

## CHAPTER 90: HEALTH AND SANITATION; NUISANCES

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### STREET TREES

#### § 90.01 TITLE

This subchapter shall hereafter be referred to and cited as the “street tree subchapter” of the city.  
(Ord. 114, passed 8-5-1948)

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### § 90.02 ENFORCEMENT AUTHORITY

The City Council or its duly authorized representative shall be charged with the enforcement of this subchapter.

(Ord. 114, passed 8-5-1948)

### § 90.03 TREE PLANTING OR REMOVAL; PERMISSION REQUIRED.

No trees or shrubs shall hereafter be planted in or removed from any public parking strip or other public place in the city without permission from the City Council.

(Ord. 114, passed 8-5-1948) Penalty see, § 90.99

### § 90.04 PROHIBITED TREES.

(A) It shall be unlawful to plant an any public parking strip the following trees: poplar, willow, cottonwood, conifer, ailanthus, fruit trees, nut trees, or silver maple.

(B) It shall be unlawful to plant willow, cottonwood, or poplar trees anywhere in the city unless the City Council approves the site as one where the tree roots will not interfere with a public sewer or water lines.

(Ord. 114, passed 8-5-1948) Penalty see, § 90.99

### § 90.05 TRIMMING AND REMOVAL

The City Council or its duly authorized representative may cause to be trimmed, pruned, or removed any trees, shrubs, plants, or vegetation in any parking strip or other public place, or may require any property owner to trim, prune, or remove any trees, shrubs, plants, or vegetation in a parking strip abutting upon the owner's property; and failure to comply therewith after 30days notice by the City Recorder shall be deemed a violation of this subchapter.

(Ord. 114, passed 8-5-1948) Penalty see, § 90.99

### § 90.06 DANGEROUS TREES A NUISANCE; SUMMARY REMOVAL

Any tree or shrub growing in a parking strip or any public place, or on private property, which in anyway may endanger the security or usefulness of any public street, sewer, water lines, or sidewalk, is hereby declared to be a public nuisance; and the city may remove or trim the tree or may require the property owner to remove or trim any such tree on private property or in a parking strip abutting upon that owner's property. Failure of the property owner to remove or trim the tree after 30-day notice by the city recorder shall be deemed a

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violation of this subchapter, and the City Council or its duly authorized representative may then remove or trim the tree and assess the costs against the property owner.

*(Ord. 114, passed 8-5-1948)* Penalty see, § 90.99

### § 90.07 APPEALS

Appeals from orders made hereunder may be made by filing written notice thereof with the City Recorder within ten days after the order is received, stating in substance that appeal is being made from the order to the City Council. The Recorder shall thereupon call the appeal to the attention of the City Council. The Recorder shall thereupon call the appeal to the attention of the City Council at the next regular succeeding meeting, at which meeting the appellant and the City Council, or its duly authorized representative may present evidence. Action taken by the City Council after this hearing shall be conclusive.

*(Ord. 114, passed 85-1948)*

### § 90.08 ABUSE OR MUTILATION OF TREES UNLAWFUL

It shall be a violation of this subchapter to abuse, destroy, or mutilate any tree, shrub, or plant in a public parking strip or any other public place; or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster, handbill, or other thing to or on any tree growing in a public place; or to cause or permit any wire charged with electricity to come in contact with any such trees or to allow any gaseous liquid or solid substance which is harmful to the trees to come in contact with their roots and leaves.

*(Ord. 114, passed 8-5-1948)* Penalty see, § 90.99

## NUISANCES

### § 90.20 DEFINITIONS.

For the purpose of this subchapter and §§ 90.40 *et seq.*, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**PERSON IN CHARGE OF PROPERTY.** An agent, occupant, lessee, contract purchaser, or other person possession or control of property or the supervision of any construction project.

**PERSON RESPONSIBLE.** The person responsible for abating a nuisance shall include:

- (1) The Owner;
- (2) The person on charge of property, as defined on this section; or

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(3) The person who cause to come into or continue in existence a nuisance as defined in this subchapter or another ordinance or code provision of this city.

**PUBLIC PLACE.** A building, way, place, or accommodation, whether publicly or privately owned, open and available to the general public.  
(Ord. 183, passed 4-16-1974; Ord. 238, passed 6-10-1982)

### § 90.21 ANIMALS AS NUISANCE.

(A) *Dangerous animals.* No owner or person in charge of an animal shall permit an animal which is dangerous to the public health or safety to be exposed in public, If the animal is exposed in public, it may be taken into custody and disposed of in accordance with the procedures provided by law for the impoundment of dogs.

