City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

Planning Commission
McMinnville Civic Hall, 200 NE 2nd Street
October 19, 2017

5:30 PM Work Session

6:30 PM Regular Meeting

Welcome! All persons addressing the Planning Commission will please use the table at the front of the Council Chambers. All testimony is electronically recorded. Public participation is encouraged. Public Hearings will be conducted per the outline on the board in the front of the room. The Chair of the Planning Commission will outline the procedures for each public hearing.

If you wish to address Planning Commission on any item not on the agenda, you may respond as the Planning Commission Chair calls for "Citizen Comments."

Commission Members	Agenda Items
Roger Hall, Chair Zack Geary, Vice-Chair Erin Butler Martin Chroust-Masin Susan Dirks Gary Langenwalter Roger Lizut Lori Schanche Erica Thomas	**5:30 PM - WORK SESSION – COUNCIL CHAMBERS** ***(Please note the venue change. This will allow for informal public comments for the vacation home rental discussion. Depending on the amount of people who want to comment, the Planning Commission Chair may limit comments to a specific amount of time.)*** **1. Call to Order** **2. Discussion Items** • **Vacation Home Rentals** **3. Adjournment**

The meeting site is accessible to handicapped individuals. Assistance with communications (visual, hearing) must be requested 24 hours in advance by contacting the City Manager (503) 434-7405 – 1-800-735-1232 for voice, or TDY 1-800-735-2900.

*****Please note that these documents are also on the City's website, www.mcminnvilleoregon.gov. You may also request a copy from the Planning Department.

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Commission Members	Agenda Items
Roger Hall, Chair Zack Geary, Vice-Chair Erin Butler Martin Chroust-Masin Susan Dirks Gary Langenwalter Roger Lizut Lori Schanche Erica Thomas	**6:30 PM – REGULAR MEETING – COUNCIL CHAMBERS** **1. Call to Order** **2. Citizen Comments** **3. Approval of Minutes:** **A. August 17, 2017 Work Session** (Exhibit 1a) **B. August 17, 2017** (Exhibit 1b) **C. September 21, 2017 Work Session** (Exhibit 1c) **D. September 21, 2017** (Exhibit 1d) **4. Discussion Item:** **5. Public Hearing** **A. <u>Zoning Text Amendment (G 4-17)</u>** (Exhibit 2) *(Continued from August 17, 2017 Meeting* Request: Approval to amend Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities to bring it into compliance with current Federal Communications Commission (FCC) regulations and to protect livability in McMinnville. Applicant: City of McMinnville

B. Sign Standards Exception (SE 2-17) (Exhibit 3)

Request: Requesting approval for a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The exception request serves as the property owner's appeal of the nonconforming sign amortization process and the updates that the amortization process would require to the existing sign on the subject property. The specific exception request is to allow the existing Burger King freestanding sign to remain at 30 feet in height and 182 square feet in surface area.

Location: The subject sign is located on the property at 2250 NE Highway 99W. The subject property is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.

Applicant: Jonathan Aliabadi

C. Zoning Text Amendment (G 8-17) (Exhibit 4)

Request: Approval to amend Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance to update provisions related to the deadline of the amortization of certain types of existing nonconforming signs. The amendment will extend the deadline for bringing nonconforming signs that are subject to the amortization process into compliance with current sign standards. The extended deadline will provide time for the City of McMinnville to evaluate the amortization program for consistency with the intent of the Signs chapter and to ensure that the amortization process is legally permissible and does not violate any state or federal law or infringe on any property rights.

Applicant: City of McMinnville

6. Discussion Items

- **Neighborhood Meetings** (Exhibit 5)
- **Planning Commission Enabling Ordinance** (Exhibit 6)

7. Old/New Business

8. Commissioner/Committee Member Comments

9. Staff Comments

10. Adjournment

Exhibit 1a

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MINUTES

August 17, 2017
Planning Commission
Work Session Meeting

5:30 pm
McMinnville Civic Hall, 200 NE 2nd Street
McMinnville, Oregon

Members Present:	Chair Roger Hall, Vice-Chair Zack Geary, Commissioners: Martin Chroust-Masin, Susan Dirks, Roger Lizut, Lori Schanche, and Erica Thomas
Members Absent:	Gary Langenwalter and Erin Butler
Staff Present:	Chuck Darnell – Associate Planner, David Koch – City Attorney, Ron Pomeroy – Principal Planner, and Heather Richards – Planning Director

1. Call to Order

Chair Hall called the meeting to order at 5:30 p.m.

2. Discussion Items:

- **Accessory Dwelling Units**

Principal Planner Pomeroy said the Affordable Housing Task Force had made recommendations regarding requirements for accessory dwelling units. One was to allow accessory dwelling units to be smaller than what was allowed in the past and the smallest they could be would be defined by the Uniform Building Code and the largest they could be was 1,000 square feet or 50% of the size of the larger dwelling on the property. Other changes were not requiring they be connected to separate utilities to the street until the property was partitioned and also that the property owner was not required to reside in the main dwelling on the property. An email was received from a citizen who had two concerns. The first was if there was a small dwelling unit on the property now and someone wanted to build an ADU, would they have to follow the requirement of 50% of the size of the original small house. Staff was recommending that a larger home could be built that could be the main home and the smaller home could be the ADU. The second issue was when the ordinance was originally adopted it stated an ADU could not be a manufactured home, trailer, or camper and she wanted modular homes to be allowed. Staff could bring that issue back to the Commission.

Planning Director Richards said by new legislation, ADUs were to be allowed in every residential zone by July 1, 2018. No more than one ADU was allowed on a property. The ADU was not required to be attached to the main structure.

There was discussion regarding compatibility of the ADUs in the neighborhoods. They should be made of materials and design that were harmonious with the neighborhood and existing structure.

Planning Director Richards said staff could draft some language for compatibility in the design standards. She would bring it back to the Commission in a public hearing.

- **Cottage Development**

Planning Director Richards said cottage development was an opportunity to bring a smaller housing product into residential neighborhoods and was appealing to many demographics. She discussed the definition of affordable housing and how one third of homeowners in McMinnville with mortgages were in unaffordable conditions and 54% of renters were in unaffordable conditions. This equated to about 9,000 people in these living conditions. The Affordable Housing Task Force reviewed the codes for possible changes. The cottage codes were for a small development on one parcel. The recommendation was for four or more single family dwelling units that would be clustered around an open space that had a coherent plan and shared amenities. They also had design standards. She showed examples that had been built in the Pacific Northwest. Currently these could be done as a planned development in the R-4, C-3, and OR zones. She thought it could be done in more zones and they could make it easier to do. Staff researched what other cities did, and the proposed changes came mostly from Grants Pass. She recommended a new site and design chapter in the Zoning Ordinance for cottage development and to allow this land use in all the residential zones as a conditional use. Some of the development standards included a density bonus of 100% of the maximum density of the base zone, the parent parcel had to be at least 8,000 square feet, the parent parcel could be subdivided, the minimum number of cottages would be 4 units and the lot coverage for both principle and accessory structures was to be no more than 35% of the gross lot area, the front setback would be the same as the zone, the rear setback would be 10 feet, and interior separation of the cottages would be 10 feet, the common open space would be 400 square feet per unit, would have cottages on two sides of it that faced the open space and would be at least 20 feet wide and 20 feet long, each cottage would have private open space of at least 250 square feet per unit, there would be one parking stall per unit, and one stall per every four units. The design standards for the cottages included a maximum of 1,000 square feet for the building footprint, they must have porches, the height would be no more than 24 feet, and there needed to be articulation on the façade and changes of the materials, textures, and colors.

There was discussion regarding compatibility, interaction with the rest of the neighborhood, and small lot development.

Planning Director Richards said two unit structures would be allowed and duplexes could be up to a third of the total number of units with a maximum of 2,000 square foot building footprint and must be similar in appearance to the one unit cottages. Carriage units would also be allowed, one for every four cottages. Community buildings would be of similar scale and design and an amenity for use of the whole development. Accessory buildings must be 200 square feet per unit with a maximum of 1,000 square feet total. The review process would require notification to surrounding property owners and a neighborhood meeting, and then it would come to the Planning Commission as a public hearing.

Commissioner Schanche suggested having public education and engagement upfront so people would be more comfortable with the concept.

Planning Director Richards would bring this back to the next Commission Work Session as well as bring back a public outreach plan.

Planning Director Richards said the Affordable Housing Task Force had concerns about the new codes being used for vacation home rentals instead of affordable housing. They requested that the Commission also look at the vacation home rental code as well. A vacation home rental had

come in and the City received six letters from citizens who were upset about it as it was the fourth one in their neighborhood. It met the code, so it had moved forward. The neighbors were also requesting the Commission look at this code.

There was consensus for the Commission to review the vacation home rental code.

Planning Director Richards attended a meeting with the Mayor and Industrial Promotions. They were going make a presentation before the Council in September. They had questions about the sign code and if it was achieving what they wanted to achieve as a City. They thought there were some unintended consequences and would like the Planning Commission to review the sign code.

3. Adjournment

4.

Chair Hall adjourned the meeting at 6:23 p.m.

Heather Richards
Secretary

Exhibit 1b

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MINUTES

August 17, 2017
Planning Commission
Regular Meeting

6:30 pm
McMinnville Civic Hall, 200 NE 2nd Street
McMinnville, Oregon

Members Present:	Chair Roger Hall, Vice-Chair Zack Geary, Commissioners: Martin Chroust-Masin, Susan Dirks, Roger Lizut, Lori Schanche, and Erica Thomas
Members Absent:	Gary Langenwalter and Erin Butler
Staff Present:	Mike Bisset – City Engineer, Chuck Darnell – Associate Planner, David Koch – City Attorney, Ron Pomeroy – Principal Planner, and Heather Richards – Planning Director

1. **Call to Order**

   Chair Hall called the meeting to order at 6:30 p.m.

2. **Citizen Comments**
   None

3. **Approval of Minutes:**

   A. June 15, 2017 Work Session

   Chair Hall called for action on the Planning Commission minutes from the June 15, 2017 Work Session. Commissioner Schanche MOVED to APPROVE the minutes as presented; SECONDED by Commissioner Geary. Motion CARRIED 7-0.

   B. July 20, 2017 Public Hearing

   Chair Hall called for action on the Planning Commission minutes from the June 20, 2017 Public Hearing. Commissioner Schanche MOVED to APPROVE the minutes as presented; SECONDED by Commissioner Dirks. Motion CARRIED 7-0.

4. **Public Hearing (Quasi-Judicial)**

A. Zone Change (ZC 9-17/ZC 10-17) (Exhibit 2)

Request: Approval of a zone change from R-1 (Single-Family Residential) to R-4 PD (Multiple-Family Residential Planned Development) on an approximately 0.22 acre parcel of land. Concurrently, the applicant is requesting a Planned Development amendment to amend an existing R-4 PD (Multiple-Family Residential Planned Development) zone on an approximately 0.89 acre parcel of land. The two parcels are located immediately adjacent to each other, with the smaller parcel adjacent to 2nd Street and the larger parcel to the south extending down to SW Apperson Street. The rezoning and planned development amendment would result in the ability to develop 21 (twenty-one) multiple-family residential dwelling units on the two parcels.

Location: 1730 SW 2nd Street and more specifically described as Tax Lots 101 and 100, Section 20CB, T. 4 S., R. 4 W., W.M.

Applicant: Ray Kulback

Chair Hall opened the public hearing and read the quasi-judicial hearing procedure. He asked if there was any objection to the Commission's jurisdiction to hear this matter. There was none. He asked if any Commissioner had a disclosure to declare or wished to abstain from participating or voting on this application. There was none. He asked if any Commissioner needed to declare any contact prior to the hearing with the applicant, any other party involved with the hearing, or any other source of information outside of staff regarding the subject of this hearing. There was none. Several Commissioners had visited the site.

Associate Planner Darnell delivered the staff report. This was a request for a zone change and a planned development amendment for property on SW 2nd Street. The zone change was for the northern parcel to go from R-1, single family residential, to R-4, multi-family residential planned development. The planned development amendment would amend the existing planned development that applied to the southern parcel to expand and cover both parcels which would result in both being zoned R-4 and underneath the planned development overlay. He described the existing parcel and the proposed changes. The current planned development was adopted in 1980. It rezoned the southern parcel to R-4 and adopted the planned development overlay. The overlay limited the site to no more than five dwelling units due to sewer capacity issues. Infrastructure improvements and easements were also required. Since that time, the infrastructure improvements had either been completed or would be required at build out of the site. He reviewed the zone change criteria. The application was consistent with the goals and policies of the Comprehensive Plan in providing a variety of housing in the City. The area could be buffered by landscaping from adjacent low density residential areas and a condition had been included for a landscape plan to be provided and that it would include buffering. There was another condition that if the building height was greater than 35 feet one foot setbacks for every foot over the 35 feet would be required. The site had access to an arterial street. There were no development limitations as it was a flat site with no natural features. Existing facilities had the capacity to support the development. The site had access to transit, was near a property zoned for commercial use in the future, and there were parks nearby. There were higher density uses such as apartments and duplexes surrounding the site. The proposed zone change was not inconsistent with the surrounding development pattern. He discussed the planned development amendment. The specific requests were to repeal the existing planned development as it was outdated and some of the requirements were irrelevant and adopt the new planned development which would increase the size and cover the north parcel as well as the southern parcel. This

site was a uniquely shaped lot as it was narrow and deep. One of the main reasons for the change was to allow for multiple duplex units to be distributed throughout the site instead of a large cluster in one area. The applicant intended to transition from the multi-family development to the east and the single family residential to the west. It was consistent with the Comprehensive Plan objectives for the area and the proposed density was more consistent with the density requirements in the R-4 zone. The proposal was to go from six dwelling units to 21 dwelling units which was a density of 18.9 units per acre. The locational characteristics of the surrounding amenities were consistent with the higher density. The sewer capacity issues had been addressed since the time of the original planned development. The applicant submitted a site plan that provided for some contiguous open space on the site. There would be a stand-alone single unit on the north that would allow for a larger open space on the north. To make that work, the applicant had requested a 5 foot reduction in the front and rear yard setbacks. The site accessed directly on public right-of-way on both sides and there would be a one way access through the site, entering on 2nd and exiting on Apperson. That would reduce the traffic impacts on 2nd. The traffic drive aisle would meander through the site to spread out the dwelling units and reduce speeds. The applicant intended to begin the project soon after it was approved. There was a condition that work had to begin within two years and completed in seven years. The streets were adequate to support the anticipated traffic from the development. A traffic analysis was done for this application and the increases in the pm peak hour delays were minimal. The level of service did not change for the surrounding intersections. The engineering and utility providers were comfortable with providing adequate facilities to serve the site. The maximum density that could be constructed on the site was up to 32 dwelling units and the applicant was proposing 21. Some additional testimony had been received that he entered into the record. The first was a letter from a nearby resident who was concerned about the impacts to traffic on 2nd and asked if a traffic light was warranted. The traffic analysis showed minimal impacts on the surrounding network and a traffic signal was not warranted at this time. Another letter was received from the Fair Housing Council of Oregon who asked the City to look at this proposal in terms of its impact on Statewide Planning Goal 10, the housing needs analysis, and buildable lands inventory. Staff responded that the Goal 10 analysis was not required in this case because the proposal was consistent with the Comprehensive Plan map which allowed for residential use, the proposal implemented the Comprehensive Plan policies, and met the zone change criteria. Staff recommended approval of the application with conditions.

Commissioner Chroust-Masin suggested it would be better to enter the site on Apperson and exit onto 2nd. Associate Planner Darnell said the intent was to prevent movements coming out of the site onto 2nd. City Engineer Bisset said the traffic study concluded that the adjacent street network had capacity for the direction that was submitted and was well below the capacity threshold in the adopted Transportation System Plan.

Commissioner Schanche asked what the percentage was of open space they were supposed to provide. Associate Planner Darnell said there was no specific percentage, they just had to provide open space. The area proposed by the applicant was 2,300 square feet or 5% of the overall site. All of the combined open space was 28% which included landscaping.

Commissioner Schanche was also concerned about the radius for fire trucks.

Public Testimony:

Ray Kulback, applicant, thanked staff for working with him on this application. Staff supported the application and found that it met all of the relative criteria. He asked the Commission to approve it. Regarding the traffic flow, he was required to give an additional 18 feet for future development of 2nd should it be required to be widened. They chose the traffic flow because it would take traffic off of 2nd and it would enter onto a lower volume street. He did not see the need to reverse it. Regarding the open space, the radius worked for fire trucks.

Commissioner Schanche thought some amenities should be included in the open space like benches. Mr. Kulback gave his vision for the open space which included benches, covered barbecue and picnic area, and covered bike parking.

Commissioner Dirks asked if he was going to put in patios behind the units. Mr. Kulback said there would be patios for every unit that would be privately fenced.

Frank Maynard, McMinnville resident, wanted to know if there would be a paved alley behind the units and if there would be a stop sign on 2nd Street. He thought Apperson would be overloaded and wanted to make sure the development did not affect the neighborhood. Chair Hall said there would be no alley or stop sign.

Commissioner Chroust-Masin clarified the driveway for the development would be right behind his property line and would be paved.

Bill Bordeaux, McMinnville resident, asked if the Commission was planning to vote on the application tonight. Chair Hall said the Commission would decide that after all of the testimony was received.

Mr. Bordeaux had come before the Commission several years ago when they were considering a 400 unit housing development on the west side of Hill Road. He warned the Commission about the potential effects of that decision at that time and now there was overcrowding on 2nd Street and in schools. Newby Elementary School was expanded and remodeled and Dunaway had additional units put in and yet both were vastly overcrowded. There was a 48 multi-family unit apartment complex immediately adjacent to this property, there was a 50 unit apartment complex 100 feet northwest of this property, a 28 unit condo complex 700 feet down Cypress, and to the immediate east there were multiple duplexes. This area was already replete with multi-family units and had no need for another 21 unit complex. The schools did not need to deal with 40 plus students added to their rolls. Regarding safety and congestion, 2nd Street had become congested over the past few years. Cypress and Agee had become major arterials that fed into 2nd. To add this additional development would compound the issue. Cypress and 2nd was a choke point and there were auto accidents there on a regular basis. Having another ingress on 2nd would jam things up more. People turning left into the development would cause back-ups and the people turning right would slow down traffic. The physical and natural contours of the area would add to the problem. There was a blind hill on both sides of Cypress and many people were speeding on the hill and there was already a choke point on Cypress and 2nd. Another egress would add to the complication. In the morning and evening there was direct sunlight going into drivers' eyes on 2nd. He cautioned adding to this difficult area. He did not think the 36 parking spaces proposed would accommodate 21 new units in this area. There was no adjacent parking on 2nd. The only potential was parking across the street which meant pedestrians walking across the dangerous street and opening car doors into the bike lane. He thought this plan failed to meet criteria number 1, the purpose on number 2, and failed to meet

17.74.070 a, b, and e. He suggested the Commission personally observe this stretch of 2nd. It was not safe and was highly congested.

Mr. Kulback gave rebuttal. Twice a month he had the property maintained so it looked presentable for the last twelve years. The reason it had not been developed in twelve years was the economy was so bad he could not afford it. He was now actively pursuing development. He had recently done a development next to Newby School and experienced the traffic. He lived about three blocks from 2nd and drove it every day. It had been improved over the years, and would be improved again. There were a lot of kids going to school and it was busy in the morning. He agreed the speed should be reduced on the hill and there should be more police enforcement. There were sidewalks and bike lanes on 2nd. There was congestion on 2nd because it was a busy street. He suggested traffic lights be put in in the future. He did not think traffic would back up when people were entering the development as a lot of the traffic was turning on Cypress and people were already slowing down. He thought it would be a good flow. The traffic study had addressed many of these issues.

Mr. Kulback waived the seven day period to submit final written arguments.

Chair Hall closed the public hearing.

Commissioner Schanche was in support of the application. It was creative and there was a need for housing in McMinnville. Traffic engineers had looked at the traffic issues and she thought this development would work. She suggested adding open space amenities to the conditions.

Commissioner Chroust-Masin had concerns with the traffic flow. He thought it would add to the current problems and again suggested reversing the flow of the traffic on the property.

Commissioner Dirks thought this was cleverly designed in a limited space. The applicant had done the best he could to get open space. She was sympathetic to the traffic issues on 2nd, but it was an arterial and they should expect traffic there. She thought moving the traffic as designed was appropriate.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Schanche MOVED to recommend the City Council approve Zone Change (ZC 9-17/ZC 10-17) and to add in Condition #1 that the details in the site plan include open space amenities. SECONDED by Commissioner Dirks. The motion PASSED 6-1 with Commissioner Chroust-Masin opposed.

B. <u>Zone Change (ZC 11-17)</u> (Exhibit 3)

Request: Approval of a zone change from AH (Agricultural Holding) to R-4 (Multiple-Family Residential) on approximately 5.2 acres of a 5.3 acre site.

Location: North of NE Cumulus Avenue and east of NE Fircrest Drive and is more specifically described as Tax Lot 900, Section 23, T. 4 S., R. 4 W., W.M.

Applicant: Land Use Resources, LLC

Chair Hall opened the public hearing and read the quasi-judicial hearing procedure. He asked if there was any objection to the Commission's jurisdiction to hear this matter. There was none.

He asked if any Commissioner had a disclosure to declare or wished to abstain from participating or voting on this application. There was none. He asked if any Commissioner needed to declare any contact prior to the hearing with the applicant, any other party involved with the hearing, or any other source of information outside of staff regarding the subject of this hearing. There was none. Several Commissioners had visited the site.

Principal Planner Pomeroy presented the staff report. He entered two items into the record. One was Attachment B to the staff report which was a memorandum provided to the Commission on August 16 which responded to testimony received from John Baker on August 11. The other was a letter from Tom and Kathy Murdeshaw dated August 16 and he read the letter into the record. They asked the Commission to postpone their decision until a complete study and review of any proposed development plans for the subject property occurred to review the affects the development plans would have on the surrounding neighborhood, community, and public utilities servicing the area. They were concerned about access to emergency vehicles, pedestrian and vehicle safety, and environmental impacts. This letter was Attachment C to the staff report. Regarding the application, the site was located east of Fircrest Drive and north of Cumulus Avenue. The current zoning of the property was EF-80 and a small piece of FP, which was flood plain zoned property of approximately one-tenth of an acre in size located on the north edge of the property. If the zone change was approved, 5.2 of the 5.3 acres would be rezoned to R-4 which matched the existing zoning of the properties to the west. The flood plain would remain in the flood plain zone. He then reviewed the zone change criteria. The application was consistent with the goals and policies of the Comprehensive Plan. The proposal was orderly and timely and able to be effectively served by utilities and services. The property was adjacent to medium density development. The northern part of the property had a drainage swale that ran to the northwest to the Yamhill River. That did not impact the balance of the site at this time. There was public transit that in the future would run along Cumulus. The site was within 200 feet of the planned transit route and was a quarter mile from commercial services. The facilities had adequate capacity for additional development. The property was within 200 feet of a collector street, which was Cumulus Avenue. Cumulus could accommodate maximum daily traffic of 10,000 trips and could accommodate the trips anticipated with this rezone. To the west of the site was the Fircrest Assisted Care and Alzheimer's facility, to the northwest was the Fircrest Village condominium development, to the south and west was the Fircrest Community Assisted Living and Memory Care apartment complex and further to the west of that was Parkland Village independent and assisted living. These were in the medium density range. He then discussed Attachment B, public comments. Most of the public comment that had been received was concerns about adequate provision of police and fire protection, the need for an environmental impact study for the property, question regarding review by Yamhill County, availability of materials for public review, questions regarding the specifics of the future development proposal for the property, and the appropriateness of the requested zoning given the adjacent development. The adjacent development was already zoned R-4 and the density would be limited based on the applicant's traffic impact analysis. Yamhill County had no jurisdiction on this property as it was within the McMinnville UGB and City limits. An environmental impact study was not required. The police and fire departments had reviewed the request and had issued no concerns. The materials for the project were made available on the City's webpage and the staff report and decision document were provided at least seven days prior to the hearing and were available at the Community Development Department counter. Staff recommended approval of the application subject to the conditions. One condition was that prior to development of the property the applicant had to submit a preservation plan relative to the natural drainage swale and wooded area of the site to be reviewed and approved by the Planning Director prior to

approval of any development plan. The limitation on development came from the traffic impact analysis which determined that there would be a maximum of 48 morning peak hour trips generated from this property and 59 evening peak hour trips. The City Engineer reviewed the analysis and concluded that the surrounding street network could accommodate all of the anticipated traffic. This allowed 95 multiple family dwelling units on the site. Other conditions identified the street improvements that were required when the property was developed and the need for acquiring erosion control permits and wetland and waterway permits as necessary.

Chair Hall said the concerns in the letter that had been read into the record were more appropriate for a development proposal than a zone change. Principal Planner Pomeroy concurred with that.

Public Testimony:

Denny Elmer, applicant, was requesting a zone change from AH to R-4 for a parcel located on Fircrest Drive. He agreed with staff's recommendation and the conditions of approval. He was seeking approval.

Commissioner Dirks asked if he would be developing the property. Mr. Elmer was not sure at this time and was not sure what the development plans would be.

Commissioner Chroust-Masin asked if there was a timeframe for development. Mr. Elmer replied he would like to start next year.

Someone from the audience asked why an environmental impact study was not required. Principal Planner Pomeroy answered because there was no development being proposed at this time. Planning Director Richards said there were two conditions of approval that required a preservation plan and wetlands study at the time of a development application. If this zone change was approved, there were permitted uses in the zone that did not require a public hearing, one of which was a multi-family complex. There were other uses that did require a public hearing, such as a subdivision. Based on what the developer chose to do, it could come back for a public hearing or for staff review and approval. Whatever was chosen, the conditions of approval would have to be followed.

Another question from the audience was confirming they could not develop a motel or hotel, that these would be residential units with people living there. Planning Director Richards said in the R-4 zone there could be single family dwelling units, two family dwelling units, multiple family dwelling units, residential facility, or social relief facility. The land west of this property was also R-4.

Chair Hall said whatever was developed would have to follow the criteria in the code with regard to what was permitted in this zone.

Another question was raised about the preservation plan and wetlands study and if the public could comment on any issues that were found. Planning Director Richards said if the application did not go through a land use process, those studies did not go into public review.

Principal Planner Pomeroy said they had capped the development of multi-family units to 95 maximum units. There was no development plan yet, and staff made a condition that capped any development in the future.

Lee Eggers, McMinnville resident and president of the Fircrest Village condominiums, said they became an HOA in 2004 and were proud of their complex. Many changes had taken place over the last 13 years that had impacted the nature of the complex. These were the addition of Fircrest Community, American Avenue housing, medical clinic, and low cost housing. They had especially had an impact on the intersection of Fircrest Drive and Cumulus Avenue. The proposed zone change indicated a traffic study was done that showed no impact. He took exception to that, especially when the study did not include the intersection of Fircrest and Cumulus. There were only a few accesses onto Cumulus which exacerbated the problem. Fircrest Community used a private street and he had done a traffic count that showed 200 plus cars per day coming from that development. If another 95 cars were added to that plus the 28 unit development going in on American Avenue, he found exception to the traffic count. Cumulus and Fircrest was a complex intersection. Fircrest Community had a sign that blocked the west view of oncoming traffic. You had to make a 90 degree turn over your shoulder to see oncoming traffic on Cumulus. There was a lot of speeding on Cumulus as well. He proposed the traffic study show the impact of traffic based on the development plans for the area and the Fircrest Drive and Cumulus Avenue intersection. He also requested that parking be restricted to only one side of Fircrest Drive to allow passage of fire trucks and ambulances. Since this was a privately owned property, could it be considered spot zoning? Did the developer have the proposed plans for these 95 units? Were there any open space resources or wetlands on the property? How many parking spaces were planned? He asked that the tree area and gully be put into a green zone in perpetuity so it would not be developed. The zoning of plot 1000 and 1001 were still zoned as AH. There was a blue metal building there that he assumed was a grow operation which would follow the AH zone.

Janice Gray, McMinnville resident, was concerned about not having a say in this if it was a multi-family development. She lived nearby and the properties around her were zoned R-4, but medium density had been built there. She thought this lot should be limited to medium density as well. By adding another street coming out onto Fircrest Drive, it would hold up traffic. She would like to see the old growth trees preserved. Cumulus was currently a dead end street. If that was not changed, it would be a problem. She did not think there were commercial services nearby. Grocery stores were far away.

Dan Wollam, McMinnville resident, had recently moved to McMinnville and one of the reasons he moved to Fircrest Place was because of the environment that surrounded it. He liked being on the edge of town and the openness and wooded areas. Without a development plan for this site, it was hard to get a concept and understanding of what the zone change would mean other than to assume the worst case possible. He did not want to deny the property owner reasonable development rights, but if it was developed to the maximum possible it would be a travesty to this area. On the one side of the property was wide open agricultural area and on the other side there was medium density. According to this proposal, high density would be sandwiched in between. Good planning did not go from an extremely low density to a high density to a medium density. He suggested looking at a different zone and not allowing the highest density and use. He discussed Policy 71.09, and how this type of residential development should be directed towards the center of the City. This property was far from the center of the City. It was not a good location for transit and commercial services either. It did not seem like a good use for the

property. There was likely an environmental impact and it was not prohibited from the Commission's consideration. This area was full of large and small mammals, birds, and wildlife. They did not know if the developer would clear cut that area and fill it all in. If this was to be a multi-family development, this would be the last public hearing for this property. He thought staff would apply the standards carefully, but was concerned that standards did not measure adequately the impact to the quality of life in the area or measure the beauty of the area. He asked the Commission to postpone the decision until the developer could give an idea of what would be done on the property. The intersection of Fircrest and Cumulus was a dangerous intersection. There were many disabled in the area as well as traffic and difficult visibility.

Gioia Goodrum, McMinnville resident, would like to know what the developer planned to do with the trees and if there would be a buffer between Fircrest Place and this development. She believed the community needed more housing.

Tom Wolf, McMinnville resident, said they were not just talking about people, but also the environment and animals. He had not heard a reason to change the zoning from agricultural to residential. He bought his property with the understanding that there was agricultural behind him. He knew things could change, but he did not think it needed to change. There was no public transportation and he thought there would not be for some time. The intersection of Fircrest and Cumulus was dangerous.

Patricia Parker, McMinnville resident, said over the last few years there had been considerable changes to the area, especially with the care facility addition. The street was short with people coming and going into a driveway that immediately split and there were many close calls. If there was more development the street would need to be widened. It could also get spill over from the housing development and apartments and there would be parking on the street. She was concerned about the trees and the gully being preserved. The areas that were not developable on the property could stay the way they were and the area up front near the street that had no trees and did not have to be dug up or changed could be developed. The trees and gully enhanced her neighborhood and the museum property. She asked that the decision be postponed until further studies were made.

Planning Director Richards said the intersection of Fircrest and Cumulus was not studied in the traffic impact analysis and staff could ask that it be done. Fircrest Drive would be required to be improved when the property developed. The improvement would be a landscape strip and sidewalk. It was a local road classification and they could explore the suggestion for parking on only one side.

City Engineer Bisset said the current standard for 26 foot wide residential streets was to allow parking on both sides, but it could be modified with a request from public safety. Fircrest was a residential street and with the addition of this development at the maximum amount of units that was studied there would not be any capacity issues with Fircrest. Cumulus was a collector street and there were not capacity issues on it either. They had reviewed the safety of the intersection, specifically the site distance concerns that had been raised. There was a temporary real estate sign and vegetation to the east that they were addressing to improve the site distance in that direction. There was a Fircrest sign that was in the site distance area and they were working with the property owner to have it moved. Once those were resolved the site distance fell within the design criteria. The intersections that were studied were studied at the direction of the Engineering Department.

Planning Director Richards said in McMinnville a property owner could request a zone change without a planned development land use application. For this property, the developer had been in dialogue with the City and had many ideas for the site. He wanted to see what he could do to preserve the wooded area as well. The traffic impact analysis was based on the development of 3.8 acres of the 5.3 acre site because there was recognition that not all of the site would be fully developed. This property had always been identified in the Comprehensive Plan map as future residential development. The AH zone was a holding zone, and it was always intended to be developed. When the Comprehensive Plan map was put together it was based on future growth needs and that was how properties were identified for residential zoning verses commercial and industrial zoning. It was in the City limits and had been identified to accommodate future residential growth.

Mr. Elmer provided rebuttal. He discussed how this process had been in evolution. The concept of using the land that was flat and not many trees related to the amount of units he was asking for. He did not plan to cut down the trees as he saw the beauty in them as well. He did not know if he could design 95 units with the parking requirements, but he planned to build on the land suggested. The City had required him to do a preservation easement over the trees and gully that would preserve that area so it could not be developed.

Mr. Wollam asked if the applicant would be open to reducing the area that would be rezoned to the area that would be used for the development and leaving the rest of it zoned as it was.

Planning Director Richards said that would require an amended application. An AH zone could be rezoned in the future. It was not the same as an easement.

Mr. Eggers asked how confident the applicant was in the traffic study as Mr. Eggers' traffic counts were higher. There was only one area they could come out onto from the property. City Engineer Bisset confirmed Mr. Elmer had used Lancaster Engineering to do the traffic study to the criteria required by the City.

There was discussion regarding the request to continue the hearing until the developer submitted a plan for the property.

City Attorney Koch said the Commission was required to apply the laws as they existed today and in this case the City allowed an applicant to apply for a zone change without having to commit to any particular development or use. A request to continue the hearing for the developer to jump through additional hoops that were not required was not something that could lawfully be imposed. The decision before the Commission was whether or not to continue the hearing to allow for additional evidence, testimony, or argument to be submitted by any party. The record could be left open until next month's Planning Commission meeting or the record could be left open for seven days for written evidence only. There would be an additional seven days for the applicant to respond to the written testimony.

Planning Director Richards said the testimony should be based on the criteria in the Code.

Mr. Eggers requested a continuance with the record left open.

Commissioner Lizut MOVED to CONTINUE the hearing to September 21 and allow written testimony to be submitted until August 25 at 5 p.m. The applicant would have an additional seven days after that to respond to any of the testimony received after which the record would be closed. SECONDED by Commissioner Geary. The motion PASSED 6-1 with Commissioner Schanche opposed.

C. **Conditional Use Permit (CU 4-17)** (Exhibit 4)

Request: Approval of a conditional use permit to allow for the expansion of the existing MMS campus. The school has purchased the property next to the existing MMS building, and intends to renovate the existing building on the property to operate as the elementary school classroom. The existing MMS building would continue to operate as school classrooms and facilities. The rear of the existing school and the new property would be combined to operate as one open play yard in the backyard areas.

Location: The property is located at 1045 SE Brooks Street, and is more specifically described as Tax Lot 1202, Section 21CA, T. 4 S., R. 4 W., W.M.

Applicant: McMinnville Montessori School

Chair Hall opened the public hearing and read the quasi-judicial hearing procedure. He asked if there was any objection to the Commission's jurisdiction to hear this matter. There was none. He asked if any Commissioner had a disclosure to declare or wished to abstain from participating or voting on this application.

Commissioner Schanche declared she was a friend of the applicant and recused herself from the hearing.

Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant, any other party involved with the hearing, or any other source of information outside of staff regarding the subject of this hearing. There was none. Several Commissioners had visited the site.

Associate Planner Darnell gave the staff report. This was a conditional use request for the expansion of McMinnville Montessori School. The property was located on SE Brooks Street. The surrounding zoning of the area was residential with a commercial property to the north. He reviewed the proposed site plan. They were proposing to keep the existing structure in place and renovate it. The application was consistent with the Comprehensive Plan policies due to the need for additional educational facilities in the City. The use was permitted conditionally in the R-4 zone. The existing structure met all of the required setbacks. They were proposing to expand the existing driveway to accommodate three new parking spaces which met the requirement for an elementary school. The development was compatible with the surrounding area. The proposed floor plan showed no changes to the exterior walls of the building. The interior would be renovated to add one classroom and the main entry door was being relocated to the east side of the building. Parents dropped students off at the curb and they were escorted in as there was no parking on site for parents which helped minimize congestion. There had been no complaints about this system. Their hours of operation were from 8:30 to 3:00 so there were no early morning or late evening impacts. The expansion would have no significant adverse impacts on the surrounding area. One condition was that a landscape plan be submitted to the Landscape Review Committee. The structure would maintain the appearance of a single family

residence and would blend in with the surrounding area. Another condition was that a pedestrian walkway be added to connect to the main entry door. Additional testimony had been received, which was a letter of support for the application. Staff recommended approval with conditions. Commissioner Schanche had suggested an additional condition that required a connection between the two buildings. He thought that was the applicant's intent.

Public Testimony:

Lisa Neal, representing the applicant, discussed the background of McMinnville Montessori School which had been in the community for 30 years. They had existing waiting lists and with the expansion they would be able to accommodate additional students. It would also help with licensing issues in allowing animals in the classrooms. They were planning to extend the native garden to the property as well. They currently had 25 primary students and 27 elementary students. They were not planning to use the renovated building until next fall and a full primary class would be added at that time.

Anna Matzinger, McMinnville resident, said the school was started in 1987 by two families with the intent to provide a Montessori based early education school for 3, 4, and 5 year olds and in 1997 they moved to the current location and added an elementary classroom for 1st through 6th grades. They focused on the development of the whole child and the goals were to give the child a love of learning, strong sense of self, responsibility, and a deep sense of community and contribution. As a parent of two Montessori students, she could attest to the positive impacts the school has had on her family, children, and community. The existing building had space for two classrooms, a primary classroom for 3, 4, and 5 year olds and an elementary classroom. There was a need in the community with several years of waitlists to provide space for another primary classroom. The adjacent property had been in a state of neglect for a number of years and she thought their ownership would benefit the neighborhood. She hoped that their commitment to the stewardship and expansion of the native garden would be a positive attribute to the street and surrounding area. She asked for approval.

Ms. Neal waived the seven day period to submit final written arguments.

Chair Hall closed the public hearing.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Lizut MOVED to approve CU 4-17 subject to staff's amended conditions of approval. SECONDED by Commissioner Geary. The motion CARRIED 6-0-1 with Commissioner Schanche recused.

D. <u>Zoning Text Amendment (G 4-17)</u> (Exhibit 5)

Request: Approval to amend Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities to achieve a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

Applicant: City of McMinnville

Chair Hall opened the public hearing.

Principal Planner Pomeroy provided the staff report. This ordinance was adopted 17 years ago and needed to be updated. It also allowed the opportunity to address better community aesthetics when it came to wireless facilities. The current requirements allowed some things that would be amended with the new language. One of those was that the regulations currently allowed towers in industrial zones without height limitations and antennas were allowed to be placed on existing structures located in the historic downtown through a conditional use permit. He gave some local examples of current tower heights and alternative support structures for wireless antennas. Staff recommended replacing in entirety the existing ordinance with the new draft. There were a number of things exempted from the ordinance, such as mobile broadcasting, ham radio operations that were licensed, and antennas that were used to receive TV and radio broadcast transmissions. Staff recommended that SCADA system operations also be exempted. There were two alternatives for that exemption, alternative 1 which would add the language "public SCADA and similar systems" or alternative 2 which offered broader language that said "all military, federal, state, and local government communication facilities except for towers in residential zones." Some of the other changes were the towers would be limited to 100 feet in height, mounting on historic structures would require review by the Historic Landmarks Committee, in the public right-of-way all vaulted equipment pedestals would be undergrounded as much as possible and outside of public right-of-way utility buildings would be limited to 12 feet in height and 200 square feet in size unless granted a conditional use permit. In residential zones and the downtown historic district, all utility cabinets and similar equipment would need to be undergrounded. There was also language that restricted signs, banners, advertising, or other logos on the towers. There were also regulations regarding color and requiring the maximum height added for new antennas in areas that were not residential would be limited to an additional ten feet. Façade mounted antennas and wiring would need to architecturally blend in with the building or be made compatible as much as possible. Roof mounted antennas should be set back as far as they could be from the edge of the roof to blend in. No artificial lighting would be allowed unless it was required by the FAA or other agency. There would be setback requirements. Facilities would co-locate as much as possible and studies by a telecommunications engineer would be submitted to justify why they could not co-locate before new towers or other structures were put in place. He showed some examples of stealth options. Staff recommended that the Commission recommend approval of the proposed amendments to the City Council. Staff received email communication, which was entered into the record, from Patrick Evans from Crown Castle, a leading provider of wireless facilities in the country, who provided a section of the FCC regulations as an attachment.

Commissioner Dirks said the email accused them of being provincial and that they had unfounded concerns regarding the impact of wireless technology on aesthetics and livability. Principal Planner Pomeroy said there was a wide range in how other cities viewed wireless technology. They did have an aesthetic and livability impact and McMinnville was proposing adopting standards to address those issues. The proposed draft had been reviewed by legal counsel and found to be legally sound in Oregon. He thought that comment was largely based on opinion.

Patrick Evans, McMinnville resident, said there was no intent in the letter to suggest McMinnville residents were provincial. He thought these changes needed to be looked at in a broader context than just aesthetics. What separated cities that grew and those that did not was infrastructure. One of the biggest issues was the way the restrictions worked together from setbacks to distances between towers, heights of towers, and location of towers. The

cumulative effect was the ability for the community to have broadband coverage everywhere. This was the future and they would not be able to use the technology if it was forced into limited areas such as industrial. They needed to be able to broadcast where the people were. He was not suggesting that they did not apply new regulations or new stealth or improvements to aesthetics. He did not think aesthetics should be at the expense of coverage. He did not want to see the community left in the lurch because the ordinance was unnecessarily prohibitive. They needed to look at where there were deficiencies and need for infrastructure and then deal with the aesthetic issues.

Commissioner Dirks asked what percentage of coverage Mr. Evans' company had in McMinnville and how many competitors they had.

Mr. Evans said the other major competitor was SPA who also had towers in the area. He did not know how many towers his company had in McMinnville, but they had the majority of them.

Chair Hall asked if there were specific items in the proposed ordinance that Mr. Evans recommended to change. Commissioner Dirks said they were detailed in his letter.

Mr. Evans was not opposed to the proposed ordinance, but thought there was room for additional clarity and focus so it not only addressed aesthetics, but coverage issues and provided clear standards that could be complied with.

Planning Director Richards recommended staff revise the ordinance and bring it back for deliberation.

There was consensus to the continue the hearing to October 19, 2017.

E. <u>Zoning Text Amendment (G 5-17)</u> (Exhibit 6)

Request: Approval to amend Chapter X, (Citizen Involvement) of the Comprehensive Plan to update goals and policies related to citizen engagement and involvement in planning processes and programs.

Applicant: City of McMinnville

Chair Hall opened the public hearing.

