

"~~Indicia~~**Indication** of camping" means items or activities that may include but are not limited to: any stove or fire or cooking activity outside of authorized areas; storage of personal belongings; use of tents, lean-tos, shacks, vehicles or any other temporary structures or any part thereof for sleeping or storage of personal belongings; designation of an area in a manner to exclude other members of the public by maintaining, using or storing personal belongings or items. Bedding (such as blankets, sleeping bags, or other sleeping matter), by itself, is not indicia of camping.

(2) Except by permit issued by the city recorder for camping in nondesignated areas, it is unlawful to camp in or upon any sidewalk, street, alley, lane, public right-of-way or any other place to which the general public has access, or under any bridge or viaduct.

(3) No RV or campsite shall be used or occupied on any tract of ground within the corporate limits of the city except as provided in this section.

(4) No person shall use or occupy any RV on the premises of any occupied dwelling or on any lot which is not part of the premises of any occupied dwelling, unless a permit therefor shall have been first obtained as prescribed in Chapter 18.125 MCMC, Trailer Houses and Trailer Coaches, nor shall any person permit such use or occupancy unless the occupant of the RV or camp has obtained a permit therefor.

(5) Exceptions.

(a) Those experiencing homelessness may sleep, lie, or keep warm and dry outside on public property in compliance with the following time, place, and manner requirements:

(i) Time.

a. Unless otherwise specified, any camping or camp, where not prohibited,

may only occur between the following hours:

i. Between November 1 and February 28 – 5 PM to 8 AM

ii. During the months of March and October - 6 PM to 8 AM

iii. Between April 1 and September 30 – 8 PM to 8 AM

b. Enforcement of time restrictions may be suspended by City Manager, Police

Chief, or designee, for severe weather events or when an individual is

engaged in case management or behavioral health services, or when

necessary or appropriate to respond to an individual's disability or unique

circumstances. Those experiencing homelessness may sleep, lie, or keep warm and dry on public property, that has not been identified as impermissible, from dusk until 30 minutes before sunrise.

(ii) Place.

Those experiencing homelessness may sleep, lie, or keep warm and dry in conformance with time and manner provisions on public property with the following location exclusions:

- (A) Public Works Water and Wastewater complex;
- (B) Areas fenced and being used for potable water storage;
- (C) Maggie Steinbaugh Park;
- (D) All areas of Millsite Park with the exception of the Disc Golf Course;
- (E) Public parking lots and rights-of-way;
- (F) Property adjacent to the volunteer fire department;
- (G) Sidewalks where ADA access would be impacted;
- (H) Evergreen Park;
- (I) Library building;
- (J) Right-of-way.

(iii) Manner.

During times allowable under the time provision of subsection (5)(a)(i) of this section, those experiencing homelessness may use small tents or other temporary means of portable shelter that must be fully removed daily without impacting the grounds.

(b) Automobile and Recreational Vehicle (RV) Use. For those experiencing homelessness, an automobile or RV as defined in ORS [446.310](#)(2) shall be allowed for sleeping outside of a permitted or authorized campground, without a permit, provided the following conditions exist and are complied with:

- (i) Shall be permitted for sleeping during periods that do not exceed 24 hours.
- (ii) Parked in an area that is graveled or hard surface, either asphalt or concrete, and would not impede traffic or create a traffic safety issue.

(6) Any person who violates this section shall be ~~punished, upon conviction, by~~ punished by a fine of ~~not more than \$100 for a first conviction,~~ not more than \$2050.00 for ~~each violation~~ ~~a second conviction, and not more than \$5,000 and up to eight (8) days in jail for a third and further convictions.~~ ~~conviction~~. Conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime. [Ord. 848 § 1, 2023; Ord. 844 § 1, 2021].

#### **9.05.160 Public Urination**

~~No Person shall urinate or defecate in public view or in a public place other than in a restroom.~~

#### **9.05.170 EXCLUSION FROM PUBLIC LAND.**

(A) In addition to any other remedy or penalty provided by law, a peace officer or other person specifically authorized by the City Manager may exclude a person who violates a provision of the state or local law or rule from that public land for a period of up to 90 days.