(B) *Animals at large.* Any person who pastures, grazes, feeds, shelters, or maintains livestock other than domestic cats and dogs shall be strictly liable for all damage or injury to any other person or to the real and personal property belonging to any other person outside the boundaries of the property lawfully in possession of the keeper of such livestock.  
(Ord. 183, passed 4-16-1974; Ord. 227, passed 7-10-1979) Penalty see, § 90.99

### § 90.22 NUISANCES AFFECTING PUBLIC HEALTH

(A) No person shall cause or permit on property owned or controlled by him or her, a nuisance affecting public health.

(B) The following are nuisances affecting public health and may be abated as provided in this subchapter:

1. *Privies.* An open vault or privy constructed and maintained within the city except those constructed or maintained in connection with construction projects in accordance with the Department of Environmental Quality regulations.

2. *Debris.* Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time and that affect the health of the city;

3. *Stagnant water.* Stagnant water which affords a breeding place for mosquitoes and other insect pests;

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4. *Water pollution.* Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute water;

5. *Food.* Decayed or unwholesome food which is offered for human consumption;

6. *Odor.* Premises which are in a state or condition so as to offensive odor which are in an unsanitary condition.

7. *Surface drainage.* Drainage of liquid wastes from private premises;

8. *Cesspools.* Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor; and

9. *Slaughterhouses and the like.* A slaughterhouse, tannery, or pigsty.  
(Ord. 183, passed 4-16-1974) Penalty, see § 90.99

10. Odors and Perceptible Effects of Presence of Marijuana.

(a) Marijuana. All parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant, an every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin, whether kept for medicinal use or otherwise.

(b) Odor of marijuana. The characteristics of marijuana that my be perceived by the sense of smell.

(c) For purposes of this Section, every law enforcement officer that is certified by the Oregon Board of Police Standards and Training, is sufficiently trained to identify the sight and odor of marijuana and whose opinion as to the presence of the odor of marijuana shall be presumed affirmative proof thereof.

(d) Unlawful Release of Marijuana Odor. No Owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

(e) Screening requirements. No owner of real property or person in charge thereof shall permit the possession, cultivation or production of marijuana in a place that may be seen by normal unaided vision from a public place or neighboring property.

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(f) Violation of Subsections (d) and (e) herein are declared to be public nuisance, punishable pursuant to Section 90.99.

Violation of this section may be abated in the manner provided in this ordinance.  
(Ord. 183, passed 4-16-1974; Am. Ord. 183 A passed 4-12-2016)

### § 90.23 NUISANCES AFFECTING PUBLIC SAFETY.

#### (A) *Attractive nuisances.*

(1) No owner or person in charge of property shall permit thereon:

(a) Unguarded machinery, equipment, or other devices which are attractive, dangerous, and accessible to children; or

(b) Lumber, logs, or piling placed or stored in a manner so as to be attractive, dangerous, or accessible to children; or

(c) An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent these places from being used by children.

(2) This division (A) shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

(B) *Snow and Ice.* Each property owner is responsible for maintenance of the curb, sidewalk and landscape strip abutting the owner's property.

(1) Snow shall not remain on the sidewalk for a period longer than the first two hours of daylight after snow has fallen; or

(2) Ice shall not remain in the sidewalk for more than two hours of daylight after the ice has formed unless the ice is covered with sand, ashes, or other suitable material to assure safe travel.

(3) It shall be the duty of every owner of any lot or parcel of land or part thereof fronting any public right-of-way of the city where sidewalks have been constructed or parking strips exist abutting the lots or parcels of land to keep such sidewalks and parking strips in good repair, and in a safe and sound condition, including but not limited to repair of damages caused by a tree or its roots.

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(4) The owner of real property is responsible for maintaining the adjacent sidewalk or parking strip shall be liable to any insured or who otherwise sustains damage due to defective sidewalk or parking strip condition or because of any negligence of owner in failing to maintain the sidewalk or parking strip in good repair and safe and sound condition.

(5) If the city is required to pay damages for any injury to persons or property caused by the failure of a person to perform the duty which this section imposes, whether by judgement or settlement, that person shall indemnify or otherwise compensate the city for the amount of the damages thus paid. The city may maintain an action in court to enforce the provisions of this section.

