



## City Council Meeting Agenda

Tuesday, August 27, 2024

6:00 p.m. – Work Session Meeting

7:00 p.m. – City Council Regular Meeting

Welcome! The public is strongly encouraged to participate remotely but there is seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself.

The public is strongly encouraged to relay concerns and comments to the Council in one of four ways:

- Attend in person and fill out a public comment card
- Email at any time up to **noon on Monday, August 26th** to [CityRecorderTeam@mcminnvilleoregon.gov](mailto:CityRecorderTeam@mcminnvilleoregon.gov)
- If appearing via telephone only please sign up prior by **noon on Monday, August 26th** by emailing the City Recorder at [CityRecorderTeam@mcminnvilleoregon.gov](mailto:CityRecorderTeam@mcminnvilleoregon.gov) as the chat function is not available when calling in Zoom;
- Join the Zoom meeting use the raise hand feature in Zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide the City Recorder with your First and Last name, Address, and contact information (email or phone) for a public comment card.**

You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331, Frontier 29 or webstream here:

[mcm11.org/live](http://mcm11.org/live)

Download the "Cablecast" app on iOS, Android, Roku, Apple TV or Amazon Firestick and watch McMinnville City Council on all your devices.

### **CITY COUNCIL WORK SESSION & REGULAR MEETING:**

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/84267425409?pwd=Y477CiNq1cmHwDqQCmt0CITDrIPwDo.1>

Zoom ID: 842 6742 5409

Zoom Password: 769047

Or you can call in and listen via Zoom: 1-253- 215- 8782

ID: 842 6742 5409

## **6:00 PM – WORK SESSION MEETING – VIA ZOOM AND SEATING AT CIVIC HALL**

1. CALL TO ORDER
2. CULTURE, PARKS AND RECREATION PROJECT UPDATE
3. ADJOURNMENT OF WORK SESSION

## **7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND SEATING AT CIVIC HALL**

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATION
  - a. Howie Harkema Day Proclamation

4. INVITATION TO COMMUNITY MEMBERS FOR PUBLIC COMMENT –

*The Mayor will announce that interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3 minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.*

5. PRESENTATION

- a. Municipal Court Annual Presentation

6. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports

7. CONSENT AGENDA

- a. Consider **Resolution No. 2024-47**: A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Fourth Amendment to Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services.
- b. Consider **Resolution No. 2024-48**: A Resolution of the City of McMinnville appointing Eli Brown Judge Pro Tempore of the McMinnville Municipal Court.

8. ORDINANCES

- a. Consider the first reading with a possible second reading of **Ordinance No. 5147**: An Ordinance Amending McMinnville Municipal Code Chapter 12.04 to Modernize City Practices with Regard to Engineering Fees and Coordinate with Adopted Engineering Fee Schedule.

9. ADJOURNMENT OF REGULAR MEETING



# PROCLAMATION

**Whereas,** Howie Harkema managed The Soup Kitchen at St. Barnabas from 2007 to 2015. He launched the Read and Feed Program and served over 100,000 meals.

**Whereas,** He co-founded Love in Action with Joyce Wolcott. This weekly meeting, from 2008 to 2018, shared community information with service providers.

**Whereas,** He helped write and guide the Yamhill County End Homelessness 10-Year Plan from 2008 to 2018. Howie was key in completing 34 out of 40 action items. He also participated in the Annual Point In Time Homeless Count and the Annual Community Connect Event.

**Whereas,** He started a winter shelter project at two McMinnville churches in 2008-2009.

**Whereas,** He was a steering committee member and organizer for CWISH, which stands for Community Winter Inclement Shelter Help, from 2010 to 2016. The group provided winter shelter with the help of volunteers.

**Whereas,** He founded The COMPASS Center, tackling homelessness issues from 2014 to 2017.

**Whereas,** He was the Vice President and co-founder of the McMinnville Free Clinic from 2012 to 2022. The clinic offered free medical and dental care, along with mental health services and support.

**Whereas,** He co-founded Piecing Community Together, which hosted monthly gatherings with meals, music, and art from 2015 to 2018.