(B) A person excluded pursuant to this division (A) of this section may not enter or remain upon that public land during the exclusion period except a person excluded from the City Hall building may enter upon or remain at the City Hall building to the extent necessary to file documents required to be filed with a city official or appear in a municipal court proceeding.

(C) A person will be given a warning and an opportunity to comply with the law or rule before an exclusion notice is issued unless the exclusion is based on:

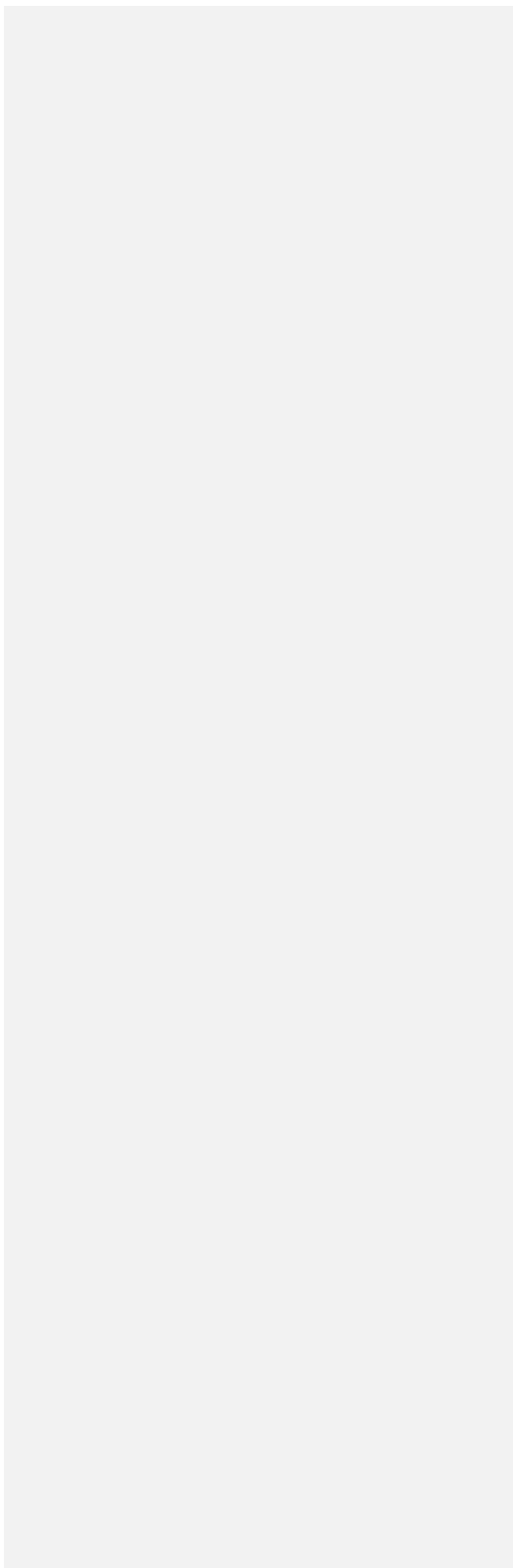
- (1) Conduct punishable as a felony;
- (2) Controlled substances or alcoholic beverages;
- (3) Actions actually or likely to result in personal injury or property damage; or
- (4) The person having been previously warned or excluded for the same conduct in a separate situation.

(D) An exclusion notice will not be issued if the person promptly complies with the warning under division (C) above.

(E) An exclusion notice will be written and include:

- (1) The signature of the issuing party and date of issuance;
- (2) The effective dates of the exclusion period;
- (3) The places from which the person is excluded;
- (4) The provisions of law violated;
- (5) A brief description of the offending conduct;
- (6) A statement of the consequences for failure to comply; and
- (7) The appropriate municipal court procedures.

(F) This chapter does not authorize exclusion of a person lawfully exercising free speech rights or other rights protected by state and federal law.



