



City of McMinnville
Planning Department
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STAFF REPORT

DATE: August 8, 2017
TO: Mayor and City Councilors
FROM: Chuck Darnell, Associate Planner
SUBJECT: **Ordinance No. 5034 - G 3-17:** Zoning Text Amendments to amend Chapter 17.06 (Definitions), Chapter 17.59 (Downtown Design Standards and Guidelines), Chapter 17.65 (Historic Preservation), and Chapter 17.72 (Applications and Review Process)

Council Goal:

Promote Sustainable Growth and Development

Report in Brief:

This action is the consideration of Ordinance No. 5034, an ordinance amending Chapter 17.06 (Definitions), Chapter 17.59 (Downtown Design Standards and Guidelines), Chapter 17.65 (Historic Preservation), and Chapter 17.72 (Applications and Review Process) of the McMinnville Zoning Ordinance to update and revise the City of McMinnville's Historic Preservation and Downtown Design programs. The existing Historic Preservation Ordinance (Ordinance 4401) is proposed to be repealed, and the language instead adopted into the Zoning Ordinance as a new chapter on Historic Preservation (proposed Chapter 17.65).

Background:

Recent amendments to Oregon Administrative Rule (OAR) 660-023-0200, also known as the Historic Resources rules for complying with Goal 5 of the Statewide Planning Program, have created the need for updates to local historic preservation ordinances to ensure that they are consistent with the state rules. The Oregon Statewide Planning Goals are a set of 19 goals related to a statewide land use planning program that is administered by the state's Land Conservation and Development Commission (LCDC). Goal 5 of the Statewide Planning Goals is related to Natural Resources, Scenic and Historic Areas, and Open Spaces. The preservation of historic resources is included in the rules associated with Goal 5, and provides the framework that local governments must follow in designating and protecting significant historic resources.

Attachments:

Ordinance No. 5034 including:

- Exhibit A – G 3-17 Decision Document*
- Exhibit B – Amendments to Chapter 17.06*
- Exhibit C – Amendments to Chapter 17.59*
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The Oregon Governor's office directed a Rulemaking Advisory Committee to form, which met through a series of meetings in 2016 and recommended a draft of proposed amendments to OAR 660-023-0200 in December of 2016. On January 27, 2017, those amendments were adopted by LCDC. The adoption of the amended OAR 660-023-0200 results in the need for local governments to review their existing regulations and programs to ensure that they are consistent with the new state requirements. This process will be undertaken continually by the Planning Department as Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) are amended and adopted by the state.

The Historic Landmarks Committee reviewed the adopted amendments to OAR 660-023-0200 at a series of previous meetings, and staff used feedback from those meetings to draft amendments to the City of McMinnville's Historic Preservation ordinance. An update on the potential for these amendments was provided to the Planning Commission during a work session on May 18, 2017. Since that meeting, staff finalized proposed amendments to the Historic Preservation ordinance, as well as the Downtown Design Standards and Guidelines chapter of the Zoning Ordinance. The proposed amendments were presented to the Historic Landmarks Committee at their June 28, 2017 regular meeting. The Historic Landmarks Committee recommended that the proposed amendments be approved, and that they be brought forward for Planning Commission and City Council review.

Discussion:

The Planning Commission held a public hearing at their regular meeting on July 20, 2017. No public testimony was received during the public hearing. After deliberation and the proposal of some minor amendments, the Planning Commission voted unanimously to recommend approval of the zoning text amendments to the City Council. The proposed zoning text amendments, as well as the minor amendments recommended by the Planning Commission, are described in detail below.

Updates to Historic Preservation Ordinance

The City of McMinnville already meets many of the requirements and rules for complying with Goal 5 of the statewide planning program. However, some updates will be required to our existing historic preservation ordinance and local historic preservation program to be consistent with the new rules.

Draft amendments to the Historic Preservation Ordinance are included as exhibits in Ordinance No. 5034, which is attached to this staff report. A summary of each of the main changes to the local historic preservation ordinance is provided below.

- 1) The repealing of the existing Historic Preservation Ordinance (Ordinance 4401) to allow for a Historic Preservation chapter to be adopted into the McMinnville Zoning Ordinance, rather than existing as a stand-alone ordinance.

Reasoning for Amendment: As part of the process of updating the Historic Preservation regulations, staff is proposing to incorporate the regulations directly into the McMinnville Zoning Ordinance. The regulations currently exist within a stand-alone, separate ordinance (Ordinance 4401), which creates difficulty for staff in administering the regulations and difficulty for community members and property

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owners in understanding the regulations. Staff believes that the inclusion in the Zoning Ordinance will improve organization and consistency. A similar practice will be employed as the Planning Department begins to update other stand-alone land use ordinances that exist in McMinnville's land use planning program.