Planning Director Richards presented the staff report. This was a Comprehensive Plan text amendment to Chapter 10. It would add one goal to the chapter, amend three policies which created the Planning Commission as the committee for citizen involvement, add four policies that made the Comprehensive Plan more in line with Oregon Revised Statutes and Administrative Rules for Land Use Goal 1, and add two proposals in the Comprehensive Plan for actions staff should take, which were evaluating the citizen involvement program and reporting annually to the Council.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Schanche MOVED to recommend approval of Zoning Text Amendment G 5-17 to the City Council. SECONDED by Commissioner Dirks. The motion CARRIED 7-0.

5. Old/New Business

Commissioner Dirks suggested changing the code to require a development plan to be submitted for multi-family zone change applications. Planning Director Richards recommended creating site and design review standards for multi-family developments. Based on the standards, they could create size thresholds for when administrative review happened and for when Planning Commission review happened.

Chair Hall thought if there had been a neighborhood meeting hosted by the proposed developer, most of the issues and complaints would have already been addressed. He thought they should require or strongly encourage developers to hold neighborhood meetings. Planning Director Richards said staff would review what types of land use actions warranted neighborhood meetings and how to require the meetings in the process and still maintain the 120 day clock.

6. Commissioner Comments

None.

7. Staff Comments

None.

8. Adjournment

Chair Hall adjourned the meeting at 10:30 p.m.

Heather Richards
Secretary

Exhibit 1c

City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

MINUTES

September 21, 2017
Planning Commission
Work Session Meeting

5:30 pm
McMinnville Civic Hall, 200 NE 2nd Street
McMinnville, Oregon

Members Present:	Chair Roger Hall, Vice-Chair Zack Geary, Commissioners: Erin Butler, Martin Chroust-Masin, Susan Dirks, Gary Langenwalter, Roger Lizut, and Lori Schanche
Members Absent:	Erica Thomas
Staff Present:	David Koch – City Attorney, Ron Pomeroy – Principal Planner, and Heather Richards – Planning Director

1. Call to Order

Chair Hall called the meeting to order at 5:30 p.m.

2. Discussion Items:

- **Vacation Home Rentals**

Principal Planner Pomeroy said the City adopted vacation home rental standards in 2008. They were conditional uses that had a 660 foot spacing requirement between them. Since there were no complaints, the City moved in 2012 to remove the spacing standards. In 2014 the City amended the standards to take it from Planning Commission conditional use review to administrative staff review. The standards included maintaining the characteristics of a single family residence, providing one off street parking space for each guest bedroom, signs were limited to 3 square feet and only one, the rental limitation was 21 consecutive days, there needed to be smoke detectors, there needed to be a local person who could respond immediately to emergency situations, they could be renewed for one year at a time, and the Planning Commission would review any complaints. Some concerns that had recently been raised were: vacation rental homes were commercial uses being allowed in residential neighborhoods, vacation rental homes might have a negative impact on the neighborhood social cohesion, they could remove homes from long term residency and affordable housing stock, and in some cases there were too many clustered together. The current City inventory showed there were 38 permitted and active vacation home rentals. He discussed the map of where the rentals were located. They averaged renting 100 and one-half days per year. Less than 1% of the single family housing stock was in vacation rental home use now. The residences that typically utilized vacation rental homes were not those that were utilized for affordable housing needs. The effect of these rental homes on neighborhoods could result from a number of different factors and he described those factors. The only City of those surveyed that had spacing standards was Bend, which was 250 feet between rentals, but only in certain areas of the city. Manzanita capped the

number of rentals allowed in certain areas. Most cities required two off street parking spaces for these rentals.

There was discussion regarding the concern some citizens had of having too many rentals in a certain neighborhood and how to balance that with private property rights.

There was consensus for staff to contact Bend and Manzanita to find out more about their programs and to bring this item back to the October work session and invite stakeholders and interested parties to come to the work session to discuss the issues.

Commissioner Geary would like to know how Manzanita governed spacing, classified the zoning, and how it was received. He also wanted staff to look at capacity for enforcement, penalizing those who were not following the code, what the average price point was for the rentals, and how many of the rentals were owned by the same person.

- **Neighborhood Meetings**

Planning Director Richards stated at the last Planning Commission meeting staff had been directed to look into whether or not to require neighborhood meetings for certain land use applications. A lot of communities required neighborhood meetings. She asked if the Commission wanted to amend the code to include this requirement.

There was discussion regarding the neighborhood groups in the City and the pros and cons of neighborhood meetings.

Commissioner Butler questioned whether they should make this a requirement as it could be onerous on the developer.

Planning Director Richards said one of the things to think about was when in the process the neighborhood meeting should take place. She thought it should take place before the land use application was submitted. Another question was which land use applications would they want to require to hold a neighborhood meeting or should it just be a suggestion.

There was consensus to have staff explore the options for requiring neighborhood meetings for certain land use applications.

Commissioner Schanche said notices were sent to property owners, not renters. She suggested using door hangers to notice neighborhood meetings. She thought the meetings should be more like an open house with questions and answers and not restricted to only a presentation from the developer and limited public input.

Commissioner Geary asked for a list of the types of applications that had been submitted in the last 12 months.

There was consensus to make neighborhood meetings a requirement.

Planning Director Richards suggested bringing this item back to the November work session with a recommendation for which applications should require a neighborhood meeting.

- **Planning Commission By-Laws**

Planning Director Richards said McMinnville Industrial Promotions gave a presentation to the City Council on the sign code enforcement program that was currently underway to get signs into compliance by December 31, 2017. The enforcement program had been impactful to some property owners and Council directed staff to change the deadline to December 31, 2018 to make sure the code was achieving what the City wanted it to achieve. The current code had a maximum height of 20 feet and 100 square feet of area, and the previous code had a maximum height of 30 feet and 150 square feet of area. The bulk of the impacted property owners fell between the 20 and 30 feet. Staff was going to bring to the Commission a suggested code amendment to change the effective date and create a plan to have a dialogue about the issues

in the next six months. No city in the state of Oregon had successfully implemented an amortization program.

City Attorney Koch said when codes changed in most jurisdictions, uses were allowed to continue as lawful non-conforming uses until there was a change to the sign or change in the use or new development. To require the structure to be torn down, downsized, or moved was not common. It moved towards unconstitutional takings where the City might have to pay compensation to the property owners.

There was discussion regarding how the businesses at the time were given 8 years to come into compliance and now they were opposed to the enforcement program. Planning Director Richards confirmed some companies had come into compliance, though they were ones that were inexpensive to change.

3. Adjournment

Chair Hall adjourned the meeting at 6:30 p.m.

Heather Richards
Secretary

Exhibit 1d

City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

MINUTES

September 21, 2017
Planning Commission
Regular Meeting

6:30 pm
McMinnville Civic Hall, 200 NE 2nd Street
McMinnville, Oregon

Members Present: Chair Roger Hall, Vice-Chair Zack Geary, Commissioners: Erin Butler, Martin Chroust-Masin, Susan Dirks, Gary Langenwalter, Roger Lizut, and Lori Schanche

Members Absent: Erica Thomas

Staff Present: Mike Bisset – City Engineer, David Koch – City Attorney, Ron Pomeroy – Principal Planner, and Heather Richards – Planning Director

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1. **Call to Order**

Chair Hall called the meeting to order at 6:30 p.m.

2. **Citizen Comments**

Mark Davis – Mark Davis, referring to the sign code discussion that occurred at the earlier work session, encouraged the Planning Commission to not amend the sign code to extend the deadline for the amortization program for free-standing signs. He feels that the city should move forward with the enforcement program so that the Planning Commission and planning staff could start to focus on the extensive work plan of needs that the Planning Director presented in the early spring.

3. **Approval of Minutes:**

A. July 20, 2017 Work Session

Commissioner Schanche MOVED to approve the July 20, 2017 Work Session Planning Commission minutes. SECONDED by Commissioner Geary. The motion CARRIED 8-0.

4. **Public Hearing (Quasi-Judicial)**

A. Zone Change (ZC 11-17) (Exhibit 2) - *(Continued from August 17, 2017 Meeting*

Request: Approval of a zone change from AH (Agricultural Holding) to R-4 (Multiple-Family Residential) on approximately 5.2 acres of a 5.3 acre site.

Location: North of NE Cumulus Avenue and east of NE Fircrest Drive and is more specifically described as Tax Lot 900, Section 23, T. 4 S., R. 4 W., W.M.

Applicant: Land Use Resources, LLC

Principal Planner Pomeroy presented the staff report. This hearing was continued from the August 17 Planning Commission meeting and the public testimony portion had been closed.

All of the residential uses surrounding this property were R-4 and there was no need to buffer from low density residential. The Fircrest Village condominiums were medium density residential. If they included the memory care and assisted living facilities that rounded out the overall neighborhood, it equaled high density for the area. The trip cap included in the traffic impact analysis and the condition that was placed on the property landed this property as high density. Staff recommended approval of the zone change with conditions.

Commissioner Dirks said some of the residents were concerned about the additional traffic on Cumulus. She clarified that ODOT would not allow any new access onto Cumulus. Principal Planner Pomeroy said that was correct.

Commissioner Dirks said that would mean all of the access would be on Fircrest and one of the other concerns was parking on both sides of Fircrest. She asked if the City would only allow parking on one side due to the width of Fircrest.

City Engineer Bisset cautioned the Commission from getting into parking conditions. A 26 foot wide street standard was a historically adopted street standard and did allow parking on both sides. At the request of public safety, they had restricted parking where there was a need for better access. It was a traffic calming effect to have narrow residential streets and only allowing parking on one side did increase speeds.

Commissioner Dirks asked about the conditions requiring a preservation plan and permits, was it the same as doing an environmental impact study. Could they require an environmental impact study? Principal Planner Pomeroy said the permits had to do with drainage and grading issues. Environmental impacts could come into play depending on what was proposed, and the Planning Director would review the preservation plan. It was not the same as an environmental impact study.

Commissioner Schanche asked about the traffic concerns at the intersection of Fircrest and Cumulus and how the developer did not go back to the traffic engineer but asked staff for the information. She thought he had not received the professional assessment on the traffic impact as requested. City Engineer Bisset said engineering staff gave direction on which intersections to include in the traffic study and he did not believe the capacity of Fircrest and Cumulus was an issue. He provided additional information to the Commission as background, but the applicant did not study that intersection at his direction. Principal Planner Pomeroy said the memorandum from City Engineer Bisset for the additional traffic analysis was done as staff's response to the issue, not at the request of the applicant.

Commissioner Dirks thought this proposal as a whole was a good one, as there was a need for more housing in McMinnville and this was a reasonable location. The applicant intended to maintain the wooded area at the back of the property and there was a condition that ensured that would happen. She was concerned about the lack of commercial development, but this area was in the process of being developed and services would come. The traffic studies were sufficient. Measuring the number of cars was a science and it was different from what people perceived was the use of the street. She thought they should go by the professional evaluation. She suggested an environmental impact study be required.

Commissioner Schanche said that was a huge study and only undertaken for federal projects and could take years. She thought the conservation plan that was being proposed would suffice.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Butler MOVED to recommend the City Council approve Zone Change (ZC 11-17) subject to the conditions of approval as recommended by staff. SECONDED by Commissioner Geary. The motion CARRIED 8-0.

B. Zoning Text Amendment (G 6-17) (Exhibit 3)

Request: Approval to amend Chapter 17.12 (Single-Family Residential Zone) of the McMinnville Zoning Ordinance to update provisions relative to Accessory Dwelling Units to reduce some identified barriers to affordable housing opportunities in McMinnville.

Applicant: City of McMinnville

Chair Hall opened the public hearing and read the hearing procedure.

Commissioner Butler recused herself from the hearing due to a conflict of interest.

Principal Planner Pomeroy delivered the staff report. He entered into the record, Attachment 6, which was a letter received today from Friends of Yamhill County in support of the proposed code modifications. The Affordable Housing Task Force had been looking at opportunities to increase efficiencies for affordable housing in McMinnville. One was Accessory Dwelling Units. These amendments had been discussed at a Planning Commission work session and the suggestions made at that meeting had been incorporated into the document before the Commission tonight. The changes included: adding how ADUs could be established by construction of a new primary residence with the existing dwelling being designated as the ADU, amending the language for the square footage of ADUs which would be changed to not exceed 50% instead of 40% of the primary dwelling exclusive of the garage or 1,000, instead of 800, square feet as a maximum, adding a statement that the minimum area would be determined by the State of Oregon Building Code Division, and removing the statement that the minimum area would not be less than 300 square feet. Another new item stated the building coverage of a detached ADU may not be larger than the building coverage of the primary dwelling. Additionally the maximum height allowed for detached ADUs was the lesser of 25 feet or the height of the primary dwelling. The structure's appearance would coincide with what was being used on the primary dwelling unit including roof pitch, eaves, and window fenestration patterns. One additional off street parking space would be provided for the ADU. Staff recommended striking the statement that said ADUs had to have independent service connections. Those connections would not be required until the time the property was partitioned. Staff also proposed to strike the current requirement that the property owner had to reside on site within the primary dwelling unit. Not more than one ADU was allowed per lot or parcel; the ADU would contain a kitchen, bathroom, living, and sleeping area that were independent from the primary dwelling; and manufactured homes, recreational vehicles, motor vehicles, travel trailers, and all other forms of manufactured structures not to include modular structures would not be used as ADUs. Three new standards would also be added: ADUs would be exempt from the residential density standards, occupancy and use standards for ADUs would be the same as those that were applicable to a primary dwelling on the same site, and legally non-conforming accessory structures located on residentially zoned land may be converted to an ADU in accordance with the requirements of Chapter 17.63. Staff recommended approval of these changes.

Commissioner Langenwalter asked if they did not require the property owner to reside on site within the primary dwelling unit, did that mean both dwellings could be rented? Principal Planner Pomeroy said that was correct. There were situations where the property owner wanted to allow his or her children to live on the property instead and this would allow that situation. The land use impact was identical whether the property owner lived on the premises or not.

Planning Director Richards said most communities were removing the requirement from their codes because it was not something that was easily enforced. The intention of ADUs was to bring in smaller units on properties, which was typically used for an extension of family. They were also an affordable housing product.

Commissioner Geary asked about regulations for ADUs that were being used as vacation rentals. Principal Planner Pomeroy said that discussion had not taken place yet. Commissioner Dirks thought those regulations should be included in the vacation rental code. Planning Director Richards said if a vacation rental permit application came through, if it was an ADU it would be denied.

Commissioner Lizut discussed the recommendation from the Mid-Willamette Valley representative of the Oregon Department of Land Conservation and Development to either get rid of the requirement for one off street parking space as it was a barrier to affordable housing or allowing it to be met by on street parking. Planning Director Richards said staff's concern was creating congested parking conditions on streets. There were costs involved in providing off street parking.

Commissioner Lizut asked if it was possible for someone to get a variance to have the parking requirement waived. Principal Planner Pomeroy said it was possible.

Public Testimony:

Kellen Lignier, McMinnville resident, shared her observations of what was happening in her neighborhood on Birch Street. There were two air B&Bs across from each other and a house and ADU next door to her where the house was being rented by multiple people who only stayed a couple of months. The street was narrow and it was difficult for her to get in and out of her driveway and guests did not have a place to park. She would like the Commission to take this situation into account when making decisions on ADUs and vacation home rentals. She thought the vacation rentals and ADUs needed to be limited to a certain concentration, that off street parking should be required, and that the property owner should live on the property. She thought there would be a lot of enforcement problems if property owners were not required to live on the property.

Planning Director Richards said state law required allowing ADUs in all residential zones by June 30, 2018.

Terry Sherwood, McMinnville resident, also lived next to this ADU. It was tall enough that they could see into his backyard. He concurred with the house being used as a rental, and there were plans that the ADU would become a rental as well. People were coming in and out of the main house with new renters every few months. Parking was an issue as well. How these regulations would affect the neighborhoods needed to be taken into consideration. They took away from the character of the neighborhood, especially for older neighborhoods where the ADUs did not look like the original dwellings.

Chair Hall said the ADU was supposed to resemble as closely as possible the existing unit. In the case where the materials were no longer available, they had to do the best they could.

Commissioner Dirks asked if the ADU was taller than the original house. Mr. Sherwood said no, it had more to do with the slope of the ground. The original house was taller.

Chair Hall closed the public hearing.

Commissioner Schanche thought they should keep the requirement for one off street parking space. There was consensus to keep that requirement.

Commissioner Geary was concerned about deleting the requirement for the property owner to live on site.

Planning Director Richards said the problem was how staff would know over time whether or not the owner was still living there. There was not enough staff to enforce it. City Attorney Koch said they also had to define residing on the property. Some groups, like the snow birds, were only here for six months out of the year. Did they reside here or somewhere else? It was time consuming to do an investigation to verify if a person lived in a certain place. Principal Planner Pomeroy said enforcing on a residency basis could also have an effect on affordable housing as the ADU would be taken off the books if the property owner was not residing in the original dwelling.

Commissioner Geary did not want to create a way for the affluent to increase their rental stock.

Commissioner Dirks said who lived there was not a land use issue.

Commissioner Schanche supported not requiring the property owner to live there. She asked if there was a reason the current code required it.

Planning Director Richards suspected it was because it was originally to serve the need for aging parents to move into the ADU and the children moving into the original house to take care of them. It was now shifting to being hard to enforce and meeting a need for affordable housing.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Dirks MOVED to recommend the City Council approve Zoning Text Amendment (G 6-17). SECONDED by Commissioner Schanche. The motion PASSED 7-0-1 with Commissioner Butler recused.

5. Old/New Business

Planning Director Richards said the Department of Land Conservation and Development issued a request for grant proposals. They had $250,000 for technical assistance grants and she would like to apply for a buildable lands inventory and housing needs analysis. There were funds in the budget to provide the local match. The grant is due on October 13, 2017 and we will start soliciting for letters of support in the community. She will be requesting a letter from the Commission as well. The City recently received a Transportation Growth Management grant to look at the Three Mile Lane corridor. The work would begin in July 2018. On December 12, 2017 there will be a Green Cities program presentation to the City Council.

6. Commissioner Comments

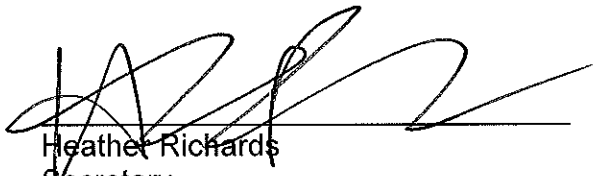
None

7. Staff Comments

None

8. Adjournment

Chair Hall adjourned the meeting at 7:42 p.m.



Heather Richards
Secretary

City of McMinnville
Planning Department
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McMinnville, OR 97128
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EXHIBIT 2 - STAFF REPORT

DATE: October 19, 2017
TO: McMinnville Planning Commission
FROM: Ron Pomeroy, Principal Planner
SUBJECT: G 4-17 Wireless Communications Facilities – Proposed Zoning Text Amendment – Chapter 17.55 (Wireless Communications Facilities)

Report in Brief:

This is a public hearing to review and consider a proposed zoning text amendment to Chapter 17.06 (Definitions) and Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance. The proposed zoning text amendment is related to 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.

In February, 2017, the Planning Department presented the Commission with an overview of a three-year Department work plan to accomplish a number of projects along with estimated calendar targets of when you might expect to see those work products. One of the first-year identified projects is an update to the Wireless Communications Facilities chapter (Chapter 17.55) of the McMinnville zoning ordinance.

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 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.

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, 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. Additionally, 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.

Attachments:
Attachment A - Decision, Findings of Fact and Conclusionary Findings for G 4-17

In our review of this chapter, we considered the wireless facility requirements of other jurisdictions. In that review we found that, while many cities had not updated their wireless requirements for seven or more years, the City of Wilsonville's code was updated in 2016 and addressed many of the areas that have been a concern to the McMinnville Planning Department and has provided guidance for these proposed amendments. The key proposed modifications 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
- 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 4). 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 5) 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.

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 now before you. 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.

Recommended Text Amendments:

The amendments being proposed to Chapter 17.06 (Definitions) are provided as Attachment 1 and the Amendments being proposed to Chapter 17.55 (Wireless Communications Facilities) are provided as Attachment 2 of the Decision Document with the existing text of Chapter 17.55 recommended to be repealed is provided as Attachment 3 of the Decision Document; the intent of this recommendation, if approved, is a full replacement of the existing Wireless Communications Facilities chapter (Chapter 17.55) of the zoning ordinance.

Fiscal Impact:

None

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 Commission make the following motion recommending approval of G 4-17 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 4-17 AND THE ZONING TEXT AMENDMENTS AS RECOMMENDED BY STAFF.

RP:sjs

Attachments:
Attachment A - Decision, Findings of Fact and Conclusionary Findings for G 4-17

ATTACHMENT A

CITY OF MCMINNVILLE
PLANNING DEPARTMENT
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DECISION, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF LEGISLATIVE AMENDMENTS TO CHAPTER 17.55 (WIRELESS COMMUNICATIONS FACILITIES) OF THE McMINNVILLE ZONING ORDINANCE (ORDINANCE 3380).

DOCKET: G 4-17

REQUEST: The City of McMinnville is proposing to amend Chapter 17.06 (Definitions) and Chapter 17.55 (Wireless Communications Ordinance) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities to achieving a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

LOCATION: N/A

ZONING: N/A

APPLICANT: City of McMinnville

STAFF: Ron Pomeroy, Principal Planner

DATE DEEMED COMPLETE: N/A

HEARINGS BODY: McMinnville Planning Commission

DATE & TIME: August 17, 2017 and October 19, 2017. Meeting held at the Civic Hall, 200 NE 2nd Street, McMinnville, Oregon.

COMMENTS: This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Recology Western Oregon; Comcast; and Northwest Natural Gas. No comments in opposition have been received.

Attachments:
Attachment 1: Proposed Chapter 17.06 code amendments
Attachment 2: Proposed Chapter 17.55 code amendments
Attachment 3: Existing Chapter 17.55 proposed to be deleted
Attachment 4: Memo - Mike Bisset, Community Development Director, dated August 11, 2017, received August 11, 2017
Attachment 5: Letter - Patrick Evans, Crown Castle, dated August 16, 2017, received August 16, 2017

DECISION

Based on the findings and conclusions, the Planning Commission recommends **APPROVAL** of the legislative zoning text amendments (G 4-17) to the McMinnville City Council.

//

DECISION: APPROVAL

//

City Council:_____ Date:_____
Scott Hill, Mayor of McMinnville

Planning Commission:_____ Date:_____
Roger Hall, Chair of the McMinnville Planning Commission

Planning Department:_____ Date:_____
Heather Richards, Planning Director

Attachments:
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Application Summary:

The City of McMinnville is proposing to a zoning text amendment to Chapter 17.06 (Definitions) and Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance. The proposed zoning text amendment is related to achieving a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

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. 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 4). 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 5) 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.

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 now before you. 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.

Proposed Amendments:

The proposed amendments to Chapter 17.06 and Chapter 17.55 of the McMinnville zoning ordinance (Ordinance 3380) are attached to this Decision Document as Attachment 1.

CONDITIONS OF APPROVAL

None.

ATTACHMENTS

Attachment 1: Proposed Chapter 17.06 code amendments
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COMMENTS

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Wastewater Services, Parks Department, McMinnville Public Works, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Recology Western Oregon; Comcast; Northwest Natural Gas; and the Oregon Department of Land Conservation and Development. The only comment received was from the Community Development Director and is attached to this Decision Document as Attachment 4.

FINDINGS OF FACT

1. McMinnville's first Wireless Communications Facilities ordinance was adopted in June, 2000, as Chapter 17.55 of the McMinnville Zoning Ordinance.

2. The City of McMinnville is proposing to amend Chapter 17.06 (Definitions) and Chapter 17.55 (Wireless Communications Ordinance) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities to achieving a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

3. In concert with legal counsel, staff has drafted the following proposed amendments to McMinnville Zoning Ordinance (Ordinance 3380) specific to Section 17.55 (Wireless Communications Facilities) for consideration by the McMinnville Planning Commission and the McMinnville City Council.

4. This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Wastewater Services, Parks Department, McMinnville Public Works, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Recology Western Oregon; Comcast; Northwest Natural Gas; and the Oregon Department of Land Conservation and Development. No comments in opposition have been received.

5. Public notification of the public hearing held by the Planning Commission was published in the August 8, 2017 edition of the News Register. No comments in opposition were provided by the public prior to the public hearing.

6. The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

CONCLUSIONARY FINDINGS

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

Economy of McMinnville

GOAL IV 1 TO ENCOURAGE THE CONTINUED GROWTH AND DIVERSIFICATION OF McMINNVILLE'S ECONOMY IN ORDER TO ENHANCE THE GENERAL WELL-BEING OF THE COMMUNITY AND PROVIDE EMPLOYMENT OPPORTUNITIES FOR ITS CITIZENS.

Commercial Development

GOAL IV 2 TO ENCOURAGE THE CONTINUED GROWTH OF McMINNVILLE AS THE COMMERCIAL CENTER OF YAMHILL COUNTY IN ORDER TO PROVIDE EMPLOYMENT OPPORTUNITIES, GOODS, AND SERVICES FOR THE CITY AND COUNTY RESIDENTS.

Industrial Development

GOAL IV 6 TO INSURE INDUSTRIAL DEVELOPMENT THAT MAXIMUZES EFFICIENCY OF LAND USES, THAT IS APPROPRIATELY LOCATED IN RELATION TO SURROUNDING LNAD USES, AND THAT MEETS NECESSARY ENVIRONMENTAL STANDARDS.

General Policies:

48.00 The City of McMinnville shall encourage the development of new industries and expansion of existing industries that provide jobs for the local (McMinnville and Yamhill County) labor pools.

Economic Development

132.34.00 Supportive of the mobility needs of business and industry, the McMinnville transportation system shall consist of the infrastructure necessary for the safe and efficient movement of goods, services, and people throughout the McMinnville planning area, and between other centers within Yamhill County and the Willamette Valley. [..]

Finding: Goals IV 1, IV 2 and IV 6, and Policies 48.00 and 132.34.00 are satisfied by this proposal in that the proposed modifications would support the continued opportunity for the provision of wireless communications facilities in McMinnville. While requiring wireless communications facilities to physically blend in more cohesively with our local urban environment, this proposal will also lend support to job creation and retention, and aid in enhancing business and industry communications options. While not actual employment or manufacturing centers, wireless communications facilities will continue to provide for the digital transfer of information which is directly supportive of and enabling to the commercial and industrial sectors.

Community Facilities and Services

GOAL VII 1 TO PROVIDE NECESSARY PUBLIC AND PRIVATE FACILITIES AND UTILITIES AT LEVELS COMMENSURATE WITH URBAN DEVELOPMENT, EXTENDED IN A PHASED MANNER, AND PLANNED AND PROVIDED IN ADVANCE OF OR CONCURRENT WITH DEVELOPMENT [..]

Attachments:
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Police and Fire Protection

153.00 The City of McMinnville shall continue coordination between the planning and fire departments in evaluating major land use decisions.

155.00 The ability of existing police and fire facilities and services to meet the needs of new service areas and populations shall be a criterion used in evaluating annexations, subdivision proposals, and other major land use decisions.

Finding: Goal VII 1 and Policies 153.00 and 155.00 are satisfied by this proposal in that in that the proposed modifications would continue to support the efficient operation of a wireless communications network that would, in some part, enable the rapid movement of fire, medical, and police vehicles throughout McMinnville's urban area. These amendments were provided to the McMinnville Police and Fire Departments for review and comment and no concerns or objections were provided.

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

Policies:

188.00 The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

Finding: Goal X 1 and Policy 188.00 are satisfied in that McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed Staff Report and Decision Document prior to the holding of advertized public hearing(s). All members of the public have access to provide testimony and ask questions during the public review and hearing process.

7. The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) are applicable to the request:

General Provisions:

17.03.020 Purpose. The purpose of this ordinance is to encourage appropriate and orderly physical development in the City through standards designed to protect residential, commercial, industrial, and civic areas from the intrusions of incompatible uses; to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services; to provide adequate open space, desired levels of population densities, workable relationships between land uses and the transportation system, and adequate community facilities; to provide assurance of opportunities for effective utilization of the land resource; and to promote in other ways public health, safety, convenience, and general welfare.

Finding: Section 17.03.020 is satisfied by the request for the reasons enumerated in Conclusionary Finding for Approval No. 1.

RP:sjs

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ATTACHMENT 1

CITY OF MCMINNVILLE
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PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE

New proposed language is represented by **bold underline font**, deleted language is represented by ~~strikethrough font.~~

Chapter 17.06 DEFINITIONS

17.06.050 Wireless Communication Facilities Related Definitions. For the purpose of Wireless Communication Facilities (Chapter 17.55), the following definitions shall apply.

Alternative Antenna Support Structures – Roofs of buildings, provided they are 30 feet or more in height above the street grade upon which such buildings front, church steeples, existing and replacement utility poles, flagpoles, street light standards, traffic light and traffic sign structures, billboards and commercial signs, and other similar man-made structures and devices that extend vertically from the ground to a sufficient height or elevation to accommodate the attachment of antennas at an altitude or elevation that is commercially desirable for wireless communications signal transmission and reception.

Antenna – A specific device used to receive or capture incoming and/or to transmit outgoing radio-frequency (RF) signals, microwave signals, and/or other communications energy transmitted from, or to be received by, other antennas. Antennas regulated by Chapter 17.55 (Wireless Communications Facilities) include omni-directional (or "whip") antennas, directional (or "panel") antennas, parabolic (or "dish") antennas**, small cell** and any other devices designed for the reception and/or transmission of radio-frequency (RF) signals or other communication technologies.

~~**Antenna Array – Two or more antenna as defined above.**~~

Antenna Support Structure – A structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennas at a height, altitude, or elevation which is above the base of such structure. Antenna support structures include, but are not limited to, the following:

A. Lattice tower: A vertical support structure consisting of a network of crossed metal braces, forming a tower which may be three, four, or more sided.
B. Monopole tower; a vertical support structure consisting of a single vertical metal, concrete, or wooden pole, pipe, tube or cylindrical structure, typically round or square, and driven into the ground or mounted upon or attached to a foundation.

Co-location – Utilization of a single antenna support structure, alternative antenna support structure, or an underground conduit or duct, by more than one wireless communications service provider.

Equipment Enclosure – A small structure, shelter, cabinet, box or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless communications signals and data, including any provisions for air conditioning, ventilation, or auxiliary electricity generators.

Facilities – All equipment and property associated with the construction of antenna support structures, antenna arrays, and antennas, including but not limited to cables, wires, conduits, ducts, pedestals, antennas of all descriptions, electronic and mechanical equipment and devices, and buildings and similar structures.

Radio Frequency (RF) Engineer – A professional engineer licensed in Oregon, with a degree in electrical engineering, and demonstrated accreditation and experience to perform and certify radio frequency radiation measurements.

Small Cells – Also referred to as Distributed Antenna Systems (or "DAS"). A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. Small Cell Networks are also commonly referred to as DAS.

Wireless Communications Facility – An unstaffed facility for the transmission and/or reception of RF, microwave or other signals for commercial communications purposes, typically consisting of an equipment enclosure, an antenna support structure or an alternative antenna support structure, and one or more antennas.

Wireless Communications Service **(WCF)** – The providing or offering for rent, sale, lease, or in exchange for other consideration, of the transmittal and reception of voice, data, image, graphic, and other information by the use of current or future wireless communications.

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PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE

New proposed language is represented by **bold underline font**, deleted language is represented by ~~strikethrough font.~~

Chapter 17.55

WIRELESS COMMUNICATIONS FACILITIES

Sections:

17.55.010 Purpose. Wireless Communications Facilities (WCF) play an important role in meeting the communication needs of the citizens of McMinnville. The purpose of this chapter is to establish appropriate locations, site development standards, and permit requirements to allow for the provision of WCF while helping McMinnville remain a livable and attractive city.

In accordance with the guidelines and intent of Federal law and the Telecommunications Act of 1996, these regulations are intended to: 1) protect and promote the public health, safety, and welfare of McMinnville citizens; 2) preserve neighborhood character and overall City-wide aesthetic quality; 3) encourage siting of WCF in locations and by means that minimize visible impact through careful site selection, design, configuration, screening, and camouflaging techniques.

As used in this chapter, reference to WCF is broadly construed to mean any facility, along with all of its ancillary equipment, used to transmit and/or receive electromagnetic waves, radio and/or television signals, including telecommunication lattice and monopole

towers, and alternative supporting structures, equipment cabinets or buildings, parking and storage areas, an all other associated accessory development.

17.55.020 Definitions. For the purposes of this section, refer to Section 17.06.050 for Wireless Communications Facility related definitions. (Ord. 4952 §1, 2012).

17.55.030 Exemptions. The provisions of this chapter do not apply to:

A. Federally licensed amateur radio stations,

B. Antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations regardless of the zoning designation of the site outside of the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines).

C. Public SCADA (supervisory control and data acquisition) and similar systems.

D. Cell on Wheels which are portable mobile cellular sites that provide temporary network and wireless coverage, are permitted as temporary uses in all zones for a period not to exceed sixty (60) days, except that such time period may be extended by the City during a period of emergency as declared by the City, County, or State; a typical example of Cells on Wheels would be a mobile news van used for broadcasting coverage of an event or other news.

E. Modifications to Existing Facilities. As specified and required by the Federal Communications Commission (FCC) in the provisions of 47 U.S.C. 1455(a), as implemented by 47 CFR Part 1.40001(a), all modifications and expansions to existing WCF's are permitted in every zone, subject to the requirements of this Section. Certain modifications are deemed minor in nature and are deemed "eligible modifications." These modifications include the addition, removal, and/or replacement of transmission equipment that do not make a substantial change to the physical dimensions (height, mass, width) of the existing tower, support structure, or base station. Replacement of an existing tower may also be considered an eligible modification if such replacement meets the standards in paragraph 4 below.

1. For the purpose of this Section, the FCC has defined "substantial change" as meaning the following:

a. For towers, other than towers in the public right-of-way, the mounting of the proposed antenna on the tower would increase the existing height of the tower by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

b. For towers, other than towers in the public right-of-way, the mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; or

c. The mounting of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure; or

d. The mounting of the proposed antenna would involve located excavation outside the current tower site, defined as the current boundaries

of the leased or owned property surrounding the tower and any access or utility easements currently related to the site; or

e. The mounting or the proposed antenna would defeat the concealment elements of the eligible support structure; or

17.55.040 Permitted and conditional use locations of antennas, small cells, antenna support structures and alternative antenna support structures to be used for wireless communications service. All non-exempt (17.55.030) WCF (antennas, antenna support structures, alternative antenna support structures and small cells (also known as DAS (Distributed Antenna Systems)) are permitted, conditionally permitted, or prohibited to be located in zones as provided in this Chapter and as listed below:

A. Permitted Uses.

1. Antennas (inclusive of small cells), antenna support structures and alternative antenna support structures are permitted in the M-L (Limited Light Industrial Zone), M-1 (Light Industrial Zone), and M-2 (General Industrial Zone) zones. Antenna support structures are not permitted within the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines).

2. Antennas (inclusive of small cells) mounted to alternative antenna support structures in the O-R, C-1, C-2, and C-3 zones located outside of the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines). However, such antennas and small cells shall add not more than ten (10) feet to the total height of such structure. Associated facilities so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building or structure. Such screening materials shall be reviewed and approved by the Planning Director.

3. Antennas (inclusive of small cells) may be mounted to alternative antenna support structures in the R-1, R-2, R-3, R-4, A-H and F-P zones. However, such antennas and small cells shall not exceed the height of the alternative antenna support structure. Associated facilities so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building or structure. Such screening materials shall be reviewed and approved by the Planning Director.

B. Conditional Uses. In the area defined in Chapter 17.59 (Downtown Design Standards and Guidelines), antennas proposed for mounting on alternative antenna support structures, in addition to all requirements of this Chapter, are subject to conditional use permit approval by the Planning Commission.

C. Prohibited Uses. Construction or placement of new antenna support structures in all zones except as permitted by 17.55.040 (A)(1).

WIRELESS FACILITIES		
ZONE	ANTENNA SUPPORT STRUCTURES	ANTENNAS (INCLUSIVE OF SMALL CELLS) MOUNTED TO ALTERNATIVE ANTENNA SUPPORT STRUCTURES*
Residential	Prohibited	Permitted - No additional height added
-	-	-
Commercial	Prohibited	Permitted - Less than or equal to 10 feet height added
-	-	Conditional Use - Within Downtown Design District
-	-	-
Industrial	Permitted outside of the Downtown Design District	Permitted (100-foot maximum finished height)
-	-	-
Agricultural Holding	Prohibited	Permitted – No additional height added
-	-	-
Floodplain	Prohibited	Permitted – No additional height added

*** Subject to the requirements of Chapter 17.55.**

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses).

A. Visual Impact.

1. Antennas. Façade-mounted antennas (inclusive of small cells) shall be architecturally integrated into the building/structural improvement design and otherwise made as unobtrusive as possible. As appropriate, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than two (2) feet out from the building face. Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.

a. Small Cells on utility poles, signal poles, etc. shall also conform to the following standards.

1) The antennas do not project more than 24 inches above the existing utility pole support structure.

2) No more than a total of two antennas or antenna arrays are located on a single pole.

3) The equipment cabinet is no larger than six cubic feet and is concealed from public view by burying or screening by means other than walls or fences.

2. **Height. Freestanding antenna support structures and alternative antenna support structures shall be exempted from the height limitations of the zone in which they are located, but shall not exceed one-hundred (100) feet in Industrial zones unless it is demonstrated that it is necessary. Antennas (inclusive of small cells) shall not exceed fifty (50) feet in height in residential zones, except where such facility is sited on an alternative antenna support structure. This exemption notwithstanding, the height and mass of the transmission tower shall be the minimum which is necessary for its intended use, as demonstrated in a report prepared by a licensed professional engineer. A wireless or broadcast communication facility that is attached to an alternative antenna support structure shall not exceed the height of the alternative antenna support structure by more than ten (10) feet in commercial zones, and for location or collocation on alternative tower structures in residential zones, no increase in height shall be allowed.**
3. **Visual Impact. All WCF shall be designed to minimize the visual impact to the maximum extent possible by means of placement, screening, landscaping and camouflage. All WCF shall also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. All WCF shall be sited in such a manner as to cause the least detriment to the viewshed from other properties. The use of camouflage technique(s), as found acceptable to the Planning Director to conceal antennas, associated equipment and wiring, and antenna supports is required.**
4. **Screening. The area around the base of antenna support structures (including any equipment enclosure) is to be fenced, with a sight-obscuring fence a minimum of six feet in height. The fenced area is to be surrounded by evergreen shrubs (or a similar type of evergreen landscaping), placed within a landscaped strip a minimum of ten feet in width. In the event that placement of a proposed antenna support structure and/or equipment enclosure is located in a unique area within a subject site that would not benefit from the addition of landscaped screening, the Planning Director may require that the applicant submit a landscape plan illustrating the addition of a proportional landscape area that will enhance the subject site either at a building perimeter, parking lot, or street frontage, adjacent to or within the subject site.**
5. **Color.**
    a. **A camouflage or stealth design that blends with the surrounding area shall be utilized for all wireless and broadcast communication facilities unless an alternative design is approved during the land use review process. If an alternative design is approved, all towers, antennae and associated equipment shall be painted a non-reflective, neutral color as approved through the review process. Attached communication facilities shall be painted so as to be identical to or compatible with the existing structure.**
    b. **Towers more than 100 feet in height shall be painted in accordance with the Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) rules. Applicants shall attempt to seek a waiver of ODA and FAA marking requirements. When a waiver is granted, towers shall be painted and/or camouflaged in accordance with subsection "A", above.**

c. **Where ancillary facilities are allowed under this code to be visible, they shall be colored or surfaced so as to blend the facilities with the surrounding natural and built environment, and where mounted on the ground shall be otherwise screened from public view, or placed underground.**

6. **Signage. There shall be no signs, symbols, flags, banners, or other such elements attached to or painted or inscribed upon any WCF except for warning and safety signage with a surface area of no more than three (3) square feet. Except as required by law, all signs are prohibited on WCF except for one non-illuminated sign, not to exceed two (2) square feet, which shall be provided at the main entrance to the WCF, stating the owner's name, the wireless operator(s) if different from the owner, and address and a contact name and phone number for emergency purposes.**
7. **Historic Buildings and Structures. If the application involves the placement of an antenna on a building that is listed in the McMinnville register of historic structures, no such permit shall be issued without the prior approval of the McMinnville Historic Landmarks Committee.**
8. **Accessory Building Size. Within the public right-of-way, no above-ground accessory buildings shall be permitted. Outside of the public right-of-way, all accessory buildings and structures permitted to contain equipment accessory to a WCF shall not exceed twelve (12) feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure is limited to two hundred (200) square feet, unless approved through a Conditional Use Permit. If approved in a Residential zone or the Downtown Overlay District, all equipment and ancillary facilities necessary for the operation of and constructed as part of a wireless or broadcast communication facility shall be placed within an underground vault specific to the purpose. For facilities required to be approved as stealth facilities, no fencing around the wireless or broadcast communication facilities shall be allowed. Unenclosed storage of materials is prohibited. Other building facilities, including offices, vehicle storage areas or other similar uses not necessary for transmission or relay functions are prohibited unless a separate land use application for such is submitted and approved. Such other facilities shall not be allowed in Residential zones.**
9. **Utility Vaults and Equipment Pedestals. Within the public right-of-way, utility vaults and equipment pedestals associated with WCF must be underground to the maximum extent possible.**
10. **Parking. No net loss in minimum required parking spaces shall occur as a result of the installation of any WCF.**
11. **Sidewalks and Pathways. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land and shall be screened from view. Cabinets shall be undergrounded, to the maximum extent possible.**
12. **Lighting. No antennas, or antenna support structures shall be artificially lighted except as required by the FAA or other governmental agency. WCF shall not include any beacon lights or strobe lights, unless required by the FAA or other applicable authority. If beacon lights or strobe lights are required, the Planning Director shall review the available alternatives and approve the design with the least visual impact. All other site lighting**

for security and maintenance purposes shall be shielded and directed downward, unless otherwise required under Federal law.

B. Setbacks and Separation.

1. Setbacks. All WCF antenna support structures shall be set back from any other property line by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto, unless this requirement is specifically waived by the Planning Director or the Planning Commission for purposes of mitigating visual impacts or improving compatibility with other uses on the property.

All WCF are prohibited in a required front yard, rear yard, side yard, or exterior side yard setback of any lot in any zone, and no portion of any antenna shall extend into such setback. For guyed towers or monopoles, all guy anchors shall be located outside of the required site setbacks.

2. Separation. No antenna support structure shall be permitted to be constructed, installed or erected within 1,000 feet of any other antenna support structure that is owned, operated, or occupied by the same wireless communications service. Exceptions to this standard may be permitted by the Planning Director if, after reviewing evidence submitted by the service provider, the Director finds that: 1) a closer spacing is required in order to provide adequate wireless communication service to the subject area; and, 2) the service provider has exhausted all reasonable means of co-locating on other antenna support structures that may be located within the proposed service area.