**Whereas,** He led warming and cooling shelters for Encompass Yamhill Valley from 2019 to 2024.

**Whereas,** He served as Executive Director of Champion Team, a mental health drop-in center, in 2020-2021.

**Whereas,** He represented the tri-county area on the Fair Housing Council of Oregon from 2020 to 2023.

**Whereas,** He was part of the McMinnville Affordable Housing Task Force from 2017 to 2024. He moved up the ranks from committee member to ex-officio member.

**Whereas,** He held meetings with Yamhill County Mayors about homelessness in 2021-2022.

**Whereas,** He hosted the TV program "Speaking Frankly: And How We Doin'?" from 2013 to 2024. The show featured interviews with nonprofit leaders, political officials, and candidates. It also highlighted local art, music, and events.

**Now, therefore, I, Remy Drabkin,** Mayor of the City of McMinnville, Oregon, do hereby proclaim August 27, 2024 as:

## **HOWIE HARKEMA DAY**

**In Witness Whereof,** I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 27th day of August, 2024.

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Remy Drabkin, Mayor

**Municipal Court Judge's  
August 2024 report to Council  
Misdemeanors**

MONTH	NO. OF DEFENDANTS	NO. OF CASES	NO. OF CHARGES
07/23	139	169	199
08/23	57	162	189
09/23	99	290	227
10/23	174	235	270
11/23	94	122	139
12/23	171	238	278
01/24	172	255	293
02/24	142	237	272
03/24	143	239	264
04/24	177	283	305
05/24	155	255	287
06/24	181	343	375
07/24	118	180	197
<b>Average</b>	<b>152</b>	<b>251</b>	<b>275</b>

**Violations**

MONTH	NO. OF OFFENDERS	NO. OF CASES	NO. OF CHARGES
07/23	115	119	183
08/23	112	114	173
09/23	124	129	183
10/23	127	131	184
11/23	115	118	167
12/23	140	144	213
01/24	145	150	218
02/24	190	194	290
03/24	161	166	248
04/24	117	121	185
05/24	152	154	134
06/24	94	95	126
07/24	150	151	197
<b>Average</b>	<b>145</b>	<b>149</b>	<b>208</b>

## **1. Grant Proposal**

- a. Court staff and Finance Dir
- b. \$1.2 million
  - i. over next 4 fiscal cycles
- c. Fund specialty court
  - i. Appointed lawyers
  - ii. Staffing
  - iii. Training
  - iv. Aid & assist evaluations
  - v. Coordinating with community partners
- d. Specific day & time
- e. **Software upgrade**
  - i. **Court centered**
  - ii. Budgeted

## **2. Jail Arraignments Plea & Sentencings**

- a. Wed 8:00 a.m. ct in jail
- b. SO is setting up a specific room for our use
- c. M&F telephonic
- d. Warrants
  - i. people are being held

## **3. Reschedule of monthly court docket**

- a. Traffic violations v Criminal misdemeanors
  - i. Opens up more time for
    - 1. criminal cases and
    - 2. specialty court

## **4. Existing ad hoc Specialty Court**

- a. Encompass
  - i. Prohibited camping
- b. Provoking Hope
  - i. Substance abuse
  - ii. Prohibited camping
- c. YCMH
  - i. MH issues

## **5. Recognition of community partners**

- a. Friend of court award
  - i. Kyle Johansen

## **6. Written Court Rules**

## **7. Workshop**

- a. Expungement
- b. Set aside arrest record

## **8. Challenges**

- a. mental health
  - i. Community Restoration
  - ii. Magistrates Notice
    1. Civil commitment
      - a. Because of:
        - i. Mental disorder
        - ii. Danger to self or others
        - iii. Unable to provide for basic personal needs necessary to avoid serious physical harm in the near future
          1. not receiving such care as is necessary to avoid such harm.
  - iii. Credit for treatment
    1. Financial
    2. Sanction

## **9. Questions?**



**City of McMinnville**  
**City Attorney's Office**  
230 NE Second Street  
McMinnville, OR 97128  
(503) 434-7303

[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** August 27, 2024  
**TO:** Jeff Towery, City Manager  
**FROM:** David Ligtenberg, City Attorney  
**SUBJECT:** Resolution No. 2024-47, A Resolution Authorizing the City Manager to Execute a Fourth Amendment to Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services

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### **Report in Brief:**

Resolution No. 2024-47 will authorize the continuation of City Prosecutor services with Erskine Law Practice LLC for fiscal year 2024-25.