(C) *Noxious Vegetation.* No owner or person in charge of property shall permit weeds or other noxious vegetation to grow upon his or her property. It shall be the duty of an owner or person in charge of the property to cut down or to destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or in case of weeds or other noxious vegetation, from maturing or from going to seed. Vegetation in any parking strip or other public place, or may require any property owner to trim, prune or remove any trees, shrubs, plants or vegetation in a parking strip abutting upon the owner's property.  
(Ord. No. 2025, passed 1-14-2020)

(D) *Scattering rubbish.* No person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal, or vehicle traveling upon a public way.

(E) *Fences and Walls.*

(1) No owner or person in charge of property shall construct or maintain a barbed-wire fence thereon or permit barbed wire to remain as part of a fence along a sidewalk or public way; except, this type of wire may be placed above the top of other fencing not less than six feet, six inches high.

(2) No owner or person in charge of property shall construct, maintain, or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person.

(3) The landowner and /or contractor shall request a utility located before construction or excavation.

(4) All new fences and walls or replacement of existing fences and wall shall not enclose and/or encroach upon the City right-of-way.

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(5) All new fences and walls or replacement of existing fences and walls shall not enclose property where a utility easement exist, such as telephone poles.

(6) During a Type 1a Land Use Review for all new fences and walls or replacement of existing fences and walls, the property owner shall provide a survey of property and/or have a licensed and bonded contractor perform the construction.  
*(Ord. 2051; passed 2-8-2022)*

### (F) *Surface waters, drainage.*

(1) No owner or person in charge of a building or structure shall suffer or permit rainwater, ice, or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.

(2) The owner or person in charge of property shall install and maintain in proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk.  
*(Ord. 183, passed 4-16-1974; Am. Ord. 2057, passed 2-8-2023)* Penalty see § 90.99

## § 90.24 NUISANCES AFFECTING PUBLIC PEACE.

### (A) Radio and television interference.

(1) No person shall operate or use an electrical, mechanical, or other device, apparatus, instrument, or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

(2) This division (A) does not apply to devices licensed, approved, and operated under the rules and regulations of the Federal Communications Commission.

### (B) Junk

(1) No person shall keep any junk outdoors on any street, lot, or premises, or in a building that is not wholly or entirely enclosed, except doors used for ingress and egress.

(2) The term “junk” as used in this section, includes all old motor vehicles, old motor vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances or parts thereof, old iron or other metal, glass, paper, lumber, wood, or other waste discarded material.



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(3) This division (B) shall not apply to junk in a duly licensed junkyard or automobile wrecking house.

*(Ord. 183, passed 4-16-1974)* Penalty, see § 90.99

### § 90.25 UNENUMERATED NUISANCES.

(A) The acts, conditions or objects specifically enumerated and defined in §§ 90.21-90.24 of this code are declared public nuisances; and those acts, conditions, or objects may be abated by any of the procedures set forth in § 90.26 of this code.

(B) In addition to the nuisances specifically enumerated within this subchapter, every other thing, substance, or act which is determined by the Council to be injurious or detrimental to the public health, safety, or welfare of the city is declared a nuisance and may be abated as provided in this subchapter.

*(Ord. 183, passed 4-16-1974)* Penalty, see § 90.99

### § 90.26 ABATEMENT; PROCEDURES.

(1) Observe Violation: Citizen , Code Enforcement Officer, City of Merrill Employee or City Councilor.

(2) Written Complaint: Completion on Code Enforcement Complaint Form.

(3) Assigned to Code Enforcement Officer: Complaint is assigned to a Code Enforcement Officer for investigation.

(4) Assigned Case Number: Code Enforcement Officer shall assign a case number.

(5) Investigation Code Enforcement Officer investigates complaint to determine and document (including photographs of violation and property address) any code violations.

(6) Determine Violation(s): Code Enforcement Officer shall determine exact violation of the Merrill City Code and document Code Numbers and abatement instructions.

(A) *Notice.*

(1) The notice to abate shall contain:

(g) A description of the real property, by street address or otherwise, on which the nuisance exists.

(h) Notice to resident/Owner: Notice may contain either verbal or written sent

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through the US Mail., email or posted at the property to resident and/or property owner. (If verbal, time, date, and person given notice is documented in case file.)

(i) The written notice will contain the following: Name of Resident/Owner of Property, time and date of violation, description of violation (with code and/or ordinance number), photograph(s), or violation and property address, date of required abatement, description of abatement resolution, Code Enforcement Officer name, Merrill City Hall telephone number and Code Enforcement Officer email address.

(j) A statement that, unless the nuisance is removed, the city may abate the nuisance, and the cost of the abatement charges to the person responsible;

(k) A statement that failure to abate a nuisance may warrant imposition of a fine; and

(l) A statement that the person responsible may protest the order to abate by giving notice to the City Recorder within ten days form the date of the notice.