Antennas mounted on rooftops or City-approved alternative support structures shall be exempt from these minimum separation requirements. However, antennas and related equipment may be required to be set back from the edge of the roof line in order to minimize their visual impact on surrounding properties and must be screened in a manner found acceptable to the reviewing authority.

17.55.060 Co-location of antennas and antenna support structures.

A. In order to encourage shared use of towers, monopoles, or other facilities for the attachment of WCF, no conditional use permit shall be required for the addition of equipment, provided that:

1. There is no change to the type of tower or pole.

2. All co-located WCF shall be designed in such a way as to be visually compatible with the structures on which they are placed.

3. All co-located WCF must comply with the conditions and concealment elements of the original tower, pole, or other facility upon which it is co-locating.

4. All accessory equipment shall be located within the existing enclosure, shall not result in any exterior changes to the enclosure and, in Residential zones and the Downtown Overlay District, shall not include any additional above grade equipment structures.

5. Collocation on an alternative tower structure in a Residential zone or the Downtown Overlay District shall require a stealth design.

6. The equipment shall not disturb, or will mitigate any disturbed, existing landscaping elements according to that required in a landscape plan previously approved by the Landscape Review Committee. If no such plan exists, a new landscape plan for the affected area must be submitted

to and reviewed by the Landscape Review Committee prior to installation of the subject facility.

7. Placement of the equipment does not entail excavation or deployment outside of the site of the current facility where co-location is proposed.
8. A building permit shall be required for such alterations or additions. Documentation shall be provided by an Oregon-licensed Professional Engineer verifying that changes or additions to the tower structure will not adversely affect the structural integrity of the tower.
9. Additional Application Requirements for Co-Location.
   a. A copy of the site plan approved for the original tower, pole, or other base station facility, to which the co-location is proposed.
   b. A site survey delineating development on-the-ground is consistent with the approved site plan.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following:

A. Payment of all permit fees, plans check fees and inspection fees;
B. Proof of ownership of the land and/or alternative antenna support structure upon which the requested antenna, enclosure, and/or structure is proposed, or copy of an appropriate easement, lease, or rental agreement;
C. Public Meeting. Prior to submitting an application for a new antenna support structure (as defined in Chapter 17.06), the applicant shall schedule and conduct a public meeting to inform the property owners and residents of the surrounding area of the proposal. It is the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected area (the affected area being all properties within 1000 feet of the proposed site). Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant sends notice to the surrounding property owners. The following provisions shall be applicable to the applicant's obligation to notify the residents of the area affected by the new development application:
   1. The applicant shall send mailed notice of the public meeting to all property owners within 1,000 feet of the boundaries of the subject property (the subject property includes the boundary of the entire property on which the lease area for the facility lies). The property owner list shall be compiled from the Yamhill County Tax Assessor's property owner list from the most recent property tax assessment roll. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:
      a. Date, time and location of the public meeting.
      b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.
      c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the subject property.
   2. Evidence showing that the above requirements have been satisfied shall be submitted with the land use application. This shall include: copies of all required notification materials; surrounding property owners list; and, an affidavit from the property owner stating that the above listed requirements were satisfied.

D. Residential Siting Analysis. If a wireless or broadcast communications facility is proposed within a Residential zone, the applicant must demonstrate the need for the new facility and compliance with stealth design requirements for alternative support structure as specified in this Chapter.

E. Geographical Survey. The applicant shall identify the geographic service area for the proposed WCF, including a map showing all of the applicant's existing sites in the local service network associated with the gap that the proposed WCF is proposed to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network. Prior to the issuance of any building permits, applicants for WCF shall provide a copy of the corresponding FCC Construction Permit or license for the facility being built or relocated, if required. The applicant shall include a vicinity map clearly depicting where, within a one-half (1/2) mile radius, any portion of the proposed WCF could be visible, and a graphic simulation showing the appearance of the proposed WCF and all accessory and ancillary structures from two separate points within the impacted vicinity, accompanied by an assessment of potential mitigation and screening measures. Such points are to be mutually agreed upon by the Planning Director, or the Planning Director's designee, and the applicant. This Section is not applicable to applications submitted subject to the provisions of 47 U.S.C. 1455(a) as implemented by 47 CFR Part 1.40001(a) noted in Section 17.55.030(E) above.

F. Visual Impact, Technological Design Options, and Alternative Site Analysis. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken. The applicant shall include an analysis of alternative sites and technological design options for the WCF within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower or pole is proposed as a part of the proposed WCF, the applicant must demonstrate the need for a new tower or pole and why existing locations or design alternatives, such as the use of microcell technology, cannot be used to meet the identified service objectives. Documentation and depiction of all steps that will be taken to screen or camouflage the WCF to minimize the visual impact of the proposed facility must be submitted.

G. Number of WCF. The Application shall include a detailed narrative of all of the equipment and components to be included with the WCF, including, but not limited to, antennas and arrays; equipment cabinets; back-up generators; air conditioning units; towers; monopoles; lighting; fencing; wiring, housing; and screening. The applicant must provide the number of proposed WCF at each location and include renderings of what the WCF will look like when screened. The Application must contain a list of all equipment and cable systems to be installed, including the maximum and minimum dimensions of all proposed equipment.

H. Safety Hazards. Any and all known or expected safety hazards for any of the WCF facilities must be identified and the applicant who must demonstrate how all such hazards will be addressed and minimized to comply with all applicable safety codes.

I. **Landscaping. The Application shall provide a landscape plan, drawn to scale, that is consistent with the need for screening at the site, showing all proposed landscaping, screening and proposed irrigation (if applicable), with a discussion of how proposed landscaping, at maturity, will screen the site. Existing vegetation that is proposed to be removed must be clearly indicated and provisions for mitigation included. All landscape plans shall be reviewed by and approved by the McMinnville Landscape Review Committee prior to installation.**

J. **Height. The Application shall provide an engineer's diagram, drawn to scale, showing the height of the WCF and all of its above-ground components. Applicants must provide sufficient evidence that establishes that the proposed WCF is designed to the minimum height required to meet the carrier's coverage objectives. If a WCF height will exceed the base height restrictions of the applicable zone, its installation will be predicated upon either an Administrative Variance approval by the Planning Director (17.72.110) or a or Variance approval (17.72.120) by the Planning Commission.**

K. **Timeframe. The Application shall describe the anticipated time frame for installation of the WCF.**

L. **Noise/Acoustical Information. The Application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide equipment decibel ratings as provided by the manufacturer(s) for all noise generating equipment for both maintenance cycling and continual operation modes.**

M. **Parking. The Application shall provide a site plan showing the designated parking areas for maintenance vehicles and equipment for review and approval by the Planning Director.**

N. **Co-Location. In the case of new antenna support structures (multi-user towers, monopoles, or similar support structures), the applicant shall submit engineering feasibility data and a letter stating the applicant's willingness to allow other carriers to co-locate on the proposed WCF.**

O. **Lease. The site plan shall show the lease or easement area of the proposed WCF.**

P. **Lighting and Marking. The Application shall describe any proposed lighting and marking of the WCF, including any required by the Oregon Department of Aviation (ODA).**

Q. **Maintenance. The applicant shall provide a description of anticipated maintenance needs, including frequency of service, personnel needs, equipment needs and potential safety impacts of such maintenance.**

R. **The Planning Director may request any other information deemed necessary to fully evaluate and review the information provided in the application.**

S. **Co-Location Feasibility. A feasibility study for the co-location of any WCF as an alternative to new structures must be presented and certified by an Oregon-licensed Professional Engineer. Co-location will be required when determined to be feasible. The feasibility study shall include:**

   1. **An inventory, including the location, ownership, height, and design of existing WCF within one-half (1/2) mile of the proposed location of a new WCF. The planning director may share such information with other applicants seeking permits for WCF, but shall not, by sharing such information, in any way represent or warrant that such sites are available or suitable.**

2. **Documentation of the efforts that have been made to co-locate on existing or previously approved towers, monopoles, or structures. The applicant shall make a good faith effort to contact the owner(s) of all existing or approved towers, monopoles, or structures and shall provide a list of all owners contacted in the area, including the date, form, and content of such contact.**
3. **Documentation as to why co-location on existing or proposed towers, monopoles, or commercial structures within one thousand (1,000) feet of the proposed site is not practical or feasible. Co-location shall not be precluded simply because a reasonable fee for shared use is charged or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The Planning Director and/or Development Review Board may consider expert testimony to determine whether the fee and costs are reasonable when balanced against the market and the important aesthetic considerations of the community.**

17.55.080 Speculation tower. No application shall be accepted or approved from an applicant to construct a tower and lease tower space to service providers when it is not itself a wireless service provider unless the applicant submits a binding written commitment or executed lease from a service provider to utilize or lease space on the tower.

17.55.090 Owner's Responsibility

A. If the City of McMinnville approves a new tower, the owner of the tower improvement shall, as conditions of approval, be required to:
1. **Record all conditions of approval specified by the City with the Yamhill County Clerk/Recorder;**
2. **Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant;**
   a. **Negotiate in good faith with any potential user for shared use of space on the tower;**
   b. **The above conditions, and any others required by the City, shall run with the land and be binding on subsequent purchasers of the tower site and/or improvement; and**
   c. **A person/entity who/which deems himself/herself/itself aggrieved by the failure of a tower owner to respond in a timely and comprehensive manner or negotiate in good faith for shared use of a tower approved by the City under this ordinance or any previous iteration of this ordinance, shall have a private right of action for damages for injury sustained by the party which was caused by the failure of the owner of the tower to so respond or negotiate in good faith as required by this section. In the resulting private litigation/mediation/arbitration, the prevailing party shall be entitled to have his/her/it's reasonable attorney fees paid by the nonprevailing party at the trial level and upon appeal.**

B. Maintenance. The following maintenance requirements apply to all facilities and shall be required as conditions of approval, where applicable:
1. **All landscaping shall be maintained at all times and shall be promptly replaced if not successful.**
2. **If a flagpole is used as a stealth method for camouflaging a facility, flags must be flown and must be properly maintained at all times.**

3. **All wireless and broadcast communication facility sites shall be kept clean, free of litter and noxious weeds.**
4. **All wireless and broadcast communication facility sites shall maintain compliance with current RF emission standards of the FCC, the National Electric Safety Code, and all state and local regulations.**
5. **All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.**

17.055.100 Abandoned Facilities

A. **All owners who intend to abandon or discontinue the use of any wireless or broadcast communication facility shall notify the City of such intentions no less than 60 days prior to the final day of use.**
B. **Wireless or broadcast communication facilities shall be considered abandoned 90 days following the final day of use or operation.**
C. **All abandoned facilities shall be physically removed by the facility owner no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first. Upon written application prior to the expiration of the ninety (90) day period, the Planning Director may grant a six-month extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the City subject to any conditions required to bring the project into compliance with current law(s) and make compatible with surrounding development.**
D. **In the event that an owner discontinues use of a wireless communication and broadcast facility for more than ninety (90) days, has not been granted an extension of time by the Planning Director, and has not removed the facility, the City may declare the facility abandoned and require the property owner to remove it. An abandoned facility may be declared a nuisance subject to the abatement procedures of the City of McMinnville Code. If such structure and equipment enclosure are not so removed, the City may seek and obtain a court order directing such removal and imposing a lien upon the real property upon which the structure(s) are situated in an amount equal to the cost of removal. Delay by the City in taking action shall not in any way waive the city's right to take action. .**
E. **Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.**
F. **The applicant shall submit a cash deposit to be held by the City as security for abatement of the facility as specified herein. The cash deposit shall be equal to 120% of the estimated cost for removal of the facility and restoration of the site. Cost estimates for the removal shall be provided by the applicant based on an independent, qualified engineer's analysis and shall be verified by the City. Upon completion of the abandonment of the facility by the applicant as specified by this section, and inspection by the City, the entirety of the cash deposit shall be returned to the applicant.**

17.055.110 Review Process and Approval Criteria. The following procedures shall be applicable to all new wireless and broadcast communication facility applications as specified in the Section:

A. **All new wireless and/or broadcast communication facilities shall be reviewed under this chapter. Applications for new wireless and broadcast communication facilities shall be processed in accordance with the provisions of this section.**

B. Approval Criteria. The City shall approve the application for a wireless or broadcast communication facility on the basis that the proposal complies with the General Development Standards listed in this code above, and upon a determination that the following criteria are met:

1. **The location is the least visible of other possible locations and technological design options that achieve approximately the same signal coverage objectives.**
2. **The location, size, design, and operating characteristics of the proposed facility will be compatible with adjacent uses, residences, buildings, and structures, with consideration given to:**
   a. **Scale, bulk, coverage and density;**
   b. **The harmful effect, if any, upon neighboring properties; The suitability of the site for the type and intensity of the proposed facility; and**
   c. **Any other relevant impact of the proposed use in the setting where it is proposed (i.e. noise, glare, traffic, etc).**
3. **All required public facilities and services have adequate capacity as determined by the City, to serve the proposed wireless or broadcast communication facility; and**
   a. **The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards, including designation of an alternate location, or if compliance with all of the applicable approval criteria cannot be achieved through the imposition of reasonable conditions, the application shall be denied.**
   b. **Notwithstanding any other provisions of this Code, the McMinnville City Council may establish fees in amounts sufficient to recover all of the City's costs in reviewing applications filed pursuant to this Chapter, including retaining independent telecommunication or other professional consultants as may be necessary to review and evaluate any evidence offered as part of an application. Such fee may be imposed during the review of an application as deemed appropriate by the City Planning Department.**

ATTACHMENT 3

CITY OF MCM INNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128
503-434-7311
www.mcminnvilleoregon.gov

PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE

New proposed language is represented by **bold underline font**, deleted language is represented by ~~strikethrough font.~~

~~Chapter 17.55~~

~~WIRELESS COMMUNICATIONS FACILITIES~~
~~(as amended by Ord. 4732, June 2000)~~

~~Sections:~~

~~17.55.010 Purpose. The purpose of this chapter is to establish appropriate locations, site development standards, and permit requirements to allow for the provision of wireless communications services to the residents of the City. Such siting is intended to occur in a manner that will facilitate the location of various types of wireless communication facilities in permitted locations consistent with the residential character of the City, and consistent with land uses in commercial and industrial areas.~~

~~The prevention of the undue proliferation and associated adverse visual impacts of wireless communications facilities within the City is one of the primary objectives of this chapter. This chapter, together with the provisions of the Uniform Building Code, is also intended to assist in protecting the health, safety, and welfare of the citizens of McMinnville. (Ord. 4732, 2000)~~

~~17.55.020 Definitions. For the purposes of this section, refer to Section 17.06.050 for Wireless Communications Facility related definitions. (Ord. 4952 §1, 2012).~~

~~17.55.030 Antennas to which this chapter has no application. The provisions of this~~

~~chapter do not apply to radio or television reception antennas, satellite or microwave parabolic antennas not used by wireless communications service providers, antennas under 70 feet in height and owned and operated by a federally-licensed amateur radio station operators, to any antenna support structure or antenna lawfully in existence within the city on the effective date of this chapter, or to the facilities of any cable television company holding a valid and current franchise, or commercial radio or television broadcasting facilities. (Ord. 4732, 2000)~~

~~17.55.040 Permitted and conditional use locations of antenna, antenna support structures, and antenna arrays to be used for wireless communications service. Wireless communication antenna, antenna arrays, and antenna support structures are permitted, conditionally permitted, or prohibited to be located in the zones as provided in this Chapter and as listed below:~~

- ~~A. Antenna support structures are permitted in the M-L (Limited Light Industrial Zone), M-1 (Light Industrial Zone), and M-2 (General Industrial Zone) zones only.~~
- ~~B. In the R-1, R-2, R-3, and R-4 zones, with Planning Commission approval of a conditional use permit, subject to the requirements of Chapters 17.72 and 17.74, antennas and antenna arrays may be mounted to existing alternative antenna support structures. However, such antennas and antenna arrays shall not add more than twenty feet to the total height or elevation of such structure from the street grade. Facilities associated with antennas or antenna arrays so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building.~~
- ~~C. In the O-R, C-1, C-2, and C-3 zones located outside of the Historic Downtown Core (for purposes of this ordinance, defined as the area between First and Fifth Streets, and Adams and Galloway Streets), antennas and antenna arrays may be mounted to existing alternative antenna support structures. However, such antennas and antenna arrays shall add not more than twenty feet to the total height or elevation of such structure from the street grade. Facilities associated with antennas or antenna arrays so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building.~~
- ~~D. In the Historic Downtown Core, the placement of antennas and antenna arrays may be permitted subject to the requirements of Chapters 17.72 and 17.74 of the McMinnville Zoning Ordinance, and the requirements of this ordinance.~~
- ~~E. In the M-L, M-1, and M-2 zones located outside of the Historic Downtown Core, antennas and antenna arrays may be mounted to existing alternative antenna support structures.~~
- ~~F. In the A-H and F-P zones, with Planning Commission approval of a conditional use permit, subject to the requirements of Chapters 17.72 and 17.74, antennas and antenna arrays may be mounted to existing alternative antenna support structures. However, such antennas and antenna arrays shall not add more than twenty feet to the total height or elevation of such structure from the street grade. Facilities associated with antennas or antenna arrays so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building.~~
- ~~G. Wireless Facilities matrix.~~

ZONE	WIRELESS FACILITIES	
	TOWERS	ANTENNA ARRAY MOUNTS TO EXISTING STRUCTURES*
Residential	Prohibited	Less than or equal to 20 feet height added (Conditional Use)
Commercial	Prohibited	Less than or equal to 20 feet height added (Permitted)
		Within Historic Downtown (Conditional Use)
Industrial	Permitted	Permitted (without regard to height added)
		Within Historic Downtown (Conditional Use)
Agricultural Holding	Prohibited	Less than or equal to 20 feet height added (Conditional Use)
Floodplain	Prohibited	Less than or equal to 20 feet height added (Conditional Use)

* Subject to the requirements of Chapter 17.55. (Ord. 4732, 2000)

17.55.050 Design standards.

A. Where permitted, antenna support structures shall be constructed and installed as far away from existing buildings on adjoining land as is reasonably possible, and in no event within any required yard or set-back area or nearer than 25 feet to any publicly held land, residential structure or accessory building on adjoining land, or railroad right-of-way.

B. The area around the base of antenna support structures (including any equipment enclosure) is to be fenced, with a sight-obscuring fence a minimum of six feet in height. The fenced area is to be surrounded by evergreen shrubs (or a similar type of evergreen landscaping), placed within a landscaped strip a minimum of ten feet in width. In the event that placement of a proposed antenna support structure and/or equipment enclosure is located in a unique area within a subject site that would not benefit from the addition of landscaped screening, the Planning Director may require that the applicant submit a landscape plan illustrating the addition of a proportional landscape area that will enhance the subject site either at a building perimeter, parking lot, or street frontage, adjacent to or within the subject site.

C. All antenna support structures, antennas, and antenna arrays, and associated facilities shall be finished in a non-reflective neutral color.

D. No antenna support structure shall be permitted to be constructed, installed or erected within 1,000 feet of any other antenna support structure that is owned, operated, or occupied by the same wireless communications service. Exceptions to this standard may be permitted by the Planning Director if, after reviewing evidence submitted by the service provider, he finds: 1) that a closer spacing is required in order to provide adequate wireless communication service to the subject area; and 2) the service provider has exhausted all reasonable means of co-locating on other antenna support structures that may be located within the proposed service area. An appeal of the

Planning Director's decision may be made to the Planning Commission provided such appeal is filed with the Planning Department within fifteen days of the Director's decision. Appropriate fees, as set by City Council resolution, shall accompany the appeal.

E. The construction and installation of antenna support structures, antennas, antenna arrays, and the placement of antennas or antenna arrays on alternative antenna support structures, shall be subject to the requirements of the city's Building Code (UBC), and Electrical Code (NEC).

F. No antennas or antenna arrays, or antenna support structures shall be artificially lighted except as required by the Federal Aviation Administration or other governmental agency.

G. There shall be no signs, symbols, flags, banners, or other such devices or things attached to or painted or inscribed upon any antennas, antenna arrays, or antenna support structures.

H. If the application involves the placement of an antenna or an antenna array on a building that is listed in the McMinnville register of historic structures, no permit to construct, install or erect antenna support structures or equipment enclosures, or to install, mount or erect antennas or antenna arrays on existing buildings or on other alternative antenna support structures, shall be issued without the prior approval of the McMinnville Historic Landmarks Committee. (Ord. 4732, 2000)

17.55.060 Co-location of antennas and antenna support structures.

A. Co-location shall be required unless demonstrated to be infeasible to the satisfaction of the Planning Director or Planning Commission. Evidence submitted to demonstrate such shall consist of the following:

1. That no existing antenna support structures or alternative antenna support structures are located within the geographic area which meet the applicant's engineering requirements; or
2. That existing antenna support structures and alternative antenna support structures are not of sufficient height to meet applicant's engineering requirements; or
3. That existing antenna support structures and alternative antenna support structures do not have sufficient structural strength to support applicant's proposed antennas or antenna arrays and related equipment; or
4. That an applicant's proposed antennas or antenna arrays would cause detrimental electromagnetic interference with nearby antennas or antenna arrays, or vice-versa; or
5. That there are other limiting factors, such as inadequate space for a second equipment shelter, that render existing antenna support structures or alternative antenna support structures unsuitable.

B. All wireless communications service providers shall cooperate with other wireless communications service providers in co-locating additional antennas or antenna arrays on antenna support structures and/or alternative antenna support structures. The following co-location requirements shall apply:

1. All antenna support structures shall be designed so as to not preclude co-location.
2. In the event co-location is represented to be infeasible, the City may retain a technical expert in the field of telecommunications engineering to verify if co-location at the site is not feasible, or is feasible given the design configuration

most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant.

3. A wireless communications service provider shall exercise good faith in co-locating with other providers and sharing antenna sites, provided that such shared use does not technically impair their ability to provide wireless communications service. Such good faith shall include sharing of technical information to evaluate the feasibility of co-location. In the event that a dispute arises as to whether a provider has exercised good faith in accommodating other providers, the city may require a third party technical study at the expense of either or both of such providers.
4. The City of McMinnville may deny a building or conditional use permit to the applicant for a wireless facility who has not demonstrated a good faith effort to co-locate on an existing wireless communication facility. Determination of "good faith effort" shall be the responsibility of the Planning Director. (Ord. 4732, 2000)

17.55.070 Interference with reception. No antenna or antenna array shall be permitted to be placed in a location where it will interfere with existing transmittal or reception of radio, television, audio, video, electronic, microwave or other signals, especially as regard police and emergency services operating frequencies. (Ord. 4732, 2000)

17.55.080 Antenna support structures–removal when no longer used. Any antenna support structure that has had no antenna or antenna array mounted upon it for a period of 180 successive days, or if the antenna or antenna array mounted thereon are not operated for a period of 180 successive days, shall be considered abandoned, and the owner thereof shall remove such structure and any accompanying equipment enclosure within 90 days from the date of written notice from the City. During such 90 days, the owner may apply, and, for good reason, be granted an extension of time on such terms as the Planning Director or Building Official shall determine. If such structure and equipment enclosure are not so removed, the city may seek and obtain a court order directing such removal and imposing a lien upon the real property upon which the structure(s) are situated in an amount equal to the cost of removal. (Ord. 4732, 2000)

17.55.090 Application for permit for antennas, antenna arrays, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following:

A. Payment of all permit fees, plans check fees and inspection fees;
B. Proof of ownership of the land and/or alternative antenna support structure upon which the requested antenna, antenna array, enclosure, and/or structure is proposed, or copy of an appropriate easement, lease, or rental agreement;
C. A map, drawing or aerial photo showing all existing and proposed antenna support structures within one mile of the McMinnville Urban Growth Boundary (UGB). Information provided shall include the number of existing antenna and antenna arrays per antenna support structure, as well as the number of arrays planned for use upon a proposed new antenna support structure, with sufficient detail (if available) to be added to the City's GIS data system. Any wireless communications service provider may utilize existing mapping information possessed by the City in order to create an updated map.
D. A scaled plan and a scaled elevation view and other supporting drawings, illustrating the location and dimensions of the relevant antenna support structure, alternative antenna support structure, antenna array, antennas, equipment enclosures and any and all other major devices and attachments. (Ord. 4732, 2000)

ATTACHMENT 4

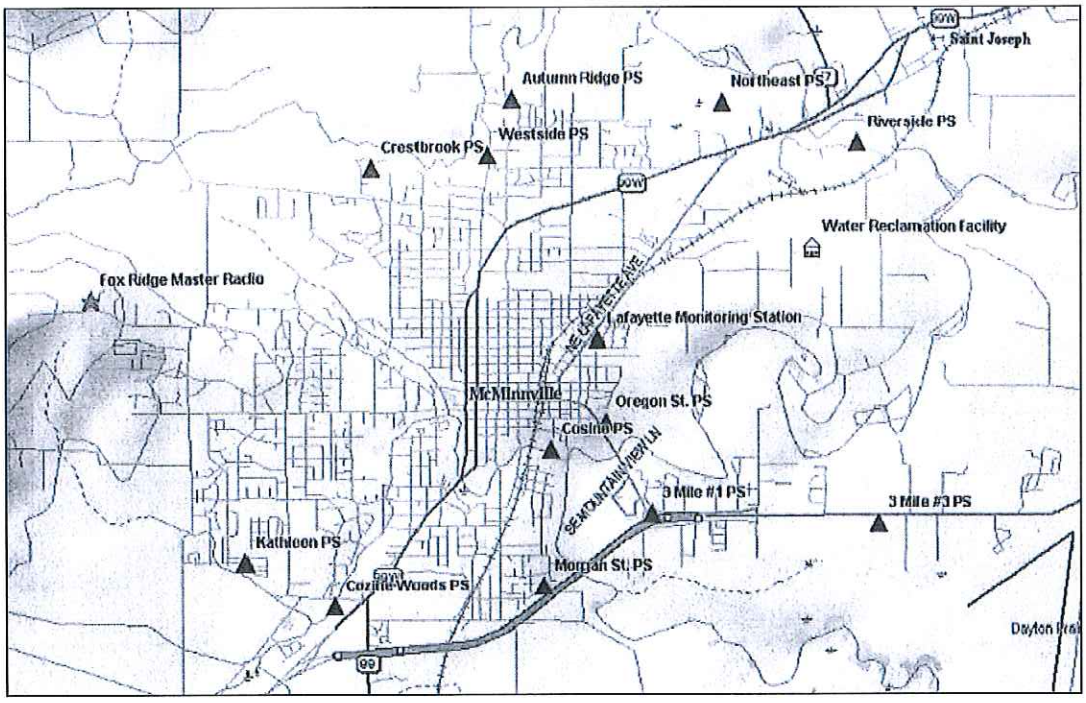
City of McMinnville
Community Development Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

MEMORANDUM

DATE: August 11, 2017
TO: Heather Richards, Planning Director
FROM: Mike Bisset, Community Development Director
SUBJECT: G4-17 Wireless Communications Facilities

Apologizing in advance for the lateness of this response, I have reviewed the proposed zoning ordinance text amendments related to wireless communications facilities (G4-17), and I have a concern that I would like to share with you and the Planning Commission. The City owns and operates thirteen (13) wastewater pump stations that collect and convey sewage from various basins throughout the City (see map below).



Many of these pump stations are located in residential areas. Typically the pump station sites are very small, and the pump station properties are a mix of City owned parcels, and City easement areas on private properties.

The City's Wastewater Services (WWS) department uses a supervisory control and data acquisition (SCADA) system to remotely monitor and control the pump stations. Currently, WWS uses a radio communication system to convey data and control commands between the Water Reclamation Facility

and the pump station sites. The system's master radio is located on McMinnville Water & Light property at the Fox Ridge reservoir site, and each pump station is equipped with radio equipment and an antenna that is used to send and receive the SCADA data and commands.

A typical antenna installation at the pump stations consists of a YAGI[1] antenna mounted on a 2" diameter galvanized steel pipe antenna mast. The typical height of the antenna mast and antenna assembly is twenty (20) feet, although in some locations the height of the mast may be higher because each antenna must have a line of sight to the master radio antenna at the Fox Ridge site.

The following photos are examples of the radio antenna installations at pump stations in residential areas:

[1] A YAGI antenna is a highly directional radio antenna made of several short rods mounted across an insulating support and transmitting or receiving a narrow band of frequencies.

Kathleen Pump Station

Northeast Pump Station

The current Wireless Communications Facilities ordinance, as I understand it, allows for radio antenna installations in residential areas. The proposed zoning ordinance text amendments do not seem to allow for these types of installations within residential zones. Further, the City would not be able to comply with the proposed requirements for residential zones (i.e. there are no "alternative antenna support structures" at the pump station sites).

I would ask that the Planning Commission modify proposed section **17.55.030 Exemptions** to allow for wireless communication facilities at City owned facilities. I would ask that the exemption language be broad enough to allow for modifications at existing sites so that equipment can be replaced as technology changes. Also, it should allow for installations at future locations, as we expect that additional pump stations will be added to the wastewater system as the City grows.

Please let me know if you have any questions.

Mike Bisset, Director
City of McMinnville Community Development
231 NE Fifth Street | McMinnville, OR 97128
Office: 503.434.7312
http://www.mcminnvilleoregon.gov

ATTACHMENT 5

CROWN CASTLE

Crown Castle
1505 Westlake Avenue North, Suite 800
Seattle, WA 98109

16 August 2017

Roger Hall, Chair
Planning Commission
City of McMinnville
231 NE 5th Street
McMinnville, OR 97128

Sent via Email

Re: Proposed Amendments to City of McMinnville's Wireless Communications Facilities Ordinance Sections 17.55.010 et seq.

Dear Planning Commission:

Crown Castle ("Crown") appreciates the opportunity to provide comments to the City of McMinnville's wireless ordinance update. Thank you in advance for considering our comments below at your upcoming Planning Commission meeting of August 17, 2017.

Background
Crown is the nation's leading provider of shared wireless infrastructure. Crown owns and manages approximately 40,000 communications facilities in the United States. In addition to these tower, or "macro" site facilities, Crowns owns and manages distributed antenna systems (DAS) and small cell systems throughout the country. Together, this infrastructure allows Crown to meet the diverse needs of wireless carriers with respect to delivering critical broadband services throughout the United States.

Crown also is a "service" provider—Crown's real estate specialists provide professional zoning and permitting services for our wireless customers. Crown believes this broad range of expertise, both as a communications facility owner and manager, and as a service provider working for wireless carrier providers, gives Crown a unique perspective when reviewing public policy that affects wireless deployment.

Critical Need for Reasonable Regulations
The next several years is expected to see incredible growth in the mobile broadband market. Put simply, this means escalating demand for high-speed wireless services. Over the next four years, mobile data traffic in the top thirty markets in the United States is expected to increase by 850%. The increased use of smartphones and tablets is straining the existing wireless networks around the country. To address this strain, wireless carriers expect to invest between $34 to $36 billion dollars annually over the next five years. This investment is expected to create approximately $1.2 trillion dollars in economic development and the creation of 1.3 million net new jobs.

A critical component in addressing this consumer demand is the speed with which carriers can deploy new wireless networks as well as their ability to rapidly modify existing wireless networks. In order to do so, relief is needed in the form of reasonable public policy that regulates wireless siting and development at the local level.

This concern for relief has also taken the form of changes in federal regulations that address "reasonableness" in the regulation of wireless facilities by local jurisdictions, particularly co-location, maintenance and modifications

of existing "Antenna Support Structures." We would refer you to 47 CFR Parts 1 and 17 (particularly Subpart CC, Section 1.40001) "Acceleration of Broadband Development by Improving Wireless Siting Policies," as well as section 6409 and related federal regulations as specifically noted, below. In drafting any changes to existing wireless ordinances jurisdictions need to be cognizant of limits imposed by these federal regulations so as to not unduly create a litigious atmosphere with wireless carriers and tower owners. We have enclosed a copy of those federal regulations for your review as part of the process of improving the City's Zoning Ordinance.

In order for the City of McMinnville to remain competitive with its peers, regulations should encourage deployment of the latest technological developments, not hinder them. Unfortunately many aspects of the proposed rules are impediments to keeping the City at the forefront of broadband deployment and appear to be from an earlier era when there were unfounded concerns regarding the impact of wireless technology on the aesthetics and livability of communities.

Specific Comments:

17.55.040 (A)(1)

McMinnville's growth and residential zoning is by the City's Comprehensive Plan, directed away from zones permitted for "antenna support structures and alternate antenna support structures" with the result that wireless coverage may be seriously impacted if antenna support structures are not allowed where the future coverage need is the greatest. Further, the chart contained on page 3 of the proposed regulations seems to indicate that the only zones in which new antenna support structures are allowed is in Industrial Zones that occupy a minimal amount of acreage (probably significantly under 10 percent) within the City of McMinnville. Forcing this type of restriction on placement of antenna support structures, coupled with the language of setback restrictions in 17.050(B)(1), will likely result in an inability of wireless carriers to adequately cover future and current residential areas of the City. We would recommend that this restriction be very carefully reconsidered by the Planning Commission for its ultimate impact on broadband deployment.

17.55.050 (A)(2)

There appears to be an inconsistency between heights allowed in residential zones and that indicated in the "Wireless Facilities" chart at the top of page 3.

17.55.050 (A)(3)

The absence of a clear definition for the phrase "least detriment" leave an applicant open to challenges from aggrieved citizenry without any ability to rebut what does or does not cause a detrimental impact to the view shed. A clear set of criteria is needed.

17.55.050 (A)(4)

The proposed landscape buffer of ten (10) feet on all sides significantly increases the area an applicant must lease while providing no commensurate economic value. We much prefer the language of "proportional landscape area" that allows for Director's discretion as to what constitutes an acceptable level of buffering.

17.55.050 (A)(8)

In the early years of wireless deployment, many different vault and underground solutions were evaluated and found wanting due to moisture and rodent intrusion plus the OSHA requirement that communication technicians working in an underground setting (including City utility workers) need to have at least one additional staff person outside the vault area in the event of a malfunction or emergency. We would ask that this requirement be stricken as it is simply impractical.

17.55.050(B)(1)

See potential impacts listed above in our comments regarding **17.55.040(A)(1).**

17.55.050(B)(2)

Placing a requirement on setbacks for roof-mounted antennas fails to recognize that the further an antenna is placed from the edge of a rooftop, the higher that antenna must be placed in order to provide coverage to the same area. We suggest that adequate camouflage measures would address the same concern without the need to place antennas at a higher elevation to provide the same coverage.

17.55.060, 17.55.080 (and Collocation and Eligible Facilities Requests in General)

As a general matter, Crown strongly recommends and believes it is incumbent upon the City to consider and incorporate the provisions and requirements of federal law governing eligible facility requests ("EFR") for modifications to existing sites. Specifically, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455), as interpreted by the Federal Communication Commission's Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (2014) ("Infrastructure Order"), requires a state or local government to approve any EFR for modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Section 6409(a), along with the Infrastructure Order, provide specific definitions and guidance on the implementation of these provisions, including time frames. To the extent that state or local law conflicts with section 6409(a) and related regulations, such state/local law is pre-empted by the federal requirements. If the City incorporates section 6409(a) into its ordinance and process, it will prevent unnecessary discussion, confusion and the wasting of resources on the part of the City and applicants, as well as potential litigation to resolve conflicts or ambiguities.

Specifically with respect to EFR and the proposed ordinance, portions of sections 17.55.060 and 17.553.080, as well as other sections of the proposed ordinance actually or could potentially run afoul of section 6409(a) requirements. Crown strongly recommend the City consider the addition of a section to the proposed ordinance, consistent with section 6409(a) and related federal regulation, that would distinguish and govern EFR modifications.

17.55.060(A)(9)(b)

The phrase "site survey" connotes a specific type of product created by a land surveyor. Crown would argue that a detailed site plan as part of a set of drawing stamped by a Registered Architect or Professional Engineer will provide the necessary information without the need for a professional site survey.

17.55.080

In addition to the note, above, regarding section 6409(a), Crown recommends a new section be added to address EFR or that this section should be modified to clarify separate application requirements for the various types of proposed installation. The current language requires that "[a]ll applications for permits for placement and construction of wireless facilities" are held to the same level of detail regardless of whether the application is to merely change antennas, add antennas or related equipment to an existing, approved wireless facility, collocate a new carrier on a previously approved wireless facility or to construct a brand new wireless facility. The ability of the City to require this type of potentially over-arching submittal requirements is clearly prohibited by 47 CFR Part 17 Subpart CC Section 1.40001.

Further, certain portions of this section require a level of technical expertise on the part of City staff in order to evaluate technical information required by the regulations that may not exist. In the absence of such a level of in-house expertise, how will the City determine whether the approval criteria, which are in themselves vague, are in fact, met?

17.55.080(H)

Crown asks for clarification of the City's authority and interest in the application of safety codes such as OSHA beyond the normal scope of review of the Building Official for compliance with OSSC or the NEC? We submit that the language of this section is overly broad and provides no guidance to the applicant as to which safety criteria must be addressed and how the application must demonstrate compliance.

17.55.085

No wireless carrier will provide a "binding letter of commitment or executed lease" until such time as an applicant has received land use approval. Crown suggests that this requirement be modified to indicate that no building permit for a WCF granted zoning approval will be accepted without evidence of a "binding letter of commitment or execute lease" from a service provider.

17.55.100(F)

Crown recommend that this language be modified to allow an applicant to provide an irrevocable bond in the amounts specified, such bond to either be returned upon evidence that the abatement has occurred to the satisfaction of the City or to be used by the City to conduct abatement in the event that the applicant fails to meet abatement requirements.

17.055.110(B)(2)(b)

The absence of any clear definition of "harmful effect on neighboring properties" is unduly vague and allows introduction of material into a land use process for which there is no objective criteria by which the impact can be evaluated. Crown strongly suggests that this language be removed in its entirety.

17.055.110(B)(3)

The City normally provides no services to wireless facilities other than electrical power. Crown does not understand what is being attempted by this first paragraph and what criteria would be used to evaluate adequacy.

17.055.110(B)(3)(a)

This section, as with many others in the proposed changes, is both overly broad and at the same time vague. The purpose of an application is to demonstrate compliance with clear statutory language and should not be held to vague standards such as "reasonable conditions" An application either conforms to applicable criteria, is allowed an alternate means of addressing those criteria, or it does not.

17.055.110(B)(3)(b)

The use of "independent telecommunication or other professional consultants" presumes that the consultant will be evaluating the application against clear criteria contained in the City's code. Absent such clear criteria, any evaluation becomes a case of "he said/she said" and has no objective meaning as typically applied to land use applications. Crown advocates that the standards contained in the code should be simple and clear enough that a reasonable person or wireless professional can determine whether or not the application meets the written standards. Absent clear standards, the code becomes open to interminable litigation when such could have been avoided by use of clear standards.

Small Cell Facilities in the Right of Way

Small cell facilities are not addressed in the proposed ordinance. Crown recommends that the City give consideration to implementing a plan for the placement of small cell facilities in the right of way on existing or new utility poles. With the advent of the 5G and the next generation of wireless deployment, many states and most major cities are addressing related issues and preparing for the process of accepting and approving deployment of small cell facilities in the public right of way.

Thank you for allowing Crown to present its views on the proposed ordinance changes and we offer our services to assist in any future re-writes of this ordinance.

Dana Adams
Interim Project Manager-Real Estate Services
Seattle District

Patrick Evans
Real Estate Specialist-Services
Oregon & SW Washington Markets

FEDERAL REGISTER

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Part IV

Federal Communications Commission

47 CFR Parts 1 and 17
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59; FCC 14–153]

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to update and tailor the manner in which it evaluates the impact of proposed deployments of wireless infrastructure on the environment and historic properties. The Commission also adopts rules to clarify and implement statutory requirements applicable to State and local governments in their review of wireless infrastructure siting applications, and it adopts an exemption from its environmental public notification process for towers that are in place for only short periods of time. Taken together, these steps will reduce the cost and delays associated with facility siting and construction, and thereby facilitate the delivery of more wireless capacity in more locations to consumers throughout the United States.

DATES: Effective February 9, 2015, except for § 1.40001, which shall be effective April 8, 2015; however, §§ 1.40001(c)(3)(i), 1.40001(c)(3)(iii), 1.140001(c)(4), and 17.4(c)(1)(vii), which have new information collection requirements, will not be effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing OMB approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, (202) 418–7369, email *Peter.Trachtenberg@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59; FCC 14–153, adopted October 17, 2014 and released October 21, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the R&O also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 13–238. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. NEPA and NHPA Review of Small Wireless Facilities

1. The Commission first adopts measures to update its review processes under the National Environmental Policy Act of 1969 (NEPA) and section 106 of the National Historic Preservation Act of 1966 (NHPA or section 106), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service. These technologies, including distributed antenna systems (DAS), small cells, and others, can be deployed on a variety of non-traditional structures such as utility poles, as well as on rooftops and inside buildings, to enhance capacity or fill in coverage gaps. Updating the Commission's environmental and historic preservation rules will enable these innovations to flourish, delivering more broadband service to more communities, while reducing the need for potentially intrusive new construction and safeguarding the values the rules are designed to protect.

2. The Commission's environmental and historic preservation rules have traditionally been directed toward the deployment of macrocells on towers and other tall structures. Since 1974, these rules have excluded collocations of antennas from most of the requirements under the Commission's NEPA review process, recognizing the benefits to the environment and historic properties from the use of existing support structures over the construction of new structures. These exclusions have limitations. The collocation exclusion under NEPA, which was first established in 1974, on its face encompasses only deployments on existing towers and buildings, as these were the only support structures widely used 40 years ago, and does not encompass collocations on existing utility poles, for example. The collocation exclusions in the Commission's process for historic preservation review under section 106 do not consider the scale of small wireless facility deployments.

3. Thus, while small wireless technologies are increasingly deployed to meet the growing demand for high mobile data speeds and ubiquitous coverage, the Commission's rules and processes under NEPA and section 106, even as modified over time, have not reflected those technical advances. Accordingly, the Commission concludes that it will serve the public interest to update its environmental and historic preservation rules in large measure to account for innovative small facilities, and the Commission takes substantial steps to advance the goal of widespread wireless deployment, including clarifying and amending its categorical exclusions. The Commission concludes that these categorical exclusions, as codified in Section 1.1306(c) and Note 1 of its rules, do not have the potential for individually or cumulatively significant environmental impacts. The Commission finds that these clarifications and amendments will serve both the industry and the conservation values its review process was intended to protect. These steps will eliminate many unnecessary review processes and the sometimes cumbersome compliance measures that accompany them, relieving the industry of review process requirements in cases where they are not needed. These steps will advance the goal of spurring efficient wireless broadband deployment while also ensuring that the Commission continues to protect environmental and historic preservation values.