### **Background and Discussion:**

Beginning in FY17-18, City Prosecutor services were provided by an in-house Deputy City Attorney. When the prior incumbent resigned to take another position in the spring of 2019, the City filled the service need through a contract with Erskine Law Practice LLC.

Sam and Shannon Erskine have been providing prosecutorial services for the City on a contract basis since May 2019. They began their legal careers as judicial clerks in the Multnomah County Circuit Court. In addition, Shannon worked for the Multnomah County District Attorney's Office and both have provided services to the St. Helens Municipal Court. They have since formed Erskine Law Practice which provides cities with full scale prosecutorial services.

On December 8, 2020, the City Council passed Resolution 2020-69, which approved a new contract with Erskine Law Practice LLC to provide city prosecutor services through December 31, 2021. That contract has been extended each year since, including last year with an increase in monthly cost from \$8,654.70 to \$8,957.61



Staff recommends extending the current contract through the end of the fiscal year at the monthly cost of \$9,226.34 monthly and \$135.67 per hour for non-standard services. These amounts represent a 3% increase from last year's contract costs.

Retaining the current City Prosecutor at the present time, subject to existing contract provisions for early termination of the Contract at the discretion of the City, will provide stability and consistency within the municipal court.

**Attachments:**

Resolution No. 2024-47

**Fiscal Impact:**

This prosecutorial services contract and its cost increase are already accounted for in the FY 24-25 budget.

**Recommendation:**

Approve the Consent Agenda.

**RESOLUTION NO. 2024 – 47**

A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Fourth Amendment to Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services.

**RECITALS:**

**WHEREAS**, City Resolution 2020-69 approved a Personal Services Contract (“Contract”) between the City and Erskine Law Practice LLC (“Contractor”) to provide City Prosecutor services for the 2021 calendar year; and

**WHEREAS**, that contract has been extended to the end of Fiscal Year 2022 (Res. 2021-60), FY 2023 (Res. 2022-44), and FY 2024 (Res 2023-52); and

**WHEREAS**, staff recommends continuing to contract with Contractor to provide City Prosecutor services through the end of the fiscal year (June 30, 2025); and

**WHEREAS**, staff also recommends increasing the Contract fee to \$110,716.08, or \$9,226.34 monthly, plus \$135.67 per hour for non-standard services.

**NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:**

1. The City Manager is authorized to execute a Fourth Amendment to Personal Services Contract with Erskine Law Practice, LLC, to continue to provide City prosecutorial services through June 30, 2025, increasing the Contract fee to \$110,716.08, plus \$135.67 per hour for non-standard services.
2. This Resolution takes effect immediately upon passage and will be applied retroactively to fees due as of July 1, 2024.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 27th day of August, 2024, by the following votes:

Ayes: \_\_\_\_\_

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

Approved this 27th day of August, 2024.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

# Staff Report

**DATE:** August 14, 2024  
**TO:** Mayor and City Councilors  
**FROM:** Jason Carbajal, Court Supervisor  
**SUBJECT:** Judge, *Pro Tempore*

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## STRATEGIC PRIORITY & GOAL:



### COMMUNITY SAFETY & RESILIENCY

Proactively plan for and responsively maintain a safe and resilient community



### CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.



### ENGAGEMENT & INCLUSION

Create a culture of acceptance and mutual respect that acknowledges differences and strives for equity

## Report in Brief:

The City Council may appoint, in addition to the Municipal Court Judge, a Judge *Pro Tempore* (McMinnville Municipal Code § 2.40.020). On occasion, the presiding Municipal Court Judge is unavailable and the Judge *Pro Tempore* (“Pro Tem”) will take the bench during those absences. This resolution appoints a Pro Tem for the McMinnville Municipal Court. The Pro Tem appointment is necessary due to Judge Arnold Poole’s ability to attend annual judicial conferences without disrupting the McMinnville Municipal Court’s duties.