(2) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the posting and mailing respectively.

(3) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

(4) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of the abatement not paid by the person responsible may be assessed to and become a lien on the property.

(5) Reinvestigate: Code Enforcement Office shall determine whether the violation has been abated.

(6) Completed Abatement: Code Enforcement Officer shall determine that the violation has been abated to code standard. Written notice of compliance with the abatement request with statement “matter is now closed” is sent via US mail.

(7) Second Notice: If not abated in the time allotted, a second notice is issued. (Always is written form through the US Mail, email or posted at property.)

(8) Reinvestigate: Code Enforcement Officer shall determine whether the violation has been abated.

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(9) Third Notice: If still not abated in the time allotted, a third notice is issued. (Always in standard mail and/or posted at property.)

(10) Presentation to Council for Citation: Code Enforcement Officer shall present the case to the City Council for authorization of issuance of Violation of City Code to the Klamath County Justice Court.

(11) Reinvestigate: Code Enforcement Office shall investigate whether the violation has been abated prior to court date. If violation has been completed, Code Enforcement Officer may contact Klamath County Justice Court to dismiss case. If violation is not abated after conviction, Code Enforcement Officer shall reinvestigate and report to the City Council for authorization for additional citations and actions.

### (B) *Abatement by the person responsible.*

(1) A person responsible, protesting that no nuisance exists, shall file with the City Recorder a written statement which shall specify the basis for so protesting.

(2) The statement shall be referred to the City Council as a part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council; and the Council shall determine whether or not a nuisance in fact exists; and the determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement had been filed as provided.

(3) If the Council determines a nuisance does not in fact exist, the person responsible shall, within time allotment by the Council Determination, abate the nuisance.

(C) *Joint Responsibility.* An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

### (D) *Abatement by the city.*

(1) If, within the time allowed, the nuisance has not been abated by the person responsible, the Council may cause the nuisance to be abated.

(2) The officer or person designated by the officer charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon the property to investigate or cause the removal of a nuisance.

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(3) The City Recorder shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include therein a charge of \$100 or 9% of those expenses (whichever is greater) for administrative overhead.

### (E) *Assessment of costs*

(1) The City Recorder, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

(d) The total cost of abatement , including the administration overhead;

(e) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from date of the notice; and

(f) That if the person responsible objects to the cost of the abatement as indicated, he or she may file a notice of objection with the City Recorder not more than ten days from the date of notice.

(2) Upon the expiration of ten days after the date of the notice, the Council, in the regular course of business, shall hear and determine the objections to the costs assessed.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as determined by the Council, shall be resolution and shall there upon be entered in the docket of city liens; and upon this entry being made, shall constitute lien upon the property from which the nuisance was removed or abated.

(4) The lien shall be enforced and shall bear interest at the rate of 9 % per annum. The interest shall commence to run from the date of the entry of the lien on the lien docket.

(5) An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

(F) Summary abatement. The procedure provided by this subchapter is not exclusive, but is in addition to procedure provided by other ordinances; and the County Health Officer, the Chief of the Fire Department, the Fire Marshall, or the Chief of Police may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.

*(Ord. 183, passed 4-16-1974; Am. Ord. 2028, passed 10-13-2020)*

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### § 90.27 VIOLATIONS; REMEDIES

(A) Each day's violation of a provision of this subchapter constitutes a separate offense.

(B) The abatement of a nuisance is not a penalty for violating this subchapter but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within the due date of notice to abate, or if written protest has been filed, then abatement within time allotted by Council determination that a nuisance exists, will relieve the person responsible for the imposition of any fine under § 90.99 (c) of this code.

*(Ord. 183, passed 4-16-1974; Am. Ord. 2027, passed 10-13-2020) Penalty, see § 90.99*

### 90.28 STORM DRAINAGE AND IRRIGATION DITCHES.

(A) No owner or person in charge of property shall use public/storm drain ditches for the purpose of obtaining irrigation water.

(B) No owner or person in charge of property shall suffer or permit flood irrigation water to drain into any public/storm drain ditch.

(C) No owner or person in charge of property shall suffer or permit flood irrigation water to encroach, intrude, invade, infringe, or trespass upon any abutting private or public property.

*(Ord. 238, passed 6-10-1982) Penalty, see § 90.99*

### § 90.99 PENALTY

Any person who shall violate any provision of this chapter for which no other penalty is provided shall, upon conviction, be subject to penalties as set forth in § 10.99 of this code.