



**City of McMinnville**  
**Planning Department**  
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## STAFF REPORT

**DATE:** November 28, 2017  
**TO:** Mayor and City Councilors  
**FROM:** Ron Pomeroy, Principal Planner  
**SUBJECT:** **Ordinance No. 5043 - G 4-17** Zoning Text Amendments to amend Chapter 17.06 (Definitions), and Chapter 17.55 (Wireless Communications Facilities)

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### **Council Goal:**

Promote Sustainable Growth and Development

### **Report in Brief:**

This action is the consideration of Ordinance No. 5043, an ordinance amending Chapter 17.06 (Definitions), and Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities with a purpose of achieving a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

### **Background:**

McMinnville's first Wireless Communications Facilities ordinance (Ordinance 4732) was adopted in June, 2000 as Chapter 17.55 of the McMinnville Zoning Ordinance. This is the first proposed amendment to that Chapter in the 17 years since its original adoption.

Since that time there have been several federal laws governing local regulations of wireless communications facilities.

This zoning text amendment was identified as a priority project in the 2017 Planning Commission work plan.

### **Discussion:**

Currently, wireless communications towers located in Industrial zones have no height limitation. This has resulted in some towers being constructed into the 140 to 150-foot height range; the most recent being the towers intended to serve telecommunications companies that are currently being installed near the maintenance shop at the Yamhill County Fairgrounds and on property located south of Highway 18, north of the Airport hangers.

Additionally, while the current code requires telecommunication antennas in residential zones and the historic downtown area to be obscured from view from all streets and immediately adjacent properties,

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#### *Attachments:*

*Ordinance No. 5043*

*Exhibit A – Proposed Text Amendments*

*Exhibit B – Decision Document*

there is little guidance as to how this should be accomplished. The current chapter also allows 20-feet of additional height to be added to antenna support structures in all zones except for the Agricultural Holding and Floodplain zones. While co-location of antennas is required prior to the installation of new towers, there is little required to demonstrate the inability to co-locate and the need for a new tower to be installed.

Staff worked with legal counsel and the planning commission to amend the current code to address compliance issues with federal regulations and to address urban design and aesthetic issues associated with the installation of wireless facilities to ensure enduring community value and quality of life for McMinnville residents and businesses.

The key proposed modifications in the code occur in the following areas:

- Height limitations
- Visual Impact
- Screening and Landscaping
- Color
- Signage
- Limitation on equipment building storage size and height; exceeding these standards would require the facility to be placed in an underground vault.
- Lighting
- Setbacks and Separation
- Co-Location – Burdon of proof required
- Updated exemptions
- Application submittal requirements
- Noise
- Abandoned Facilities
- Review process and approval criteria

Staff provided a copy of the proposed amendments to the legal team of Beery Elsner & Hammond, LLP, for review and current FCC compliance; BEH specializes, in part, in municipal law & governance, and land use & development review, and is contracted with the City of McMinnville to provide legal counsel. Staff incorporated the resultant comments and recommendations from legal counsel in the draft amendments that were provided to the Planning Commission at their regularly scheduled July 20, 2017 work session. Following review and discussion of the draft, the Commission requested that this matter be presented for Commission review at a public hearing during their regularly scheduled August 17, 2017 public meeting.

Notice of the August 17, 2017 public hearing was published in the August 8, 2017 edition of the News Register newspaper. At the August 17, 2017 meeting, the Commission opened the public hearing on this item and received testimony. A memo from Community Development Director, Mike Bisset, and dated August 11, 2017, was submitted into the record (Decision Document: Attachment 1). The memo relayed a concern related to the City's continued ability to install and utilize Supervisory Control and Data Acquisition (SCADA) systems that remotely monitor and control pump stations. Modified code language was suggested during the staff presentation to address this concern. Written testimony (Decision Document: Attachment 2) and verbal testimony were also received from Patrick Evans, a representative of Crown Castle, relative to the proposed text amendments; Crown Castle is the nation's largest provider of shared wireless infrastructure. Following discussion, the Commission elected to keep the record open and continue the hearing to the October 19, 2017 Planning Commission public meeting.

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Staff initiated additional conversation and review of the proposed amendments with Mr. Evans and incorporated some of that resulting dialogue into the draft code amendments presented to the Commission at the October 19, 2017 hearing on this matter. Additionally, staff reached out on August 18, 2017 to the other two largest national wireless communications purveyors, SBA Communications and American Tower Corporation, inviting review and comment on the proposed code amendment. No response from either of those two companies has been received to date.

At the October 19, 2017 Planning Commission hearing, a staff presentation was provided culminating with a request that the Commission leave the record open and continue the public hearing to the November 16, 2017 Planning Commission public meeting. This recommendation was to allow time for additional legal counsel review of the recommended amendments, in particular the list of Federal Communications Commission (FCC) wireless communications exemptions recently incorporated into the draft recommendation. Following discussion, the Commission elected to keep the record open and continue the hearing to the November 16, 2017 Planning Commission public meeting.

On October 30, 2017, the Planning Department received additional email communication from Mr. Evans regarding the proposed amendments that were provided to the Commission at the October 19<sup>th</sup> public hearing (Decision Document, Attachment 3). Legal counsel was asked to review the observations offered and recommendations have been incorporated into the current proposed draft amendments to the Wireless Communication Chapter (Chapter 17.55) of the McMinnville Zoning Ordinance. Relevant summary responses to Mr. Evans' observations are offered below.

At the November 16, 2017 Planning Commission hearing, a staff presentation was provided. Following deliberation, the Planning voted unanimously to recommend that the City Council approve G 4-17, as amended, per the decision document provided which includes the findings of fact.

#### Recommended Text Amendments:

The amendments proposed to Chapter 17.06 (Definitions) and to Chapter 17.55 (Wireless Communications Facilities) are provided as Exhibit A of Ordinance 5043.

#### Fiscal Impact:

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

#### Council Options:

1. **ADOPT** Ordinance No. 5043, approving G 4-17 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. 5043.

#### Recommendation/Suggested Motion:

Staff recommends that the Council adopt Ordinance No. 5043 as amended which would approve the zoning text amendments as recommended by the Planning Commission.

**“THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY THE CITY OF McMINNVILLE, I MOVE TO ADOPT ORDINANCE NO. 5043, AS AMENDED.”**

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#### Attachments:

Ordinance No. 5043

Exhibit A – Proposed Text Amendments

Exhibit B – Decision Document