## Background:

The McMinnville Municipal Court operates every Wednesday, and typically will have two court days per month focused on traffic violations and two per month on misdemeanors. Municipal Court Judge Arnold Poole presides every week that court is in session. Such regularity leaves little room for any unavailability of Judge Poole, to both his detriment and that of a successful court schedule. The Municipal Court allows for the appointment of a pro tempore municipal judge who may step in when the presiding municipal judge is unavailable (“by reason of absence from the city, illness, vacations or disqualification by reason of knowledge or relationship to the cause before him” MMC § 2.40.020).

Staff recommends the appointment of Judge *Pro Tempore* Eli Brown. Mr. Brown is a Pro Tem for the Toledo Municipal Court and is currently a trial attorney Linn County Circuit Court, Linn Justice Court, Albany

Municipal Court, and Sweet Home Municipal Court. Mr. Brown possesses the background and expertise fulfilling the qualification requirement under Municipal Code § 2.40.030.

**Financial Impact:**

The budget includes funds for Judge *Pro Tempore* services.

**Attachments:**

1. Resolution appointing Eli Brown as Judge Pro Tempore of the McMinnville Municipal Court.
  - a. Exhibit 1 - Agreement for Municipal Court Pro Tem Judicial Services.
2. Resume for Mr. Eli Brown.

**Recommendation:**

Staff recommends that Council adopt the attached Resolution, making this appointment.

**RESOLUTION NO. 2024-48**

A Resolution of the City of McMinnville appointing Eli Brown Judge Pro Tempore of the McMinnville Municipal Court.

**RECITALS:**

**Whereas**, the City Council, under Municipal Code section 2.40.020, has the authority to appoint a Judge *Pro Tempore* to serve when the appointed Municipal Judge is unavailable; and

**Whereas**, Mr. Arnold Poole currently serves as Municipal Judge of the Municipal Court; and

**Whereas**, the City does not currently have an appointed Judge *Pro Tempore* for the Municipal Court to serve in the absences of the Municipal Judge; and

**Whereas**, having satisfied Municipal Code section 2.40.030 concerning qualifications for the post, the City Council appoints Mr. Eli Brown as Judge *Pro Tempore* for the City's Municipal Court.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MCMINNVILLE, OREGON as follows:**

1. That Mr. Eli Brown is appointed Judge *Pro Tempore*, and the City Manager is authorized to enter into an agreement with Mr. Brown in a form substantially similar to Exhibit 1 attached hereto.
2. This Resolution is effective upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 27<sup>th</sup> day of August, 2024 by the following votes:

Ayes: \_\_\_\_\_

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

Approved this 27<sup>th</sup> day of August, 2024.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

Exhibits:

Exhibit 1 – Agreement for Municipal Court Pro Tem Judicial Services.

**CITY OF McMinnville**  
**AGREEMENT FOR MUNICIPAL COURT *PRO TEM* JUDICIAL SERVICES**

This Agreement for Municipal Court *Pro Tem* Judicial Services (“Agreement”) is made and entered into on this \_\_\_\_ day of August 2024 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Elijah Brown**, a(n) individual (hereinafter referred to as “Pro Tem Judge”).

**RECITALS**

WHEREAS, the City requires services which Pro Tem Judge is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Pro Tem Judge represents that Pro Tem Judge is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Pro Tem Judge is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Work**

Pro Tem Judge shall diligently perform the judicial services as Pro Tem Judge according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit 1** and incorporated by reference herein (the “Services”).

**Section 2. Term**

The term of this Agreement shall be from the Effective Date until June 30, 2025, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

**Section 3. Pro Tem Judge’s Services**

3.1. All written documents prepared by Pro Tem Judge in conjunction with the Services shall bear the signature, stamp, or initials of Pro Tem Judge.

3.2. Pro Tem Judge shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Pro Tem Judge may have access by reason of this Agreement. Pro Tem Judge warrants that Pro Tem Judge’s employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All

agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

#### **Section 4. Compensation**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Pro Tem Judge a not-to-exceed unit price of SEVENTY-FIVE DOLLARS (\$75.00) per hour for performance of the Services (“Compensation Amount”). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Pro Tem Judge.