A. NEPA Categorical Exclusions

1. Regulatory Background

4. Section 1.1306 (Note 1) clarifies that the requirement to file an Environmental Assessment (EA) under section 1.1307(a) generally does not apply to "the mounting of antenna(s) on an existing building or antenna tower" or to the installation of wire or cable in an existing underground or aerial corridor, even if an environmentally sensitive circumstance identified in section 1.1307(a) is present. Note 1 reflects a preference first articulated by the Commission in 1974, and codified into Note 1 in 1986, that "[t]he use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged."

2. Antennas Mounted on Existing Buildings and Towers

a. Clarification of "Antenna"

5. The Commission first clarifies that the term "antenna" as used in Note 1 encompasses all on-site equipment associated with the antenna, including transceivers, cables, wiring, converters, power supplies, equipment cabinets and shelters, and other comparable equipment. The Commission concludes that this is the only logically consistent interpretation of the term, as associated equipment is a standard part of such collocations, and the antennas subject to NEPA review cannot operate without it. Thus, interpreting the term "antenna" as omitting associated equipment would eviscerate the categorical exclusion by requiring routine NEPA review for nearly every collocation. Such an interpretation would frustrate the categorical exclusion's purpose. The Commission also notes that its interpretation of "antenna" in this context is consistent with how the Commission has defined the term "antenna" in the comparable context of its process for reviewing effects of proposed deployments on historic properties. Specifically, the Commission's section 106 historic preservation review is governed by two programmatic agreements, and in both, the term "antenna" encompasses all associated equipment.

6. Further, if associated equipment presented significant concerns, the Commission would expect that otherwise excluded collocations that included such equipment would, at some point over the past 40 years, have been subject to environmental objections or petitions to deny. The Commission is unaware of any such objections or petitions directed at backup generators or any other associated equipment, or of any past EAs that found any significant environmental effect from such equipment. The Commission finds some commenters' generalized assertions of a risk of environmental effects to be unpersuasive, and the Commission reaffirms that the collocations covered by Note 1, including the collocation of associated equipment addressed by its clarification, will not individually or cumulatively have a significant effect on the human environment. While Alexandria *et al.* submit a declaration from Joseph Monaco asserting that "[m]inor additions to existing facilities could have significant effects even if only incremental to past disturbances," the Commission finds this position is inconsistent with the Commission's finding that the mounting of antennas on existing towers and buildings will not have significant effects, and with the Commission's experience administering the NEPA process, in which a collocation has never been identified by the Commission or the public to have caused a significant environmental effect. The Commission further notes that the proffered examples appear to confuse consideration under the Commission's NEPA process with review under local process, which the Commission does not address here. To the extent that rare circumstances exist where "even the smallest change could result in a significant effect, based on the intrinsic sensitivity of a particular resource," the Commission concludes that such extraordinary circumstances are appropriately addressed through sections 1.1307(c) and (d), as necessary.

7. The Commission finds unpersuasive Tempe's argument that the NEPA categorical exclusion for collocation should not encompass backup generators in particular. Tempe argues that generators cause "fumes, noise, and the potential for exposure to hazardous substances if there is a leak or a spill" and "should not be allowed to be installed without the appropriate oversight." The Wireless Telecommunications Bureau addressed all of these potential impacts in its Final Programmatic Environmental Assessment for the Antenna Structure Registration Program (PEA), and did not find any to be significant. Tempe's own comments, moreover, confirm that backup generators are already subject to extensive local, State, and Federal regulation, suggesting that further oversight from the Commission would not meaningfully augment existing environmental safeguards. In assessing environmental effect, an agency may factor in an assumption that the action is performed in compliance with other applicable regulatory requirements in the absence of a basis in the record beyond mere speculation that the action threatens violations of such requirements. Tempe's comments support the Commission's conclusion that such regulations applicable to backup generators address Tempe's concerns. The Commission finds that cell sites with such generators will rarely if ever be grouped in sufficient proximity to present a risk of cumulative effects.

8. The Commission finds no reason to interpret "antenna" in the Note 1 NEPA collocation categorical exclusion to omit backup generators or other kinds of backup power equipment. The Commission finds that the term "antenna" as used in the categorical exclusion should be interpreted to encompass the on-site equipment associated with the antenna, including backup power sources. Further, the need for such power sources at tower sites is largely undisputed, as backup power is critical for continued service in the event of natural disasters or other power disruptions—times when the need and demand for such service is often at its greatest. The Commission amends Note 1 to clarify that the categorical exclusion encompasses equipment associated with the antenna, including the critical component of backup power.

9. Finally, the Commission notes that sections 1.1306(b)(1)–(3) and 1.1307(c) and (d) of its rules provide for situations where environmental concerns are presented and, as called for by the requirement that categorical exclusions include consideration of extraordinary circumstances, closer scrutiny and potential additional environmental review are appropriate. The Commission concludes that individual cases presenting extraordinary circumstances in which collocated generators or other associated equipment may have a significant effect on the environment, including cases in which closely spaced generators may have a significant cumulative effect or where the deployment of such generators would violate local codes in a manner that raises environmental concerns, will be adequately addressed through these provisions.

b. Antennas Mounted in the Interior of Buildings

10. The Commission clarifies that the existing NEPA categorical exclusion for mounting antennas "on" existing buildings applies to installations in the interior of existing buildings. An antenna mounted on a surface inside a building is as much "on" the building as an antenna mounted on a surface on the exterior, and the Commission finds nothing in the language of the categorical exclusion, in the adopting order, or in the current record supporting a distinction between collocations on the exterior or in the interior that would limit the scope of the categorical exclusion to exterior collocations. To the contrary, it is even more likely that indoor installations will have no significant environmental effects in the environmentally sensitive areas in which proposed deployments would generally trigger the need to prepare an EA, such as wilderness areas, wildlife preserves, and flood plains. The existing Note 1 collocation categorical exclusion reflects a finding that collocations do not individually or cumulatively have a significant effect on

the human environment, even if they would otherwise trigger the requirement of an EA under the criteria identified in sections 1.1307(a)(1)–(3) and (5)–(8). The Commission finds that this conclusion applies equally or even more strongly to an antenna deployed inside a building than to one on its exterior, since the building's exterior structure would serve as a buffer against any effects. The Commission notes that the First Responder Network Authority (FirstNet), the National Telecommunications and Information Administration (NTIA), and other agencies have adopted categorical exclusions covering internal modifications and equipment additions inside buildings and structures. For example, in adopting categorical exclusions as part of its implementation of the Broadband Technology Opportunities Program, NTIA noted that excluding interior modifications and equipment additions reflects long-standing categorical exclusions and administrative records, including in particular "the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, and the Federal Emergency Management Agency." While a Federal agency cannot apply another agency's categorical exclusion to a proposed Federal action, it may substantiate a categorical exclusion of its own based on another agency's experience with a comparable categorical exclusion. This long-standing practice of numerous agencies that conduct comparable activities, reflecting experience that confirms the propriety of the categorical exclusion, provides further support for the conclusion that internal collocations will not individually or cumulatively have a significant effect on the human environment. With respect to Tempe's concern about generators being placed inside buildings as the result of collocations, the Commission relies on local building, noise, and safety regulations to address these concerns, and the Commission anticipates that such regulations will almost always require generators to be outside of any residential buildings where their use would present health or safety concerns or else place very strict requirements on any placement in the interior. The Commission finds it appropriate to amend Note 1 to clarify that the Note 1 collocation categorical exclusion applies to the mounting of antennas in the interior of buildings as well as the exterior.

c. Antennas Mounted on Other Structures

11. The Commission adopts its proposal to extend the categorical exclusion for collocations on towers and buildings to collocations on other existing man-made structures. The Commission concludes that deployments covered by this extension will not individually or cumulatively have a significant impact on the human environment. The Commission updates the categorical exclusion adopted as part of Note 1 in 1986 to reflect the modern development of wireless technologies that can be collocated on a much broader range of existing structures. This measure will facilitate collocations and speed deployment of wireless broadband to consumers without significantly affecting the environment.

12. In finding that it is appropriate to broaden the categorical exclusion contained in section 1.1306 Note 1 to apply to other structures, the Commission relies in part on its prior findings regarding the environmental effects of collocations. In implementing NEPA requirements in 1974, for example, the Commission found that mounting an antenna on an existing building or tower "has no significant aesthetic effect and is environmentally preferable to the construction of a new tower, provided there is compliance with radiation safety standards." In revising its NEPA rules in 1986, the Commission found that antennas mounted on towers and buildings are among those deployments that will normally have no significant impact on the environment. The Commission notes in particular that collocations will typically add only marginal if any extra height to a structure, and that in 2011, in a proceeding addressing the Commission's NEPA requirements with respect to migratory birds, the Commission reaffirmed that collocations on towers and buildings are unlikely to have environmental effects and thus such collocations are categorically excluded from review for impact on birds. Further, given that towers and buildings are typically much taller than other man-made structures on which antennas will be collocated, the Commission expects that there will be even less potential for significant effects on birds from collocations on such other structures.

13. In the *Infrastructure NPRM,* the Commission tentatively concluded that the same determination applies with regard to collocations on other structures such as utility poles and water towers. Numerous commenters support this determination, and opponents offer no persuasive basis to distinguish the environmental effects of collocations on antenna towers and buildings from the effects of collocations on other existing structures. Indeed, in this regard, the Commission notes that buildings and towers, which are already excluded under Note 1, are typically taller than structures such as utility poles and road signs. While some commenters raise concerns about possible water-tank contamination or driver distraction, these concerns do not present persuasive grounds to limit the categorical exclusion. Under sections 1.1306(a) and (b), collocations on structures such as water tanks and road signs are already categorically excluded from the obligation to file an EA unless they occur in the environmentally sensitive circumstances identified in sections 1.1307(a) or (b) (such as in wildlife preserves or flood plains). Nothing in the record leads the Commission to find that collocations in such sensitive areas that currently require EAs present greater risks of water tank contamination or driver distraction than collocations outside such areas. For similar reasons, the Commission is also not persuaded by Springfield's argument that extending the categorical exclusion to other structures without "qualifying delimitations for how DAS facilities are defined and where they may be installed may have unacceptable impacts on historic and other sensitive neighborhoods." Springfield offers no argument to explain why the NEPA categorical exclusion for collocations on utility poles should be more restrictive than the exclusion for collocations on buildings. Moreover, the Commission notes that the NEPA categorical exclusion the Commission addresses here does not exclude the proposed collocation from NHPA review for effects on historic properties or historic districts.

14. The Commission also notes that the exclusion from section 106 review in the Collocation Agreement is not limited to collocations on towers and buildings but also specifically includes collocations on other existing non-tower structures. Further, the U.S. Fish and Wildlife Service has found collocations on existing non-tower structures to be environmentally desirable with regard to impacts on birds, noting that they will in virtually every circumstance have less impact than would construction of a new tower.

15. Considering that collocating on these structures is necessary for broadband deployment, and in light of the environmental benefits of

encouraging collocation rather than the construction of new structures, the Commission finds that extending the categorical exclusion to other structures advances the public interest and meets its obligations under NEPA.

3. Categorical Exclusion of Deployments in Communications or Utilities Rights-of-Way

16. The Commission adopts a categorical exclusion for certain wireless facilities deployed in above-ground utility and communications rights-of-way. The Commission finds that such deployments will not individually or cumulatively have a significant effect on the environment. Given that DAS and small-cell nodes are often deployed in communications and utilities rights-of-way, the Commission concludes that the categorical exclusion will significantly advance the deployment of such facilities in a manner that safeguards environmental values.

17. Specifically, this categorical exclusion, which the Commission incorporates into its rules as section 1.1306(c), covers construction of wireless facilities, including deployments on new or replacement poles, only if: (1) The facility will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment; (2) the right-of-way is in active use for such designated purposes; and (3) the facility will not constitute a substantial increase in size over existing support structures that are located in the right-of-way within the vicinity of the proposed construction.

18. Although the Commission sought comment, in the *Infrastructure NPRM,* on whether to adopt a categorical exclusion that covered facilities also located within fifty feet of a communications or utility right-of-way, similar to the exclusion from section 106 review in section III.E. of the National Programmatic Agreement (NPA), the Commission limits its NEPA categorical exclusion to facilities deployed within existing communications and utility rights-of-way. Industry commenters that support applying the categorical exclusion to deployments within fifty feet of a right-of-way do not explain why the conclusion that deployments in the right-of-way will not have a significant effect on the human environment also apply outside of a right-of-way. Such ground would not necessarily be in active use for the designated purposes, and there could well be a greater potential outside the right-of-way for visual impact or new or significant ground disturbance that might have the potential for significant environmental effects. Finally, the record supports the conclusion that a categorical exclusion limited to deployments within the rights-of-way will address most of the deployments that would be covered by a categorical exclusion that also encompassed deployments nearby. Sprint, for example, emphasizes that "many DAS and small cells will be attached to existing structures and installed *within utility rights-of-way corridors.*"

19. For purposes of this categorical exclusion, the Commission defines a substantial increase in size in similar fashion to how it is defined in the Collocation Agreement. Thus, a deployment would result in a substantial increase in size if it would: (1) Exceed the height of existing support structures that are located in the right-of-way within the vicinity of the proposed construction by more than 10% or twenty feet, whichever is greater; (2) involve the installation of more than four new equipment cabinets or more than one new equipment shelter; (3) add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or (4) involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

20. The Commission notes that it has found a similar test appropriate in other contexts, including under its environmental rules. In particular, the first three criteria that the Commission specifies above to define the scope of the NEPA rights-of-way categorical exclusion also define the scope of the rights-of-way exclusion from historic preservation review under the NPA. Similarly, for purposes of Antenna Structure Registration, the Commission does not require environmental notice for a proposed tower replacement if, among other criteria, the deployment will not cause a substantial increase in size under the first three criteria of the Collocation Agreement, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property. Further, given that the industry now has almost a decade of experience applying this substantial increase test to construction in the rights-of-way under the NPA exclusion, and in light of the efficiencies to be gained from using a similar test here, the Commission finds the Collocation Agreement test, as modified here, to be appropriate in this context.

21. The Commission concludes that facilities subject to this categorical exclusion will not have a significant effect on the environment either individually or cumulatively, and that the categorical exclusion is appropriate. In the *NPA Report and Order,* 70 FR 556 Jan 4, 2005, the Commission found that excluding construction in utilities or communications rights-of-way from historic preservation review was warranted because, "[w]here such structures will be located near existing similar poles, . . . the likelihood of an incremental adverse impact on historic properties is minimal." The Commission finds that the potential incremental impacts on the environment are similarly minimal. Indeed, deploying these facilities should rarely involve more than minimal new ground disturbance, given that constructing the existing facilities likely disturbed the ground already and given the limitations on the size of any new poles. Moreover, any new pole will also cause minimal visual effect because by definition comparable structures must already exist in the vicinity of the new deployment in that right-of-way, and new poles covered by this categorical exclusion will not be substantially larger. Further, because such corridors are already employed for utility or communications uses, and the new deployments will be comparable in size to such existing uses, these additional uses are unlikely to trigger new NEPA concerns. Any such concerns would have already been addressed when such corridors were established, and the size of the deployments the Commission categorically excludes will not be substantial enough to raise the prospect of cumulative effects.

22. The Commission also finds support for these conclusions in the categorical exclusions adopted by other agencies, including FirstNet. In establishing its own categorical exclusions, FirstNet noted as part of its Administrative Record that its anticipated activities in constructing a nationwide public safety broadband network would primarily include "the installation of cables, cell towers, antenna collocations, buildings, and

power units," for example in connection with "Aerial Plant/Facilities," "Towers," "Collocations," "Power Units," and "Wireless Telecommunications Facilit[ies.]" It defined a "Wireless Telecommunications Facility" as "[a]n installation that sends and/or receives radio frequency signals, including directional, omni-directional, and parabolic antennas, structures, or towers (no more than 199 feet tall with no guy wires), to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment, and other structures, and the land or structure on which they are all situated." To address its NEPA obligations in connection with these activities, FirstNet adopted a number of categorical exclusions, including a categorical exclusion for "[c]onstruction of wireless telecommunications facilities involving no more than five acres (2 hectares) of physical disturbance at any single site." In adopting this categorical exclusion, FirstNet found that it was "supported by long-standing categorical exclusions and administrative records. In particular, these include categorical exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, and U.S. Department of Energy."

23. The Commission finds that FirstNet's anticipated activities encompass the construction of wireless facilities and support structures in the rights-of-way, and are therefore comparable to the wireless facility deployments the Commission addresses here. Further, the Commission notes that the categorical exclusions adopted by FirstNet are broader in scope than the categorical exclusion the Commission adopts for facilities deployed within existing rights-of-way. The Commission further notes that several other agencies have found it appropriate to categorically exclude other activities in existing rights-of-way unrelated to telecommunications.

24. The Commission finds that the categorical exclusion addresses some concerns raised by municipalities, and the Commission finds that other concerns they raise are not relevant to the environmental review process. First, the Commission notes that the categorical exclusion it adopts addresses Coconut Creek's objection to above-ground deployments in areas with no above-ground infrastructure because the Commission limits it to rights-of-way in active use for above-ground utility structures or communications towers. Second, concerns about hazards to vehicular or pedestrian traffic are logically inapplicable. As the Commission noted in connection with deployments on structures other than communications towers and buildings, such concerns do not currently warrant the submission of an EA. Rather, EAs are routinely required for deployments in communications or utility rights-of-way only if they meet one of the criteria specified in section 1.1307(a) or (b). Deployments in the communications or utility rights-of-way have never been identified in the Commission's rules as an environmentally sensitive category; indeed, the use of such rights-of-way for antenna deployments is environmentally desirable as compared to deployments in other areas. Finally, the Commission finds it unnecessary to adopt Tempe's proposed limitation, whether it is properly understood as a proposal to categorically exclude only one non-substantial increase at a particular site or in the same general vicinity, as such limitation has proven unnecessary in the context of historic preservation review. Having concluded that wireless facility deployments in communications or utility rights-of-way have no potentially significant environmental effects individually or cumulatively, the Commission finds no basis to limit the number of times such a categorical exclusion is used either at a particular site or in the same general vicinity. Indeed, the categorical exclusion encourages an environmentally responsible approach to deployment given that, as Note 1 and section 1.1306(c) make clear, the use of existing corridors "is an environmentally desirable alternative to the construction of new facilities." And, apart from environmental considerations, it would be contrary to the public interest to unnecessarily limit the application of this categorical exclusion.

25. To the extent that commenters propose extending the Note 1 aerial and underground corridor categorical exclusion to include components of telecommunications systems other than wires and cables, the Commission declines to do so. The Commission finds that the new section 1.1306(c) categorical exclusion the Commission adopts for deployments in communications or utilities rights-of-way will provide substantial and appropriate relief, and that the record in this proceeding does not justify a further expansion of the Note 1 categorical exclusion. Further, the existing Note 1 categorical exclusion for wires and cables in underground and aerial corridors is broader than the categorical exclusion for installations on existing buildings or antenna towers because it is not limited by section 1.1307(a)(4) (section 106 review) or 1.1307(b) (RF emissions), while collocations on existing buildings or towers are subject to these provisions. The Commission notes that even parties advocating an extension of the categorical exclusion for installation of wire and cable to additional telecommunications components concede that the extension should not apply to review of RF emissions exposure, as the existing categorical exclusion does. This distinction underscores that the existing categorical exclusion of cables and wires in aerial and underground corridors is based on an analysis that does not directly apply to other communications facilities.

B. NHPA Exclusions

1. Regulatory Background

26. Section 1.1307(a)(4) of the Commission's rules directs licensees and applicants, when determining whether a proposed action may affect historic properties, to follow the procedures in the rules of the Advisory Council on Historic Preservation (ACHP) as modified by the Collocation Agreement and the NPA, two programmatic agreements that took effect in 2001 and 2005, respectively. The Collocation Agreement excludes collocations on buildings or other non-tower structures outside of historic districts from routine section 106 review unless: (1) The structure is inside the boundary of a historic district, or it is within 250 feet of the boundary of a historic district and the antenna is visible from ground level within the historic district; (2) the structure is a designated National Historic Landmark or is listed in or eligible for listing in the National Register of Historic Places (National Register); (3) the structure is over 45 years old; or (4) the proposed collocation is the subject of a pending complaint alleging adverse effect on historic properties.

2. New Exclusions

27. In addition to seeking comment on whether the Commission should add an exclusion from section 106 review for DAS and small cells generally, the *Infrastructure NPRM* sought comment on whether to expand the existing categorical exclusion for collocations to cover collocations on structures subject to review solely because of the structure's age—that is, to deployments that are more than 45 years old but that are not (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a

designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties.

28. As an initial matter, the Commission finds no basis to hold categorically that small wireless facilities such as DAS and small cells are not Commission undertakings. While PCIA argues that small facilities could be distinguished, it does not identify any characteristic of such deployments that logically removes them from the analysis applicable to other facilities. Having determined that DAS and small cell deployments constitute Federal undertakings subject to section 106, the Commission considers its authority based on section 800.3(a)(1) of ACHP's rules to exclude such small facility deployments from section 106 review. It is clear under the terms of section 800.3(a)(1) that a Federal agency may determine that an undertaking is a type of activity that does not have the potential to cause effects to historic properties, assuming historic properties were present, in which case, "the agency has no further obligations under section 106 or this part [36 part 800, subpart B]."

29. The commenters that propose a general exclusion for DAS and small cell deployments assert that under any circumstances, such deployments have the potential for at most minimal effects, but they do not provide evidence to support such a broad conclusion. Moreover, several commenters, including several SHPOs, express concerns that such deployments do have the potential for effects in some cases. The Commission cannot find on this record that DAS and small-cell facilities qualify for a general exclusion, and the Commission therefore concludes, after consideration of the record, that any broad exclusion of such facilities must be implemented at this time through the development of a "program alternative" as defined under ACHP's rules. The Commission is committed to making deployment processes as efficient as possible without undermining the values that section 106 protects. The Commission staff are working on a program alternative that, through consultation with stakeholders, will ensure thorough consideration of all applicable interests, and will culminate in a system that eliminates additional bureaucratic processes for small facilities to the greatest extent possible consistent with the purpose and requirements of section 106.

30. The Commission further concludes that it is in the public interest to immediately adopt targeted exclusions from its section 106 review process that will apply to small facilities (and in some instances larger antennas) in many circumstances and thereby substantially advance the goal of facilities deployment. The Commission may exclude activities from section 106 review upon determining that they have no potential to cause effects to historic properties, assuming such properties are present. As discussed in detail below, the Commission finds two targeted circumstances that meet this test, one applicable to utility structures and the other to buildings and any other non-tower structures. Pursuant to these findings the Commission establishes two exclusions.

31. First, the Commission excludes collocations on existing utility structures, including utility poles and electric transmission towers, to the extent they are not already excluded in the Collocation Agreement, if: (1) The collocated antenna and associated equipment, when measured together with any other wireless deployment on the same structure, meet specified size limitations; and (2) the collocation will involve no new ground disturbance. Second, the Commission excludes collocations on a building or other non-tower structure, to the extent they are not already excluded in the Collocation Agreement, if: (1) There is an existing antenna on the building or other structure; (2) certain requirements of proximity to the existing antenna are met, depending on the visibility and size of the new deployment; (3) the new antenna will comply with all zoning conditions and historic preservation conditions on existing antennas that directly mitigate or prevent effects, such as camouflage or concealment requirements; and (4) the deployment will involve no new ground disturbance. With respect to both of these categories—utility structures and other non-tower structures—the Commission extends the exclusion only to deployments that are not (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, these exclusions address collocations on utility structures and other non-tower structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old. The Commission's action here is consistent with its determination in the NPA to apply a categorical exclusion based upon a structure's proximity to a property listed in or eligible to be listed in the National Register rather than whether a structure is over 45 years old regardless of eligibility. Consistent with section 800.3(a)(1), the Commission finds collocations meeting the conditions stated above have no potential to affect historic properties even if such properties are present. The Commission nevertheless finds it appropriate to limit the adopted exclusions. Given the sensitivities articulated in the record, particularly those from the National Conference of State Historic Preservation Officers (NCSHPO) and other individual commenting SHPOs, regarding deployments in historic districts or on historic properties, the Commission concludes that any broader exclusions require additional consultation and consideration, and are more appropriately addressed and developed through the program alternative process that Commission staff have already begun.

a. Collocations on Utility Structures

32. Pursuant to section 800.3(a)(1) of ACHP's rules, the Commission finds that antennas mounted on existing utility structures have no potential for effects on historic properties, assuming such properties are present, where the deployment meets the following conditions: (1) The antenna and any associated equipment, when measured together with any other wireless deployments on the same structure, meets specified size limitations; and (2) the deployment will involve no new ground disturbance. Notwithstanding this finding of no potential for effects even assuming historic properties are present, the Commission limits this exclusion (as described above) in light of the particular sensitivities related to historic properties and districts. Accordingly, this exclusion does not apply to deployments that are (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, this new targeted exclusion addresses collocations on utility structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old.

33. For purposes of this exclusion, the Commission defines utility structures as utility poles or electric transmission towers in active use by a "utility" as defined in section 224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting. Utility structures are, by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment. Their inherent characteristic thus incorporates the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services. Indeed, the Commission notes that other, often larger facilities are added to utility structures without review. For example, deployments of equipment supporting unlicensed wireless operations like Wi-Fi access occur without the Commission's section 106 review in any case, as do installations of non-communication facilities such as municipal traffic management equipment or power equipment such as electric distribution transformers. The addition of DAS or small cell facilities to these structures is therefore fully consistent with their existing use.

34. While the potential for effects from any deployments on utility structures is remote at most, the Commission concludes that the additional conditions described above support a finding that there is no such potential at all, assuming the presence of historic properties. First, the Commission limits the size of equipment covered by this exclusion. In doing so, the Commission draws on a PCIA proposal, which includes separate specific volumetric limits for antennas and for enclosures of associated equipment, but the Commission modifies the definition in certain respects to meet the standard in ACHP's rules that the undertaking must have no potential for effects. Specifically, the Commission provides that the deployment may include covered antenna enclosures no more than three cubic feet in volume per enclosure, or exposed antennas that fit within an imaginary enclosure of no more than three cubic feet in volume per imaginary enclosure, up to an aggregate maximum of six cubic feet. The Commission further provides that all equipment enclosures (or imaginary enclosures) associated with the collocation on any single structure, including all associated equipment but not including separate antennas or enclosures for antennas, must be limited cumulatively to seventeen cubic feet in volume. Further, collocations under this rule will be limited to collocations that cause no new ground disturbance.

35. Because the Commission finds that multiple collocations on a utility structure could have a cumulative impact, the Commission further applies the size limits defined above on a cumulative basis taking into account all pre-existing collocations. Specifically, if there is a pre-existing wireless deployment on the structure, and any of this pre-existing equipment would remain after the collocation, then the volume limits apply to the cumulative volume of such pre-existing equipment and the new collocated equipment. Thus, for the new equipment to come under this exclusion, the sum of the volume of all pre-existing associated equipment that remains after the collocation and the new equipment must be no greater than seventeen cubic feet, and the sum of the volume of all collocated antennas, including pre-existing antennas that remain after the collocation, must be no greater than six cubic feet. The Commission further provides that the cumulative limit of seventeen cubic feet for wireless equipment applies to all equipment on the ground associated with an antenna on the structure as well as associated equipment physically on the structure. Thus, application of the limit is the same regardless of whether equipment associated with a particular deployment is deployed on the ground next to a structure or on the structure itself. While some commenters oppose an exclusion based solely on PCIA's volumetric definition, the Commission finds that the Commission's exclusion addresses their concerns. For example, Tempe and the CA Local Governments express concern that PCIA's definition would allow an unlimited number of ground-mounted cabinets. The Commission's approach provides that associated ground equipment must also come within the volumetric limit for equipment enclosures, however, and therefore does not allow for unlimited ground-based equipment. Further, because the Commission applies the size limit on a cumulative basis, the Commission's exclusion directly addresses concerns that the PCIA definition would allow multiple collocations that cumulatively exceed the volumetric limits. Consistent with a proposal by PCIA, the Commission finds that certain equipment should be omitted from the calculation of the equipment volume, including: (1) Vertical cable runs for the connection of power and other services, the volume of which may be impractical to calculate and which should in any case have no effect on historic properties, consistent with the established exclusion of cable in pre-existing aerial or underground corridors; (2) ancillary equipment installed by other entities that is outside of the applicant's ownership or control, such as a power meter installed by the electric utility in connection with the wireless deployment, and (3) comparable equipment from pre-existing wireless deployments on the structure.

36. To meet the standard under section 800.3(a)(1), the Commission further imposes a requirement of no new ground disturbance, consistent for the most part with the NPA standard. Under the NPA standard, no new ground disturbance occurs so long as the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. The Commission finds that footings and anchorings should be included in this context to ensure no potential for effects. Therefore, the Commission's finding is limited to cases where there is no ground disturbance or the depth and width of previous disturbance exceeds the proposed construction depth and width, including the depth and width of any proposed footings or other anchoring mechanisms, by at least two feet. Some Tribal Nations have indicated that exclusions of small facilities from section 106 review might be reasonable if there is no excavation but that any ground disturbance would be cause for concern. The Commission finds that the restrictions it places on both of the Commission's new section 106 exclusions are sufficient to address this concern and ensure that there is no potential for effects on historic properties of Tribal religious or cultural significance. These restrictions include a strict requirement for both exclusions of no new ground disturbance and restrictions on the size and placement of equipment. Furthermore, both exclusions are limited to collocations (and therefore do not include new or replacement support structures).

37. Adoption of this exclusion will provide significant efficiencies in the section 106 process for DAS and small-cell deployments. Many DAS and small-cell installations involve collocations on utility structures. PCIA also estimates that excluding collocations on these wooden poles would increase the estimated number of excluded collocation structures by a factor of 10—which would dramatically advance wireless infrastructure deployment

without impacting historic preservation values.

b. Collocations on Buildings and Other Non-Tower Structures

38. Verizon proposes an exclusion for collocations on any building or other structure over 45 years old if: (1) The antenna will be added in the same location as other antennas previously deployed; (2) the height of the new antenna will not exceed the height of the existing antennas by more than three feet, or the new antenna will not be visible from the ground regardless of the height increase; and (3) the new antenna will comply with any requirements placed on the existing antennas by the State or local zoning authority or as a result of any previous historic preservation review process.

39. Section 800.3(a)(1) of ACHP rules authorizes an exclusion only where the undertaking does not have the potential to cause effects on historic properties, assuming such historic properties are present. While the Commission concludes that this standard allows for an exclusion applicable to many collocations on buildings and other structures that already house collocations, the Commission finds insufficient support in the record to adopt Verizon's proposed exclusion in its entirety. While Verizon states that adding an antenna to a building within the scope of its proposal would not have an effect that differs from those caused by existing antennas, the Commission must also consider the cumulative effects of additional deployments on the integrity of a historic property to the extent that they add incompatible visual elements. Further, while Verizon relies heavily on the requirement that any new deployment must meet the same conditions as the existing deployment, the Commission cannot assume that conditions placed on a previous deployment are always sufficient to prevent any effects, particularly in the event of multiple additional deployments. Indeed, it is often the case that mitigating conditions are designed to offset effects rather than eliminate or reduce them entirely. The Commission concludes that with certain modifications to Verizon's proposal, deployments covered by the test would have no potential for effects.

40. Specifically, the Commission finds that collocations on buildings or other non-tower structures over 45 years old will have no potential for effects on historic properties if: (1) There is an existing antenna on the building or structure; (2) one of the following criteria is met: (a) The new antenna will not be visible from any adjacent streets or surrounding public spaces and will be added in the same vicinity as a pre-existing antenna; (b) the new antenna will be visible from adjacent streets or surrounding public spaces, provided that (i) it will replace a pre-existing antenna, (ii) the new antenna will be located in the same vicinity as the pre-existing antenna, (iii) the new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna, (iv) the new antenna will not be more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and (v) no new equipment cabinets will be visible from the adjacent streets or surrounding public spaces; or (c) the new antenna will be visible from adjacent streets or surrounding public spaces, provided that (i) it will be located in the same vicinity as a pre-existing antenna, (ii) the new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna, (iii) the pre-existing antenna was not deployed pursuant to the exclusion based on this finding, (iv) the new antenna will not be more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and (v) no new equipment cabinets will be visible from the adjacent streets or surrounding public spaces; (3) the new antenna will comply with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements; and (4) the deployment of the new antenna will involve no new ground disturbance. Notwithstanding its finding of no potential for effects even assuming historic properties are present, the Commission limits this exclusion in light of many parties' particular sensitivities related to historic properties and districts. As with the exclusion for collocations on utility poles, this exclusion does not apply to deployments that are (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, this new targeted exclusion addresses collocations on non-tower structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old.

41. Consistent with the Verizon proposal, the Commission requires that there must already be an antenna on the building or other structure and that the new antenna be in the same vicinity as the pre-existing antenna. For this purpose, a non-visible new antenna is in the "same vicinity" as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface, and a visible new antenna is in the "same vicinity" as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within 10 feet of the centerpoint of the pre-existing antenna. Combined with the other criteria discussed below, this requirement is designed to assure that a new antenna will not have any incremental effect on historic properties, assuming they exist, as there will be no additional incompatible elements.

42. In addition to Verizon's proposed requirement that the deployment be in the same vicinity as an existing antenna, the Commission also adopts a condition of no-visibility from adjoining streets or any surrounding public spaces, with two narrow exceptions. For the general case, the Commission's no-effects finding will apply only to a new antenna that is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna. In adopting this standard, the Commission is informed by the record and also in part by General Services Administration (GSA) Preservation Note 41, entitled "Administrative Guide for Submitting Antenna Projects for External Review." Preservation Note 41 recommends that an agency may recommend a finding of no effect where the antenna will not be visible from the surrounding public space or streets and the antenna will not harm original historic materials or their replacements-in-kind. The Commission notes that, in addition to the measures ensuring that there are no incremental visual effects from covered facilities, the Commission's finding of no effects in this case is also implicitly based on a requirement, as the GSA Note recommends, that the deployment will not harm original historic materials. Even assuming a building is historic, however, as required by section 800.3(a)(1), this "no harm" criterion would be satisfied by ensuring that any anchoring on the building was not performed on the historic materials of the property or their replacements-in-kind. It is therefore unnecessary to expressly impose a "no harm" condition

in this case, as the exclusion the Commission adopts does not apply to historic properties. Necessarily, any anchoring of deployments subject to the exclusion will not be in any historic materials of the property. The Commission also notes that, under the criteria the Commission adopts, the deployment will occur only where another antenna has already been reviewed under section 106 and approved for deployment in the same vicinity, and any conditions imposed on that prior deployment to minimize or eliminate historic impact, including specifications of where, how, or under what conditions to construct, are part of the Commission's "no effect" finding and would apply as a condition of the exclusion.

43. The Commission makes a narrow exception to the no-visibility requirement where the new antenna would replace an existing antenna in the same vicinity and where the addition of the new antenna would not constitute a substantial increase in size over the replaced antenna. In this situation, no additional incompatible visual element is being added, as one antenna is a substitution for the other. The Commission permits an insubstantial increase in size in this situation. For purposes of this criterion, the replacement facility would represent a substantial increase in size if it is more than three feet larger in height or width (including all protuberances) than the existing facility, or if it involves any new equipment cabinets that are visible from the street or adjacent public spaces. The Commission declines to adopt the NPA definition of "substantial increase," which allows greater increases in height or width in some cases, because it applies to towers, not to antenna deployments, and it is therefore overbroad with respect to the replacement of an existing antenna. The Commission further notes that no one has objected to Verizon's proposed limit on increases of three feet in this context. Also, since the Commission is required to ensure no potential for effects on historic properties assuming such properties are present, the Commission finds it appropriate to adopt a more stringent test than in the context of a program alternative. For these reasons, any increase in the number of equipment cabinets that are visible from the street or adjacent public spaces in connection with a replacement antenna constitutes a substantial increase in size. In combination with the requirements that the new antenna be within 10 feet of the replaced antenna and that the pre-existing antenna be visible from any ground perspective that would afford a view of the new antenna these requirements ensure that the replacement deployment will not have an additional visual effect.

44. Under its second partial exception to the no-visibility requirement, the new antenna may be in addition to, rather than a replacement of, a pre-existing antenna, but must meet the other requirements applicable to replacement antennas. The Commission requires that the pre-existing antenna itself not have been deployed pursuant to this exception. While this exception will allow an additional visual element to be added, the element is again limited to a comparably-sized antenna in the same viewshed (and again does not include any new visible associated equipment). Further, because the pre-existing antenna may not itself have been deployed pursuant to this no-effects finding, deployments cannot be daisy-chained across the structure, which might present a potential for cumulative effects.

45. Consistent with the Verizon proposal, the Commission requires that the new antenna comply with all zoning and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage, concealment, or painting requirements. The Commission does not extend that requirement to conditions that have no direct relationship to the facility's effect or how the facility is deployed, such as a condition that requires the facility owner to pay for historic site information signs or other conditions intended to offset harms rather than prevent them. Its goal is to assure that any new deployments have no effects on historic properties. Payments or other forms of mitigation applied to antennas previously deployed on the building or structure that were intended to compensate for any adverse effect on historic properties caused by those antennas but were not intended to prevent that effect from occurring do not advance its goal of assuring no effects from such collocations. The Commission does not require that the new antenna comply with such conditions.

46. As with the exclusion the Commission adopts for collocations on utility structures, the Commission imposes a strict requirement of no new ground disturbance. Thus, the exclusion will permit ground disturbance only where the depth and width of previous disturbance exceeds the proposed construction depth and width (including footings and other anchoring mechanisms) by at least two feet.

3. Antennas Mounted in the Interior of Buildings

47. The Collocation Agreement provides that "[a]n antenna may be mounted on a building" without section 106 review except under certain circumstances, *e.g.*, the building is a historic property or over 45 years of age. The Commission clarifies that section V of the Collocation Agreement covers collocations in buildings' interiors. Given the limited scope of the exclusion of collocations on buildings under the Collocation Agreement (*e.g.*, the building may not itself be listed in or eligible for listing in the National Register or in or near a historic district), there is no reason to distinguish interior collocations from exterior collocations for purposes of assessing impacts on historic properties.

II. Environmental Notification Exemption for Registration of Temporary Towers

48. If pre-construction notice of a tower to the FAA is required, the Commission's rules also require the tower owner to register the antenna structure in the Commission's Antenna Structure Registration (ASR) system, prior to construction or alteration. To fulfill responsibilities under NEPA, the Commission requires owners of proposed towers, including temporary towers that must be registered in the ASR system to provide local and national notice prior to submitting a completed ASR application. Typically, the ASR notice process takes approximately 40 days.

49. On May 15, 2013, in the *Environmental Notification Waiver Order* (*Waiver Order*), the Commission granted an interim waiver of the ASR environmental notification requirements for temporary towers meeting certain criteria. The Commission provided that the interim waiver would remain in effect pending the completion of a rulemaking to address the issues raised in the petition. In the *Infrastructure NPRM*, the Commission proposed to adopt a permanent exemption from the ASR pre-construction environmental notification requirements consistent with the interim exemption granted in the *Waiver Order*.

50. The Commission now adopts a permanent exemption from its ASR environmental notification requirements for temporary towers that (1) will be in place for no more than 60 days; (2) require notice of construction to the FAA; (3) do not require marking or lighting under FAA regulations; (4) will be less than 200 feet in height; and (5) will either involve no excavation or

involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. The Commission finds that establishing the proposed exemption is consistent with its obligations under NEPA and the Council on Environmental Quality (CEQ) regulations, and will serve the public interest.

51. As the Commission observed in the *Infrastructure NPRM*, the ASR notice process takes approximately 40 days and can take as long as two months. The record confirms that absent the exemption, situations would arise where there is insufficient time to complete this process before a temporary tower must be deployed to meet near-term demand. The record, as well as the Commission's own experience in administering the environmental notice rule, shows that a substantial number of temporary towers that would qualify for the exemption require registration. The Commission finds that absent an exemption, application of the ASR notice process to these temporary towers will interfere with the ability of service providers to meet important short term coverage and capacity needs.

52. At the same time, the benefits of environmental notice are limited in the case of temporary towers meeting these criteria. The purpose of environmental notice is to facilitate public discourse regarding towers that may have a significant environmental impact. The Commission finds that towers meeting the specified criteria are highly unlikely to have significant environmental effects due to their short duration, limited height, absence of marking or lighting, and minimal to no excavation. As the Commission explained in the *Waiver Order*, its experience in administering the ASR public notice process confirms that antenna structures meeting the waiver criteria rarely if ever generate public comment regarding potentially significant environmental effects or are determined to require further environmental processing. In particular, since the *Waiver Order* has been in place, the Commission has seen no evidence that a temporary tower exempted from notification by the waiver has had or may have had a significant environmental effect. The Commission finds that the limited benefits of notice in these cases do not outweigh the potential detriment to the public interest of prohibiting the deployment of towers in circumstances in which the notification process cannot be completed quickly enough to address short-term deployment needs. Further, having concluded that pre-construction environmental notification is categorically unnecessary in the situations addressed here, the Commission finds it would be inefficient to require the filing and adjudication of individual waiver requests for these temporary towers. The Commission concludes that adoption of the exemption is warranted.

53. The Commission also adopts the proposal to require no post-construction environmental notice for temporary towers that qualify for the exemption. Ordinarily, when pre-construction notice is waived due to an emergency situation, the Commission requires environmental notification shortly after construction because such a deployment may be for a lengthy or indefinite period of time. The Commission finds that requiring post-construction notification for towers intended to be in place for the limited duration covered by the exemption is not in the public interest as the exempted period is likely to be over or nearly over by the time the notice period ends. Additionally, the Commission notes again that it has rarely seen temporary antenna structures generate public comment regarding potentially significant environmental effects. The Commission further notes that of the many commenters supporting an exemption, none opposed its proposal to exempt qualifying temporary towers from post-construction environmental notification.

54. The Commission finds that the objections to the proposed exemption raised by Lee County, Tempe, and Orange County are misplaced. They express concerns that a temporary towers exemption would eliminate local review (including local environmental review) and antenna structure registration requirements. The exemption the Commission adopts does neither of these things. First, the temporary towers measure does not exempt any deployment from any otherwise applicable requirement under the Commission's rules to provide notice to the FAA, to obtain an FAA "no-hazard" determination, or to complete antenna structure registration. In raising its concern, Orange County notes that it "operates . . . a large regional airport that has recently expanded through construction of a third terminal." The Commission finds the exemption poses no threat to air safety. As noted, deployments remains subject to all applicable requirements to notify the FAA and register the structure in the ASR system. If the Commission or the FAA requires either painting or lighting, *i.e.*, because of a potential threat to aviation, the exemption does not apply. Nor does the exemption impact any local requirements. Further, the Commission provides, as proposed in the *Infrastructure NPRM*, that towers eligible for the notification exemption are still required to comply with the Commission's other NEPA requirements, including filing an EA in any of the environmentally sensitive circumstances identified by the rules. The Commission further provides that if an applicant determines that it needs to complete an EA for a temporary tower otherwise eligible for the exemption, or if the relevant bureau makes this determination pursuant to section 1.1307(c) or (d) of the Commission's rules, the application will not be exempt from the environmental notice requirement.