## Chapter 9.10

### **BURN-BARRELS OPEN OUTDOOR BURNING**

Sections:

[9.10.010 Title.](#)

[9.10.020 Purpose.](#)

[9.10.030 Definitions.](#)

[9.10.040 Prohibitions.](#)

[9.10.050 Exemptions.](#)

[9.10.060 Prohibited materials.](#)

[9.10.070 Inspection and citation.](#)

[9.10.080 Permits.](#)

[9.10.090 Penalty.](#)

[9.10.100 Severability.](#)

#### **9.10.010 Title.**

This chapter shall be known as the “Myrtle Creek ~~burn-barrel-Open Outdoor Burning~~ Ordinance” and may be cited as such and will be referred to herein as “this chapter.” [Ord. 735 § 1, 2004].

#### **9.10.020 Purpose.**

The purpose of this chapter is to promote public health, safety, and general welfare of the public and owners and occupants of open spaces and structures by ~~prohibiting the use of burn-barrels, and~~ adopting all current restricted hours and activities for burning as set forth by the DFPA, within the city of Myrtle Creek; except as expressly allowed by this chapter or if exempted from this chapter by Oregon statute. [Ord. 824, 2019; Ord. 735 § 2, 2004].

#### **9.10.030 Definitions.**

The following definitions apply to this chapter:

“Burning ~~barrel~~ Apparatus” means any area, container, device, pit, ring, barrel, incinerator, or structure used for the purpose of disposal by fire of any material prohibited from burning by ordinance, law, rule or regulation.



“Burn period” means that time when an “open outdoor fire” may be allowed by special fire department permit.

“Commercial open burning” means the open burning of “commercial wastes” which are materials actually generated or used by a commercial operation.

“Commercial waste” means any waste produced in any business involving the lease or sale, including wholesale and retail, of goods or services, including but not limited to housing, and means any waste produced by a governmental, educational or charitable institution; however, it does not include any waste produced in a dwelling containing four living units or less.

“Construction open burning” means the open burning of “construction wastes” which are materials actually resulting from or produced by a building or construction project.

“Demolition material” means any waste resulting from the complete or partial destruction of any manmade structure as a house, apartment, commercial building or industrial building.

“Demolition open burning” means the open burning of “demolition wastes” which are materials actually resulting from or produced by the complete or partial destruction or tearing down of any manmade structure or the clearing of any site, or land clearing for site preparation for development.

“Domestic waste” means any ~~nonputrescible~~ organic decaying waste, consisting of combustible materials, such as paper, cardboard, yard clippings, wood or similar materials, generated in a dwelling, including the real property upon which it is situated, containing four living units or less.

“Field burning” means the burning of any grass field, grain field, pasture, rangeland, or other field by open burning or by use of mobile equipment or flaming equipment on any land or vegetation.

“Garbage” means ~~putrescible~~ animal and vegetable wastes resulting from the handling, preparation, cooking, and serving of food.

“Industrial open burning” means the open burning of “industrial wastes” which are materials produced as a direct result of any manufacturing or industrial process.

“Industrial waste” means any waste resulting from any process or activity of manufacturing or construction.

“Land clearing debris” means any waste generated by the removal of debris, logs, trees, brush or demolition material from any site in preparation for land improvement or construction projects.

“Open burning” means any burning conducted in such a manner that combustion air is not effectively controlled and that combustion products are not vented through a stack or chimney, including but not limited to burning conducted in open outdoor fires, common burn barrels and backyard incinerators.

“Recreation fire” as defined in Section 219 of the Oregon Uniform Fire Code for the purpose of burning of material other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill, or barbecue pit (or other enclosure) and with a total fuel area of three feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking or similar purposes.

“Residential open burning” means the open burning of clean wood, yard trimmings and prunings which are actually generated in or around a dwelling for three or fewer family living units. Once this material is removed from the property of origin it becomes commercial waste. Such materials actually generated in or around a dwelling of more than three family living units are commercial wastes.