4.2. During the course of Pro Tem Judge’s performance, if the City, through its Project Manager, specifically requests Pro Tem Judge to provide additional services that are beyond the Scope of Work described on **Exhibit 1**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 14**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Pro Tem Judge will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Pro Tem Judge as promptly as is reasonably possible.

4.4. Pro Tem Judge’s Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

#### **Section 5. City’s Rights and Responsibilities**

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Pro Tem Judge and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 13**.

#### **Section 6. City’s Project Manager**

The City’s Project Manager is Jason Carbajal. The City shall give Pro Tem Judge prompt written notice of any re-designation of its Project Manager.

## **Section 7. Pro Tem Judge's Project Manager**

Pro Tem Judge's Project Manager is Eli Brown.

## **Section 8. Duty to Inform**

If at any time during the performance of this Agreement or any future phase of this Agreement for which Pro Tem Judge has been retained, Pro Tem Judge becomes aware of actual or potential problems, conflicts of interest, or possible ethics issues, or of any nonconformance with federal, state, or local laws, rules, or regulations, Pro Tem Judge shall give prompt written notice thereof to the City's Project Manager.

## **Section 9. Subcontractors and Assignments**

Pro Tem Judge shall not subcontract with others for any of the Services prescribed herein. Pro Tem Judge shall not assign any of Pro Tem Judge's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

## **Section 10. Pro Tem Judge Is Independent Contractor**

Pro Tem Judge is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Pro Tem Judge will be solely responsible for determining the manner and means of accomplishing the end result of Pro Tem Judge's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Pro Tem Judge's Services so such Services meet the requirements of the Project.

## **Section 11. Pro Tem Judge Responsibilities**

11.1. Pro Tem Judge must make prompt payment for any claims for labor, materials, or services furnished to Pro Tem Judge by any person in connection with this Agreement as such claims become due. Pro Tem Judge shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Pro Tem Judge. If Pro Tem Judge fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Pro Tem Judge under this Agreement. The City may also recover any such amounts directly from Pro Tem Judge.

11.2. Pro Tem Judge must comply with all applicable Oregon and federal wage and hour laws. Pro Tem Judge shall make all required workers compensation and medical care payments on time. Pro Tem Judge shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Pro Tem Judge shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Pro



Tem Judge shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Pro Tem Judge's responsibility. Pro Tem Judge shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Pro Tem Judge in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

## **Section 12. Indemnity**

12.1. Indemnification. Pro Tem Judge acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Pro Tem Judge's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Pro Tem Judge's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Pro Tem Judge shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Pro Tem Judge of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Pro Tem Judge's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Pro Tem Judge shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Pro Tem Judge. As used herein, the term "Pro Tem Judge" applies to Pro Tem Judge and its own agents and employees.

12.2. Standard of Care. In the performance of professional services, Pro Tem Judge agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Pro Tem Judge's profession practicing in the Portland metropolitan area. Pro Tem Judge will re-perform any Services not meeting this standard without additional compensation. Pro Tem Judge's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Pro Tem Judge's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

## **Section 13. Early Termination; Default**

13.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

13.1.1. By mutual written consent of the parties;

13.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Pro Tem Judge by mail or in person; or

13.1.3. By Pro Tem Judge, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Pro Tem Judge, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

13.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Pro Tem Judge to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Pro Tem Judge shall be liable for all costs and damages incurred by the City as a result of the default by Pro Tem Judge, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Pro Tem Judge. In the event of a default, the City will provide Pro Tem Judge with written notice of the default and a period of ten (10) days to cure the default. If Pro Tem Judge notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

13.3. If the City terminates this Agreement for its own convenience not due to any default by Pro Tem Judge, payment of Pro Tem Judge shall be prorated to, and include, the day of termination and shall be in full satisfaction of all claims by Pro Tem Judge against the City under this Agreement.