It is important to note that much of the existing Historic Preservation Ordinance (Ordinance 4401) language will be preserved. Major components of the existing Historic Preservation Ordinance will not be deleted, but are proposed to be copied over into the draft amendments to the Zoning Ordinance. The formatting has been updated to be consistent with other chapters in Title 17 of the McMinnville City Code, which is the Zoning Ordinance. For this reason, and to identify which text is remaining and which is being deleted, a version of the proposed amendments showing text proposed to be removed in ~~strikethrough~~ and text proposed to be added in **bold and underline** is attached for your reference. The language that is included in Ordinance No. 5034 does not show the existing text, but only shows the language proposed to be adopted into the Zoning Ordinance.

- 2) Updated review criteria to be considered in the designation of a historic resource.

Sections Amended: Section 17.65.030(C); Section 17.65.030(F)

Reasoning for Amendment: OAR 660-023-0200(5)(a) requires that local governments use the National Register Criteria for Evaluation when determining the significance of a potential historic resource. For that reason, the National Register Criteria have been added to the review criteria that the Historic Landmarks Committee will use in making decisions on additions or changes to the Historic Resources Inventory. However, the OARs give local governments the ability to use other criteria in addition to the National Register Criteria. Therefore, staff is proposing to keep the original review criteria that the Historic Landmarks Committee used to create the existing Historic Resources Inventory. Existing historic resources were scored and evaluated based on those original criteria, so staff believes it would be beneficial to still have the ability to refer to those criteria during any consideration of a change to the level of significance of an existing historic resource.

OAR 660-023-0200(9) requires different review criteria to be used in considering deletions from the Historic Resources Inventory. Those criteria have been added as Section 17.65.030(F).

- 3) Inclusion of owner consent definitions and processes to be consistent with the new rules and the ruling of *Lake Oswego Preservation Society v. City of Lake Oswego*.

Sections Amended: Section 17.65.020(I); Section 17.65.030(D); Section 17.65.030(E)

Reasoning for Amendment: OAR 660-023-0200(6)(b) requires that local governments allow for owners of historic resources to refuse designation at any point during the designation process. Also, it establishes a process by which a property owner can request that a historic resource be removed from a local inventory. This language and the process, including the criteria that an owner must meet to request and be granted removal from the Historic Resources Inventory, have been added to Section

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17.65.030(D) and Section 17.65.030(E). Also, the definition of “owner” has been added to our definitions list in Section 17.65.020(I), and refers to the same definition of “owner” that is used in the OARs.

- 4) The inclusion of the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation as review criteria for the consideration of the alteration of any historic landmark.

Sections Amended: Section 17.65.020(F); 17.65.060(B)(2)

Reasoning for Amendment: OAR 660-023-0200(7) requires that locally significant historic resources included on the Historic Resources Inventory be protected. Specifically, the OARs state that the protection of locally significant historic resources should be consistent with the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior, produced by the National Park Service. Therefore, staff has added these Secretary of the Interior Standards and Guidelines as review criteria for the consideration of an alteration of a historic landmark.

It is important to note that, as drafted, the proposed amendments result in the Secretary of the Interior Standards and Guidelines applying only to alterations to historic landmarks, which are those historic resources that are classified as “Distinctive” or “Significant” on the Historic Resources Inventory. Staff sought clarification from the State Historic Preservation Office (SHPO) as to whether the City had the ability to only apply the Secretary of the Interior Standards and Guidelines to historic landmarks, or whether those Standards and Guidelines were required to apply to all historic resources included on our Historic Resources Inventory. SHPO clarified that the Secretary of the Interior Standards only need to apply to resources that the local government determines to be Goal 5 resources – or those resources that are “locally significant historic resources”. Therefore, staff is proposing to amend the definition of “Historic Landmark” to include the following statement:

Historic Landmark: Any historic resource which is classified as “Distinctive” or “Significant” on the McMinnville Historic Resources Inventory. **Historic landmarks are also locally significant historic resources as defined by OAR 660-023-0200(1)(j).**

This will ensure that only historic landmarks are subject to the Secretary of the Interior Standards and Guidelines. This is consistent with the City of McMinnville’s existing treatment of resources that are included on the Historic Resources Inventory. Currently, only “Distinctive” and “Significant” historic resources are subject to a review process and subject to design standards and guidelines. Resources that are designated as “Contributory” or “Environmental” have never been subject to a review process or the design standards and guidelines, and the proposed amendments would not change that.