55. The Commission concludes that making the exemption available for towers less than 200 feet above ground level is appropriate and adequate to ensure that the exemption serves the public interest both by minimizing potential significant environmental effects and by enabling wireless providers to more effectively respond to large or unforeseen spikes in demand for service. CTIA indicates that carriers deploy temporary towers more than 150 feet tall to replace damaged towers of similar height, and that having to use shorter towers to stand in for damaged towers may reduce coverage and thereby limit the availability of service during emergencies. The Commission agrees with CTIA that reducing the maximum tower height could undermine the intended purpose of the exemption. Further, the proposed limit of less than 200 feet will allow appropriate flexibility for taller temporary models, as they become available.

56. The Commission concludes that 60 days is an appropriate time limit for the deployment of towers under this exemption. This time limit has substantial support in the record, and the Commission finds that 60 days strikes the proper balance between making this exemption a useful and effective tool for facilitating urgently needed short term communications deployments and facilitating public involvement in Commission decisions that may affect the environment. The brief duration of the covered deployments renders post-construction notification unnecessary in the public interest because the deployment will be removed by the time a post-construction notice period is complete or shortly thereafter. As the intended deployment period grows, however, the applicability of that reasoning erodes. For emergency deployments that may last up to six months or even longer, post-

construction notice will generally be warranted, as the Commission has indicated previously. Thus, the Commission finds that the existing procedure—*i.e.*, site-specific waivers that are generally conditioned on post-construction notice—remains appropriate for emergency towers that will be deployed for longer periods than those covered by the narrow exemption the Commission establishes in this proceeding.

57. The Commission declines to define consequences or to adopt special enforcement mechanisms for misuse of the exemption, as proposed by some commenters. The Commission agrees with Springfield, however, that the Commission should adopt a measure to prevent the use of consecutive deployments under the exemption to effectively exceed the time limit. The Commission therefore requires that at least 30 days must pass following the removal of one exempted temporary tower before the same applicant may rely on the exemption for another temporary tower covering substantially the same service area. While AT&T argues that the Commission should not adopt measures to prevent "speculative abuses," the Commission concludes that this narrow limitation on the consecutive use of the exemption will help to ensure that it applies only to deployments of brief duration, as intended. Further, the Commission is not persuaded by CTIA's argument that such a restriction would interfere with a carrier's flexibility to respond to unforeseen events. The restriction places no limit on the number of exempt towers that can be deployed at any one time to cover a larger combined service area. The Commission also notes that its rule provides for extensions of the 60-day period in appropriate cases, which should further ensure that applicants have sufficient flexibility to respond to unforeseen events.

58. The Commission further clarifies that under appropriate conditions, such as natural disasters or national emergencies, the relevant bureau may grant waivers of this limitation applicable to defined geographic regions and periods. In addition, a party subject to this limitation at a particular site may still request a site-specific waiver of the notice requirements for a subsequent temporary deployment at that site.

59. To implement the new temporary towers exemption, Commission staff will modify FCC Form 854. The Commission notes that the modification of the form is subject to approval by the Office of Management and Budget (OMB). To ensure clarity, the Commission provides that the exemption will take effect only when the Wireless Telecommunications Bureau issues a Public Notice announcing OMB's approval. The Commission further provides that, until the new exemption is effective, the interim waiver of notification requirements for temporary towers remains available.

III. Implementation of Section 6409(a)

A. Background

60. Congress adopted section 6409 in 2012 as a provision of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, which is more commonly known as the Spectrum Act. Section 6409(a), entitled "Facility Modifications," has three provisions. Subsection (a)(1) provides that "[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Subsection (a)(2) defines the term "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment. Subsection (a)(3) provides that "[n]othing in paragraph (a) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969." Aside from the definition of "eligible facilities request," section 6409(a) does not define any of its terms. Similarly, neither the definitional section of the Spectrum Act nor that of the Communications Act contains definitions of the section 6409(a) terms. In the *Infrastructure NPRM*, the Commission sought comment on whether to address the provision more conclusively and comprehensively. The Commission found that it would serve the public interest to seek comment on implementing rules to define terms that the provision left undefined, and to fill in other interstices that may serve to delay the intended benefits of section 6409(a).

B. Discussion

61. After reviewing the voluminous record in this proceeding, the Commission decides to adopt rules clarifying the requirements of section 6409(a), and implementing and enforcing these requirements, in order to prevent delay and confusion in such implementation. As the Commission noted in the *Infrastructure NPRM*, collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services. The Commission agrees with industry commenters that clarifying the terms in section 6409 will eliminate ambiguities in interpretation and thus facilitate the zoning process for collocations and other modifications to existing towers and base stations. Although these issues could be addressed over time through judicial decisions, the Commission concludes that addressing them now in a comprehensive and uniform manner will ensure that the numerous and significant disagreements over the provision do not delay its intended benefits.

62. The record demonstrates very substantial differences in the views advanced by local government and wireless industry commenters on a wide range of interpretive issues under the provision. While many localities recommend that the Commission defer to best practices to be developed on a collaborative basis, the Commission finds that there has been little progress in that effort since enactment of section 6409(a) well over two years ago. While the Commission generally encourages the development of voluntary best practices, the Commission is also concerned that voluntary best practices, on their own, may not effectively resolve many of the interpretive disputes or ensure uniform application of the law in this instance. In light of these disputes, the Commission takes this opportunity to provide additional certainty to parties.

63. *Authority.* The Commission finds that it has authority under section 6003 of the Spectrum Act to adopt rules to clarify the terms in section 6409(a) and to establish procedures for effectuating its requirements. The Commission also has broad authority to "take any action necessary to assist [FirstNet] in effectuating its duties and responsibilities" to construct and operate a nationwide public safety broadband network. The rules the Commission adopts reflect the authority conferred by these provisions, as they will facilitate and expedite infrastructure deployment in qualifying cases and thus advance wireless broadband deployment by commercial entities as well as FirstNet.

1. Definition of Terms in Section 6409(a)

a. Scope of Covered Services

64. The Commission first addresses the scope of wireless services to which the provision applies through the definitions of both "transmission equipment" and "wireless tower or base station." After considering the arguments in the record, the Commission concludes that section 6409(a) applies both to towers and base stations and to transmission equipment used in connection with any Commission-authorized wireless communications service. The Commission finds strong support in the record for this interpretation. With respect to towers and base stations, the Commission concludes that this interpretation is warranted given Congress's selection of the broader term "wireless" in section 6409(a) rather than the narrow term "personal wireless service" it previously used in section 332(c)(7), as well as Congress's express intent that the provisions of the Spectrum Act "advance wireless broadband service," promoting "billions of dollars in private investment," and further the deployment of FirstNet. The Commission finds that interpreting "wireless" in the narrow manner that some municipal commenters suggest would substantially undermine the goal of advancing the deployment of broadband facilities and services, and that interpreting section 6409(a) to facilitate collocation opportunities on a broad range of suitable structures will far better contribute to meeting these goals, and is particularly important to further the deployment of FirstNet. The Spectrum Act directs the FirstNet authority, in carrying out its duty to deploy and operate a nationwide public safety broadband network, to "enter into agreements to utilize, to the maximum extent economically desirable, existing . . . commercial or other communications infrastructure; and . . . Federal, State, tribal, or local infrastructure." For all of these reasons, the Commission finds it appropriate to interpret section 6409(a) as applying to collocations on infrastructure that supports equipment used for all Commission-licensed or authorized wireless transmissions.

65. The Commission is not persuaded that Congress's use of the term "base station" implies that the provision applies only to mobile service. As noted in the *Infrastructure NPRM*, the Commission's rules define "base station" as a feature of a mobile communications network, and the term has commonly been used in that context. It is important, however, to interpret "base station" in the context of Congress's intention to advance wireless broadband service generally, including both mobile and fixed broadband services. The Commission notes, for example, that the Spectrum Act directs the Commission to license the new commercial wireless services employing H Block, AWS–3, and repurposed television broadcast spectrum under "flexible-use service rules"—*i.e.*, for fixed as well as mobile use. Moreover, in the context of wireless broadband service generally, the term "base station" describes fixed stations that provide fixed wireless service to users as well as those that provide mobile wireless service. Indeed, this is particularly true with regard to Long Term Evolution (LTE), in which base stations can support both fixed and mobile service. The Commission finds that, in the context of section 6409(a), the term "base station" encompasses both mobile and fixed services.

66. The Commission is also not persuaded that it should exclude "broadcast" from the scope of section 6409(a), both with respect to "wireless" towers and base stations and with respect to transmission equipment. The Commission acknowledges that the term "wireless providers" appears in other sections of the Spectrum Act that do not encompass broadcast services. The Commission does not agree, however, that use of the word "wireless" in section 6409's reference to a "tower or base station" can be understood without reference to context. The Commission interprets the term "wireless" as used in section 6409(a) in light of the purpose of this provision in particular and the larger purposes of the Spectrum Act as a whole. The Commission finds that Congress intended the provision to facilitate collocation in order to advance the deployment of commercial and public safety broadband services, including the deployment of the FirstNet network. The Commission agrees with NAB that including broadcast towers significantly advances this purpose by "supporting the approximately 25,000 broadcast towers as collocation platforms." The Commission notes that a variety of industry and municipal commenters likewise support the inclusion of broadcast towers for similar reasons. Finally, the Commission observes that this approach is consistent with the Collocation Agreement and the NPA, both of which define "tower" to include broadcast towers. These agreements address "wireless" communications facilities and collocation for any "communications" purposes. They extend to any "tower" built for the sole or primary purpose of supporting any "FCC-licensed" facilities. The Commission finds these references particularly persuasive in ascertaining congressional intent, since section 6409(a) expressly references the Commission's continuing obligations to comply with NEPA and NHPA, which form the basis for these agreements.

67. The Commission further concludes that a broad interpretation of "transmission equipment" is similarly appropriate in light of the purposes of section 6409(a) in particular and the Spectrum Act more generally. The statute's Conference Report expresses Congress's intention to advance wireless broadband service generally, and as PCIA states, a broad definition of this term will ensure coverage for all wireless broadband services, including future services not yet contemplated. Defining "transmission equipment" broadly will facilitate the deployment of wireless broadband networks and will "minimize the need to continually redefine the term as technology and applications evolve." The Commission also notes that a broad definition reflects Congress's definition of a comparable term in the context of directly related provisions in the same statute; in section 6408, the immediately preceding provision addressing uses of adjacent spectrum, Congress defined the term "transmission system" broadly to include "any telecommunications, broadcast, satellite, commercial mobile service, or other communications system that employs radio spectrum."

68. The Commission disagrees with commenters who contend that including broadcast equipment within covered transmission equipment does not advance the goals of the Spectrum Act. While broadcast equipment does not itself transmit wireless broadband signals, its efficient collocation pursuant to section 6409(a) will expedite and minimize the costs of the relocation of broadcast television licensees that are reassigned to new channels in order to clear the spectrum that will be offered for broadband services through the incentive auction, as mandated by the Spectrum Act. The Commission concludes that inclusion of broadcast service equipment in the scope of transmission equipment covered by the provision furthers the goals of the legislation and will contribute in particular to the success of the post-incentive auction transition of television broadcast stations to their new channels. The Commission notes that the language of section 6409(a) is broader than that used in section

332(c)(7), and it is reasonable to construe it in a manner that does not differentiate among various Commission-regulated services, particularly in the context of mandating approval of facilities that do not result in any substantial increase in physical dimensions.

69. The Commission further rejects arguments that Congress intended these terms to be restricted to equipment used in connection with personal wireless services and public safety services. The Communications Act and the Spectrum Act already define those narrower terms, and Congress chose not to employ them in section 6409(a), determining instead to use the broader term, "wireless." The legislative history supports the conclusion that Congress intended to employ broader language. In the Conference Report, Congress emphasized that a primary goal of the Spectrum Act was to "advance wireless broadband service," which would "promot[e] billions of dollars in private investment, and creat[e] tens of thousands of jobs." In light of its clear intent to advance wireless broadband deployment through enactment of section 6409(a), the Commission finds it implausible that Congress meant to exclude facilities used for such services.

b. Transmission Equipment

70. The Commission adopts the proposal in the *Infrastructure NPRM* to define "transmission equipment" to encompass antennas and other equipment associated with and necessary to their operation, including power supply cables and backup power equipment. The Commission finds that this definition reflects Congress's intent to facilitate the review of collocations and minor modifications, and it recognizes that Congress used the broad term "transmission equipment" without qualifications that would logically limit its scope.

71. The Commission is further persuaded by wireless industry commenters that power supplies, including backup power, are a critical component of wireless broadband deployment and that they are necessary to ensure network resiliency. Indeed, including backup power equipment within the scope of "transmission equipment" under section 6409(a) is consistent with Congress's directive to the FirstNet Authority to "ensure the . . . resiliency of the network." Tempe's assertion that backup power is not technically "necessary" because transmission equipment can operate without it is unpersuasive. Backup power is certainly necessary to operations during those periods when primary power is intermittent or unavailable. The Commission also concludes that "transmission equipment" should be interpreted consistent with the term "antenna" in the NPA and, given that the NPA term encompasses "power sources" without limitation, the Commission finds that "transmission equipment" includes backup power sources. Finally, while the Commission recognizes the concerns raised by local government commenters regarding the potential hazards of backup power generators, the Commission finds that these concerns are fully addressed in the standards applicable to collocation applications discussed below.

72. The Commission defines "transmission equipment" under section 6409(a) as any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply. This definition includes equipment used in any technological configuration associated with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband.

c. Existing Wireless Tower or Base Station

73. The Commission adopts the definitions of "tower" and "base station" proposed in the *Infrastructure NPRM* with certain modifications and clarifications, in order to give independent meaning to both of these statutory terms, and consistent with Congress's intent to promote the deployment of wireless broadband services. First, the Commission concludes that the term "tower" is intended to reflect the meaning of that term as it is used in the Collocation Agreement. The Commission defines "tower" to include any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities.

74. As proposed in the *Infrastructure NPRM*, the Commission interprets "base station" to extend the scope of the provision to certain support structures other than towers. Specifically, the Commission defines that term as the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network. The Commission finds that the term includes any equipment associated with wireless communications service including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supply, and comparable equipment. The Commission notes that this definition reflects the types of equipment included in its definition of "transmission equipment," and that the record generally supports this approach. For example, DC argues that the Commission should define a base station as "generally consist[ing] of radio transceivers, antennae, coaxial cable, a regular and backup power supply, and other associated electronics." TIA concurs that the term "base station" encompasses transmission equipment, including antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup power equipment.

75. The Commission further finds, consistent with the Commission's proposal, that the term "existing . . . base station" includes a structure that, at the time of the application, supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a "base station" as defined above, even if the structure was not built for the sole or primary purpose of providing such support. As the Commission noted in the *Infrastructure NPRM*, while "tower" is defined in the Collocation Agreement and the NPA to include only those structures built for the sole or primary purpose of supporting wireless communications equipment, the term "base station" is not used in these agreements. The Commission rejects the proposal to define a "base station" to include any structure that is merely capable of supporting wireless transmission equipment, whether or not it is providing such support at the time of the application. The Commission agrees with municipalities' comments that by using the term "existing," section 6409(a) preserves local government authority to initially determine what types of structures are appropriate for supporting wireless transmission equipment if the structures were not built (and thus were not previously approved) for the sole or primary purpose of supporting such equipment. Some wireless industry commenters also support its interpretation that,

while a tower that was built for the primary purpose of housing or supporting communications facilities should be considered "existing" even if it does not currently host wireless equipment, other structures should be considered "existing" only if they support or house wireless equipment at the time the application is filed.

76. The Commission finds that the alternative definitions proposed by many municipalities are unpersuasive. First, the Commission rejects arguments that a "base station" includes only the transmission system equipment, not the structure that supports it. This reading conflicts with the full text of the provision, which plainly contemplates collocations on a base station as well as a tower. Section 6409(a) defines an "eligible facilities request" as a request to modify an existing wireless tower or *base station* by collocating on it (among other modifications). This statutory structure precludes the Commission from limiting the term "base station" to transmission equipment; collocating on base stations, which the statute envisions, would be conceptually impossible unless the structure is part of the definition as well. The Commission further disagrees that defining "base station" to include supporting structures will deprive "tower" of all independent meaning. The Commission interprets "base station" not to include wireless deployments on towers. Further, the Commission interprets "tower" to include all structures built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, and their associated facilities, regardless of whether they currently support base station equipment at the time the application is filed. Thus, "tower" denotes a structure that is covered under section 6409(a) by virtue of its construction. In contrast, a "base station" includes a structure that is not a wireless tower only where it already supports or houses such equipment.

77. The Commission is also not persuaded by arguments that "base station" refers only to the equipment compound associated with a tower and the equipment located upon it. First, no commenters presented evidence that "base station" is more commonly understood to mean an equipment compound as opposed to the broader definition of all equipment associated with transmission and reception and its supporting structures. Furthermore, the Collocation Agreement's definition of "tower," which the Commission adopts in the R&O, treats equipment compounds as part of the associated towers for purposes of collocations; if towers include their equipment compounds, then defining base stations as equipment compounds alone would render the term superfluous. The Commission also notes that none of the State statutes and regulations implementing section 6409(a) has limited its scope to equipment and structures associated with towers. In addition, the Commission agrees with commenters who argue that limiting the definition of "base station" (and thus the scope of section 6409(a)) to structures and equipment associated with towers would compromise the core policy goal of bringing greater efficiency to the process for collocations. Other structures are increasingly important to the deployment of wireless communications infrastructure; omitting them from the scope of section 6409(a) would mean the statute's efficiencies would not extend to many if not most wireless collocations, and would counterproductively exclude virtually all of the small cell collocations that have the least impact on local land use.

78. Some commenters arguing that section 6409(a) covers no structures other than those associated with towers point to the Conference Report, which, in describing the equivalent provision in the House bill, states that the provision "would require approval of requests for modification of cell towers." The Commission does not find this ambiguous statement sufficient to overcome the language of the statute as enacted, which refers to "modification of an existing wireless tower *or base station.*" Moreover, this statement from the report does not expressly state a limitation on the provision, and thus may reasonably be read as a simplified reference to towers as an important application of its mandate. The Commission does not view this language as indicating Congress's intention that the provision encompasses only modifications of structures that qualify as wireless towers.

79. The Commission thus adopts the proposed definition of "base station" to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station at the time the application is filed. The Commission also finds that "base station" encompasses the relevant equipment in any technological configuration, including DAS and small cells. The Commission disagrees with municipalities that argue that "base station" should not include DAS or small cells. As the record supports, there is no statutory language limiting the term "base station" in this manner. The definition is sufficiently flexible to encompass, as appropriate to section 6409(a)'s intent and purpose, future as well as current base station technologies and technological configurations, using either licensed or unlicensed spectrum.

80. While the Commission does not accept municipal arguments to limit section 6409(a) to equipment or structures associated with towers, the Commission rejects industry arguments that section 6409(a) should apply more broadly to include certain structures that neither were built for the purpose of housing wireless equipment nor have base station equipment deployed upon them. The Commission finds no persuasive basis to interpret the statutory provision so broadly. The Commission agrees with Alexandria et al. that the scope of section 6409(a) is different from that of the Collocation Agreement, as the statutory provision clearly applies only to collocations on an existing "wireless tower or base station" rather than any existing "tower or structure." Further, interpreting "tower" to include structures "similar to a tower" would be contrary to the very Collocation Agreement to which these commenters point, which defines "tower" in the narrower fashion that the Commission adopts. The Commission also agrees with municipalities as a policy matter that local governments should retain authority to make the initial determination (subject to the constraints of section 332(c)(7)) of which non-tower structures are appropriate for supporting wireless transmission equipment; its interpretations of "tower" and "base station" preserve that authority.

81. Finally, the Commission agrees with Fairfax that the term "existing" requires that wireless towers or base stations have been reviewed and approved under the applicable local zoning or siting process or that the deployment of existing transmission equipment on the structure received another form of affirmative State or local regulatory approval (*e.g.*, authorization from a State public utility commission). Thus, if a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval; the governing authority is not obligated to grant a collocation application under section 6409(a). The Commission further clarifies that a wireless tower that does not have a permit because it was not in a zoned area when it was built, but was lawfully constructed, is an "existing" tower. The Commission finds that its

interpretation of "existing" is consistent with the purposes of section 6409(a) to facilitate deployments that are unlikely to conflict with local land use policies and preserve State and local authority to review proposals that may have impacts. First, it ensures that a facility that was deployed unlawfully does not trigger a municipality's obligation to approve modification requests under section 6409(a). Further, it guarantees that the structure has already been the subject of State or local review. This interpretation should also minimize incentives for governing authorities to increase zoning or other regulatory review in cases where minimally intrusive deployments are currently permitted without review. For example, under this interpretation, a homeowner's deployment of a femtocell that is not subject to any zoning or other regulatory requirements will not constitute a base station deployment that triggers obligations to allow deployments of other types of facilities at that location under section 6409(a). By thus preserving State and local authority to review the first base station deployment that brings any non-tower structure within the scope of section 6409(a), the Commission ensures that subsequent collocations of additional transmission equipment on that structure will be consistent with congressional intent that deployments subject to section 6409(a) will not pose a threat of harm to local land use values.

82. On balance, the Commission finds that the foregoing definitions are consistent with congressional intent to foster collocation on various types of structures, while addressing municipalities' valid interest in preserving their authority to determine which structures are suitable for wireless deployment, and under what conditions.

d. Collocation, Replacement, Removal, Modification

83. The Commission concludes again that it is appropriate to look to the Collocation Agreement for guidance on the meaning of analogous terms, particularly in light of section 6409(a)(3)'s specific recognition of the Commission's obligations under NHPA and NEPA. As proposed in the *Infrastructure NPRM* and supported by the record, the Commission concludes that the definition of "collocation" for purposes of section 6409(a) should be consistent with its definition in the Collocation Agreement. The Commission defines "collocation" under section 6409(a) as "the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." The term "eligible support structure" means any structure that falls within the definitions of "tower" or "base station." Consistent with the language of section 6409(a)(2)(A)–(C), the Commission also finds that a "modification" of a "wireless tower or base station" includes collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure.

84. The Commission disagrees with municipal commenters who argue that collocations are limited to mounting equipment on structures that already have transmission equipment on them. That limitation is not consistent with the Collocation Agreement's definition of "collocation," and would not serve any reasonable purpose as applied to towers built for the purpose of supporting transmission equipment. Nevertheless, the Commission observes that the Commission's approach leads to the same result in the case of "base stations;" since its definition of that term includes only structures that already support or house base station equipment, section 6409(a) will not apply to the first deployment of transmission equipment on such structures. Thus, the Commission disagrees with CA Local Governments that adopting the Commission's proposed definition of collocation would require local governments to approve deployments on anything that could house or support a component of a base station. Rather, section 6409(a) will apply only where a State or local government has approved the construction of a structure with the sole or primary purpose of supporting covered transmission equipment (*i.e.*, a wireless tower) or, with regard to other support structures, where the State or local government has previously approved the siting of transmission equipment that is part of a base station on that structure. In both cases, the State or local government must decide that the site is suitable for wireless facility deployment before section 6409(a) will apply.

85. The Commission finds that the term "eligible facilities request" encompasses hardening through structural enhancement where such hardening is necessary for a covered collocation, replacement, or removal of transmission equipment, but does not include replacement of the underlying structure. The Commission notes that the term "eligible facilities request" encompasses any "modification of an existing wireless tower or base station that involves" collocation, removal, or replacement of transmission equipment. Given that structural enhancement of the support structure is a modification of the relevant tower or base station, the Commission notes that permitting structural enhancement as a part of a covered request may be particularly important to ensure that the relevant infrastructure will be available for use by FirstNet because of its obligation to "ensure the safety, security, and resiliency of the [public safety broadband] network. . . ." In addition to hardening for Public Safety, commercial providers may seek structural enhancement for many reasons, for example, to increase load capacity or to repair defects due to corrosion or other damage. The Commission finds that such modification is part of an eligible facilities request so long as the modification of the underlying support structure is performed in connection with and is necessary to support a collocation, removal, or replacement of transmission equipment. The Commission further clarifies that, to be covered under section 6409(a), any such structural enhancement must not constitute a substantial change as defined below.

86. The Commission agrees with Alexandria et al., that "replacement," as used in section 6409(a)(2)(C), relates only to the replacement of "transmission equipment," and that such equipment does not include the structure on which the equipment is located. Even under the condition that it would not substantially change the physical dimensions of the structure, replacement of an entire structure may affect or implicate local land use values differently than the addition, removal, or replacement of transmission equipment, and the Commission finds no textual support for the conclusion that Congress intended to extend mandatory approval to new structures. Thus, the Commission declines to interpret "eligible facilities requests" to include replacement of the underlying structure.

e. Substantial Change and Other Conditions and Limitations

87. After careful review of the record, the Commission adopts an objective standard for determining when a proposed modification will "substantially change the physical dimensions" of an existing tower or base station. The Commission provides that a modification substantially changes the physical dimensions of a tower or base station if it meets any of the following criteria: (1) for towers

outside of public rights-of-way, it increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater; (2) for towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet; (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; (4) it entails any excavation or deployment outside the current site of the tower or base station; (5) it would defeat the existing concealment elements of the tower or base station; or (6) it does not comply with conditions associated with the prior approval of construction or modification of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds identified above. The Commission further provides that the changes in height resulting from a modification should be measured from the original support structure in cases where the deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. Beyond these standards for what constitutes a substantial change in the physical dimensions of a tower or base station, the Commission further provides that for applications covered by section 6409(a), States and localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

88. The Commission initially concludes that it should adopt a test that is defined by specific, objective factors rather than the contextual and entirely subjective standard advocated by the Intergovernmental Advisory Committee (IAC) and municipalities. Congress took care to refer, in excluding certain modifications from mandatory approval requirements, to those that would substantially change the tower or base station's "physical dimensions." The Commission also finds that Congress intended approval of covered requests to occur in a timely fashion. While the Commission acknowledges that the IAC approach would provide municipalities with maximum flexibility to consider potential effects, the Commission is concerned that it would invite lengthy review processes that conflict with Congress's intent. Indeed, some municipal commenters anticipate their review of covered requests under a subjective case-by-case approach could take even longer than their review of collocations absent section 6409(a). The Commission also anticipates that disputes arising from a subjective approach would tend to require longer and more costly litigation to resolve given the more fact-intensive nature of the IAC's open-ended and context-specific approach. The Commission finds that an objective definition, by contrast, will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities. The Commission finds further support for this approach in State statutes that have implemented section 6409(a), all of which establish objective standards.

89. The Commission further finds that the objective test for "substantial increase in size" under the Collocation Agreement should inform its consideration of the factors to consider when assessing a "substantial change in physical dimensions." This reflects its general determination that definitions in the Collocation Agreement and NPA should inform its interpretation of similar terms in section 6409(a). Further, as noted in the *Infrastructure NPRM*, the Commission has previously relied on the Collocation Agreement's test in comparable circumstances, concluding in the *2009 Declaratory Ruling* that collocation applications are subject to a shorter shot clock under section 332(c)(7) to the extent that they do not constitute a "substantial increase in size of the underlying structure." The Commission has also applied a similar objective test to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review. The Commission notes that some municipalities support this approach, and the Commission further observes that the overwhelming majority of State collocation statutes adopted since the passage of the Spectrum Act have adopted objective criteria similar to the Collocation Agreement test for identifying collocations subject to mandatory approval. The Commission notes as well that there is nothing in the record indicating that any of these objective State-law tests have resulted in objectionable collocations that might have been rejected under a more subjective approach. The Commission is persuaded that it is reasonable to look to the Collocation Agreement test as a starting point in interpreting the very similar "substantial change" standard under section 6409(a). The Commission further decides to modify and supplement the factors to establish an appropriate balance between promoting rapid wireless facility deployment and preserving States' and localities' ability to manage and protect local land-use interests.

90. First, the Commission declines to adopt the Collocation Agreement's exceptions that allow modifications to exceed the usual height and width limits when necessary to avoid interference or shelter the antennas from inclement weather. The Commission agrees with CA Local Governments that these issues pose technically complex and fact-intensive questions that many local governments cannot resolve without the aid of technical experts; modifications that would not fit within the Collocation Agreement's height and width exceptions are thus not suitable for expedited review under section 6409(a).

91. Second, the Commission concludes that the limit on height and width increases should depend on the type and location of the underlying structure. Under the Collocation Agreement's "substantial increase in size" test, which applies only to towers, a collocation constitutes a substantial increase in size if it would increase a tower's height by 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater. In addition, the Collocation Agreement authorizes collocations that would protrude by twenty feet, or by the width of the tower structure at the level of the appurtenance, whichever is greater. The Commission finds that the Collocation Agreement's height and width criteria are generally suitable for towers, as was contemplated by the Agreement.

92. These tests were not designed with non-tower structures in mind, and the Commission finds that they may often fail to identify substantial changes to non-tower structures such as

buildings or poles, particularly insofar as they would permit height and width increases of 20 feet under all circumstances. Instead, considering the proposals and arguments in the record and the purposes of the provision, the Commission concludes that a modification to a non-tower structure that would increase the structure's height by more than 10% or 10 feet, whichever is greater, constitutes a substantial change under section 6409(a). Permitting increases of up to 10% has significant support in the record. Further, the Commission finds that the adoption of a fixed minimum best serves the intention of Congress to advance broadband service by expediting the deployment of minor modifications of towers and base stations. Without such a minimum, the Commission finds that the test will not properly identify insubstantial increases on small buildings and other short structures, and may undermine the facilitation of collocation, as vertically collocated antennas often need 10 feet of separation and rooftop collocations may need such height as well. Further, the fact that the 10-foot minimum is substantially less than the 20-foot minimum limit under the Collocation Agreement and many State statutes or the 15-foot limit proposed by some commenters provides additional assurance that the Commission's interpretation of what is considered substantial under section 6409(a) is reasonable.

93. The Commission also provides, as suggested by Verizon and PCIA, that a proposed modification of a non-tower structure constitutes a "substantial change" under section 6409(a) if it would protrude from the edge of the structure more than six feet. The Commission finds that allowing for width increases up to six feet will promote the deployment of small facility deployments by accommodating installation of the mounting brackets/arms often used to deploy such facilities on non-tower structures, and that it is consistent with small facility deployments that municipalities have approved on such structures. The Commission further notes that it is significantly less than the limits in width established by most State collocation statutes adopted since the Spectrum Act. The Commission finds that six feet is the appropriate objective standard for substantial changes in width for non-tower structures, rather than the alternative proposals in the record.

94. The Commission declines to apply the same substantial change criteria to utility structures as apply to towers. While Verizon argues in an *ex parte* that this approach is justified because of the "significant similarities" between towers and utility structures, its own comments note that in contrast to "macrocell towers," utility structures are "smaller sites[.]" Because utility structures are typically much smaller than traditional towers, and because utility structures are often located in easements adjacent to vehicular and pedestrian rights-of-way where extensions are more likely to raise aesthetic, safety, and other issues, the Commission does not find it appropriate to apply to such structures the same substantial change criteria applicable to towers. The Commission further finds that towers in the public rights-of-way should be subject to the more restrictive height and width criteria applicable to non-tower structures rather than the criteria applicable to other towers. The Commission notes that, to deploy DAS and small-cell wireless facilities, carriers and infrastructure providers must often deploy new poles in the rights-of-way. Because these structures are constructed for the sole or primary purpose of supporting Commission-licensed or authorized antennas, they fall under the definition of "tower." They are often identical in size and appearance to utility poles in the area, which do not constitute towers. As a consequence, applying the tower height and width standards to these poles constructed for DAS and small-cell support would mean that two adjacent and nearly identical poles could be subject to very different standards. To ensure consistent treatment of structures in the public rights-of-way, and because of the heightened potential for impact from extensions in such locations, the Commission provides that structures qualifying as towers that are deployed in public rights-of-way will be subject to the same height and width criteria as non-tower structures.

95. The Commission agrees with commenters that its substantial change criteria for changes in height should be applied as limits on cumulative changes; otherwise, a series of permissible small changes could result in an overall change that significantly exceeds the adopted standards. Specifically, the Commission finds that whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the "tower or base station" as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.

96. The Commission declines to provide that changes in height should always be measured from the original tower or base station dimensions, as suggested by some municipalities. As with the original tower or base station, discretionary approval of subsequent modifications reflects a regulatory determination of the extent to which wireless facilities are appropriate, and under what conditions. At the same time, the Commission declines to adopt industry commenters' proposal always to measure changes from the last approved change or the effective date of the rules. Measuring from the last approved change in all cases would provide no cumulative limit at all. In particular, since the Spectrum Act became law, approval of covered requests has been mandatory and approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority's judgment that the modified structure is consistent with local land use values. Because it is impractical to require parties, in measuring cumulative impact, to determine whether each pre-existing modification was or was not required by the Spectrum Act, the Commission provides that modifications of an existing tower or base station that occur after the passage of the Spectrum Act will not change the baseline for purposes of measuring substantial change. Consistent with the determination that a tower or base station is not covered by section 6409(a) unless it received such approval, this approach will in all cases limit modifications that are subject to mandatory approval to the same modest increments over what the relevant governing authority has previously deemed compatible with local land use values. The Commission further finds that, for structures where collocations are separated horizontally rather than vertically (such as building rooftops), substantial change is more appropriately measured from the height of the original structure, rather than the height of a previously approved antenna. Thus, for example, the deployment of a 10-foot antenna on a rooftop would not mean that a nearby deployment of a 20-foot antenna would be considered insubstantial.

97. Again drawing on the Collocation Agreement's test, the Commission further provides that a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station. As in the Collocation Agreement, the Commission defines the "site" for

towers outside of the public rights-of-way as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For other towers and all base stations, the Commission further restricts the site to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

98. The Commission also rejects the PCIA and Sprint proposal to expand the Collocation Agreement's fourth prong, as modified by the 2004 NPA, to allow applicants to excavate outside the leased or licensed premises. Under the NPA, certain undertakings are excluded from the section 106 review, including "construction of a replacement for an existing communications tower and any associated excavation that . . . does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site." The NPA exclusion from section 106 review applies to replacement of "an existing communications tower." In contrast, "replacement," as used in section 6409(a)(2)(C), relates only to the replacement of "transmission equipment," not the replacement of the supporting structures. Thus, the activities covered under section 6409(a) are more nearly analogous to those covered under the Collocation Agreement than under the replacement towers exclusion in the NPA. The Commission agrees with localities comments that any eligible facilities requests that involve excavation outside the premises should be considered a substantial change, as under the fourth prong of the Collocation Agreement's test.

99. Based on its review of the record and various state statutes, the Commission further finds that a modification constitutes a substantial change in physical dimensions under section 6409(a) if the change (1) would defeat the existing concealment elements of the tower or base station, or (2) does not comply with pre-existing conditions associated with the prior approval of construction or modification of the tower or base station. The first of these criteria is widely supported by both wireless industry and municipal commenters, who generally agree that a modification that undermines the concealment elements of a stealth wireless facility, such as painting to match the supporting façade or artificial tree branches, should be considered substantial under section 6409(a). The Commission agrees with commenters that in the context of a modification request related to concealed or "stealth"-designed facilities—*i.e.*, facilities designed to look like some feature other than a wireless tower or base station—any change that defeats the concealment elements of such facilities would be considered a "substantial change" under section 6409(a). Commenters differ on whether any other conditions previously placed on a wireless tower or base station should be considered in determining substantial change under section 6409(a). After consideration, the Commission agrees with municipal commenters that a change is substantial if it violates any condition of approval of construction or modification imposed on the applicable wireless tower or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds. In other words, modifications qualify for section 6409(a) only if they comply, for example, with conditions regarding fencing, access to the site, drainage, height or width increases that exceed the thresholds the Commission adopted and other conditions of approval placed on the underlying structure. This approach, the Commission finds, properly preserves municipal authority to determine which structures are appropriate for wireless use and under what conditions, and reflects one of the three key priorities identified by the IAC in assessing substantial change.

100. The Commission agrees with PCIA that legal, non-conforming structures should be available for modification under section 6409(a), as long as the modification itself does not "substantially change" the physical dimensions of the supporting structure as defined here. The Commission rejects municipal arguments that any modification of an existing wireless tower or base station that has "legal, non-conforming" status should be considered a "substantial change" to its "physical dimensions." As PCIA argues, the approach urged by municipalities could thwart the purpose of section 6409(a) altogether, as simple changes to local zoning codes could immediately turn existing structures into legal, non-conforming uses unavailable for collocation under the statute. Considering Congress's intent to promote wireless facilities deployment by encouraging collocation on existing structures, and considering the requirement in section 6409(a) that States and municipalities approve covered requests "[n]otwithstanding . . . any other provision of law," the Commission finds the municipal commenters' proposal to be unsupportably restrictive.

101. The record also reflects general consensus that wireless facilities modification under section 6409(a) should remain subject to building codes and other non-discretionary structural and safety codes. As municipal commenters indicate, many local jurisdictions have promulgated code provisions that encourage and promote collocations and replacements through a streamlined approval process, while ensuring that any new facilities comply with building and safety codes and applicable Federal and State regulations. Consistent with that approach on the local level, the Commission finds that Congress did not intend to exempt covered modifications from compliance with generally applicable laws related to public health and safety. The Commission concludes that States and localities may require a covered request to comply with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, and that they may condition approval on such compliance. In particular, the Commission clarifies that section 6409(a) does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of backup power sources, including noise control ordinances if any. The Commission further clarifies that eligible facility requests covered by section 6409(a) must still comply with any relevant Federal requirement, including any applicable Commission, FAA, NEPA, or section 106 requirements. The Commission finds that this interpretation is supported in the record, addresses a concern raised by several municipal commenters and the IAC, and is consistent with the express direction in section 6409(a) that the provision is not intended to relieve the Commission from the requirements of NEPA and NHPA.

102. In sum, the Commission finds that the definitions, criteria, and related clarifications it adopts for purposes of section 6409(a) will provide clarity and certainty, reducing delays and litigation, and thereby facilitate the rapid deployment of wireless infrastructure and promote advanced wireless broadband services. At the same time, the Commission concludes that its approach also addresses concerns

voiced by municipal commenters and reflects the priorities identified by the IAC. The Commission concludes that this approach reflects a reasonable interpretation of the language and purposes of section 6409(a) and will serve the public interest.

2. Application Review Process, Including Timeframe for Review

103. As an initial matter, the Commission finds that State or local governments may require parties asserting that proposed facilities modifications are covered under section 6409(a) to file applications, and that these governments may review the applications to determine whether they constitute covered requests. As the Bureau observed in the *Section 6409(a) PN*, the statutory provision requiring a State or local government to approve an "eligible facilities request" implies that the relevant government entity may require an applicant to file a request for approval. Further, nothing in the provision indicates that States or local governments must approve requests merely because applicants claim they are covered. Rather, under section 6409(a), only requests that do in fact meet the provision's requirements are entitled to mandatory approval. Therefore, States and local governments must have an opportunity to review applications to determine whether they are covered by section 6409(a), and if not, whether they should in any case be granted.

104. The Commission further concludes that section 6409(a) warrants the imposition of certain requirements with regard to application processing, including a specific timeframe for State or local government review and a limitation on the documentation States and localities may require. While section 6409(a), unlike section 332(c)(7), does not expressly provide for a time limit or other procedural restrictions, the Commission concludes that certain limitations are implicit in the statutory requirement that a State or local government "may not deny, and shall approve" covered requests for wireless facility siting. In particular, the Commission concludes that the provision requires not merely approval of covered applications, but approval within a reasonable period of time commensurate with the limited nature of the review, whether or not a particular application is for "personal wireless service" facilities covered by section 332(c)(7). With no such limitation, a State or local government could evade its statutory obligation to approve covered applications by simply failing to act on them, or it could impose lengthy and onerous processes not justified by the limited scope of review contemplated by the provision. Such unreasonable delays not only would be inconsistent with the mandate to approve but also would undermine the important benefits that the provision is intended to provide to the economy, competitive wireless broadband deployment, and public safety. The Commission requires that States and localities grant covered requests within a specific time limit and pursuant to other procedures outlined below.

105. The Commission finds substantial support in the record for adopting such requirements. It is clear from the record that there is significant dispute as to whether any time limit applies at all under section 6409(a) and, if so, what that limit is. The Commission also notes that there is already some evidence in the record, albeit anecdotal, of significant delays in the processing of covered requests under this new provision, which may be partly a consequence of the current uncertainty regarding the applicability of any time limit. Because the statutory language does not provide guidance on these requirements, the Commission is concerned that, without clarification, future disputes over the process could significantly delay the benefits associated with the statute's implementation. Moreover, the Commission finds it important that all stakeholders have a clear understanding of when an applicant may seek relief from a State or municipal failure to act under section 6409(a). The Commission finds further support for establishing these process requirements in analogous State statutes, nearly all of which include a timeframe for review.

106. Contrary to the suggestion of municipalities, the Commission disagrees that the Tenth Amendment prevents the Commission from exercising its authority under the Spectrum Act to implement and enforce the limitations imposed thereunder on State and local land use authority. These limitations do not require State or local authorities to review wireless facilities siting applications, but rather preempt them from choosing to exercise such authority under their laws other than in accordance with Federal law—*i.e.*, to deny any covered requests. The Commission therefore adopts the following procedural requirements for processing applications under section 6409(a).

107. First, the Commission provides that in connection with requests asserted to be covered by section 6409(a), State and local governments may only require applicants to provide documentation that is reasonably related to determining whether the request meets the requirements of the provision. The Commission finds that this restriction is appropriate in light of the limited scope of review applicable to such requests and that it will facilitate timely approval of covered requests. At the same time, under this standard, State or local governments have considerable flexibility in determining precisely what information or documentation to require. The Commission agrees with PCIA that States and localities may not require documentation proving the need for the proposed modification or presenting the business case for it. The Commission anticipates that over time, experience and the development of best practices will lead to broad standardization in the kinds of information required. As discussed above, even as to applications covered by section 6409(a), State and local governments may continue to enforce and condition approval on compliance with non-discretionary codes reasonably related to health and safety, including building and structural codes. The Commission finds that municipalities should have flexibility to decide when to require applicants to provide documentation of such compliance, as a single documentation submission may be more efficient than a series of submissions, and municipalities may also choose to integrate such compliance review into the zoning process. Accordingly, the Commission clarifies that this documentation restriction does not prohibit States and local governments from requiring documentation needed to demonstrate compliance with any such applicable codes.