13.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Pro Tem Judge or the City that accrued prior to such termination. Pro Tem Judge shall surrender to the City items of work or portions thereof, referred to in **Section 16**, for which Pro Tem Judge has received payment or the City has made payment.

#### **Section 14. Modification/Addendum**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Pro Tem Judge. A modification is a written document, contemporaneously executed by the City and Pro Tem Judge, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Pro Tem Judge and the City. If Pro Tem Judge incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum to this Agreement.

## **Section 15. Access to Records**

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Pro Tem Judge as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of this Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

## **Section 16. Property of the City**

All documents, reports, and research gathered or prepared by Pro Tem Judge under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Pro Tem Judge as creator of such work shall be conveyed to the City upon request without additional compensation.

## **Section 17. Notices**

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City:                      City of McMinnville  
   Attn: Jennifer Cuellar, Finance Director  
   230 NE Second Street  
   McMinnville, OR 97128

To Pro Tem Judge:      Elijah Brown  
   4065 Thoroughbred Ave SE  
   Albany, OR 97322

## **Section 18. Miscellaneous Provisions**

18.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

18.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

18.3. No Assignment. Pro Tem Judge may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

18.4. Adherence to Law. In the performance of this Agreement, Pro Tem Judge shall adhere to all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Pro Tem Judge is required by law to obtain or maintain in order to perform the Services described on **Exhibit 1**, shall be obtained and maintained throughout the term of this Agreement.

18.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

18.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

18.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

18.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

18.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

18.10. Modification. This Agreement may not be modified except by written instrument executed by Pro Tem Judge and the City.

18.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

18.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

18.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

18.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

18.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

18.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

18.17. Interpretation. As a further condition of this Agreement, the City and Pro Tem Judge acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

18.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

18.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

18.20. Authority. Each party signing on behalf of Pro Tem Judge and the City hereby warrants actual authority to bind their respective party.

The Pro Tem Judge and the City hereby agree to all provisions of this Agreement.

**PRO TEM JUDGE:**

**CITY:**

Elijah Brown

CITY OF McMinnville

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
David Lightenberg, City Attorney City of  
McMinnville, Oregon

## **Exhibit 1**

### **Scope of Services**

The Pro-Tem Municipal Court Judge serves as an on-call judicial officer to provide coverage for the City's Municipal Court Judge during periods of absence, excessive workload, or other times requiring judicial services beyond the capabilities of the Municipal Court Judge. Typical duties include:

1. Presiding over Municipal Court for all Misdemeanor, City matters, criminal jury and non-jury trials, pre-trial conferences, and other cases appropriately tried in Municipal Court.
2. Adjudicating all complaints that are filed within the jurisdiction of the Court including, but not limited to, Misdemeanors, traffic violations, parking violations, city ordinances, city violations.
3. Reviewing and/or denying requests for continuances.
4. Determining innocence or culpability (when hearing cases without a jury) and levying fines commensurate with the violation in such a manner to preserve equity and uniformity in the application of existing laws and ordinances.
5. Directing jurors in trial cases on their role in the interpretation and application of law.
6. Supporting court activities with Court Clerks, City Attorney and/or City Prosecutor and other city departments.
7. Performing legal research, reviewing legislation and current case law affecting offenses and the criminal justice system and implement procedures to ensure compliance.
8. Conducting hearings.
9. Issuing warrants, summons, etc.
10. Collaborating with the Municipal Court Judge, City Manager, City Attorney, City Prosecutor and applicable city departments to ensure policies, ordinances and orders are within the parameters of state law and also consistent with the values of the community and needs of the department.
11. Supporting the relationship between the City of McMinnville and the general public by demonstrating courteous and cooperative behavior when interacting with visitors and City staff.
12. Maintaining confidentiality of work-related issues and City information.
13. Performing other related duties as assigned.