- 5) Inclusion of all National Register for Historic Places as protected resources, and the exclusion of accessory structures and non-contributing resources within a National Register nomination from the review and protection requirements.

Sections Amended: Section 17.65.040(A)

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Reasoning for Amendment: OAR 660-023-0200(8) requires that local governments protect National Register resources. There are a number of National Register resources in the city, particularly within the Historic Downtown District. While most all of the National Register resources in the city are included on the Historic Resources Inventory, some sites within the Historic Downtown District are not or are designated as “Contributory” or “Environmental” historic resources. As described above, those types of resources would not be subject to our local review process and the design standards and guidelines.

To be consistent with the OARs and ensure that all National Register resources are protected, resources that are listed on the National Register have been included specifically as a type of resource that is subject to the Certificate of Approval review process (the Certificate of Approval review process is another proposed amendment, which is discussed in more detail below).

The OARs do give local governments the ability to decide whether non-contributing resources and accessory structures within a National Register nomination should be excluded from the local protection process. Based on feedback from the Historic Landmarks Committee at previous meetings, the draft amendments proposed by staff include this exclusion of accessory structures and non-contributing resources within a National Register nomination. The Historic Landmarks Committee did not believe that it would be reasonable to subject those types of resources and accessory structures to design standards and guidelines, as they likely were not constructed during any period of significance and may not include any historical architectural characteristics.

- 6) The establishment of a public hearing process for the demolition or moving of National Register resources, as well as a review process and criteria for the consideration of the demolition or moving of National Register resources.

Sections Amended: Section 17.65.050; Section 17.65.050(D)

Reasoning for Amendment: As discussed above, OAR 660-023-0200(8) requires that National Register resources be protected by local review processes. By specifically including National Register resources as a type of resource that will be subject to the Certificate of Approval review process, any request for a demolition or moving of a National Register resource must meet specific review criteria in Section 17.65.050(B). OAR 660-023-0200(8)(a) required that these types of requests be considered against a number of factors including the historic resource’s condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. Staff believes that the existing review criteria for the demolition or moving of historic resources, which will now also apply to National Register resources, were consistent with the types of factors that the OARs required to be considered, so no amendments are proposed to those review criteria in Section 17.65.050(B).

OAR 660-023-0200(8)(a) does also require that demolition or moving requests for National Register resources be considered by the Historic Landmarks Committee during a public hearing. Therefore, staff is proposing to add this requirement to our local process in Section 17.65.050(D). That amendment would require the public hearing, and would allow for the City to process it subject to the procedures in Section 17.72.120 of the McMinnville Zoning Ordinance. This section of the zoning ordinance includes

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the notification processes, including notification in the News Register and to surrounding property owners, and timeframes for which the public hearing would be held.

- 7) Creation of a Certificate of Approval process to replace the existing Building Permit Clearance review process. Currently, only alterations that require a building permit are subject to the historic preservation standards and review process. The Certificate of Approval process will apply in more situations.

Sections Amended: Section 17.65.020(A); Section 17.65.040; Section 17.65.060

Reasoning for Amendment: The Historic Landmarks Committee, in discussion at previous meetings, expressed concern with the fact that some alterations of historic resources were not subject to review against the relevant review criteria. The review criteria for the alteration of historic resources include standards such as the retention of exterior building materials, colors, and original architectural features. However, some types of alterations could be completed to drastically alter the exterior appearance of a resource without a building permit, which would not trigger a review process to ensure that the alteration met the relevant design standards.

This discrepancy in the code was realized recently, when a property owner proposed to replace windows and change the exterior building materials on an entire building façade. Neither of those types of construction required a building permit, so the Historic Landmarks Committee had no authority to require any changes to the proposed alterations to ensure that the design standards were being met. Based on those discrepancies, staff is proposing to remove the Building Permit Clearance process currently included in the Historic Preservation Ordinance, and instead adopt a Certificate of Approval process that would apply in more situations.

The Certificate of Approval process would apply to any exterior alteration, and would not be triggered by a building permit. Rather, the definition of “alteration” is proposed to be updated as follows:

Alteration: The addition to, removal of, removal from, or physical modification and/or repair of any exterior part or portion of an historic landmark **resource that results in a change in design, materials or appearance. Painting, reroofing, and general repairs are not alterations when the new materials and/or colors match those already in use.**

There is still some subjectivity in determining when an alteration results in a change in design, materials, or appearance, and when general repairs are not considered alterations. Therefore, staff is proposing to also include, in Section 17.65.060 (review process for exterior alterations), the ability for the Planning Director to determine whether any proposed activity or exterior alteration meets the definition of an alteration. In other words, the Planning Director has the ability to determine whether a proposed activity results in a change to a historic resource’s design, materials, or appearance.