“Responsible person” means each person who is in ownership, control, or custody of the property on which the open burning occurs, including any tenant thereof; or who is in ownership, control, or custody of the materials which are burned; or any person who causes or allows open burning to be initiated or maintained. [Ord. 735 § 3, 2004].

#### **9.10.040 Prohibitions.**

Except as provided in MCMC [9.10.050](#):

(1) No person shall kindle, start, maintain or allow to be maintained any burn barrel.

(2) No person shall kindle, start, maintain or allow to be maintained a garbage fire or rubbish fire. A garbage fire or rubbish fire is an open outdoor fire in which the materials burned are ordinarily found in household garbage and trash, including but not limited to food packaging, cardboard and plastic food containers, as well as ~~putrescible organic~~ and nonputrescible ~~nonorganic~~ materials.

(3) No person shall kindle, start, maintain or allow to be maintained the burning of:

(a) Commercial waste.

(b) Construction waste.

(c) Demolition waste.

(d) Domestic waste.

(e) Industrial waste.

(f) Fields and land clearing. [Ord. 735 § 4, 2004].

#### **9.10.050 Exemptions.**

Within the ordinary definition and understanding of said words, the following activities are specifically exempted from the prohibition in MCMC [9.10.040](#) and shall include but not be limited to:

(1) The outdoor burning of grass, hay, straw, or similar material, as well as commercially available residential dwelling heating fuel, wood, tree limbs, branches, leaves, trimmings, or any other woods debris.

(2) A cooking fire or other outdoor fire used for pleasure, religious, ceremonial, cooking or similar purposes with the fire contained in a fireplace, barbecue grill, barbecue pit, or other similar enclosure specifically designed for outdoor recreation or cooking.

(3) Training fires set and maintained for fire fighting training or training fire protection personnel, provided all safety precautions required by the fire marshal are met.

(4) Emergency fire when the mayor, fire chief, or police chief declares an emergency and in accordance with conditions and restrictions deemed necessary by the fire marshal to protect public health and safety. [Ord. 735 § 5, 2004].

#### **9.10.060 Prohibited materials.**

No person may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable material resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors; proposed burning will not cause or contribute to significant degradation of air quality. [Ord. 735 § 6, 2004].

#### **9.10.070 Inspection and citation.**

(1) The following are listed “enforcement officers” and are hereby specifically authorized by law to make such investigations and inspections as are necessary to enforce the provisions of this chapter, and to issue violation citations to individuals or entities to appear in the Myrtle Creek municipal court:

(a) Any city firefighter, city police officer, city code enforcement officer, city building official, city planning administrator, city administrator, city engineering manager and such other employees of the city of Myrtle Creek as are specifically identified in an order or resolution of the city council.

(2) When it may be necessary to inspect any premises to enforce the provisions of this code, any enforcement officer having reasonable cause to believe that there exists, upon a premises, a condition which is contrary to or in violation of this chapter, the enforcement officer, in accordance with administrative policy, may enter at reasonable times to inspect or to perform the duties imposed by this chapter; provided, that if such premises be occupied that credentials be presented to the occupant and entry requested. If such premises be unoccupied, the enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the enforcement officer shall have recourse to the remedies provided by law to secure entry, including specifically an administrative search warrant from the municipal court. [Amended during 2012 recodification; Ord. 735 § 7, 2004].

#### **9.10.080 Permits.**

The fire chief or state fire marshal may issue, refuse, or postpone open burning permits when necessary to prevent danger to life or property from fire, notwithstanding any determination by court or city council or designated officer. [Ord. 735 § 8, 2004].

#### **9.10.090 ~~Penalty.~~**

Any person, firm or corporation violating any of the provisions of this code shall ~~be guilty of a misdemeanor subject of a fine not to exceed \$500~~, and each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed. ~~continued or permitted and upon conviction of any such violation of this chapter, such person shall be punishable by a maximum fine prescribed by statute, or by imprisonment, or by both such fine and imprisonment. [Amended during 2012 recodification; Ord. 735 § 9, 2004].~~

**Commented [LR1]:** Chief Brewster to review and make recommendations

#### **9.10.100 Severability.**

Open burning in compliance with the rules in this chapter does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order, or decree of this or any other governmental entity having jurisdiction.