# ELIJAH R. L. BROWN

[REDACTED], Albany, Oregon 97322 | (503) [REDACTED] | [REDACTED]

## Education

- Willamette University College of Law** 2013–2016, Juris Doctor awarded  
*Honors:* Honors, Advanced Legal Research  
Honors, Legal Research and Writing
- Brigham Young University–Idaho**, Political Science 2009–2012, Bachelor of Arts awarded  
*Honors:* Pi Sigma Alpha, Political Science Honor Society
- Linn-Benton Community College**, Animal Science 2004–2006

## Work Experience

- Attorney, Owner** January 2018–Current  
*Elijah R. L. Brown, Attorney at Law*  
Provided indigent defense to accused persons in Linn County Circuit Court, Linn Justice Court, Albany Municipal Court, and Sweet Home Municipal Court; handled juvenile dependency and delinquency matters; Judge Pro Tem for Toledo Municipal Court.
- Trial Attorney** June 2016–December 2019  
*Weatherford Thompson, Attorney at Law*  
Litigated landlord-tenant and other property and business cases. On top of carrying business and property civil litigation matters.
- Judicial Law Clerk, Extern** September–December, 2015  
*Hon. J. Norman R. Hill, Polk County Circuit Court*  
During the fall semester of law school, I researched and helped write judicial opinions in hotly contested criminal trial matters, two of which dealing with Oregon Evidence Code 412 regarding “rape shield law” and had mere hours to research the relevant case law and draft a memorandum for the judge’s review.

## Volunteer Experience

- Backcountry Hunters & Anglers, Oregon Chapter** September 2021–Current  
*Co-chair of the Board of Directors* (2023—current). *Northwest Director* (2021—2023).  
Participate in legislative actions relating to public land advocacy and preservation of natural resources.
- CASA of Linn County** September 2016–June 2020  
*Board of Directors*. Served on the general board, as well as the Governance Committee and Executive Committee. Was directly involved in the hiring of two of CASA’s Executive Directors.
- Linn-Benton Bar Association** March 2017–Current  
*President* (May 2019—May 2022); *Events Chair* (March 2017–May 2019).
- The Boy Scouts of America** November 2019–Current  
*District Executive Committee Chairman* (November 2019–April 2021). Coordinated with different chairs for scouting in the local region. Participated in monthly meetings relating to ongoing efforts within the local district of local Boy Scout Troops. Organized fundraising efforts around the district.
- Assistant Scoutmaster* (February 2023–Current). Currently serve as the assistant scoutmaster, leading youth in leadership skills, using outdoor adventure as the catalyst.





## STAFF REPORT

**DATE:** August 27, 2024  
**TO:** Mayor and City Councilors  
**FROM:** David Ligtenberg, City Attorney  
**SUBJECT:** An Ordinance Amending McMinnville Municipal Code Chapter 12.04 to Modernize City Practices with Regard to Engineering Fees and Coordinate with Adopted Engineering Fee Schedule

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### **Report in Brief:**

Adopted Engineering Fees are set to go into effect on October 1, 2024. These proposed code amendments are necessary to implement those fees and update the code to reflect modern engineering fee practices.

### **Discussion:**

In the study period prior to proposing an updated Engineering Fee Schedule on June 25, 2024, a number of inconsistencies were discovered between current fee practice, the proposed fees, and the City's Municipal Code. Those inconsistencies were localized in Chapter 12.04, with regard to street and sidewalk construction, which was last amended in 1958.

Particularly, the recommended changes allow the City Engineer to track, notice, and enforce permit requirements within the chapter, rather than the City Recorder. Additionally, a reference to an obsolete permit application fees is recommended to be removed and replaced with a reference to the Council-adopted Fee Schedule.

### **Attachments:**

1. Ordinance 5147: An Ordinance Amending McMinnville Municipal Code Chapter 12.04 to Modernize City Practices with Regard to Engineering Fees and Coordinate with Adopted Engineering Fee Schedule

**ORDINANCE NO. 5147**

**AN ORDINANCE AMENDING MCMINNVILLE MUNICIPAL CODE CHAPTER 12.04 TO MODERNIZE CITY PRACTICES WITH REGARD TO ENGINEERING FEES AND COORDINATE WITH ADOPTED ENGINEERING FEE SCHEDULE.**

**RECITALS:**

**WHEREAS**, on June 25, 2024, the City Council adopted an Engineering Fee schedule, with a stated goal of 100% cost recovery; and