108. In addition to defining acceptable documentation requirements, the Commission establishes a specific and absolute timeframe for State and local processing of eligible facilities requests under section 6409(a). The Commission finds that a 60-day period for review, including review to determine whether an application is complete, is appropriate. In addressing this issue, it is appropriate to consider not only the record support for a time limit on review but also State statutes that facilitate collocation applications. Many of these statutes impose review time limits, thus providing valuable insight into States' views on the appropriate amount of time. Missouri, New Hampshire, and Wisconsin, for example, have determined that 45 days is the maximum amount of time available to a municipality to review applications, while Georgia, North

Carolina, and Pennsylvania have adopted a 90-day review period, including review both for completeness and for approval. Michigan's statute provides that after the application is filed, the locality has 14 days to deem the application complete and an additional 60 days to review. The Commission finds it appropriate to adopt a 60-day time period as the time limit for review of an application under section 6409(a).

109. The Commission finds that a period shorter than the 90-day period applicable to review of collocations under section 332(c)(7) of the Communications Act is warranted to reflect the more restricted scope of review applicable to applications under section 6409(a). The Commission further finds that a 60-day period of review, rather than the 45-day period proposed by many industry commenters, is appropriate to provide municipalities with sufficient time to review applications for compliance with section 6409(a), because the timeframe sets an absolute limit that—in the event of a failure to act—results in a deemed grant. Thus, whereas a municipality may rebut a claim of failure to act under section 332(c)(7) if it can demonstrate that a longer review period was reasonable, that is not the case under section 6409(a). Rather, if an application covered by section 6409(a) has not been approved by a State or local government within 60 days from the date of filing, accounting for any tolling, as described below, the reviewing authority will have violated section 6409(a)'s mandate to approve and not deny the request, and the request will be deemed granted.

110. The Commission further provides that the foregoing section 6409(a) timeframe may be tolled by mutual agreement or in cases where the reviewing State or municipality informs the applicant in a timely manner that the application is incomplete. As with tolling for completeness under section 332(c)(7) (as discussed in the R&O), an initial determination of incompleteness tolls the running of the period only if the State or local government provides notice to the applicant in writing within 30 days of the application's submission. The Commission also requires that any determination of incompleteness must clearly and specifically delineate the missing information in writing, similar to determinations of incompleteness under section 332(c)(7). Further, consistent with the documentation restriction established above, the State or municipality may only specify as missing information and supporting documents that are reasonably related to determining whether the request meets the requirements of section 6409(a).

111. The timeframe for review will begin running again when the applicant makes a supplemental submission, but may be tolled again if the State or local government provides written notice to the applicant within 10 days that the application remains incomplete and specifically delineates which of the deficiencies specified in the original notice of incompleteness have not been addressed. The timeframe for review will be tolled in this circumstance until the applicant supplies the relevant authority with the information delineated. Consistent with determinations of incompleteness under section 332(c)(7) as described below, any second or subsequent determination that an application is incomplete may be based only on the applicant's failure to provide the documentation or information the State or municipality required in its initial request for additional information. Further, if the 10-day period passes without any further notices of incompleteness from the State or locality, the period for review of the application may not thereafter be tolled for incompleteness.

112. The Commission further finds that the timeframe for review under section 6409(a) continues to run regardless of any local moratorium. This is once again consistent with its approach under section 332(c)(7), and is further warranted in light of section 6409(a)'s direction that covered requests shall be approved "[n]otwithstanding . . . any other provision of law."

113. Some additional clarification of time periods and deadlines will assist in cases where both section 6409(a) and section 332(c)(7) apply. In particular, the Commission notes that States and municipalities reviewing an application under section 6409(a) will be limited to a restricted application record tailored to the requirements of that provision. As a result, the application may be complete for purposes of section 6409(a) review but may not include all of the information the State or municipality requires to assess applications not subject to section 6409(a). In such cases, if the reviewing State or municipality finds that section 6409(a) does not apply (because, for example, it proposes a substantial change), the Commission provides that the presumptively reasonable timeframe under section 332(c)(7) will start to run from the issuance of the State's or municipality's decision that section 6409(a) does not apply. To the extent the State or municipality needs additional information at that point to assess the application under section 332(c)(7), it may seek additional information subject to the same limitations applicable to other section 332(c)(7) reviews. The Commission recognizes that, in such cases, there might be greater delay in the process than if the State or municipality had been permitted to request the broader documentation in the first place. The Commission finds that applicants are in a position to judge whether to seek approval under section 6409(a), and the Commission expects they will have strong incentives to do so in a reasonable manner to avoid unnecessary delays. Finally, as the Commission proposed in the *Infrastructure NPRM*, the Commission finds that where both section 6409(a) and section 332(c)(7) apply, section 6409(a) governs, consistent with the express language of section 6409(a) providing for approval "[n]otwithstanding" section 332(c)(7) and with canons of statutory construction that a more recent statute takes precedence over an earlier one and that "normally the specific governs the general."

114. Beyond the guidance provided in the R&O, the Commission declines to adopt the other proposals put forth by commenters regarding procedures for the review of applications under section 6409(a) or the collection of fees. The Commission concludes that its clarification and implementation of this statutory provision strikes the appropriate balance of ensuring the timely processing of these applications and preserving flexibility for State and local governments to exercise their rights and responsibilities. Given the limited record of problems implementing the provision, further action to specify procedures would be premature.

3. Remedies

115. After a careful assessment of the statutory provision and a review of the record, the Commission establishes a deemed granted remedy for cases in which the applicable State or municipal reviewing authority fails to issue a decision within 60 days (subject to any tolling, as described above) on an application submitted pursuant to section 6409(a). The Commission further concludes that a deemed grant does not become effective until the applicant notifies the reviewing jurisdiction in writing, after the time period for review by the State or municipal reviewing authority as prescribed in the Commission's rules has expired, that the application has been deemed granted.

116. The Commission's reading of section 6409(a) supports this approach.

The provision states without equivocation that the reviewing authority "may not deny, and shall approve" any qualifying application. This directive leaves no room for a lengthy and discretionary approach to reviewing an application that meets the statutory criteria; once the application meets these criteria, the law forbids the State or local government from denying it. Moreover, while State and local governments retain full authority to approve or deny an application depending on whether it meets the provision's requirements, the statute does not permit them to delay this obligatory and non-discretionary step indefinitely. In the R&O, the Commission defines objectively the statutory criteria for determining whether an application is entitled to a grant under this provision. Given the objective nature of this assessment, then, the Commission concludes that withholding a decision on an application indefinitely, even if an applicant can seek relief in court or in another tribunal, would be tantamount to denying it, in contravention of the statute's pronouncement that reviewing authorities "may not deny" qualifying applications. The Commission finds that the text of section 6409(a) supports adoption of a deemed granted remedy, which will directly serve the broader goal of promoting the rapid deployment of wireless infrastructure. The Commission notes as well that its approach is consistent with other Federal agencies' processes to address inaction by State and local authorities.

117. Many municipalities oppose the adoption of a deemed granted remedy primarily on the ground that it arguably represents an intrusion into local decision-making authority. The Commission fully acknowledges and values the important role that local reviewing authorities play in the siting process, and, as the Commission stated in the *Infrastructure NPRM*, "[the Commission's] goal is not to 'operate as a national zoning board.'" At the same time, its authority and responsibility to implement and enforce section 6409(a) as if it were a provision of the Communications Act obligate the Commission to ensure effective enforcement of the congressional mandate reflected therein. To do so, given its "broad grant of rulemaking authority," the importance of ensuring rapid deployment of commercial and public safety wireless broadband services as reflected in the adoption of the Spectrum Act, and in light of the record of disputes in this proceeding, as well as the prior experience of the Commission with delays in municipal action on wireless facility siting applications that led to the *2009 Declaratory Ruling*, the Commission concludes it is necessary to balance these federalism concerns against the need for ensuring prompt action on section 6409(a) applications. The Commission adopts this approach in tandem with several measures that safeguard the primacy of State and local government participation in local land use policy, to the extent consistent with the requirements of section 6409(a). First, the Commission has adopted a 60-day time period for States and localities to review applications submitted under section 6409(a). While many industry commenters proposed a 45-day review period based on the non-discretionary analysis that the provision requires, the Commission has provided more time in part to ensure that reviewing authorities have sufficient time to assess the applications.

118. Second, the Commission is establishing a clear process for tolling the 60-day period when an applicant fails to submit a complete application, thus ensuring that the absence of necessary information does not prevent a State or local authority from completing its review before the time period expires.

119. Third, even in the event of a deemed grant, the section 106 historic preservation review process—including coordination with State and Tribal historic preservation officers—will remain in place with respect to any proposed deployments in historic districts or on historic buildings (or districts and buildings eligible for such status).

120. Fourth, a State or local authority may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction when it believes the underlying application did not meet the criteria in section 6409(a) for mandatory approval, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately "deemed granted."

121. Finally, and perhaps most importantly, the deemed granted approach does not deprive States and localities of the opportunity to determine whether an application is covered; rather, it provides a remedy for a failure to act within the fixed but substantial time period within which they must determine, on a non-discretionary and objective basis, whether an application fits within the parameters of section 6409(a).

122. The Commission emphasizes as well that it expects deemed grants to be the exception rather than the rule. To the extent there have been any problems or delays due to ambiguity in the provision, the Commission anticipates that the framework it has established, including the specification of substantive and procedural rights and applicable remedies, will address many of these problems. The Commission anticipates as well that the prospect of a deemed grant will create significant incentives for States and municipalities to act in a timely fashion.

123. With respect to the appropriate forum for redress or for resolving disputes, including disputes over the application of the deemed grant rule, the Commission finds that the most appropriate course for a party aggrieved by operation of section 6409(a) is to seek relief from a court of competent jurisdiction. Although the Commission finds that it has authority to resolve such disputes under its authority to implement and enforce that provision, the Commission also finds that requiring that these disputes be resolved in court, and not by the Commission, will better accommodate the role of the States and local authorities and serve the public interest for the reasons the municipal commenters identify and as discussed in the R&O.

124. A number of factors persuade the Commission to require parties to adjudicate claims under section 6409(a) in court rather than before the Commission. First, Commission adjudication would impose significant burdens on localities, many of which are small entities with no representation in Washington, DC and no experience before the Commission. The possible need for testimony to resolve disputed factual issues, which may occur in these cases, would magnify the burden. The Commission is also concerned that it may simply lack the resources to adjudicate these matters in a timely fashion if the Commission enables parties to seek its review of local zoning disputes arising in as many as 38,000 jurisdictions, thus thwarting Congress's goal of speeding up the process. The Commission also agrees with municipalities that it does not have any particular expertise in resolving local zoning disputes, whereas courts have been adjudicating claims of failure to act on wireless facility siting applications since the adoption of section 332(c)(7).

125. The Commission requires parties to bring claims related to section 6409(a) in a court of competent jurisdiction. Such claims would appear likely to fall into one of three categories. First, if the State or local authority has denied the application, an applicant might seek to challenge that denial. Second, if an

applicant invokes its deemed grant right after the requisite period of State or local authority inaction, that reviewing authority might seek to challenge the deemed grant. Third, an applicant whose application has been deemed granted might seek some form of judicial imprimatur for the grant by filing a request for declaratory judgment or other relief that a court may find appropriate. In light of the policy underlying section 6409(a) to ensure that covered requests are granted promptly, and in the self-interest of the affected parties, the Commission would expect that these parties would seek judicial review of any such claims relating to section 6409(a) expeditiously. The enforcement of such claims is a matter appropriately left to such courts of competent jurisdiction. Given the foregoing Federal interest reflected in section 6409(a), it would appear that the basis for equitable judicial remedies would diminish significantly absent prompt action by the aggrieved party. In its judgment, based on the record established in this proceeding, the Commission finds no reason why (absent a tolling agreement by parties seeking to resolve their differences) such claims cannot and should not be brought within 30 days of the date of the relevant event (*i.e.*, the date of the denial of the application or the date of the notification by the applicant to the State or local authority of a deemed grant in accordance with the Commission's rules).

4. Non-application to States or Municipalities in Their Proprietary Capacities

126. As proposed in the *Infrastructure NPRM* and supported by the record, the Commission concludes that section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities. As discussed in the record, courts have consistently recognized that in "determining whether government contracts are subject to preemption, the case law distinguishes between actions a State entity takes in a proprietary capacity—actions similar to those a private entity might take—and its attempts to regulate." As the Supreme Court has explained, "[i]n the absence of any express or implied implication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and when analogous private conduct would be permitted, this Court will not infer such a restriction." Like private property owners, local governments enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property, and the Commission finds no basis for applying section 6409(a) in those circumstances. The Commission finds that this conclusion is consistent with judicial decisions holding that sections 253 and 332(c)(7) of the Communications Act do not preempt "non regulatory decisions of a state or locality acting in its proprietary capacity."

127. The Commission declines at this time to further elaborate as to how this principle should apply to any particular circumstance in connection with section 6409(a). The Commission agrees with Alexandria et al. that the record does not demonstrate a present need to define what actions are and are not proprietary, and the Commission concludes in any case that such a task is best undertaken, to the extent necessary, in the context of a specific municipal action and associated record.

5. Effective Date

128. Based on its review of the record, the Commission is persuaded that a transition period is necessary and appropriate. The Commission agrees with certain municipal commenters that affected State and local governments may need time to make modifications to their laws and procedures to conform to and comply with the rules the Commission adopts in the R&O implementing and enforcing section 6409(a), and that a transition period is warranted to give them time to do so. The Commission concludes as proposed by the IAC and other parties that the rules adopted to implement section 6409(a) will take effect 90 days after **Federal Register** publication.

IV. Section 332(c)(7) and the 2009 Declaratory Ruling

A. Background

129. In 2009, the Commission adopted a Declaratory Ruling in response to a petition requesting clarification on two points: what constitutes a "reasonable period of time" after which an aggrieved applicant may file suit asserting a failure to act under section 332(c)(7), and whether a zoning authority may restrict competitive entry by multiple providers in a given area under section 332(c)(7)(B)(i)(II). In the *2009 Declaratory Ruling*, the Commission interpreted a "reasonable period of time" under section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications, and 150 days for processing applications other than collocations. The Commission further determined that failure to meet the applicable timeframe presumptively constitutes a failure to act under section 332(c)(7)(B)(v), enabling an applicant to pursue judicial relief within the next 30 days.

130. In the *Infrastructure NPRM*, while stating that it would not generally revisit the *2009 Declaratory Ruling*, the Commission sought comment on six discrete issues arising under section 332(c)(7) and the *2009 Declaratory Ruling:* (1) Whether and how to clarify when a siting application is considered complete for the purpose of triggering the *2009 Declaratory Ruling's* shot clock; (2) whether to clarify that the presumptively reasonable period for State or local government action on an application runs regardless of any local moratorium; (3) whether the *2009 Declaratory Ruling* applies to DAS and small-cell facilities; (4) whether to clarify the types of actions that constitute "collocations" for purposes of triggering the shorter shot clock; (5) whether local ordinances establishing preferences for deployment on municipal property violate section 332(c)(7)(B)(i)(I); and (6) whether to adopt an additional remedy for failures to act in violation of section 332(c)(7).

B. Discussion

1. Completeness of Applications

131. The Commission finds that it should clarify under what conditions the presumptively reasonable timeframes may be tolled on grounds that an application is incomplete. As an initial matter, the Commission notes that under the *2009 Declaratory Ruling*, the presumptively reasonable timeframe begins to run when an application is first submitted, not when it is deemed complete. Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.

132. Further, consistent with proposals submitted by Crown Castle and PCIA, the Commission clarifies that, following a submission in response to a determination of incompleteness, any subsequent determination that an application remains incomplete must be based solely on the applicant's failure to supply information that was requested within the first 30 days. The shot clock will begin running again after the applicant makes a supplemental submission. The State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. In other words, a subsequent

determination of incompleteness can result in further tolling of the shot clock only if the local authority provides it to the applicant in writing within 10 days of the supplemental submission, specifically identifying the information the applicant failed to supply in response to the initial request. Once the 10-day period passes, the period for review of the application may not thereafter be tolled for incompleteness.

133. The Commission further provides that, in order to toll the timeframe for review on grounds of incompleteness, a municipality's request for additional information must specify the code provision, ordinance, application instruction, or otherwise publically-stated procedures that require the information to be submitted. This requirement will avoid delays due to uncertainty or disputes over what documents or information are required for a complete application. Further, while some municipal commenters argue that "[n]ot all jurisdictions codify detailed application submittal requirements because doing so would require a code amendment for even the slightest change," the Commission's approach does not restrict them to reliance on codified documentation requirements.

134. Beyond these procedural requirements, the Commission declines to enumerate what constitutes a "complete" application. The Commission finds that State and local governments are best suited to decide what information they need to process an application. Differences between jurisdictions make it impractical for the Commission to specify what information should be included in an application.

135. The Commission finds that these clarifications will provide greater certainty regarding the period during which the clock is tolled for incompleteness. This in turn provides clarity regarding the time at which the clock expires, at which point an applicant may bring suit based on a "failure to act." Further, the Commission expects that these clarifications will result in shared expectations among parties, thus limiting potential miscommunication and reducing the potential or need for serial requests for more information. These clarifications will facilitate faster application processing, reduce unreasonable delay, and accelerate wireless infrastructure deployment.

2. Moratoria

136. The Commission clarifies that the shot clock runs regardless of any moratorium. This is consistent with a plain reading of the *2009 Declaratory Ruling*, which specifies the conditions for tolling and makes no provision for moratoria. Moreover, its conclusion that the clock runs regardless of any moratorium means that applicants can challenge moratoria in court when the shot clock expires without State or local government action, which is consistent with the case-by-case approach that courts have generally applied to moratoria under section 332(c)(7). This approach, which establishes clearly that an applicant can seek redress in court even when a jurisdiction has imposed a moratorium, will prevent indefinite and unreasonable delay of an applicant's ability to bring suit.

137. Some commenters contend that this approach would, in effect, improperly require municipal staff to simultaneously review and update their regulations to adapt to new technologies while also reviewing applications. The Commission recognizes that new technologies may in some cases warrant changes in procedures and codes, but finds no reason to conclude that the need for any such change should freeze all applications. The Commission is confident that industry and local governments can work together to resolve applications that may require more staff resources due to complexity, pending changes to the relevant siting regulations, or other special circumstances. Moreover, in those instances in which a moratorium may reasonably prevent a State or municipality from processing an application within the applicable timeframe, the State or municipality will, if the applicant seeks review, have an opportunity to justify the delay in court. The Commission clarifies that the shot clock continues to run regardless of any moratorium.

138. The Commission declines at this time to determine that a moratorium that lasts longer than six months constitutes a *per se* violation of the obligation to take action in a reasonable period of time. Although some have argued that a six-month limit would "discourage localities from circumventing the intent of the Commission's shot clock rules," others disagree, and the record provides insufficient evidence to support a *per se* determination at this juncture. Given its clarification that the presumptively reasonable timeframes apply regardless of moratoria, any moratorium that results in a delay of more than 90 days for a collocation application or 150 days for any other application will be presumptively unreasonable.

3. Application to DAS and Small Cells

139. The Commission clarifies that to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to applications related to other personal wireless service facilities. The Commission notes that courts have addressed the issue and, consistent with its conclusion, have found that the timeframes apply to DAS and small-cell deployments.

140. Some commenters argue that the shot clocks should not apply because some providers describe DAS and small-cell deployments as wireline, not wireless, facilities. Determining whether facilities are "personal wireless service facilities" subject to section 332(c)(7) does not rest on a provider's characterization in another context; rather, the analysis turns simply on whether they are facilities used to provide personal wireless services. Based on its review of the record, the Commission finds no evidence sufficient to compel the conclusion that the characteristics of DAS and small-cell deployments somehow exclude them from section 332(c)(7) and the *2009 Declaratory Ruling*. For similar reasons, the Commission rejects Coconut Creek's argument that the shot clocks should apply only to neutral host deployments.

141. Some commenters suggest revising the Commission's proposal on the grounds that the unique qualities of DAS and small-cell systems require longer timeframes for municipal review. The Commission declines to adjust the timelines as these commenters suggest. The Commission notes that the timeframes are presumptive, and the Commission expects applicants and State or local governments to agree to extensions in appropriate cases. Moreover, courts will be positioned to assess the facts of individual cases—including whether the applicable time period "t[ook] into account the nature and scope of [the] request"—in instances where the shot clock expires and the applicant seeks review. The Commission also notes that DAS and small-cell deployments that involve installation of new poles will trigger the 150-day time period for new construction that many municipal commenters view as reasonable for DAS and small-cell applications. The Commission finds it unnecessary to modify the presumptive timeframes as they apply to DAS applications.

4. Definition of Collocation

142. After reviewing the record, the Commission declines to make any changes or clarifications to the existing standard established in the *2009 Declaratory Ruling* for applying the 90-day shot clock for collocations. In particular, the Commission declines to apply the "substantial change" test that the Commission establishes in the R&O for purposes of section 6409(a). The Commission observes that sections 6409(a) and 332(c)(7) serve different purposes, and the Commission finds that the tests for "substantial change" and "substantial increase in size" are appropriately distinct. More specifically, the test for a "substantial increase in size" under section 332(c)(7) affects only the length of time for State or local review, while the test the Commission adopts under section 6409(a) identifies when a State or municipality must grant an application. This is a meaningful distinction that merits a more demanding standard under section 6409(a).

143. Considering that these provisions cover different (though overlapping) pools of applications, it is appropriate to apply them differently. Further, the Commission finds no compelling evidence in the record that using the same test for both provisions would provide significant administrative efficiencies or limit confusion, as some have argued. The Commission preserves distinct standards under the two provisions.

5. Preferences for Deployments on Municipal Property

144. The Commission finds insufficient evidence in the record to make a determination that municipal property preferences are *per se* unreasonably discriminatory or otherwise unlawful under section 332(c)(7). To the contrary, most industry and municipal commenters support the conclusion that many such preferences are valid. Consistent with the majority of comments on this issue, the Commission declines at this time to find municipal property preferences per se unlawful under section 332(c)(7).

6. Remedies

145. After reviewing the record, the Commission declines to adopt an additional remedy for State or local government failures to act within the presumptively reasonable time limits. The Commission also notes that a party pursuing a "failure to act" claim may ask the reviewing court for an injunction granting the application. Moreover, in the case of a failure to act within the reasonable timeframes set forth in the Commission's rules, and absent some compelling need for additional time to review the application, the Commission believes that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of such relief.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

146. As required by section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the requirements adopted in the R&O. To the extent that any statement contained in the FRFA is perceived as creating ambiguity with respect to the Commission's rules, or statements made in the R&O, the rules and R&O statements shall be controlling.

1. Need for, and Objectives of, the Report and Order

147. In the R&O, the Commission takes important steps to promote the deployment of wireless infrastructure, recognizing that it is the physical foundation that supports all wireless communications. The R&O adopts and clarifies rules in four specific areas in an effort to reduce regulatory obstacles and bring efficiency to wireless facility siting and construction. The Commission does this by eliminating unnecessary reviews, thus reducing the burden on State and local jurisdictions and also on industry, including small businesses. In particular, the Commission updates and tailors the manner in which the Commission evaluates the impact of proposed deployments on the environment and historic properties. The Commission also adopts rules to clarify and implement statutory requirements related to State and local government review of infrastructure siting applications, and the Commission adopts an exemption from its environmental public notification process for towers that are in place for only short periods of time. Taken together, these steps will further facilitate the delivery of more wireless capacity in more locations to consumers throughout the United States. Its actions will expedite the deployment of equipment that does not harm the environment or historic properties, as well as recognize the limits on Federal, State, Tribal, and municipal resources available to review those cases that may adversely affect the environment or historic properties.

148. First, the Commission adopts measures to refine its environmental and historic preservation review processes under NEPA and NHPA to account for new wireless technologies, including physically small facilities like those used in DAS networks and small-cell systems that are a fraction of the size of macrocell installations. Among these, the Commission expands an existing categorical exclusion from NEPA review so that it applies not only to collocations on buildings and towers, but also to collocations on other structures like utility poles. The Commission also adopts a new categorical exclusion from NEPA review for some kinds of deployments in utilities or communications rights-of-way. With respect to NHPA, the Commission creates new exclusions from section 106 review to address certain collocations that are currently subject to review only because of the age of the supporting structure. The Commission takes these steps to assure that, as the Commission continues to meet its responsibilities under NEPA and NHPA, the Commission also fulfills its obligation under the Communications Act to ensure that rapid, efficient, and affordable radio communications services are available to all Americans.

149. Second, regarding temporary towers, the Commission adopts a narrow exemption from the Commission's requirement that owners of proposed towers requiring ASR provide 30 days of national and local notice to give members of the public an opportunity to comment on the proposed tower's potential environmental effects. The exemption from notification requirements applies only to proposed temporary towers meeting defined criteria, including limits on the size and duration of the installation, that greatly reduce the likelihood of any significant environmental effects. Allowing licensees to deploy temporary towers meeting these criteria without first having to complete the Commission's environmental notification process will enable them to more effectively respond to emergencies, natural disasters, and other planned and unplanned short-term spikes in demand without undermining the purposes of the notification process. This exemption will "remove an administrative obstacle to the availability of broadband and other wireless services during major events and unanticipated periods of localized high demand" where expanded or substitute service is needed quickly.

150. Third, the Commission adopts rules to implement and enforce section 6409(a) of the Spectrum Act. Section 6409(a) provides, in part, that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." By requiring timely approval of eligible requests, Congress intended to advance wireless broadband service for both public safety and commercial users. Section 6409(a) includes a number of undefined terms that bear directly on how the provision applies to infrastructure deployments, and the record confirms that there are substantial disputes on a wide range of interpretive issues under the provision. The Commission adopts rules that clarify many of these terms and enforce their requirements, thus advancing Congress's goal of facilitating rapid deployment. These rules will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure and promoting advanced wireless broadband services.

151. Finally, the Commission clarifies issues related to section 332(c)(7) of the Communications Act and the Commission's *2009 Declaratory Ruling*. Among other things, the Commission explains when a siting application is complete so as to trigger the presumptively reasonable timeframes for local and State review of siting applications under the *2009 Declaratory Ruling*, and how the shot clock timeframes apply to local moratoria and DAS or small-cell facilities. These clarifications will eliminate many disputes under section 332(c)(7), provide certainty about timing related to siting applications (including the time at which applicants may seek judicial relief), and preserve State and municipal governments' critical role in the siting application process.

152. Taken together, the actions the Commission takes in the R&O will enable more rapid deployment of vital wireless facilities, delivering broadband and wireless innovations to consumers across the country. At the same time, they will safeguard the environment, preserve historic properties, protect the interest of Tribal Nations in their ancestral lands and cultural legacies, and address municipalities' concerns over impacts to aesthetics and other local values.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

153. No commenters directly responded to the IRFA. Some commenters raised issues of particular relevance to small entities, and the Commission addresses those issues in the FRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

154. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

155. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

156. The R&O adopts rule changes regarding local and Federal regulation of the siting and deployment of communications towers and other wireless facilities. Due to the number and diversity of owners of such infrastructure and other responsible parties, including small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantify them in the remainder of this section.

157. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission's action may, over time, affect a variety of small entities. To assist in assessing the R&O's effect on these entities, the Commission describes three comprehensive categories—small businesses, small organizations, and small governmental jurisdictions—that encompass entities that could be directly affected by the rules the Commission adopts. As of 2010, there were 27.9 million small businesses in the United States, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

158. Wireless Telecommunications Carriers (except satellite). The Census Bureau defines this category as follows: "This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services." The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite). In this category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. According to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

159. Personal Radio Services. Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided

for in other services. Personal radio services include services operating in spectrum licensed under part 95 of the Commission's rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules the Commission adopts. Since all such entities are wireless, the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the R&O.

160. Public Safety Radio Services. Public safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities in jurisdictions with populations of less than 50,000 fall within the definition of a small entity.

161. Private Land Mobile Radio. Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories that operate and maintain switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. The Commission believes that the most appropriate classification for PLMR is Wireless Communications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of PLMR licensees are small entities that may be affected by its action.

162. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

163. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules the Commission adopts could potentially impact every small business in the United States.

164. Multiple Address Systems. Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

165. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the "Wireless Telecommunications Carriers (except satellite)" definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 100 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its action.

166. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems—previously referred to as Multipoint

Distribution Service (MDS) and Multichannel Multipoint Distribution Service systems, and "wireless cable"—transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average annual gross revenues of no more than $40 million over the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. The Commission previously estimated that of the 61 small business BRS auction winners, based on its review of licensing records, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities; 18 incumbent BRS licensees do not meet the small business size standard. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA's rules or the Commission's rules. In 2009, the Commission conducted Auction 86, which involved the sale of 78 licenses in the BRS areas. The Commission established three small business size standards that were used in Auction 86: (i) An entity with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years was considered a small business; (ii) an entity with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years was considered a very small business; and (iii) an entity with attributed average annual gross revenues that did not exceed $3 million for the preceding three years was considered an entrepreneur. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service.

167. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based educational broadcasting services. Since 2007, Wired Telecommunications Carriers have been defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. Establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA has determined that a business in this category is a small business if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms in this category that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's Universal Licensing System indicates that as of July 2013, there are 2,236 active EBS licenses. The Commission estimates that of these 2,236 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

168. Location and Monitoring Service (LMS). LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

169. Television Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 2,076 television stations operated in that year. Of that number, 1,515 had annual receipts of $10,000,000 dollars or less, and 561 had annual receipts of more than $10,000,000. Since the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $38.5 million in that year, the Commission concludes that the majority of television stations were small under the applicable SBA size standard.

170. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. The Commission estimates that the majority of commercial television broadcasters are small entities.

171. The Commission notes, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Its estimate likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. The estimate of small businesses to which rules may apply does not exclude any television station

from the definition of a small business on this basis and is possibly over-inclusive to that extent.

172. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. These stations are non-profit, and considered to be small entities.

173. There are also 2,414 LPTV stations, including Class A stations, and 4,046 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

174. Radio Broadcasting. The SBA defines a radio broadcast station as a small business if it has no more than $35.5 million in annual receipts. Business concerns included in this category are those "primarily engaged in broadcasting aural programs by radio to the public." According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of 11,341 commercial radio stations have revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission notes that in assessing whether a business concern qualifies as small under the above definition, revenues from business (control) affiliations must be included. This estimate likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

175. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. The estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and may be over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it can be difficult to assess this criterion in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

176. FM translator stations and low power FM stations. The rules and clarifications the Commission adopts could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $38.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

177. Multichannel Video Distribution and Data Service (MVDDS). MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

178. Satellite Telecommunications. Two economic census categories address the satellite industry. Both establish a small business size standard of $32.54 million or less in annual receipts.

179. The first category, "Satellite Telecommunications," "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 had annual receipts of under $10 million, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

180. The second category, "All Other Telecommunications," comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

181. Non-Licensee Tower Owners. Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. Thus, non-licensee tower owners may be subject to the environmental notification requirements associated with ASR registration, and may benefit from the exemption for certain temporary antenna structures that the Commission adopts in the R&O. In addition, non-licensee tower owners may be affected by its interpretations of section 6409(a) of the Spectrum Act or by its revisions to its interpretation of section 332(c)(7) of the Communications Act.

182. As of September 5, 2014, the ASR database includes approximately 116,643 registration records reflecting a "Constructed" status and 13,972 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which it can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, the Commission does not collect information as to the number of such towers in use and cannot estimate the number of tower owners that would be subject to the rules the Commission adopts. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." The Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for "All Other Telecommunications." In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells that might be affected by the regulatory measures the Commission adopts. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

183. The R&O adopts a narrow exemption from the Commission's requirement that owners of proposed towers requiring ASR registration provide 30 days of national and local notice to give members of the public an opportunity to comment on the proposed tower's potential environmental effects. The exemption from the notice requirements applies only to applicants seeking to register temporary antenna structures meeting certain criteria that greatly reduce the likelihood of any significant environmental effects. Specifically, proposed towers exempted from the Commission's local and national environmental notification requirement are those that (i) will be in use for 60 days or less, (ii) require notice of construction to the Federal Aviation Administration (FAA), (iii) do not require marking or lighting pursuant to FAA regulations, (iv) will be less than 200 feet in height, and (v) will involve minimal or no excavation.

184. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. An applicant seeking to claim the temporary towers exemption from the environmental notification process must indicate on its FCC Form 854 that it is claiming the exemption for a new, proposed temporary tower and demonstrate that the proposed tower satisfies the applicable criteria. While small entities must comply with these requirements in order to take advantage of the exemption, on balance, the relief from compliance with local and national environmental notification requirements provided by the exemption greatly reduces burdens and economic impacts on small entities.

185. The applicant may seek an extension of the exemption from the Commission's local and national environmental notification requirement of up to sixty days through another filing of Form 854, if the applicant can demonstrate that the extension of the exemption period is warranted due to changed circumstances or information that emerged after the exempted tower was deployed. The exemption adopted in the R&O is intended specifically for proposed towers that are intended and expected to be deployed for no more than 60 days, and the option to apply for an extension is intended only for cases of unforeseen or changed circumstances or information. Small entities, like all applicants, are expected to seek extensions of the exemption period only rarely and any burdens or economic impacts incurred by applying for such extensions should be minimal.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

186. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." The FRFA incorporates by reference all discussion in the R&O that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized below.

187. The actions taken in the R&O encourage and promote the deployment of advanced wireless broadband and other services by tailoring the regulatory review of new wireless network infrastructure consistent with the law and the public interest. The Commission anticipates that the steps taken in the R&O will not impose any significant economic impacts on small entities, and will in fact help reduce burdens on small entities by reducing the cost and delay associated with the deployment of such infrastructure.

188. In the R&O, the Commission takes action in four major areas relating to the regulation of wireless facility siting and construction. In each area, the rules the Commission adopts and clarifications the Commission makes will not increase burdens or costs on small entities. To the contrary, its actions will reduce costs and burdens associated with deploying wireless infrastructure.

189. First, the Commission adopts measures with regard to its NEPA process for review of environmental effects regarding wireless broadband deployment that should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure, and will not impose any additional costs on such entities. Specifically, the Commission clarifies that the existing NEPA categorical exclusion for antenna collocations on buildings and towers includes equipment associated with the antennas (such as wiring, cabling, cabinets, or backup-power), and that it also covers collocations in a building's interior. The Commission also expands the NEPA collocation categorical exclusion to cover collocations on structures other than buildings and towers, and adopts a new NEPA categorical exclusion for deployments, including deployments of new poles, in utility or communications rights-of-way that are in active use for such purposes, where the deployment does not constitute a substantial increase in size over the existing utility or communications uses. The Commission also adopts measures concerning its section 106 process for review of impact on historic properties. First, the Commission adopts certain

exclusions from section 106 review, and the Commission clarifies that the existing exclusions for certain collocations on buildings under the Commission's programmatic agreements extend to collocations inside buildings. These new exclusions and clarifications will reduce environmental compliance costs of small entities by providing that eligible proposed deployments of small wireless facilities do not require the preparation of an Environmental Assessment.

190. Second, the Commission adopts an exemption from the Commission's requirement that ASR applicants must provide local and national environmental notification prior to submitting a completed ASR application for certain temporary antenna structures meeting criteria that makes them unlikely to have significant environmental effects. Specifically, the Commission exempts antenna structures that (1) will be in place for 60 days or less; (2) require notice of construction to the FAA; (3) do not require marking or lighting under FAA regulations; (4) will be less than 200 feet above ground level; and (5) will involve minimal or no ground excavation. This exemption will reduce the burden on wireless broadband providers and other wireless service providers, including small entities.

191. Third, the Commission adopts several rules to clarify and implement the requirements of section 6409(a) of the Spectrum Act. In interpreting the statutory terms of this provision, such as "wireless tower or base station," "transmission equipment," and "substantially change the physical dimensions," the Commission generally does not distinguish between large and small entities, as the statute provides no indication that such distinctions were intended, and such distinctions have been proposed. Further, these clarifications will help limit potential ambiguities within the rule and thus reduce the burden associated with complying with this statutory provision, including the burden on small entities. Generally, the Commission clarifies that section 6409(a) applies only to State and local governments acting in their regulatory role and does not apply to such entities acting in their proprietary capacities.

192. With regard to the process for reviewing an application under section 6409(a), the Commission provides that a State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facility request meets the requirements of section 6409(a) and that, within 60 days from the date of filing (accounting for tolling), a State or local government shall approve an application covered by section 6409(a). Where a State or local government fails to act on an application covered under section 6409(a) within the requisite time period, the application is deemed granted. Parties may bring claims under section 6409(a) to a court of competent jurisdiction. The Commission declines to entertain such disputes in a Commission adjudication, which would impose significant burdens on localities, many of which are small entities with no representation in Washington, DC or experience before the Commission. Limiting relief to court adjudication lessens the burden on applicants in general, and small entities specifically.

193. Lastly, the Commission adopts clarifications of its 2009 Declaratory Ruling, which established the time periods after which a State or local government has presumptively failed to act on a facilities siting application "within a reasonable period of time" under section 332(c)(7) of the Act. Specifically, the Commission clarifies that the timeframe begins to run when an application is first submitted, not when it is deemed complete by the reviewing government. Further, a determination of incompleteness tolls the shot clock only if the State or local government provides notice to the applicant in writing within 30 days of the application's submission, specifically delineating all missing information. Following a submission in response to a determination of incompleteness, any subsequent determination that an application remains incomplete must be based solely on the applicant's failure to supply missing information that was identified within the first 30 days. These clarifications will provide greater certainty in the application process and reduce the potential or need for serial requests for more information. These clarifications will facilitate faster application processing, reduce unreasonable delay, and reduce the burden on regulated entities, including small businesses.

194. The Commission also clarifies that to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to applications related to other personal wireless service facilities under section 332(c)(7). The Commission clarifies further that the presumptively reasonable timeframes run regardless of any applicable moratoria, and that municipal property preferences are not per se unreasonably discriminatory or otherwise unlawful under section 332(c)(7). Finally, the Commission concludes that the explicit remedies under section 332(c)(7) preclude adoption of a deemed granted remedy for failures to act. These clarifications reduce confusion and delay within the siting process which in turn reduces the burden on industry and State and local jurisdictions alike, which may include small entities.

7. Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

195. None.

8. Report to Congress

196. The Commission will send a copy of the R&O, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

9. Report to Small Business Administration

197. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

B. Paperwork Reduction Act

198. The R&O contains revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding in a separate **Federal Register** Notice. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In addition, the Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA.

C. Congressional Review Act

199. The Commission will send a copy of the R&O in a report to be sent to Congress and the Government Accountability Office pursuant to the

Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

200. *It is ordered,* pursuant to sections 1, 2, 4(i), 7, 201, 301, 303, 309, and 332 of the Communications Act of 1934, as amended, sections 6003, 6213, and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, 1433, and 1455(a), section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, that the R&O IS *hereby adopted.* If any section, subsection, paragraph, sentence, clause or phrase of the R&O or the rules adopted therein is declared invalid for any reason, the remaining portions of the R&O and the rules adopted therein *shall be* severable from the invalid part and *shall remain* in full force and effect.

201. *It is further ordered* that parts 1 and 17 of the Commission's Rules ARE *amended* as set forth in Appendix B of the R&O (see the Final Rules contained in this summary), and that these changes *shall be effective* 30 days after publication in the **Federal Register**, except for section 1.40001, which *shall be effective* 90 days after publication in the **Federal Register**; provided that those rules and requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act *shall become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

202. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Environmental impact statements, Federal buildings and facilities, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

47 CFR Part 17

Aviation safety, Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 and part 17 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is amended to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.1306 is amended by adding paragraph (c) and revising the first sentence of Note 1 read as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

(c)(1) Unless § 1.1307(a)(4) is applicable, the provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not

(A) Increase the height of the tower or non-tower structure by more than 10% or twenty feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to § 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b).

Note 1: The provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or backup-power), on or in an existing building, or on an antenna tower or other man-made structure, unless § 1.1307(a)(4) is applicable. * * *

* * * * *

■ 3. Section 1.1307 is amended by redesignating paragraph (a)(4) as (a)(4)(i), and by adding new paragraph (a)(4)(ii) and a Note to paragraph (a)(4)(ii) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) * * *

(4) * * *

(ii) The requirements in paragraph (a)(4)(i) of this section do not apply to:

(A) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on existing utility structures (including utility poles and electric transmission towers in active use by a "utility" as defined in Section 224 of the Communications Act, 47 U.S.C. 224, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) where the deployment meets the following conditions:

(*1*) All antennas that are part of the deployment fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that are individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that total no more than six cubic feet in volume;

(*2*) All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, are cumulatively no more than seventeen cubic feet in volume, exclusive of

(i) Vertical cable runs for the connection of power and other services;

(*ii*) Ancillary equipment installed by other entities that is outside of the applicant's ownership or control, and

(*iii*) Comparable equipment from pre-existing wireless deployments on the structure;

(*3*) The deployment will involve no new ground disturbance; and

(*4*) The deployment would otherwise require the preparation of an EA under paragraph (a)(4)(i) of this section solely because of the age of the structure; or

(B) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on buildings or other non-tower structures where the deployment meets the following conditions:

(*1*) There is an existing antenna on the building or structure;

(*2*) One of the following criteria is met:

(*i*) *Non-Visible Antennas.* The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(*ii*) *Visible Replacement Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*A*) It is a replacement for a pre-existing antenna,

(*B*) The new antenna will be located in the same vicinity as the pre-existing antenna,

(*C*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*D*) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*E*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(*iii*) *Other Visible Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*A*) It is located in the same vicinity as a pre-existing antenna,

(*B*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*C*) The pre-existing antenna was not deployed pursuant to the exclusion in this subsection (§ 1.1307(a)(4)(ii)(B)(*2*)(*iii*)),

(*D*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*E*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(*3*) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(*4*) The deployment of the new antenna involves no new ground disturbance; and

(*5*) The deployment would otherwise require the preparation of an EA under paragraph (a)(4) of this section solely because of the age of the structure.

Note to paragraph (a)(4)(ii): A non-visible new antenna is in the "same vicinity" as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the "same vicinity" as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

* * * * *

■ 4. Add Subpart CC to part 1 to read as follows:

Subpart CC—State and Local Review of Applications for Wireless Service Facility Modification

§ 1.40001 Wireless Facility Modifications.