The sections and subsections of this chapter are severable. If any section, provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses or paragraphs of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Nothing in this chapter authorizes or commands or shall be interpreted as authorizing or commanding the performance of any activity which is in violation of any city, county, state or federal law, rule, or regulation. [Ord. 735 § 10, 2004].

## **Chapter 9.15**

### **ABATEMENT OF CHRONIC DISORDERLY PROPERTIES**

Sections:

[9.15.010 Purpose.](#)

[9.15.020 Definitions.](#)

[9.15.030 Violation.](#)

[9.15.040 Procedure.](#)

[9.15.050 Burden of proof – Defenses – Mitigation of civil penalty.](#)

[9.15.060 Closure during pendency of action – Emergency closures.](#)

[9.15.070 Commencement of actions – Remedies.](#)

[9.15.080 Enforcement.](#)

[9.15.090 Attorney fees.](#)

[9.15.100 Enforcement procedures for violations.](#)

#### **9.15.010 Purpose.**

The purpose of this chapter is to provide a method for the city to hold persons who allow criminal activity to occur on their property responsible for their actions while protecting their property rights. [Ord. 797 § 1, 2015].

#### **9.15.020 Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

“Chronic disorderly property” is defined as follows:

(1) Property in the city limits on which three or more prohibited activities have occurred during any 60-day period.

(2) Property in the city limits on which or within 200 feet of which any person associated with the property has engaged in three or more prohibited activities during any 60-day period.

“Control” means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on a property.

“Permit” means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

“Person associated with” includes any person who, on the occasion of a prohibited activity, has entered, patronized, or visited, or attempted to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.

“Person in charge” of property means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or supervision of a construction project.

“Prohibited activities” are defined as follows:

- (1) Harassment as defined in ORS [166.065](#)(1)(a) or the city code.
- (2) Intimidation as provided in ORS [166.155](#) to [166.165](#).
- (3) Disorderly conduct as provided in ORS [166.025](#) or the city code.
- (4) Assault or menacing as provided in ORS [163.160](#), [163.165](#), [163.175](#), [163.185](#), or [163.190](#).
- (5) Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as provided in ORS [163.415](#), [163.425](#), [163.427](#), [163.435](#), or [163.445](#).
- (6) Public indecency as provided in ORS [163.465](#).
- (7) Prostitution or related offenses as provided in ORS [167.007](#), [167.012](#), and [167.017](#).
- (8) Alcoholic liquor violations as provided in ORS [471.105](#) to [471.482](#).
- (9) Offensive littering as provided in ORS [164.805](#).
- (10) Criminal trespass as provided in ORS [164.243](#), [164.245](#), [164.255](#), or [164.265](#).
- (11) Theft as provided in ORS [164.015](#) to [164.140](#).
- (12) Possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS [167.203](#), [475.005](#) to [475.285](#), or [475.940](#) to [475.995](#).
- (13) Illegal gambling as provided in ORS [167.117](#), [167.122](#), or [167.127](#).
- (14) Criminal mischief as provided in ORS [164.345](#) to [164.365](#).

(15) Property which in addition to or in combination with the prescribed number and duration of prohibited activities, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS [167.203](#), [475.005](#) to [475.285](#) and/or [475.940](#) to [475.995](#) have occurred.

(16) Violating MCMC [9.05.030](#)(1): keeping an animal that, by loud and frequent continued noise, disturbs the comfort and repose of a person in the vicinity.

(17) Discharge of firearms in violation of MCMC [9.05.050](#).

(18) Frequenting a place where controlled substances are used as provided in ORS [167.222](#).

“Property” means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any residential premises, room, house, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any prohibited activity has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping. [Ord. 797 § 1, 2015].

#### **9.15.030 Violation.**

(1) Property within the city that is a chronic disorderly property is in violation of MCMC [9.15.010](#) to [9.15.090](#) and subject to their remedies.

