



City of McMinnville
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EXHIBIT 1 - STAFF REPORT

DATE: March 15, 2018
TO: McMinnville Planning Commission
FROM: Chuck Darnell, Associate Planner
SUBJECT: G 2-18 – Nonconforming Signs – Zoning Text Amendments

Report in Brief:

This is a public hearing to review and consider proposed zoning text amendments to Chapter 17.06 (Definitions) and Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance.

The proposed zoning text amendments are related to nonconforming signs and the process for which nonconforming signs are required to come into compliance with the current sign standards in the McMinnville Zoning Ordinance. The amendments will result in the removal of the existing amortization process, which required that all nonconforming signs come into compliance by December 31, 2018. In place of the amortization process, the proposed amendments will introduce other triggers for bringing nonconforming signs into compliance with the current sign standards.

Background:

In November 2008, the McMinnville City Council adopted a sign ordinance (Ordinance 4900). This ordinance included an amortization process which required that certain types of nonconforming signs (free-standing, roof, and animated signs) come into compliance with the updated sign standards. The original deadline for nonconforming signs to be brought into compliance was eight (8) years from the adoption of the ordinance, which was December 2016. Ordinance 4900 also required that notice of sign noncompliance be “mailed to affected property owners following the adoption of this ordinance and again no later than one year prior to the end of the amortization period”. Due to limited staffing and resources at the time, the Planning Department did not send out notification of the December 2016 deadline to impacted property and business owners in a timely manner. The deadline was extended by the City Council in October 2016 (Ordinance 5013) to December 31, 2017 to provide Planning Department staff with adequate time to inventory the city and notify property owners with signs that would be subject to the amortization process 6 months prior to the deadline to come into compliance.

Planning Department staff inventoried all of the free-standing, roof, and animated signs in the community and in June 2017, notices of potential sign noncompliance were provided to 140 property owners throughout the city. Some businesses/property owners brought their signs into compliance, others worked with the city to show how they were compliant, and others applied for a sign exception.

However, the city received three letters from legal representatives of businesses/property owners questioning the legality of the city forcing businesses to change out their signs without a land-use process

Attachments:

Attachment A: Decision, Findings of Fact and Conclusionary Findings for the Approval of Legislative Amendments to Chapter 17.06 (Definitions) and Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance to Update the Requirements for Nonconforming Signs

triggering the requirement. At the same time, representatives from McMinnville Industrial Promotions approached the City Council about the financial burden for some businesses/property owners to bring their signs into compliance.

With a legal challenge and a local challenge, the City of McMinnville again amended the sign code in November 2017 (Ordinance 5044) to extend the deadline for compliance to December 31, 2018, in order to research and assess the legal risk to the city with moving forward with the enforcement of the amortization program.

Discussion:

Based on the legal and local challenges received, Planning Department staff and the City Attorney reviewed the existing zoning language related to nonconforming signs to assess the legal risk to the city in moving forward with the enforcement of the amortization program. The City Attorney's findings were discussed with the City Council, and the Council provided direction to staff to remove the amortization program and to introduce alternative enforcement methods for existing nonconforming signs.

Based on this direction, staff has prepared zoning text amendments that would remove the existing amortization process and introduce other triggers or enforcement methods that would still address the City's desire to bring nonconforming signs into compliance with the sign standards adopted by the City in November 2008 (Ordinance 4900).

The other triggers and enforcement methods that are being proposed are related to changes in the use of the property that the nonconforming sign is located upon. The requirement to bring nonconforming land uses into compliance with code at the time of certain events or actions related to the use or development of the property in question is a standard practice in land use planning and development. The City Attorney has confirmed that the alternative triggers and enforcement methods being proposed are more clearly established under applicable laws and carry less risk of being challenged.

Specifically, the proposed amendments would require that a nonconforming sign be brought into compliance with the standards in the Signs Chapter (Chapter 17.62) when any of the following actions occur:

1. Any alteration of a nonconforming sign that requires a building permit;
2. Any alteration of a structure or building on the property that requires a building permit and a certificate of occupancy;
3. Additions or expansions of 25 percent or more of the overall square footage of a structure or building on the property;
4. Any change to a property that requires a building permit of which the value of the building permit improvements is 25 percent or more of the real market value of the buildings on the property, as determined by the Yamhill County Assessor's Office in the most recent tax year;
5. Abandonment of a nonconforming sign.

Staff believes that the proposed amendments still provide a process through which nonconforming signs will be updated to come into compliance with the sign standards in Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance. The updating of the nonconforming signs protects the aesthetic appeal of McMinnville, and improves the visual qualities of McMinnville's streetscape through equitable sign standards. However, the removal of the amortization process and incorporation of other situations and triggers to bring nonconforming signs into compliance does provide for a balance with the needs of businesses in McMinnville and responds to the concerns that property/business owners had

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communicated related to the automatic updates that would have been required by the amortization process.

One of the alternative enforcement methods being proposed is related to the abandonment of nonconforming signs. The current definition of an “abandoned sign” contains language that is somewhat vague. Therefore, staff is proposing to amend the definition to provide specific timeframes that can be easily interpreted when necessary during the enforcement of nonconforming signs. The proposed amendments to the definition of “abandoned sign”, which is included in Section 17.06.040 of the McMinnville Zoning Ordinance, are provided below:

Abandoned Sign – A sign that advertises a business or event that has been closed for more than thirty (30) days a sign or sign structure where either: a) the sign is no longer used by the property or sign owner; Discontinuance of sign use may be shown by cessation of use of the property where the sign is located; or b) the sign has been damaged, and repairs and restoration are not started within **sixty days (60)** forty-five (45) days of the date the sign was damaged, or are **discontinued for a period of sixty (60) days** not diligently pursued, once started.

Fiscal Impact:

The removal of the amortization process would likely result in the City avoiding the defense of multiple legal challenges. Defending a single legal challenge would be expected to cost the City \$100,000 - \$400,000 depending upon the complexity of the challenge and how the City chooses to defend the action.

Commission Options:

- 1) Close the public hearing and recommend that the City Council **APPROVE** the application, per the decision document provided which includes the findings of fact.
- 2) **CONTINUE** the public hearing to a specific date and time.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a specific date and time.
- 4) Close the public hearing and **DENY** the application, providing findings of fact for the denial in the motion to deny.

Recommendation/Suggested Motion:

The Planning Department recommends that the Planning Commission make the following motion recommending approval of G 2-18 to the City Council:

THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY THE CITY OF McMINNVILLE, THE PLANNING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE G 2-18 AND THE ZONING TEXT AMMENDMENTS AS RECOMMENDED BY STAFF.

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