(a) *Purpose.* These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

(1) *Base station.* A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

(2) *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) *Eligible facilities request.* Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) *Eligible support structure.* Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) *Existing.* A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) *Substantial change.* A modification substantially changes the physical dimensions of an eligible

support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) *Transmission equipment.* Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) *Tower.* Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) *Review of applications.* A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) *Documentation requirement for review.* When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) *Timeframe for review.* Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) *Tolling of the timeframe for review.* The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) *Failure to act.* In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) *Remedies.* Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 5. The authority citation for part 17 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sections 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 6. Amend § 17.4 by revising paragraphs (c)(1)(v) and (c)(1)(vi), and adding paragraph (c)(1)(vii) to read as follows:

§ 17.4 Antenna structure registration.

* * * * *

(c) * * *

(1) * * *

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission (*see* § 1.1311(e) of this chapter); or

(vii) For the construction or deployment of an antenna structure that will:

(A) Be in place for no more than 60 days,

(B) Requires notice of construction to the FAA,

(C) Does not require marking or lighting under FAA regulations,

(D) Will be less than 200 feet in height above ground level, and

(E) Will either involve no excavation or involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. An applicant that relies on this exception must wait 30 days after removal of the antenna structure before relying on this exception to deploy another antenna structure covering substantially the same service area.

* * * * *

[FR Doc. 2014–28897 Filed 1–7–15; 8:45 am]

BILLING CODE 6712–01–P

City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
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EXHIBIT 3 - STAFF REPORT

DATE: October 19, 2017
TO: McMinnville Planning Commission
FROM: Chuck Darnell, Associate Planner
SUBJECT: SE 2-17 – Sign Standards Exception – 2250 NE Highway 99W

Report in Brief:

This is a public hearing to consider an application for a sign standards exception to allow for an existing sign to exceed the maximum height and size requirements for freestanding signs. The existing sign is the freestanding sign associated with the Burger King restaurant at 2250 NE Highway 99W. The subject site is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.

Background:

Certain types of existing nonconforming signs in McMinnville are subject to an amortization process, which requires that signs that are not in compliance with the current sign standards be brought into compliance by December 31, 2017. Specifically, Section 17.62.110(C) of the McMinnville Zoning Ordinance states the following:

> Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, 2017, […]

The deadline for the amortization process may be extended by one year to December 31, 2018, pending a zoning text amendment that will be under consideration by the Planning Commission and the City Council near the end of 2017. However, the McMinnville Zoning Ordinance does allow for property owners with existing nonconforming signs that are subject to the amortization process to request an exception to the sign standards to allow their sign to continue to exist.

The subject site is identified below:

Attachments:
Attachment A – Decision, Findings of Fact, and Conclusionary Findings for the Denial of a Sign Standards Exception Request at 2250 NE Highway 99W

Discussion:

In this case, the property owner is requesting an exception from the height and size requirements for freestanding signs in commercial zones. The subject site is zoned C-3 (General Commercial). Freestanding signs in commercial zones are limited to 125 square feet in area and 20 feet in height when the subject property is located adjacent to Highway 99W. Specifically, Section 17.62.070(C)(1) of the McMinnville Zoning Ordinance regulates freestanding signs as follows:

> Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere.

The existing sign on the property, which is the subject of this exception request, is located near the subject property's frontage to Highway 99W. The subject freestanding sign is 30 feet in height and 182

square feet in size, between the 3 (three) separate cabinets on the pole sign. The subject freestanding sign can be seen below:

Section 17.62.120(A) of the McMinnville Zoning Ordinance states that the Planning Commission may authorize sign standard exceptions where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the sign standards and amortization process would cause the property owner an undue or unnecessary hardship.

Sign Exception Review Criteria

The criteria that must be met in order for the Planning Commission to grant an exception are described in Section 17.62.120(B) of the McMinnville Zoning Ordinance. Those criteria are as follows:

Section 17.62.120(B):

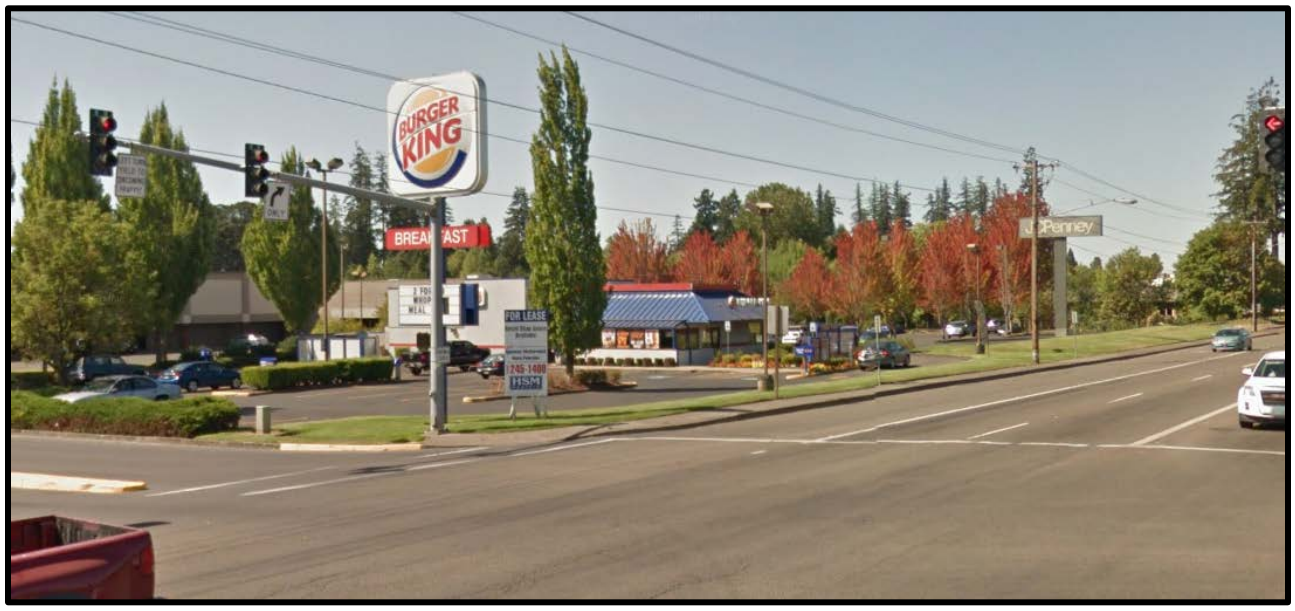
1) An exception is necessary to prevent an unnecessary hardship due to factors such as topography, location, surrounding development, lot shape or lot size; and

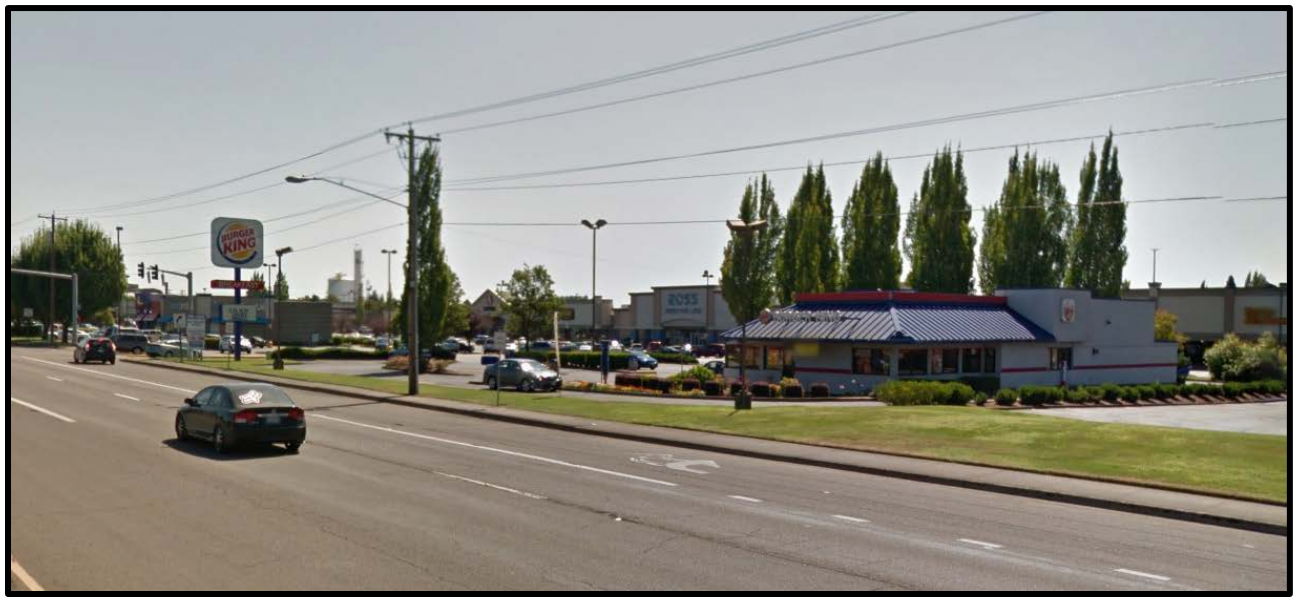
The applicant has provided arguments that state that the exception is necessary to prevent an unnecessary hardship due to sign location, topography, and surrounding development. The applicant has argued that the location of the sign presents challenges that would result in a hardship. Those challenges, as described by the applicant, include the existence of overhead powerlines which obstruct the vertical space on the north side of the site, parking lot improvements and landscaping within the site that limit the relocation of the sign, and other surrounding development (other signs and parking lot lights) that cause the need for the taller sign. The applicant also references the fact that the Burger King building is set back from the street, and believes that necessitates the exceptions to sign height and size that are being requested.

Staff does not concur with the applicant's arguments, and does not believe that the exceptions requested are warranted based on the sign's location, surrounding development, or other physical characteristics of the subject site. The property that the Burger King building is located on is relatively flat. There is a slight reduction in elevation from the grade of Highway 99W adjacent to the property down to the property's parking lot and building site, but the grade difference is not substantial enough to warrant the increase in sign height being requested (10 feet over the standard maximum of 20 feet in height). Also, the reference to the vertical space being obstructed by overhead powerlines does not warrant the exception for sign height, as a reduction in height down to a level that meets the City's sign standards would actually bring the sign down below the height of the powerlines and reduce the obstruction from view from the public right-of-way. In terms of the exception for sign size, the applicant did not provide sufficient evidence for the need for a larger sign (57 square feet over the standard maximum size of 125 square feet).

In addition, the subject site is highly visible from the adjacent right-of-way. The Burger King building is set back from the street, but is completely unobstructed from view with no landscaping or other physical barriers between the building and the adjacent right-of-way. Staff believes that the property has space to accommodate a freestanding sign that meets the City's current sign standards along the property's frontage that would still provide additional visibility for the business. The underlying zoning district (C-3 General Commercial) did not require that the building be setback from the street, so if visibility was a primary concern of the property owner, the site could have been designed to locate the building closer to the roadway. Therefore, some of the hardships referenced by the applicant are not specific to the subject property and were not out of the control of the property owner, but are the result of the manner in which the property was developed.

Views of the subject site and existing sign, from both directions on the adjacent public right-of-way (Highway 99W), are provided below:





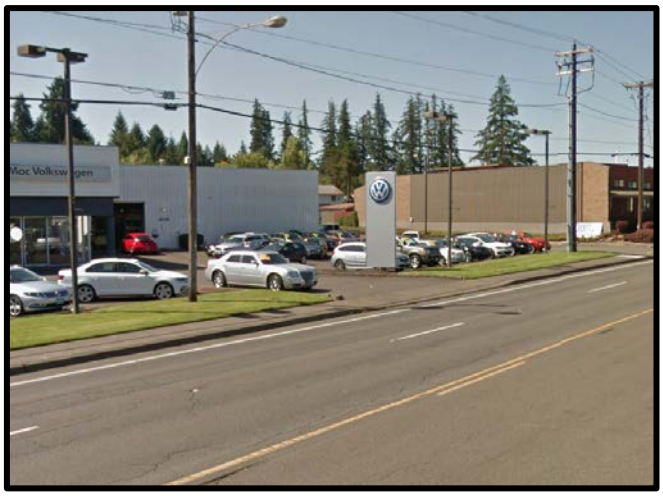
Section 17.62.120(B):

2) The granting of the exception will not result in material damage or prejudice to other property in the vicinity; and

The applicant has argued that the existing sign does not result in material damage to other properties and businesses in the vicinity, as the sign is offset from the roadway and does not block any other businesses from view.

Staff believes that the existing sign, in and of itself, does not cause any material damage to other surrounding properties. However, the granting of the exceptions will result in prejudice to other properties in the vicinity that have constructed signs that meet the City's sign standards. Many of the factors that the applicant referenced in their response to criteria #1 (Section 17.62.120(B)(1)), including sign location, topography, and surrounding development, apply similarly to many other

properties in the vicinity. Those properties have taken those factors into consideration, and still found a location on the site that allowed for a sign to be located that provides visibility for the businesses but that also meets the City's standards for freestanding sign size and height. Within a quarter mile of the subject site, there are numerous properties with similar physical characteristics that have installed freestanding signs that meet the City's standards for height and size. Examples of those signs and the properties that would be prejudiced are provided below:



Section 17.62.120(B):

3) The request will not be detrimental to community standards and the appearance of the city.

The applicant has stated that the existing sign and the exceptions being requested would not be detrimental to community standards or the appearance of the city. The applicant has provided drawings from the time of the sign's installation in the 1980s, and statements that the sign is continually maintained and cleaned, as evidence that the sign is not detrimental to community standards.

Staff concurs with the applicant's statements that the sign is maintained and does not believe that the sign is ever in a state of disrepair. However, the community does have specific standards in place in the McMinnville Zoning Ordinance for the height and size of freestanding signs. These standards limit the height of freestanding signs along Highway 99W to 20 feet in height and limit the size of freestanding signs to 125 square feet in area. These size requirements were developed to implement

the purpose of the McMinnville sign ordinance that was adopted in 2008 under Ordinance No. 4900. The purpose of the sign standards that were adopted, as now stated in Section 17.62.010 of the McMinnville Zoning Ordinance, is to "improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards" and to "provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance".

Staff does not believe that the exception request would be consistent with the community standards for freestanding signs, not only because the existing sign does not meet the clearly defined standards for height and size, but also because an approval of the exception request would not result in "equitably applied sign height, size, and location standards". An approval of the exception request would result in prejudice to other properties in the vicinity that have followed the community's standards for freestanding signs, as described in more detail above.

Additional Review Criteria

In addition to the review criteria discussed above, Section 17.62.120(C) of the McMinnville Zoning Ordinance allows another opportunity for a property owner to be granted an exception. This section states the following:

C. An exception may be granted if the property owner establishes that the strict enforcement of the ordinance will either:
   1. Deny the owner of all economically viable use of the property on which the sign is located; or
   2. Substantially interfere with the owner's use and enjoyment of the property on which the sign is located.

The applicant has argued that the strict enforcement of the amortization program would negatively impact the economic viability of the property for the property owner, business owner, and employees, based on the fact that any loss of signage space would result impact advertising to the business. The applicant is arguing that this is integral to the operation and success of the business at this location, and that reducing the height or size of the sign would reduce traffic and sales for the business. The applicant has also argued that strict enforcement of the amortization program would interfere with the owner's use and enjoyment of the property on which the sign is located, as any changes to the sign would place the franchisee operating the Burger King restaurant in a legal dispute with Burger King Corporation.

Staff does not believe that the strict enforcement of the amortization program will deny the owner of all economically viable use of the property, or substantially interfere with the owner's use and enjoyment of the property. The amortization program and the sign standards that apply to the existing freestanding sign do not deny the owner of all economically viable use of the property. Strict enforcement of the amortization program does not require that signage be completely removed from the property, only that the signage be updated to be in compliance. The amortization program also does not result in the property becoming completely economically inviable, as the existing building and use are allowed to continue to operate as they do today.

While the required updates to the existing freestanding sign may require changes that cause conflict between a franchisee and the larger corporation, staff does not believe that this on its own warrants the granting of a sign exception. Section 17.62.120(D) of the McMinnville Zoning Ordinance states that "exceptions shall not be granted for the convenience of the applicant or for the convenience of regional or national businesses which wish to use a standard sign size". Therefore, staff believes that the applicant's main argument for the interference of the owner's use and enjoyment of the

property is not applicable, as the use of a corporation or national business standard sign size is specifically stated in the McMinnville Zoning Ordinance as a factor that will not allow for the granting of an exception.

Fiscal Impact:

None.

Commission Options:

1) Close the public hearing and **DENY** 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 **APPROVE** the application, providing findings of fact for the approval in the motion to approve.

Recommendation/Suggested Motion:

The Planning Department recommends that the Commission make the following motion to deny SE 2-17:

THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR DENIAL IN THE DECISION DOCUMENT FOR SE 2-17, AND THE MATERIALS SUBMITTED BY THE APPLICANT, THE PLANNING COMMISSION DENIES SE 2-17.

CD:sjs

Attachments:
Attachment A – Decision, Findings of Fact, and Conclusionary Findings for the Denial of a Sign Standards Exception Request at 2250 NE Highway 99W

ATTACHMENT A

CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128

503-434-7311
www.mcminnvilleoregon.gov

DECISION, FINDINGS OF FACT, AND CONCLUSIONARY FINDINGS FOR THE DENIAL OF A SIGN STANDARDS EXCEPTION REQUEST AT 2250 NE HIGHWAY 99W

DOCKET: SE 2-17 (Sign Standard Exception)

REQUEST: The applicant has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.

LOCATION: The subject sign is located on the property at 2250 NE Highway 99W. The subject site is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.

ZONING: C-3 (General Commercial)

APPLICANT: Jonathan Aliabadi

STAFF: Chuck Darnell, Associate Planner

DATE DEEMED COMPLETE: September 27, 2017

HEARINGS BODY: McMinnville Planning Commission

DATE & TIME: October 19, 2017. Civic Hall, 200 NE 2nd Street, McMinnville, Oregon

COMMENTS: This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Comcast; and Northwest Natural Gas. Their comments are provided in this exhibit.

Attachments:
Attachment 1 – Application and Attachments

DECISION

Based on the findings and conclusions, the Planning Commission recommends **DENIAL** of the sign standards exception (SE 2-17).

//

DECISION: DENIAL

//

Planning Commission:_____ Date:_____
Roger Hall, Chair of the McMinnville Planning Commission

Planning Department:_____ Date:_____
Heather Richards, Planning Director

Attachments:
Attachment 1 – Application and Attachments

APPLICATION SUMMARY:

The applicant has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.

Certain types of existing nonconforming signs in McMinnville are subject to an amortization process, which requires that signs that are not in compliance with the current sign standards be brought into compliance by December 31, 2017. Specifically, Section 17.62.110(C) of the McMinnville Zoning Ordinance states the following:

> Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, 2017, […]

The subject site is identified below:

Attachments:
Attachment 1 – Application and Attachments

The McMinnville Zoning Ordinance does allow for property owners with existing nonconforming signs that are subject to the amortization process to request an exception to the sign standards to allow their sign to continue to exist. In this case, the property owner is requesting an exception from the height and size requirements for freestanding signs in commercial zones. The subject site is zoned C-3 (General Commercial). Freestanding signs in commercial zones are limited to 125 square feet in area and 20 feet in height when the subject property is located adjacent to Highway 99W.

Specifically, Section 17.62.070(C)(1) of the McMinnville Zoning Ordinance regulates freestanding signs as follows:

> Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere.

The existing sign on the property, which is the subject of this exception request, is located near the subject property's frontage to Highway 99W. The subject freestanding sign is 30 feet in height and 182 square feet in size, between the three separate cabinets on the pole sign. The subject freestanding sign can be seen below:

ATTACHMENTS:

1. Application and Attachments

COMMENTS:

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Frontier Communications, Comcast, Northwest Natural Gas. The following comments had been received:

No comments have been received prior to the Public Hearing.

FINDINGS OF FACT

1. The applicant, Jonathan Aliabadi, has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.

2. The property on which the subject sign is located is 2250 NE Highway 99W. The subject site is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.

3. The subject property is currently zoned C-3 (General Commercial), and is designated as Commercial on the McMinnville Comprehensive Plan Map, 1980.

4. This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Frontier Communications, Comcast, Northwest Natural Gas. No comments in opposition were provided to the Planning Department.

5. Notice of the public hearing was provided by the City of McMinnville in the October 10, 2017 edition of the News-Register. No public comments were received prior to the public hearing.

6. The applicant has submitted findings (Attachment 1) in support of this application. Those findings are herein incorporated.

CONCLUSIONARY FINDINGS:

McMinnville's Comprehensive Plan:

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF MCMINNVILLE.

Policy 188.00: The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of

information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

Finding: Goal X 1 and Policy 188.00 are satisfied in that McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed staff report prior to the McMinnville Planning Commission and/or McMinnville City Council review of the request and recommendation at an advertised public hearing. All members of the public have access to provide testimony and ask questions during the public review and hearing process.

McMinnville's City Code:

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) are applicable to the request:

Chapter 17.62 - Signs

17.62.010 Purpose. The City Council finds that signs provide an important medium through which individuals and businesses may convey a variety of messages. However, left completely unregulated, signs can become a threat to public safety and a traffic hazard as well as an obstruction to the aesthetic appeal of McMinnville's unique landscape.

The standards contained in this chapter are primarily intended to balance the needs of businesses and individuals to convey their messages through signs, and the right of the public to be protected against the unrestricted proliferation of signs and their effect on public and traffic safety and the aesthetic qualities of the City such as vistas and gateways. In an attempt to achieve that balance, the purpose of this chapter is to:

A. Improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards;
B. Provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance;
C. Minimize visual clutter caused by signs by limiting their numbers and duration of use;
D. Protect citizen safety by prohibiting hazardous signs;
E. Ensure compliance with state and federal laws regarding advertising by providing rules and standards that are content neutral; and
F. Provide for near term and longer term improvements to signage through the use of appropriate amortization and incentive policies.

Finding: Section 17.62.010 is satisfied by the decision in that the Planning Commission finds that the exception request does not allow for the purposes of the Signs chapter to be implemented. Specifically, an approval of the exception request would not allow for the City to "improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards" or to "provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance". The Planning Commission also finds that the exception request does not meet the required review criteria for sign standards exceptions, which will be discussed in more detail below.

17.62.070 Permanent Sign Regulations. Permanent signs may be erected and maintained only in compliance with the following specific provisions: […]

C. Commercial (C-1, C-2, and C-3) and Industrial (M-L, M-1, and M-2) zones. Signs in the commercial and industrial zones may be directly or indirectly lit and shall meet all setback requirements of its zone.
    1. Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site

or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere. […]

Finding: The exception request is warranted because the subject sign is 30 feet in height and 182 square feet in surface area, both of which exceed the height and size maximums for a freestanding sign in a commercial zone and adjacent to Highway 99W.

17.62.110 Nonconforming Signs.

A. The following provision will require that a nonconforming sign be brought into compliance with this chapter: physical modification of a nonconforming sign or any action on a nonconforming sign that requires a building permit. This does not include replacement of a sign face without modification of the frame or general sign maintenance and repair.
B. All temporary or portable signs not in compliance with the provisions of this code shall be removed or made compliant immediately following adoption of this ordinance.
C. Amortization. Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, 2017, or at the time of occurrence of any of the actions outlined in provision 'A' above.
D. Notice of Sign Noncompliance. Notice of sign noncompliance will be mailed to affected property owners prior to taking enforcement action pursuant to Section 17.62.130 of this chapter. For those signs impacted by 17.62.110(C) of this chapter, notice of noncompliance will be mailed to affected property owners no later than six months prior to the end of the amortization period, and again prior to taking enforcement action pursuant to Section 17.62.130 of this chapter.
E. Appealing a Notice of Noncompliance. Any owner of property on which a nonconforming sign is located may appeal a Notice of Sign Noncompliance issued pursuant to Section 17.62.110(D) within 60 days of the mailing date of such Notice by:
    1. Submitting evidence of sign compliance to the Planning Department. The Planning Director shall determine whether the evidence submitted proves sign compliance, and the Director has the authority to dismiss a Notice of Sign Noncompliance. All decisions made by the Director may be appealed to the Planning Commission; or
    2. Submitting an application for an Exception pursuant to Section 17.62.120 to the Planning Director; or
    3. Submitting an application for an administrative variance pursuant to Section 17.72.020 to the Planning Director; or
    4. Submitting an application for a variance pursuant to Section 17.72.020 to the Planning Department.

Finding: Section 17.62.110 is satisfied in that a notice of potential sign noncompliance was provided to the owner of the property on which the subject sign is located. The notice was issued by the McMinnville Planning Department on June 30, 2017, which was six (6) months prior to the end of the amortization period as defined in Section 17.62.110(C). The applicant appealed the notice of noncompliance by submitting the application for a sign standards exception on August 24, 2017.

17.62.120 Exceptions.

A. Applications for an Exception shall be heard by the Planning Commission, which may authorize exceptions from the requirements of this chapter where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship as set forth in subsections (B) and (C) of this Section, except that no exception shall be granted pursuant

to subsection (B) of this Section to allow a sign or a type of signage which is prohibited by Section 17.62.050 of this chapter. In granting an exception the Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or otherwise achieve the purposes of this chapter.

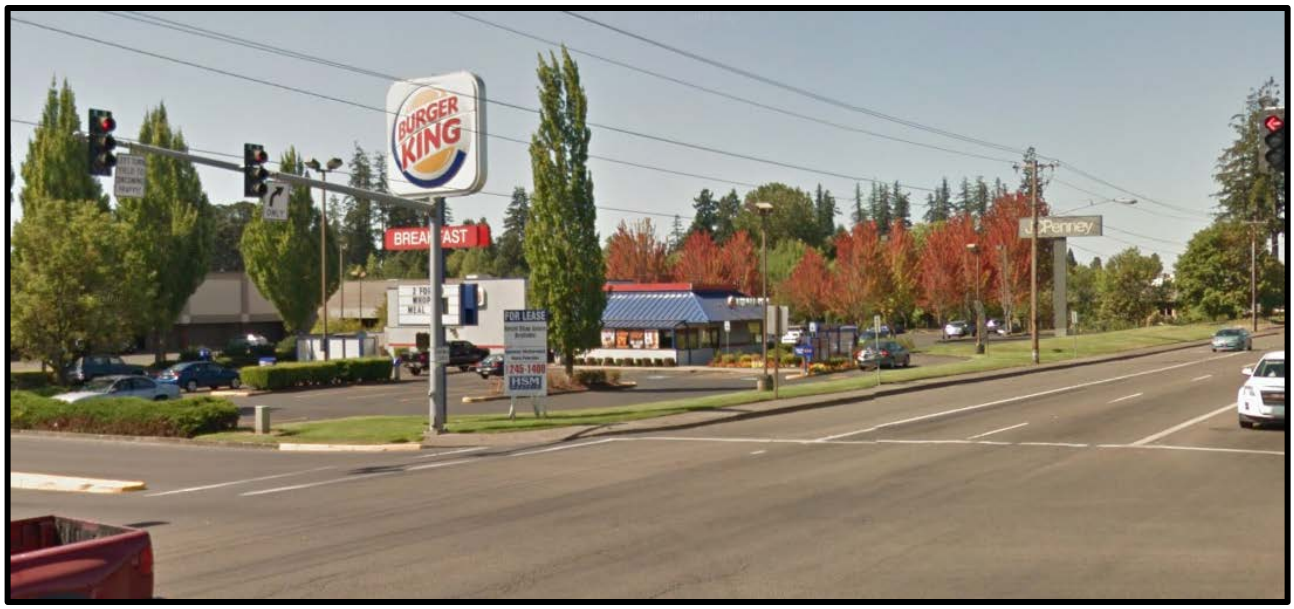
Finding: Section 17.62.120(A) is satisfied in that the Planning Commission held a public hearing to consider the exception request. The Planning Commission found that strict application of the Signs chapter and the amortization process would not cause an undue or unnecessary hardship as set forth in Section 17.62.120(B) or Section 17.62.120(C), as described in more detail below.

B. An exception may be granted if the property owner established that:
   1. An exception is necessary to prevent an unnecessary hardship due to factors such as topography, location, surrounding development, lot shape or lot size; and […]

Finding: Section 17.62.120(B)(1) is satisfied by the decision in that the Planning Commission finds that the exceptions requested are not warranted based on the sign's location, surrounding development, or other physical characteristics of the subject site. The property that the Burger King building is located on is relatively flat. There is a slight reduction in elevation from the grade of Highway 99W adjacent to the property down to the property's parking lot and building site, but the grade difference is not substantial enough to warrant the increase in sign height being requested (10 feet over the standard maximum of 20 feet in height). Also, the reference to the vertical space being obstructed by overhead powerlines does not warrant the exception for sign height, as a reduction in height down to a level that meets the City's sign standards would actually bring the sign down below the height of the powerlines and reduce the obstruction from view from the public right-of-way. In terms of the exception for sign size, the applicant did not provide sufficient evidence for the need for a larger sign (57 square feet over the standard maximum size of 125 square feet).

In addition, the subject site is highly visible from the adjacent right-of-way. The Burger King building is set back from the street, but is completely unobstructed from view with no landscaping or other physical barriers between the building and the adjacent right-of-way. The Planning Commission finds that the property has space to accommodate a freestanding sign that meets the City's current sign standards along the property's frontage that would still provide additional visibility for the business. The underlying zoning district (C-3 General Commercial) did not require that the building be setback from the street, so if visibility was a primary concern of the property owner, the site could have been designed to locate the building closer to the roadway. Therefore, some of the hardships referenced by the applicant are not specific to the subject property and were not out of the control of the property owner, but are the result of the manner in which the property was developed.

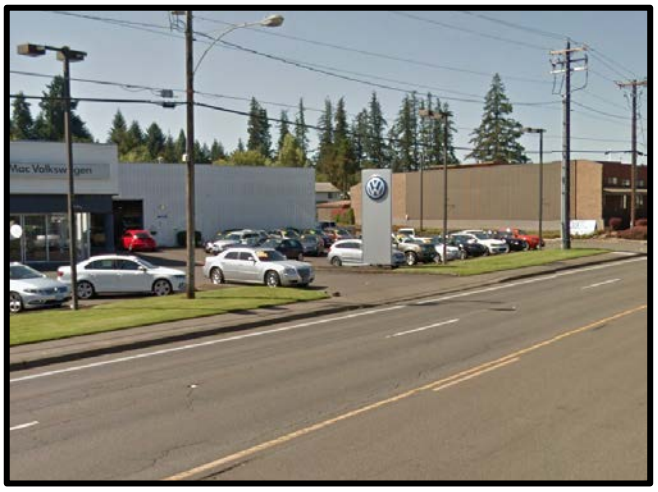
Views of the subject site and existing sign, from both directions on the adjacent public right-of-way (Highway 99W), are provided below:



2. The granting of the exception will not result in material damage or prejudice to other property in the vicinity; and […]

Finding: Section 17.62.120(B)(2) is satisfied by the decision in that the Planning Commission finds that the existing sign, in and of itself, does not cause any material damage to other surrounding properties. However, the granting of the exceptions would result in prejudice to other properties in the vicinity that have constructed signs that meet the City's sign standards. Many of the factors that the applicant referenced in their response to criteria #1 (Section 17.62.120(B)(1)), including sign location, topography, and surrounding development, apply similarly to many other properties in the vicinity. Those properties have taken those factors into consideration, and still found a location on the site that allowed for a sign to be located that provides visibility for the businesses but that also meets the City's standards for freestanding sign size and height. Within a quarter mile of the subject site, there are numerous properties with similar physical characteristics that have installed freestanding signs that meet the City's standards for height and size. Examples of those signs and the properties that would be prejudiced are provided below:



3. The request will not be detrimental to community standards and the appearance of the city.

Finding: Section 17.62.120(B)(3) is satisfied by the decision in that the Planning Commission finds that the community has specific standards in place in the McMinnville Zoning Ordinance for the height and size of freestanding signs. These standards limit the height of freestanding signs along Highway 99W to 20 feet in height and limit the size of freestanding signs to 125 square feet in area. These size requirements were developed to implement the purpose of the McMinnville sign ordinance that was adopted in 2008 under Ordinance No. 4900. The purpose of the sign standards that were adopted, as now stated in Section 17.62.010 of the McMinnville Zoning Ordinance, is to "improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards" and to "provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance".

The Planning Commission finds that granting the exception request would not be consistent with the community standards for freestanding signs, not only because the existing sign does not meet the clearly defined standards for height and size, but also because an approval of the exception request would not result in "equitably applied sign height, size, and location standards". An approval of the exception request would result in prejudice to other properties in the vicinity that have followed the community's standards for freestanding signs, as described in more detail above.

C. An exception may be granted if the property owner establishes that the strict enforcement of the ordinance will either:
   1. Deny the owner of all economically viable use of the property on which the sign is located; or
   2. Substantially interfere with the owner's use and enjoyment of the property on which the sign is located.

Finding: Section 17.62.120(C)(1) and Section 17.62.120(C)(2) are satisfied by the decision in that the Planning Commission finds that the strict enforcement of the amortization program will not deny the owner of all economically viable use of the property, or substantially interfere with the owner's use and enjoyment of the property. The amortization program and the sign standards that apply to the existing freestanding sign do not deny the owner of all economically viable use of the property. Strict enforcement of the amortization program does not require that signage be completely removed from the property, only that the signage be updated to be in compliance. The amortization program also does not result in the property becoming completely economically inviable, as the existing building and use are allowed to continue to operate as they do today.

D. Exceptions shall not be granted for the convenience of the applicant or for the convenience of regional or national businesses which wish to use a standard sign size.

Finding: Section 17.62.120 is satisfied by the decision in that an exception is not being granted for the convenience of a national business or corporation to use a standard sign size. While the applicant has stated that the required updates to the existing freestanding sign may require changes that cause conflict between a franchisee and the larger corporation, that argument does not warrant the granting of a sign exception. Therefore, the Planning Commission finds that the applicant's main argument for the interference of the owner's use and enjoyment of the property is not applicable, as the use of a corporation or national business standard sign size is specifically stated in the McMinnville Zoning Ordinance as a factor that does not allow for the granting of an exception.

CD:sjs

Attachment 1

Planning Department
231 NE Fifth Street ○ McMinnville, OR 97128
(503) 434-7311 Office ○ (503) 474-4955 Fax
www.mcminnvilleoregon.gov

Office Use Only:
File No. SE 2-17
Date Received 8-24-17
Fee 990.00
Receipt No. 17m0180
Received by SD

Sign Standards Exception Application

Applicant Information

Applicant is: ☐ Property Owner ☐ Contract Buyer ☐ Option Holder ☐ Agent ☐ Other_____

Applicant Name See attached typed response Phone_____

Contact Name_____ Phone_____
(If different than above)

Address_____

City, State, Zip_____

Contact Email_____

Property Owner Information

Property Owner Name_____ Phone_____
(If different than above)

Contact Name_____ Phone_____

Address_____

City, State, Zip_____

Contact Email_____

Site Location and Description

(If metes and bounds description, indicate on separate sheet)

Property Address_____

Assessor Map No. R4 - - Total Site Area_____

Subdivision_____ Block_____ Lot_____

Comprehensive Plan Designation_____ Zoning Designation_____

1. Please describe the specific exception from Chapter 17.62 (Signs) that is being requested. State in detail how your request differs from the requirement(s).

2. Explain how this request is necessary to prevent an unnecessary hardship due to factors such as topography, location, surrounding development, lot shape or size.

3. Explain how the granting of this exception will not result in material damage or prejudice to other property in the vicinity.

4. Explain how this request would not be detrimental to community standards and the appearance of the City.

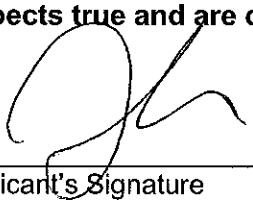
5. Does the strict enforcement of Chapter 17.62 (Signs) deny the property owner of all economically viable use of the property on which the sign is located?

6. Does the strict enforcement of Chapter 17.62 (Signs) substantially interfere with the owner's use and enjoyment on which the sign is located?

In addition to this completed application, the applicant must provide the following:

- ☑ *A site plan (drawn to scale, with a north direction arrow, legible, and of a reproducible size), clearly showing the location of the sign, buildings, lot dimensions, and adjacent street(s), distances from property lines, access, and other elements relevant to the requested exception to the sign standards.*
- ☑ *Other data or information which would help substantiate or clarify your request.*
- ☑ *Payment of the applicable review fee, which can be found on the Planning Department web page.*

I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.



Applicant's Signature

8/21/17

Date

Property Owner's Signature

Date

Typed Response for "Sign Standards Exception Application"

Applicant/Owner Information:
Jonathan Aliabadi (Agent)
7011 Koll Center Parkway #150, Pleasanton CA 94566
650-906-1264

Site Location:
Burger King located at 2250 N. Hwy 99 W McMinnville OR, 97128

The exceptions from Chapter 17.62 that are being requested include 17.62.120 B and C. The current freestanding "Burger King" signage exceeds the 20 feet height requirement established in Section 17.62.070(C)(1) of the McMinnville Zoning Ordinance. For your consideration, the request for an exemption is being made based on the following:

1. Based on the drawings provided, the Burger King restaurant has been in operation since the late 1980s. As such, the location of the existing signage has been and continues to be an integral part of local advertising for the business. Alteration to the signage would result in hardship in this regard. In terms of topographical considerations, the location presents various challenges that would result in hardship. Please see attached sign dimensions and photographs. The vertical space on the sidewalk frontage is completely obstructed by the existence of power lines. Moving the sign further back would require the parking lot, landscaping, trees, and plants to be removed. It would also likely negatively impact the intended flow of traffic for the entire shopping center. Furthermore, the sign would be obstructed by the large trees situated in the middle of the parking lot. Alternatively, moving the sign in the direction of the JC Penny sign would pose even more topographical issues. The sign would be obstructing the Burger King itself, defeating the purpose of the sign. Also, the parking light on the right side of the Burger King frontage represents the property line. Moving a sign to this location would require the parking lights to be removed. In the interest of customer safety, parking areas need to be well lit and visible. This location would also cause the existing JC Penny sign to be obstructed. The Burger King is also set back from the street due to the limitations of the lot size. As such, signage is required for advertising and marketing purposes.

2. The existing signage does not result in any material damage to other properties or businesses in the vicinity, as it is offset and does not block any other businesses from view.

3. As stated in #1, the Burger King restaurant has been in operation since the late 1980s. This predates the 2008 adoption of Ordinance No. 4900. As such, the existing signage is not detrimental to any community standards. In regards to appearance, the signage is well maintained, cleaned, and updated, as required by Burger King Corporation operational standards for independent Franchisees. Furthermore, as outlined in #1, the various topographical challenges of this property would cause unnecessary hardship if the exception is

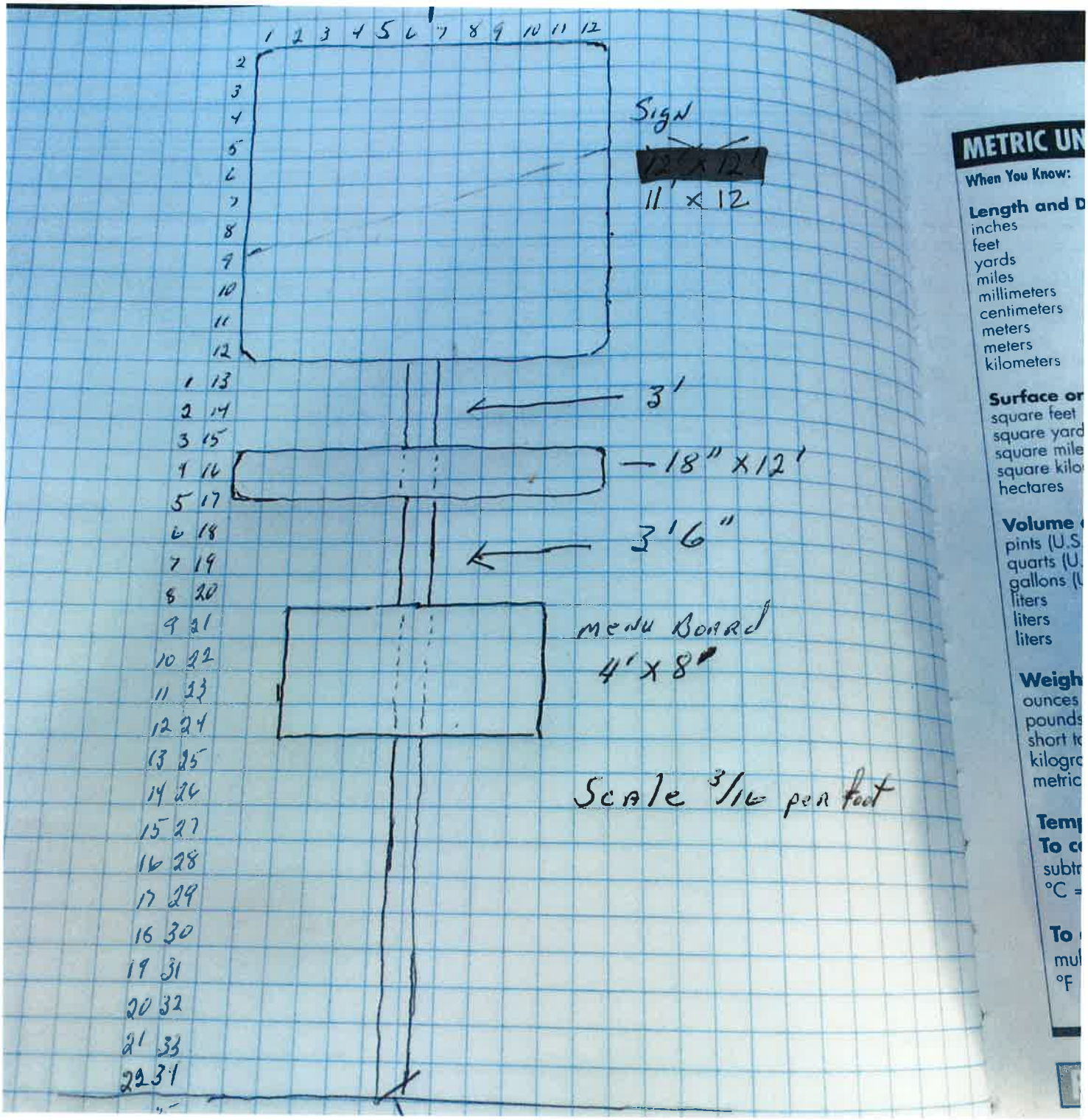
not granted. Movement of the sign is not a feasible option, and the owners would be denied economically viable use of the property.

4. The strict enforcement of Chapter 17.62 would negatively impact the economic viability of the property for the property owner. As stated in #1, the existing signage is an integral part of local advertising for the business. Strict enforcement of the ordinance could potentially result in reduced traffic and sales for the business. This negatively impacts multiple parties, including the property owner, business owner, and employees.