(2) Any person in charge of such property who permits the property to be a chronic disorderly property is in violation of MCMC [9.15.010](#) to [9.15.090](#) and subject to their remedies. [Ord. 797 § 1, 2015].

#### **9.15.040 Procedure.**

(1) When the chief of police or his designee receives two or more reports documenting the occurrence of prohibited activity on or within 200 feet of a property within the city limits, the chief of police or his designee shall independently review the reports to determine whether they describe prohibited activities enumerated in this code under this chapter. Upon such a finding the chief of police or his designee may:

(a) Notify the person in charge and property owner in writing that the property is in danger of becoming chronic disorderly property. The notice shall contain the following information:



- (i) The street address or legal description sufficient for identification of the property.
- (ii) A statement that the chief of police has information that the property may be chronic disorderly property, with a concise description of the prohibited activities that may exist, or that have occurred. The chief of police shall offer the person in charge an opportunity to propose a course of action that the chief of police agrees will abate the prohibited activities giving rise to the violation.
- (iii) Demand that the person in charge respond to the chief of police within 10 days to discuss the prohibited activities.

(2) When the chief of police receives a report documenting the occurrence of a fourth prohibited activity at or within 200 feet of a property in a residential neighborhood within a 60-day period and determines that the property has become chronic disorderly property, the chief of police shall:

(a) Notify the person in charge in writing that the property is a chronic disorderly property. The notice shall contain the following information:

- (i) The street address or legal description sufficient for identification of the property.
- (ii) A statement that the chief of police has determined the property to be chronic disorderly property with a concise description of the prohibited activities leading to the findings.
- (iii) Demand that the person in charge respond within 14 days to the chief of police and propose a course of action that the chief of police agrees will abate the prohibited activities giving rise to the violation.
- (iv) Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property believed to be a chronic disorderly property, or any other place which is likely to give the person in charge notice of the determination by the chief of police.
- (v) A copy of the notice shall be served on the owner at the address shown on the tax rolls of the county in which the property is located, the occupant, at the address of the property, if these persons are different from the person in charge, and shall be made either personally or by first class mail, postage prepaid.
- (vi) A copy of the notice shall be posted at the property.
- (vii) The failure of any person to receive notice that the property may be a chronic disorderly property shall not invalidate or otherwise affect the proceedings under MCMC [9.15.010](#) to [9.15.090](#).

(b) Chronic disorderly property, as defined by MCMC [9.15.020](#), shall be subject to the notification requirements of subsections (1) and (2) of this section.

(c) If, after the notification, but prior to the commencement of legal proceedings by the city pursuant to MCMC [9.15.010](#) to [9.15.090](#), a person in charge stipulates to the chief of police that the person in charge will pursue a course of action the parties agree will abate the prohibited activities giving rise to the violation, the chief of police may agree to postpone legal proceedings for a period of not less than 10 nor more than 30 days. If the agreed course of action does not result in the abatement of the prohibited activity or if no agreement concerning abatement is reached within 30 days, the chief of police may refer the matter to the city administrator for review.

(d) Concurrent with the notification procedures set forth in subsections (1) and (2) of this section, the chief of police shall send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the city administrator.

(3) When a person in charge makes a response to the chief of police as required by subsection (2)(c) of this section, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any prohibited activities have or are occurring. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose. [Ord. 797 § 1, 2015].

#### **9.15.050 Burden of proof – Defenses – Mitigation of civil penalty.**

(1) In an action for chronic disorderly property, the city shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic disorderly property.

(2) It is a defense to an action for chronic disorderly property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic disorderly property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic disorderly property.

(3) In establishing the amount of any civil penalty requested, the court may consider any of the following factors and shall cite those found applicable:

(a) The actions taken by the person in charge to mitigate or correct the prohibited activities at the property;

(b) The length of time that the prohibited activity has been going on and whether the problem at the property was repeated or continuous;

- (c) The magnitude or gravity of the problem;
- (d) The cost to the city of investigating and correcting or attempting to correct the prohibited activities;
- (e) Any other factor deemed by the court to be relevant. [Ord. 797 § 1, 2015].