Also, as discussed above, the Certificate of Approval process for exterior alterations would only apply to historic landmarks, or those resources designated as “Distinctive” or “Significant” on the Historic

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Resources Inventory. A Certificate of Approval would also be the type of approval required for the demolition or moving of a historic resource or any resource listed on the National Register.

- 8) Relocation of the Historic Landmarks Committee bylaws.

Sections Amended: Sections 3, 4, and 5 from Ordinance 4401 will be removed and will not be included in the proposed Chapter 17.65 of the Zoning Ordinance

Reasoning for Amendment: The Planning Department is working through a process to better organize and consolidate the language throughout the city's land use planning program related to committees and commissions. Staff is proposing to adopt language into a section of the City Code related to the establishment and bylaws for the Historic Landmarks Committee, which will be considered by the City Council under Ordinance No. 5035. A similar process and consolidation was just completed for the City's Landscape Review Committee.

The Historic Landmarks Committee processes would largely remain the same, with roles, terms, number of committee members, and meeting processes unchanged. Some new language will be added for consistency with other committee and commission processes. Also, the committee would become a commission that would have the ability to hold public hearings and make quasi-judicial land use decisions.

Updates to Downtown Design Standards and Guidelines

In addition to making updates to the Historic Preservation Ordinance, staff is proposing that an update be made to the Downtown Design Standards and Guidelines chapter of the McMinnville Zoning Ordinance (Chapter 17.59). The amendments are driven by another discussion at a previous Historic Landmarks Committee meeting, and are very much related to the reasoning for the creation of the Certificate of Approval process described above. Currently, the Downtown Design Standards and Guidelines apply only to exterior building alterations that require a building permit. This creates a difficulty in allowing the City to ensure that proposed alterations actually meet the Downtown Design Standards and Guidelines.

Some of the Downtown Design Standards and Guidelines deal with aspects of a structure that normally don't require a building permit. This is particularly true for the use of exterior building materials, in terms of the types of building materials being used, changes in exterior building materials, and colors proposed for exterior building materials. Also, alterations that are subject to the Downtown Design Standards and Guidelines must be consistent with the City's Historic Preservation Ordinance, as stated in Section 17.59.040(A)(1). As discussed in more detail above, many of the Historic Preservation standards and guidelines deal with exterior building materials whose alteration may not require a building permit.

For that reason, staff is proposing to amend the applicability section (Section 17.59.020(B)) of the Downtown Design Standards and Guidelines as follows:

- A. The provisions of this ordinance shall apply to the following activities conducted within the above described area:
1. All new building construction;

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2. Any exterior building or site **alteration** ~~modification that requires a building permit~~; and,
3. All new signage.

This amendment would allow for the Downtown Design Standards and Guidelines to apply whenever an alteration is proposed. The applicability section of this chapter, in Section 17.59.020(C), also goes on to state that the Downtown Design Standards and Guidelines do not apply to the:

Maintenance of the exterior of an existing structure, such as re-roofing, re-siding, or repainting where similar materials and colors are used that comply with this ordinance.

As with the Certificate of Approval process, there is still some subjectivity as to whether an alteration complies with the Downtown Design Standards and Guidelines. Therefore, staff is proposing to add an additional provision to the applicability section to give the Planning Director the ability to determine whether any proposed maintenance activity is subject to the Downtown Design Standards and Guidelines review process. The proposed provision is as follows:

- D. The Planning Director shall determine whether any proposed maintenance activity complies with this ordinance and whether the proposed activity is subject to the review procedures contained in this chapter.**

As amendments to the Downtown Design Standards and Guidelines chapter are being considered, staff is also proposing that some additional language and updates be made to the Review Process in Section 17.59.030(C) and the Review Criteria in Section 17.59.040(A)(2). Staff is proposing to include amendments that give the Planning Department the ability to review an application for completeness, that provide notification for the review of certain applications, and that update the timeframes to complete the review to be more consistent with other land use planning review processes completed by the City.

Also, staff is proposing that the Planning Director have the ability to review minor alterations, and that only applications for major alterations or new construction would go before the Historic Landmarks Committee for review. This is consistent with the current review process, as the Planning Director has the ability to approve applications that are consistent with the Design Standards and Guidelines. The Planning Director would have the ability to determine whether a proposed alteration is minor or major.