**WHEREAS**, the fee schedule was adopted with a grace period, postponing implementation until October 1<sup>st</sup>, 2024; and

**WHEREAS**, during the study period prior to proposing the fee schedule, a number of inconsistencies were discovered between current fee practice, the proposed fees, and the City's Municipal Code; and

**WHEREAS**, City staff now recommends these amendments to the Municipal Code in anticipation of full implementation of the adopted fee schedule; and

**WHEREAS**, these amendments shall go into effect concurrently with the new fee schedule;

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

1. McMinnville Municipal Code Section 12.04.010 is amended as follows: *[underlined language is new, ~~strikethrough language is to be repealed~~, and ellipses (. . .) indicate existing code which remains unchanged but is omitted from this ordinance for the sake of brevity].*

**12.04.010 Permit – Required – Exceptions.**

~~From and after the passage of the ordinance codified in this chapter,~~ it is unlawful for any person, firm or corporation to break up, dig up, cut, excavate or fill in any street, or construct any sidewalks, driveways, gutters or plank roadway, or to do any work in or upon any of the public streets within the city limits without first obtaining a permit therefor as provided in this chapter, except that the provisions of this chapter shall not apply to street or sidewalk repairs within the limits authorized by law or made in pursuance of a notice to repair from the city ~~reorder~~ engineer or their designee. Any improvement not fully provided for in this chapter shall be done in accordance with plans and specifications prepared by the city engineer.

2. Section 12.04.020 is amended as follows:

**12.04.020 Permit – Application – Fee.**

Any person, firm or corporation owning real property, or having real property under control as owner, agent or trustee and who may desire to do grading, to lay sidewalks, drive crossings, gutters, roadway, or to make any kind of street improvements in front of said property other than repair, within the limit authorized by law, or in pursuance of a notice to repair from the city ~~recorder~~engineer, shall apply to the city ~~recorder~~engineer before commending the same for a permit therefor, and in said application shall specify the property in front of which the improvement is to be made the name of the street or streets to be improved, the nature of the proposed improvement, and the time required for its completion. A permit fee of \$2.50 in an amount set by resolution of the City Council shall accompany the application.

3. Section 12.04.030 is amended as follows:

**12.04.030 Permit – Issuance conditions – Survey requirements.**

A. Permits will be issued by the city ~~recorder~~engineer. No permit will be issued for work upon any street when the grade has not been legally established, while a proposition to alter or amend the grade thereof is pending before the council, or after the council has granted a petition or adopted a resolution to improve the street.

B. The city ~~recorder~~engineer ~~may~~shall have discretion to refuse a permit if ~~in his judgment~~ the proposed improvement to be made is not a suitable one for the place, or will not be uniform with existing or proposed improvements of the streets in the immediate vicinity thereof, or when the improvement contemplates the removal of earth from any street when it may be necessary to secure the deposit of said earth upon another part of said street.

C. The city ~~recorder~~engineer shall specify in permits issued as herein provided the kind of work to be done and the time in which the same is to be completed. It shall be the duty of the city engineer to make the necessary survey and make the grade for any improvement for which a permit is issued; provided, however, that if the work is not done within the time specified in the permit and a second survey becomes necessary, such survey shall be at the expense of the party applying therefor. All permits issued for the construction of cement or artificial stone sidewalks or curbs shall ~~have~~include the specifications therefor, and such other information as the city ~~recorded~~engineer may deem pertinent thereto, ~~printed on the back thereof.~~

4. Section 12.04.040 is amended as follows:

**12.04.040 Permit – Recordkeeping.**

The city ~~recorder~~engineer shall keep a record of permits, showing the date of issue, to whom issued, a description of the property in front of which the improvement is to be made, the nature of the improvement to be made and an estimate of the quantity, also the date of the certificate approving and accepting the same, and when no certificate is issued by reason of failing to comply with the provisions of this chapter, the reason therefor shall be entered, and such work shall be removed whenever the city engineer shall so direct.

5. This Ordinance will take effect October 1, 2024.

Passed by the McMinnville City Council this 27th day of August, 2024 by the following votes:

Ayes: \_\_\_\_\_

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

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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