#### **9.15.060 Closure during pendency of action – Emergency closures.**

Any emergency closure proceeding initiated under this provision shall be based on evidence showing that prohibited activities have occurred on the property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of emergency closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In such an event the notice procedures set forth in MCMC [9.15.040](#)(2) need not be complied with. [Ord. 797 § 1, 2015].

#### **9.15.070 Commencement of actions – Remedies.**

- (1) The city administrator may authorize the city attorney to commence legal proceedings to enjoin or abate chronic disorderly property and to seek closure, the imposition of civil penalties against any or all of the persons in charge of the property, and any other relief deemed appropriate.
- (2) If, after the commencement but prior to the trial of an action or suit brought by the city pursuant to MCMC [9.15.010](#) to [9.15.090](#), a person in charge of chronic disorderly property stipulates to the city that he or she will pursue a course of action the parties agree will abate the prohibited activities giving rise to the violation, the city may agree to stay proceedings for a period of not less than 10 nor more than 60 days. The person in charge or the city may thereafter petition the court for additional like periods of time as may be necessary to complete the action to abate the prohibited activities. However, if the city reasonably believes the person in charge of a property is not diligently pursuing the action necessary to abate the prohibited activities, the city may apply to the court for release from the stay and may seek relief deemed appropriate.
- (3) If a court determines property to be chronic disorderly property, the court shall order that the property be closed and secured against all access, use and occupancy for a period of not less than three months, nor more than one year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the city stipulate that the nuisance has been and will continue to be abated.
- (4) If a property is found to be chronic disorderly property in violation of MCMC [9.15.030](#), the person in charge of the chronic disorderly property is subject to a civil penalty of up to

\$100.00 per day for each day prohibited activities occur on the property, following notice pursuant to MCMC [9.15.040](#)(2).

(5) Nothing in these provisions shall require any conviction for criminal activities prior to the commencement of any action provided herein. [Ord. 797 § 1, 2015].

#### **9.15.080 Enforcement.**

(1) The court may authorize the city to physically secure the property against all access, use or occupancy if the person in charge fails to do so within the time specified by the court. If the city is authorized to secure the property, all costs reasonably incurred by the city to physically secure the property shall be paid to the city by the person in charge and may be included in the city's money judgment. As used in this subsection, "costs" means those costs actually incurred by the city for physically securing the property, as well as tenant relocation costs pursuant to subsection (5) of this section.

(2) The city shall prepare a statement of the costs expended for physically securing the property and submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by ORCP 68, the statement of costs shall be included in the city's money judgment.

(3) Judgments imposed by MCMC [9.15.030](#) to [9.15.090](#) shall bear interest at the rate of nine percent per year from the date the judgment is entered.

(4) Any person who is assessed the costs of physically securing the property by the court shall be personally liable for the payment of costs to the city.

(5) The person in charge shall pay reasonable relocation costs of a tenant, as defined by ORS [90.100](#)(16), if, without actual notice, the tenant moved into the property after either:

(a) A person in charge received notice from the chief of police of the determination pursuant to MCMC [9.15.040](#)(2); or

(b) A person in charge received notice of an action brought pursuant to MCMC [9.15.070](#). [Ord. 797 § 1, 2015].

#### **9.15.090 Attorney fees.**

In any action pursuant to MCMC [9.15.010](#) to [9.15.090](#), the court may award attorney's fees to the prevailing party. [Ord. 797 § 1, 2015].

#### **9.15.100 Enforcement procedures for violations.**

The city of Myrtle Creek adopts and incorporates by reference herein the Oregon Revised Statutes regarding procedures for processing violations as described in ORS [153.005](#) to

[153.161](#). Therefore, the Myrtle Creek Municipal Code hereby authorizes city of Myrtle Creek employees to process violations pursuant to state law per the above listed sections. [Ord. 797 § 1, 2015].