In terms of the amendments to the review criteria, one of the current criteria is that any application would be subject to the City's Historic Preservation Ordinance and the design standards and guidelines contained in that ordinance. Staff is proposing to keep that reference to the Historic Preservation Ordinance in the Downtown Design Standards and Guidelines review criteria, but update it to reference Chapter 17.65 (the new Zoning Ordinance chapter that would replace Ordinance 4401) and only have the criteria apply to those types of structures that would normally be subject to the Historic Preservation review criteria (historic landmarks and structures listed on the National Register).

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Updates to Chapter 17.72 - Applications and Review Process

The amendments to the Review Process in Section 17.59.030(C) and the Review Criteria in Section 17.59.040(A)(2) of the Downtown Design Standards and Guidelines, as described in more detail above, result in the need to make minor updates to the Applications and Review Process chapter of the Zoning Ordinance to maintain consistency with the other sections of the Zoning Ordinance. In addition, a request to demolish a National Register of Historic Places structure has been added as a type of application that would be considered during a public hearing by the Historic Landmarks Committee, again to maintain consistency with other chapters of the Zoning Ordinance.

Amendments Recommended by Planning Commission and Staff

During the public hearing, the Planning Commission identified an error in Section 17.65.030 (E) of the proposed Historic Preservation chapter (Chapter 17.65). This section includes the criteria that must be met for a property owner to automatically be granted removal of their property from a historic inventory. The amendments as recommended by the Planning Commission are as follows:

- E. The Historic Landmarks Committee must remove a historic resource from the inventory if the designation was imposed on the property and the owner at the time of designation:
 1. Has retained ownership since the time of designation; and
 2. Can demonstrate that the owner objected to the designation on the public record; ~~and~~ or
 3. Was not provided an opportunity to object to the designation; ~~or~~ and
 4. Requests that the Historic Landmarks Committee remove the resource from the inventory.

The amendments to the criteria above are consistent, verbatim, with the language in the OARs. Staff reviewed the entire Historic Preservation chapter (Chapter 17.65) again to ensure that there were no other discrepancies between the proposed zoning text amendments and the adopted OARs.

One other amendment, which was identified by staff during the public hearing, was a repetitive statement in Section 17.65.020 (H), which is the definition of the Historic Resources Inventory. The repetitive statement exists in the current Historic Preservation Ordinance (Ordinance No. 4401), but is not necessary. The proposed amendments are as follows:

- H. Historic Resources inventory. ~~The product of the 1983-1984 Historic Resources Survey.~~ The initial inventory includes the resources which were evaluated and ranked by the McMinnville Historic Landmarks Committee. The inventory incorporates the surveys and inventories conducted in 1976, 1980, and 1983/84 and resources which may be included by action of the Historic Landmarks Committee under the provision of Section 17.65.030 of this chapter. The resources included in the inventory are classified as follows: [...]

Finally, after the public hearing, staff realized that the Historic Preservation definitions were listed in Section 17.65.020 of the proposed Historic Preservation chapter (Chapter 17.65). All other definitions

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in the McMinnville Zoning Ordinance are listed in one chapter (Chapter 17.06 Definitions). Therefore, staff is proposing the following amendment to Section 17.65.020 of Chapter 17.65:

17.65.020 Definitions. For the purpose of this ordinance, certain terms and words are defined as follows: words in the present tense include the future, the singular tense include the plural and vice-versa; the word “shall” is mandatory; the word “may” is discretionary; and the masculine gender includes the feminine gender. **For the purposes of this section, refer to Section 17.06.060 for Historic Preservation related definitions.**

In Section 17.06.060, staff is proposing to list all of the Historic Preservation related definitions. The definitions will retain the exact same language as was reviewed and recommended for approval by the Historic Landmarks Committee and the Planning Commission, but will just be relocated to Chapter 17.06 of the McMinnville Zoning Ordinance. This will ensure consistency with the other chapters of the Zoning Ordinance.

All of the amendments described above are incorporated into Ordinance No. 5034, which is attached to this staff report.

Fiscal Impact:

There is no anticipated fiscal impact to the City of McMinnville with this decision.

Council Options:

1. **ADOPT** Ordinance No. 5034, approving G 3-17 and adopting the Decision, Findings of Fact and Conclusionary Findings.
2. **ELECT TO HOLD A PUBLIC HEARING** date specific to a future City Council meeting.
3. **DO NOT ADOPT** Ordinance No. 5034.

Recommendation/Suggested Motion:

Staff recommends that the Council adopt Ordinance No. 5034 which would approve the zoning text amendments as recommended by the Historic Landmarks Committee and Planning Commission.

“THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY THE APPLICANT, I MOVE TO ADOPT ORDINANCE NO. 5034.”

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