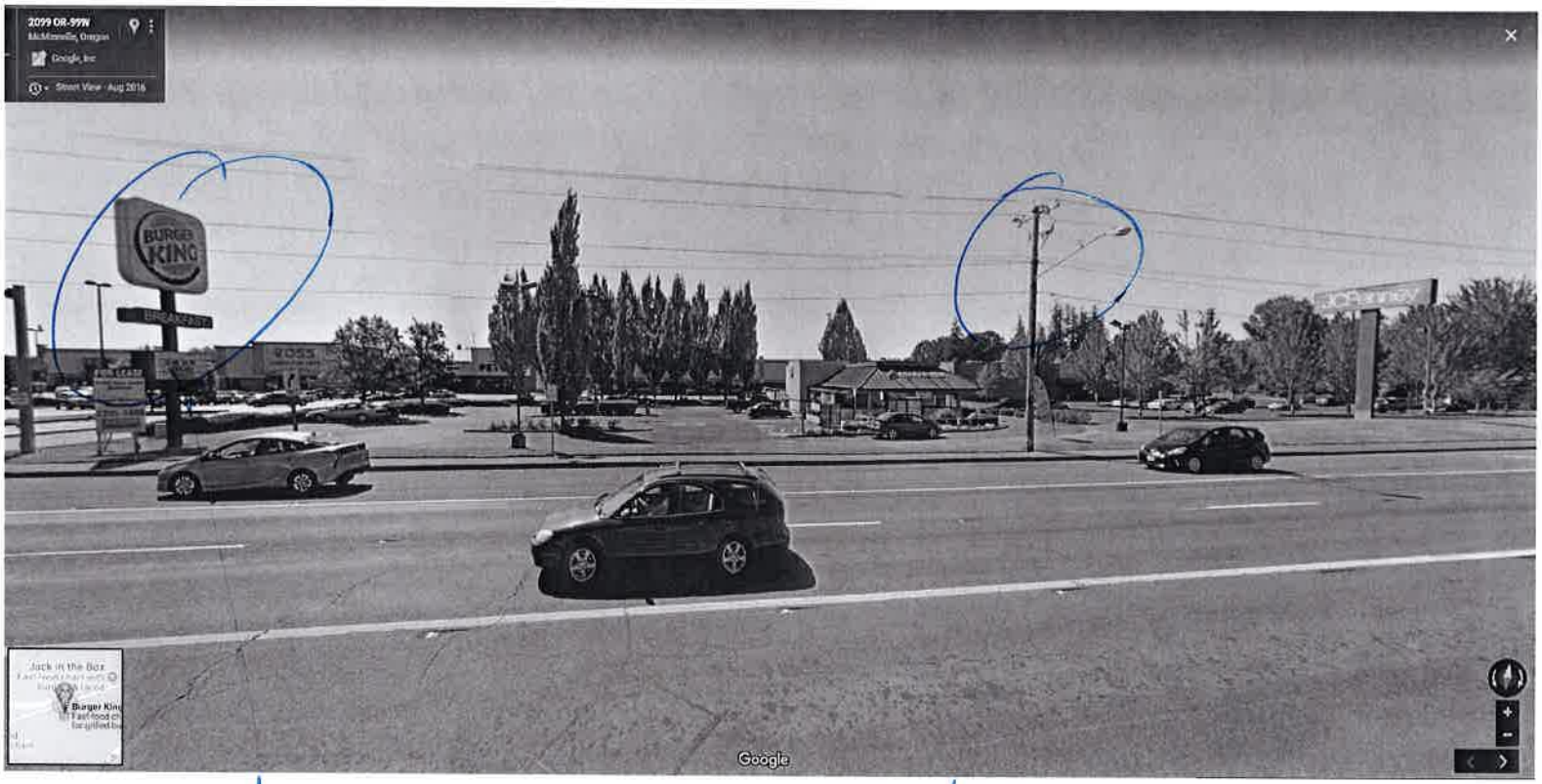
5. The strict enforcement of Chapter 17.62 would negatively impact the business owner for several reasons:

a. The location has undergone a complete overhaul and remodel, which was approved by both McMinnville Planning/Building Department and Burger King Corporation. Alterations to the sign would place Franchisee in legal dispute with Burger King Corporation, as the approved site plan would be drastically different at the time of inspection.

b. Customer traffic has already been negatively impacted by remodeling and construction activities. The business relies heavily on the existing signage to drive customer traffic back to the newly remodeled restaurant. Any alterations to the sign would negatively impact traffic to this location.

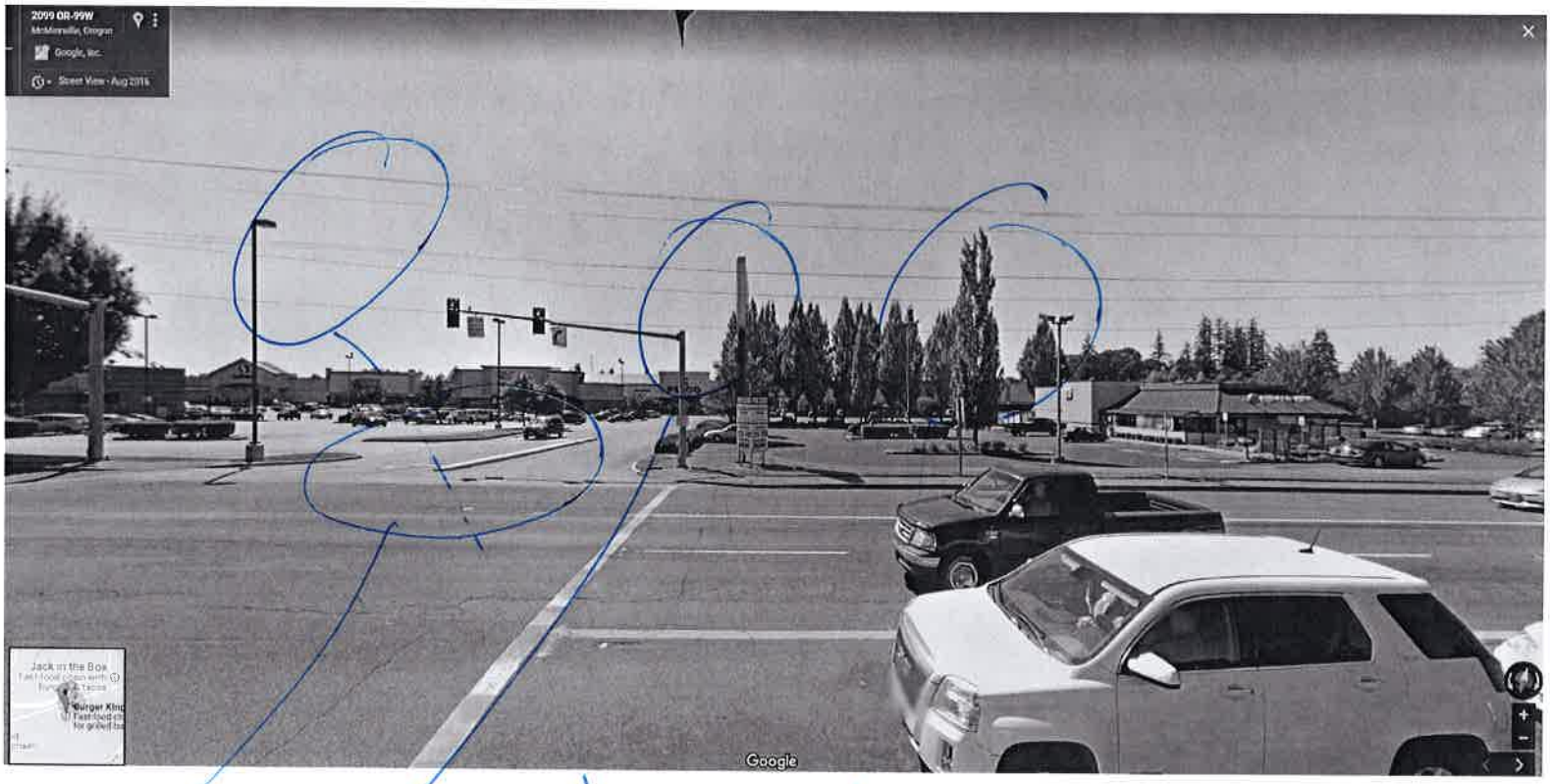

Sign
12' x 12'
11' x 12
3'
18" x 12'
3'6"
menu Board
4' x 8'
Scale 3/16 per foot


BURGER KING
BREAKFAST
2 FOR $6
WHOPPER
DEAL
FOR LEASE



Signage behind power lines.

Power Lines

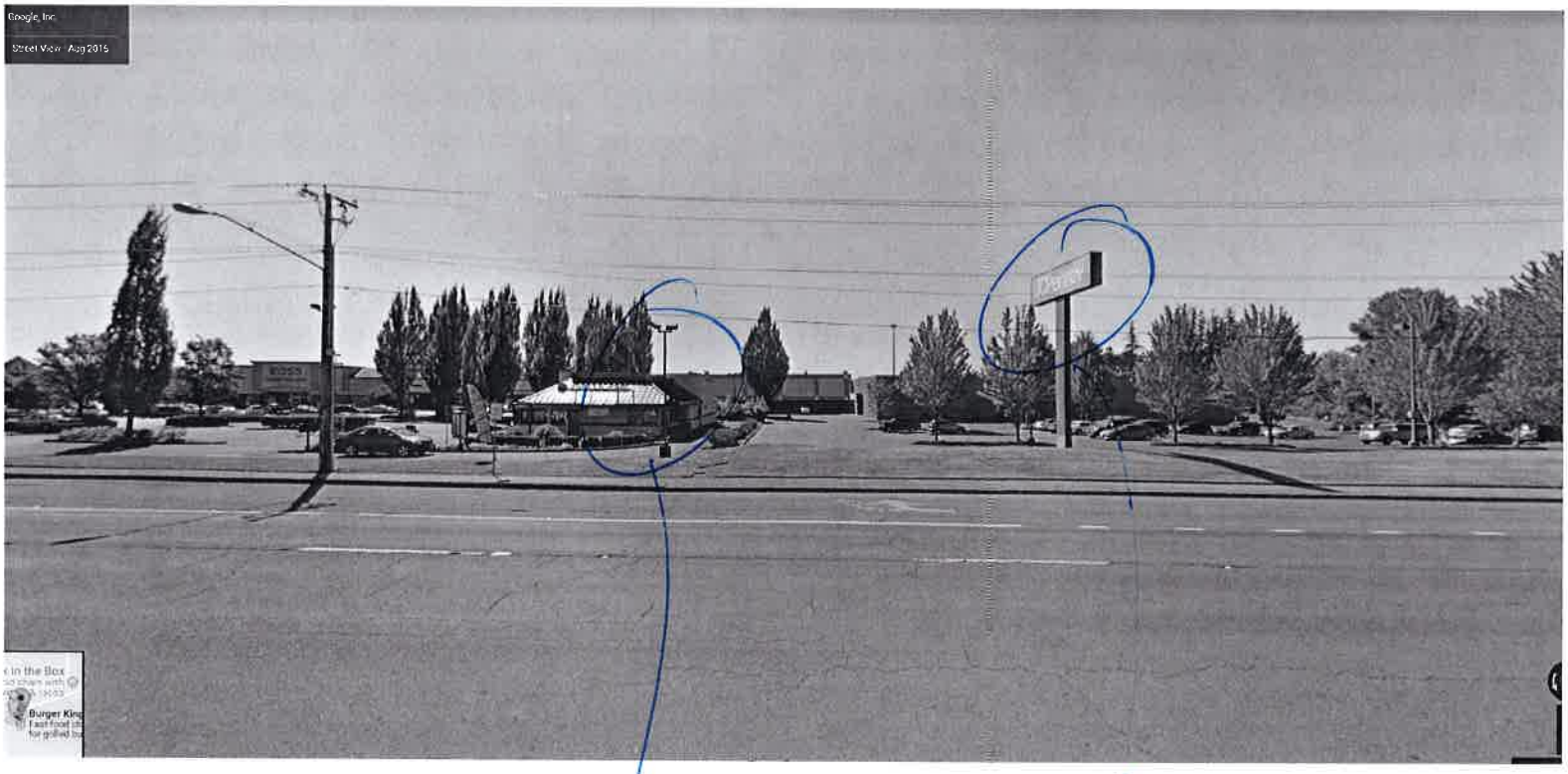


Flow of ~~traffic~~ to shopping center

Signage

Trees in center of parking lot.

Power Lines



Parking light in question near property line.

JC Penny sign

PLANNING DEPARTMENT, 231 NE Fifth Street, McMinnville, Oregon 97128
www.mcminnvilleoregon.gov

June 30, 2017

BIG ISLAND MARINA LLC
PO BOX 707
BEAVERCREEK OR 97004

Re: Notice of Potential Sign Noncompliance

To Whom It May Concern:

In November of 2008, the McMinnville City Council adopted Ordinance No. 4900, regulating signage within the McMinnville city limits (codified at Chapter 17.62 of the McMinnville Zoning Ordinance). Ordinance No. 4900, required that permanent signs failing to conform with the adopted standards (e.g., exceed maximum height or exceed sign face area) must be brought into conformance with the standards by not later than December 31, 2016. In November of 2016, the City Council extended the deadline for signs to come into conformance to **December 31, 2017.**

City staff is developing an inventory of signs that are potentially not compliant with the sign code, so that we could work with property owners to bring all noted signs into compliance by December 31, 2017. You are receiving this notice because one or more of your signs (freestanding, roof or animated signs) on your property has been identified as potentially not being compliant with the sign code. Attached to this letter is a flyer with the relevant sections of the city's sign code describing what are compliant freestanding, roof and animated signs.

Specific to the signage on your property at 2250 NE Highway 99W (Tax Lot R4415BB00900), the following identified nonconforming signage (photos attached further below) must be brought into conformance with the sign standards by December 31, 2017.

- The freestanding "Burger King" sign: It appears that this sign may exceed the height and size limits outlined in Section 17.62.070 (C)(1) of the McMinnville Zoning Ordinance. This section states that no sign on your property may be taller than 20 (twenty) feet in height and 125 square feet in surface area.

If you believe that your sign is not in violation of the sign code, or you would otherwise like to appeal the application of the code to your sign, you may appeal this notice of noncompliance **within 60 days** of the mailing date of the notice (August 29). You may appeal the notice of noncompliance by:

1. Submitting evidence of sign compliance to the Planning Department; or
2. Submitting an application for an Exception pursuant to Section 17.62.120 of the McMinnville Zoning Ordinance; or
3. Submitting an application for an Administrative Variance pursuant to Section 17.72.020 of the McMinnville Zoning Ordinance; or
4. Submitting an application for a Variance pursuant to Section 17.72.020 of the McMinnville Zoning Ordinance.

There are specific criteria that must be met in order to receive an Exception, Administrative Variance, or Variance. Those criteria, as well as all of the sign standards, can be found in Chapters 17.62 and 17.74 of the McMinnville Zoning Ordinance, which is located on our website at the link below and is provided in excerpts as an attachment to this letter.

http://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/planning/page/1341/zoning ordinance.pdf

We would like to work with you to bring your sign into compliance and would be happy to talk through your options and discuss the changes that will be required to your nonconforming signage to make it compliant. If you have any questions regarding the City's sign standards, require additional assistance, or feel that you have received this notice in error, please feel free to call me at (503) 434-7330 or stop by the Planning Department office, which is located at 231 NE 5th Street.

I very much appreciate your cooperation in this matter.

Sincerely,

Chuck Darnell
Associate Planner

CD:sjs


BURGER KING
BREAKFAST
2 FOR $10
WHOPPER
MEAL DEAL

Attachment – Relevant Sign Ordinance Regulations

Permanent Sign Regulations

17.62.050 Prohibited Signs. The following signs are prohibited: [...]
J. Roof signs.

17.62.070 Permanent Sign Regulations. Permanent signs may be erected and maintained only in compliance with the following specific provisions: [...]

C. Commercial (C-1, C-2, and C-3) and Industrial (M-L, M-1, and M-2) zones. Signs in the commercial and industrial zones may be directly or indirectly lit and shall meet all setback requirements of its zone.
    1. Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere.
    2. Mounted Signs: There is no limit on the area of permanent mounted signs except as provided in 17.62.070(D)(5).
D. Supplemental permanent sign provisions.
    1. No signs are permitted within a public right-of-way unless authorized by a public agency.
    2. Signs shall be erected in an upright position and placed perpendicular to a horizontal surface conforming to the line from horizon to horizon.
    3. Maximum square footage restrictions include changeable copy and exclude accessory and incidental signs.
    4. Minimum clearance for projecting, canopy, and hanging signs when over a walkway or access area is eight (8) feet.
    5. Projecting and hanging signs may extend no more than six (6) feet from a building's façade. No projecting or hanging sign may be over thirty-six (36) square feet in area.
    6. Sign setbacks are measured from the nearest property line to the nearest portion of the sign. In addition to the specific setbacks noted above, all signs shall meet the clear-vision requirements of Sections 17.54.050(F) and 17.54.080(A) and (B).
E. Electronic changeable copy signs are subject to the following standards:
    1. One (1) electronic changeable copy sign is permitted per site or multi-tenant complex and shall only be allowed as part of a permanent freestanding or wall sign.
    2. The electronic changeable copy portion of a freestanding sign may be no higher than twelve (12) feet above grade.
    3. The electronic changeable copy portion of a sign may not exceed twenty-four (24) square feet in area.
    4. Electronic changeable copy signs must be set at least ten (10) feet from all property lines.
    5. The electronic changeable copy portion of a sign will have its area calculated at a rate two (2) times that of other signs.
    6. On sites or multi-tenant complexes on which an electronic changeable copy sign is located, temporary signage is limited to that described in Section 17.62.060(B)(2) and (3).

Exception Process and Review Criteria

17.62.120 Exceptions.

A. Applications for an Exception shall be heard by the Planning Commission, which may authorize exceptions from the requirements of this chapter where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship as set forth in subsections (B) and (C) of this Section, except that no exception shall be granted pursuant to subsection (B) of this Section to allow a sign or a type of signage which is prohibited by Section 17.62.050 of this chapter. In granting an exception the Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or otherwise achieve the purposes of this chapter.
B. An exception may be granted if the property owner established that:
    1. An exception is necessary to prevent an unnecessary hardship due to factors such as topography, location, surrounding development, lot shape or lot size; and
    2. The granting of the exception will not result in material damage or prejudice to other property in the vicinity; and
    3. The request will not be detrimental to community standards and the appearance of the city.
C. An exception may be granted if the property owner establishes that the strict enforcement of the ordinance will either:
    1. Deny the owner of all economically viable use of the property on which the sign is located; or
    2. Substantially interfere with the owner's use and enjoyment of the property on which the sign is located
D. Exceptions shall not be granted for the convenience of the applicant or for the convenience of regional or national businesses which wish to use a standard sign size.
E. The City Council shall stand as an appeal board. An appeal from a ruling of the Commission must be filed within fifteen (15) days of the date said ruling is rendered. (Ord. 5013 §1, 2016)

Administrative Variance Application and Review Criteria

17.72.020 Application Submittal Requirements. Applications shall be filed on forms provided by the Planning Department and shall be accompanied by the following;

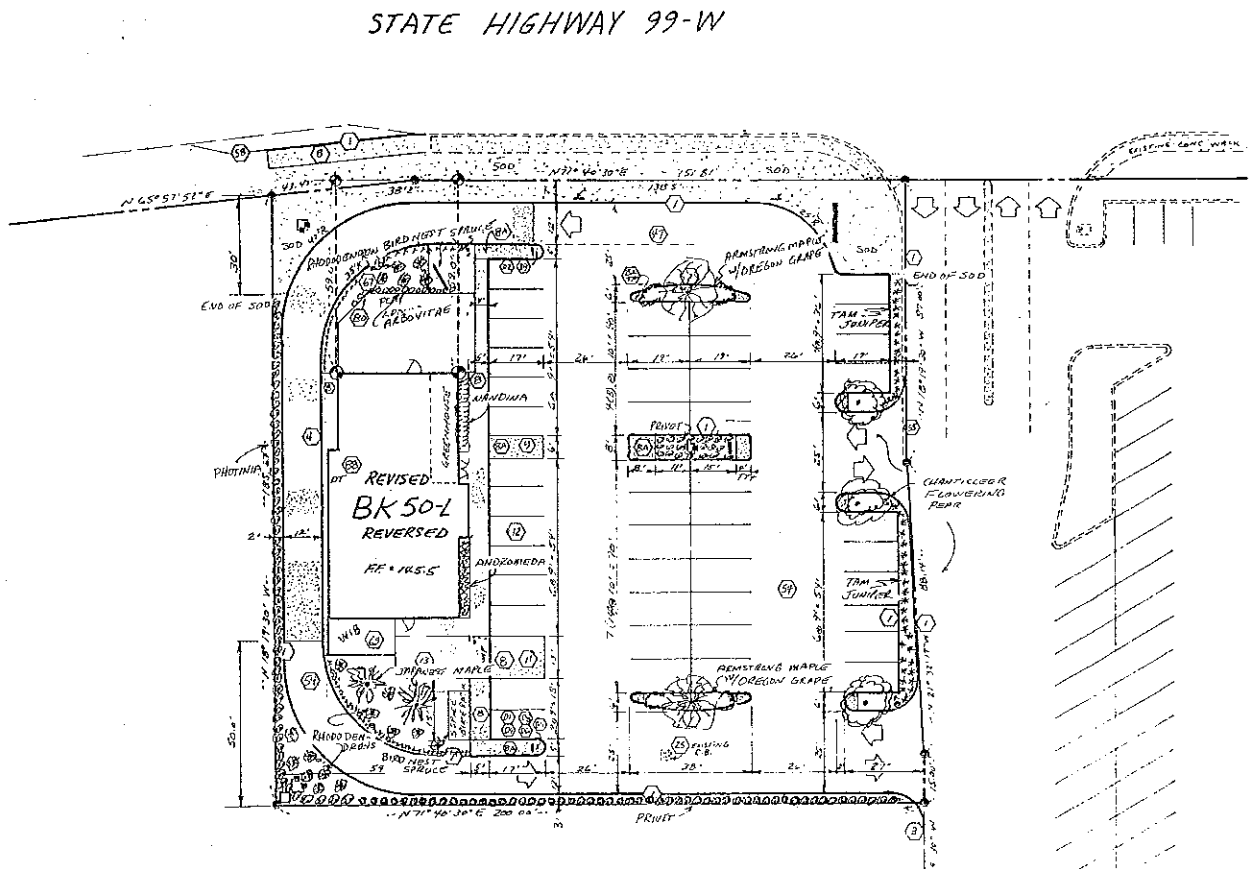
A. A scalable site plan of the property for which action is requested. The site plan shall show existing and proposed features, such as access, lot and street lines with dimensions in feet, distances from property lines, existing and proposed buildings and significant features (slope, vegetation, adjacent development, drainage etc.)
B. An explanation of intent, nature and proposed use of the development, and any pertinent background information
C. Property description and assessor map parcel numbers(s).
D. A legal description of the property when necessary.

E. Signed statement indicating that the property affected by the application is in the exclusive ownership or control of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.
F. Materials required by other sections of the McMinnville Zoning Ordinance specific to the land use application.
G. Other materials deemed necessary by the Planning Director to illustrate compliance with applicable review criteria, or to explain the details of the requested land use action.

17.74.100 Variance-Planning Commission Authority. The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

17.74.110 Conditions for Granting Variance. A variance may be granted only in the event that the following circumstances substantially exist:

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;
B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;
C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;
D. The variance requested is the minimum variance which would alleviate the hardship.



McMINNVILLE PLAZA
TO: K-MART & FLEMING'S FOOD & LESS

NORTH

TREES:

2 ea. ACER PALMATUM - "JAPANESE MAPLE" - 1¼" CALIPER - 7'-8' STD.
2 ea. ACER RUBRUM - "ARMSTRONG MAPLE" - 1¼" CALIPER - 8'-10' W/6' STD.
3 ea. "CHANTICLEER" FLOWERING PEAR - 1¼" CALIPER 8-10' W/ 6' STD.

SHRUBS:

16 ea. THUJA OCCIDENTALIS GLOBOSA - "TOM THUMB ARBOVITAE - 30" @ 30" O.C.
7 ea. PIERIS JAPONICA - "ANDROMEDA" - 3 GAL.
7 ea. NANDINA DOMESTICA - "HEAVENLY BAMBOO - MOYER'S RED" - 3 GAL.
16 ea. RHODODENDRON - VARIOUS - 18"-21" @ 6' O.C. MIN.
36 ea. PICEA ABIES "NIDIFORMIS" - BIRD NEST SPRUCE - 3 GAL. @ 3' O.C.
65 ea. PHOTINIA FRASERI - 3 GAL. @ 3' O.C.
75 ea. LIGUSTRUM OVALIFOLIUM - "CALIFORNIA PRIVET" - 1 GAL. @ 3' O.C.
40 ea. MAHONIA AQUIFOLIUM - "OREGON GRAPE" - 1 GAL. @ 3' O.C.
AS NEEDED JUNIPERUS SABINA "TAMARISCIFOLIA" - "TAM JUNIPER - 1 GAL. @ 3' O.C.

SOD: 100% CERTIFIED KENTUCKY BLUEGRASS

OTHER: GROUNDCOVER - BARKDUST
IRRIGATION - PER PAGE SD-9 AND AS NEEDED - PLANS FOR McMINNVILLE PLAZA.

ON SITE SIGN NOTES

- BURGER KING LOGO
- CLEARANCE SIGN 8'-6" (NON-ILLUM.)
- ORDER STATION
- BURGER KING LOGO
- DRIVE-THRU
- DIRECTIONAL ARROW
- THANK YOU
- ENTER ONLY
- EXIT ONLY
- NO EXIT
- ONE WAY
- RIGHT TURN ONLY
- DO NOT ENTER
- MESSAGE/SYMBOL BOTH SIDES

LEGEND

- SITE REFERENCE NOTE
- BUILDING TIE
- PROPOSED YARD LIGHT
- EXISTING CURB
- PROPOSED CURB
- EXISTING CURB/GUTTER
- PROPOSED CURB/GUTTER
- EXISTING EDGE OF PAVEMENT
- PROPOSED EDGE OF PAVEMENT
- EXISTING SPOT ELEVATION
- EXISTING CONTOUR
- PROPOSED PAVEMENT ELEVATION
- PROPOSED CURB/PAVEMENT ELEVATION
- EXISTING GAS LINE
- PROPOSED GAS LINE
- EXISTING WATER LINE
- PROPOSED WATER LINE
- EXISTING SANITARY LINE
- PROPOSED SANITARY LINE
- EXISTING STORM LINE
- PROPOSED STORM LINE
- EXISTING ELECTRIC LINE (OH) OR (UG)
- EXISTING TELEPHONE LINE (OH) OR (UG)
- PROPOSED SPRINKLER SYSTEM

SITE REFERENCE NOTES

BOXES FILLED IN (☒) ... INDICATE ITEMS REQUIRED. ALL OTHERS ... IN THIS CONTRACT.

- 6" CONCRETE CURB
- EXTRUDED CONCRETE CURB
- 2' CONCRETE CURB & GUTTER
- STANDARD CURB NOSING
- 4" BARRIER CURB
- 6" TO 4" CURB TRANSITION
- PRECAST CONC. WHEELSTOP
- PAVER TILE WALK
- BRICK WALK
- BRUSHED CONCRETE WALK
- EXPOSED AGGREGATE WALK
- CONCRETE RAMP-EXTERNAL
- CONCRETE RAMP-INTERNAL
- HANDICAP PARKING STALL
- TYPICAL CURBED PARKING STALL
- BRICK TRASH ENCLOSURE
- STUCCO TRASH ENCLOSURE
- SINGLE FIXTURE
- DOUBLE 90-DEGREE FIXTURES
- DOUBLE 0-DEGREE FIXTURES
- TRIPLE 90-DEGREE FIXTURES
- QUAD 90-DEGREE FIXTURES
- DOUBLE 180-DEGREE FIXTURES
- PAINTED TRAFFIC ARROW
- CURVED TRAFFIC ARROW
- RETAINING WALL (TYPE A)
- RETAINING WALL (TYPE B)
- RETAINING WALL (TYPE C)
- TYPICAL GUARD POST
- CATCH BASIN
- ALT. CATCH BASIN
- TRENCH DRAIN
- MANHOLE
- SOAKAGE PIT
- ROOF DRAIN BUBBLER
- ROOF DRAIN FLUME
- DECORATIVE MASONRY WALL
- HANDRAIL
- TRASH ENCLOSURE DRAIN
- PLANTER (TYP)
- SEPTIC TANK
- SEPTIC-DOSING TANK
- GREASE INTERCEPTOR
- SANITARY CLEANOUT (TYP)
- DRAINFIELD
- ROOF DRAIN LEADERS THRU CURB
- 1-1/2" PVC IRRIGATION VALVE & BOX
- WATER SERV. (SIZE ON SHT. TP-1)
- WATER METER
- FIRE SPRINKLER SERVICE
- FIRE SPRINKLER METER
- SANITARY SERVICE
- GAS SERVICE
- GAS METER
- 4" WIDE PAINTED STRIPES (TYP)
- 4" WIDE PAINT. STRIPES 1.5' OC @45-DEG.
- 8" WIDE PAINTED STRIPE
- FRONT VESTIBULE WITH FRONT DOOR
- FRONT VESTIBULE WITH SIDE DOOR
- SIDE VESTIBULE WITH FRONT DOOR
- SIDE VESTIBULE WITH SIDE DOOR
- TO BE CONSTR. AS PER LOCAL CODES
- REPLACE/RESTORE CURB TO MATCH EXIST.
- NEW PAVING TO BE COMPATIBLE W/ EXIST.
- EXIST. TO BE REMOVED AND/OR RELOCATED
- EXISTING TO REMAIN
- WATER CONN. TO TRASH ENCL.-NOTE 8-SHT. C-1
- EDGE OF PAVEMENT (NO CURB)
- STD TRAFFIC STOP SIGN W/18" STOP BAR
- 4" PVC SLEEVE BENEATH PAVEMENT
- TRANSFORMER PAD
- DRIVE-THRU CANOPY
- ORDER STATION CANOPY
- CENTERLINE OF DRIVE-THRU WINDOW
- CONCRETE DRIVE-THRU LANE
- REDWOOD STOCKADE FENCE
- LANDSCAPED AREA
- CONTRACTOR TO CONN. TO EXIST. UTILITIES
- WALK-IN BOXES (SEE ARCHITECTURALS)
- GUARD POST AT DRIVE-THRU WINDOW
- PROPANE TANK (ABOVE GROUND)
- PROPANE TANK (UNDERGROUND)
- SOAKAGE PIT (WELL)
- PROPOSED FIRE HYDRANT LOCATION
- PAVED DITCH
- ASPHALT SWALE
- RETENTION SWALE
- CONCRETE SNOWALL
- U-SNOWALL SAND/CEMENT
- SIDEWALK UNDERDRAIN
- RETENTION BASIN
- OUTLET TRAP
- GUARD RAIL (STEEL PLATE)
- PLAYGROUND FENCING
- PLANTER @ PLAYGRND W/PEA GRAVEL
- PAVER TILE @ PLAYGRND W/PEA GRAVEL
- CONC. WALK @ PLAYGRND W/PEA GRAVEL
- PLANTER @ PLAYGRND W/SYNTHETICS
- PAVER TILE @ PLAYGRND W/SYNTHETICS
- CONC. WALK @ PLAYGRND W/SYNTHETICS
- BK-86 DRIVE-THRU DETAIL
- BK-88 DRIVE-THRU DETAIL

GRAPHIC SCALE
20 10 0 20 40
1" = 20 FT.

10-26-85

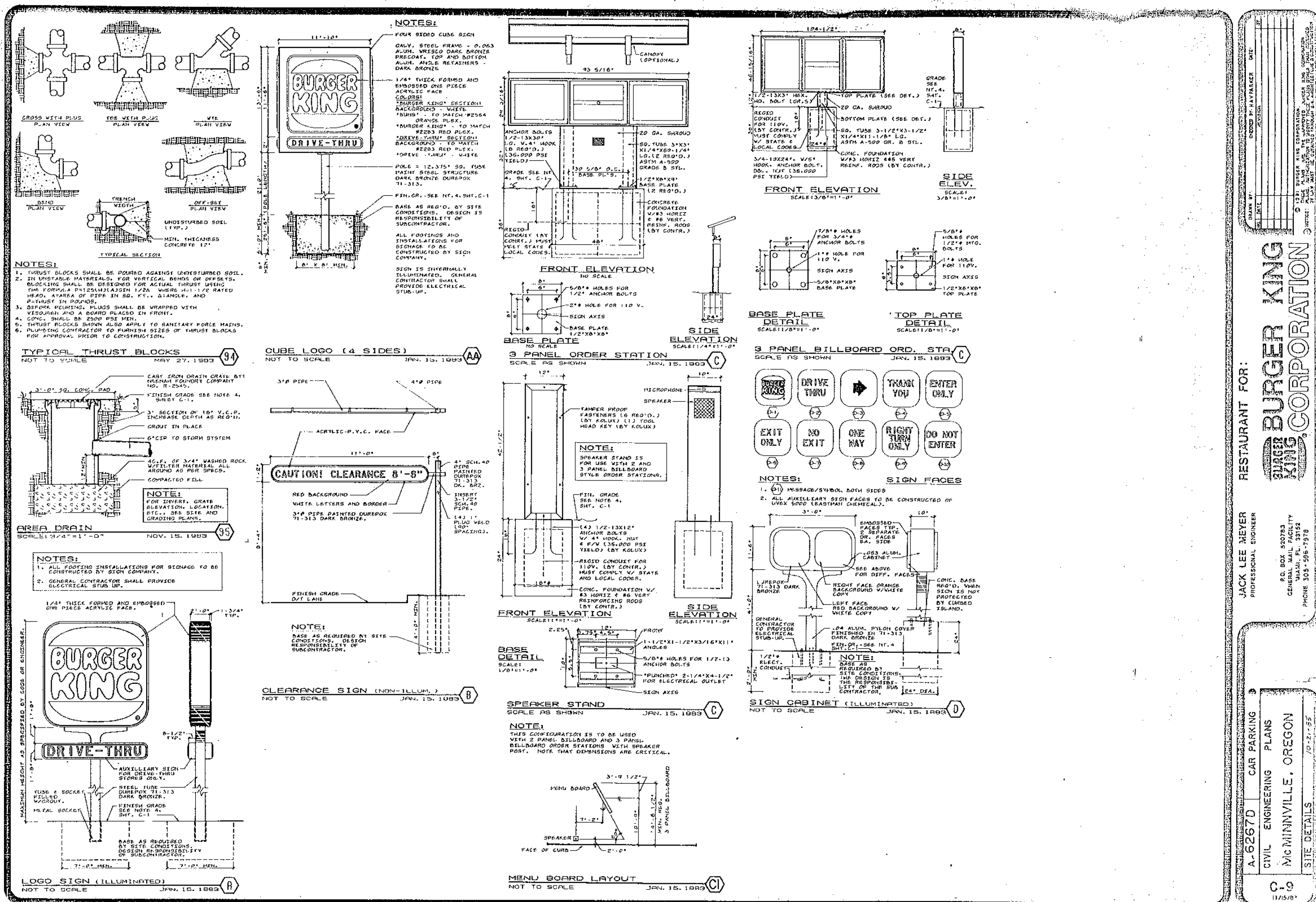
RESTAURANT FOR: RICHARD A. & SUSAN SCHWARTZ

BURGER KING CORPORATION

A-6267D | 47 CAR PARKING

CIVIL ENGINEERING PLANS
McMINNVILLE PLAZA
McMINNVILLE, OREGON
LANDSCAPING PLAN

L-1



TYPICAL THRUST BLOCKS
NOT TO SCALE MAY 27, 1983 94
CROSS WITH PLUG PLAN VIEW
TEE WITH PLUG PLAN VIEW
WYE PLAN VIEW
BEND PLAN VIEW
OFF-SET PLAN VIEW
TYPICAL SECTION
UNDISTURBED SOIL (TYP.)
MIN. THICKNESS CONCRETE 12"
NOTES:
1. THRUST BLOCKS SHALL BE POURED AGAINST UNDISTURBED SOIL.
4. CONC. SHALL BE 2500 PSI MIN.
5. THRUST BLOCKS SHOWN ALSO APPLY TO SANITARY FORCE MAINS.
6. PLUMBING CONTRACTOR TO FURNISH SIZES OF THRUST BLOCKS FOR APPROVAL PRIOR TO CONSTRUCTION.
CUBE LOGO (4 SIDES)
NOT TO SCALE JAN. 15, 1983 AA
BURGER KING
DRIVE-THRU
NOTES:
FOUR SIDED CUBE SIGN
3 PANEL ORDER STATION
SCALE AS SHOWN JAN. 15, 1983 C
FRONT ELEVATION
NO SCALE
BASE PLATE
NO SCALE
SIDE ELEVATION
CANOPY (OPTIONAL)
3 PANEL BILLBOARD ORD. STA.
SCALE AS SHOWN JAN. 15, 1983 C
FRONT ELEVATION
SCALE: 3/8"=1'-0"
SIDE ELEV.
BASE PLATE DETAIL
TOP PLATE DETAIL
AREA DRAIN
SCALE: 3/4"=1'-0" NOV. 15, 1983 95
NOTE:
FOR INVERT, GRATE ELEVATION, LOCATION, ETC., SEE SITE AND GRADING PLANS.
NOTES:
1. ALL FOOTING INSTALLATIONS FOR SIGNAGE TO BE CONSTRUCTED BY SIGN COMPANY.
2. GENERAL CONTRACTOR SHALL PROVIDE ELECTRICAL STUB UP.
CAUTION! CLEARANCE 8'-8"
CLEARANCE SIGN (NON-ILLUM.)
NOT TO SCALE JAN. 15, 1983 B
SPEAKER STAND
SCALE AS SHOWN JAN. 15, 1983 C
NOTE:
SPEAKER STAND IS FOR USE WITH 2 AND 3 PANEL BILLBOARD STYLE ORDER STATIONS.
FRONT ELEVATION
SIDE ELEVATION
BASE DETAIL
NOTE:
THIS CONFIGURATION IS TO BE USED WITH 2 PANEL BILLBOARD AND 3 PANEL BILLBOARD ORDER STATIONS WITH SPEAKER POST. NOTE THAT DIMENSIONS ARE CRITICAL.
MENU BOARD LAYOUT
NOT TO SCALE JAN. 15, 1983 C1
DRIVE THRU
THANK YOU
ENTER ONLY
EXIT ONLY
NO EXIT
ONE WAY
RIGHT TURN ONLY
DO NOT ENTER
NOTES:
SIGN FACES
SIGN CABINET (ILLUMINATED)
NOT TO SCALE JAN. 15, 1983 D
LOGO SIGN (ILLUMINATED)
NOT TO SCALE JAN. 15, 1983 A
BURGER KING
DRIVE-THRU
RESTAURANT FOR:
BURGER KING CORPORATION
JACK LEE MEYER
PROFESSIONAL ENGINEER
P.O. BOX 520783
GENERAL MAIL FACILITY
MIAMI, FL. 33152
PHONE 305-596-7978
A-6267D
CAR PARKING
CIVIL ENGINEERING PLANS
McMINNVILLE, OREGON
SITE DETAILS
10-21-85
C-9

City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

EXHIBIT 4 - STAFF REPORT

DATE: October 19, 2017
TO: McMinnville Planning Commission
FROM: Chuck Darnell, Associate Planner
SUBJECT: G 8-17 Sign Amortization Extension – Proposed Zoning Text Amendment

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Report in Brief:

This is a public hearing to review and consider a proposed zoning text amendment to Section 17.62.110(C) of the McMinnville Zoning Ordinance. The proposed zoning text amendment is related to the amortization process for certain types of existing nonconforming signs.

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 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, and that deadline was extended by the City Council in October 2016 (Ordinance 5013) to December 31, 2017. The main reason for the extension to the end of 2017 was to provide Planning Department staff with adequate time to inventory the city and provide property owners with signs that would be subject to the amortization process with a 6 month notification of the requirement to come into compliance.

Notices of potential sign noncompliance were prepared by the Planning Department and mailed to property owners with potentially nonconforming signs that would be subject to the amortization process. These notices were provided to property owners in June 2017. Since that time, Planning Department staff has responded to many inquiries about the amortization process and concern from property owners on the impacts of the required updates.

On September 12, 2017, McMinnville Industrial Promotions provided a presentation to the McMinnville City Council, which focused on the impacts of the amortization process and the overall intent of the City's requirement that nonconforming signs be updated. After discussion, the Council directed Planning Department staff to extend the amortization deadline by one year to allow for a conversation on the overall sign standards and process for updates to nonconforming signs.

Discussion:

The purpose of the extension of the amortization deadline is to allow time for the City of McMinnville to evaluate the current sign standards and amortization process to ensure that the outcomes of the sign standards and amortization process meet the intent of the Signs chapter and the overall community's

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Attachments:
Attachment A - Decision, Findings of Fact and Conclusionary Findings for the Approval of Legislative Amendments to Chapter 17.62 (Signs).

desires in regards to the updating of nonconforming signage. In addition, the City of McMinnville will use the additional time to complete research and ensure that the amortization process is legally permissible and is not in violation of any other regulations, including state statute, federal law, or other private property rights. The City will also ensure that the requirements of the amortization process have not been deemed invalid by any court of competent jurisdiction.

Based on the City Council direction, staff is proposing to amend Section 17.62.110(C) of the McMinnville Zoning Ordinance to extend the amortization deadline to the end of 2018. The proposed amendment is provided below, as well as in the decision document attached to this staff report. Text to be deleted is identified with a **~~bold strikeout~~** font and text to be added is identified with a **bold underlined** font.

McMinnville Zoning Ordinance (Ordinance 3380)
Chapter 17.62.110 (Nonconforming Signs) – (C) Amortization

C. Amortization. Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, **~~2017~~2018**, or at the time of occurrence of any of the actions outlined in provision 'A' above.

Fiscal Impact:

Minor impacts to Planning Department budget and impacts on staff capacity as additional notices will need to be mailed to property owners with existing nonconforming signs that are subject to the amortization process.

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 8-17 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 8-17 AND THE ZONING TEXT AMMENDMENT AS RECOMMENDED BY STAFF.

CD:sjs

Attachments:
Attachment A – Decision, Findings of Fact, and Conclusionary Findings for the Approval of Legislative Amendments to Chapter 17.62 (Signs)

ATTACHMENT A

CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128

503-434-7311
www.mcminnvilleoregon.gov

DECISION, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF LEGISLATIVE AMENDMENTS TO CHAPTER 17.62 (SIGNS).

DOCKET: G 8-17

REQUEST: The City of McMinnville is proposing to amend Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance to update provisions related to the deadline of the amortization of certain types of existing nonconforming signs. The amendment will extend the deadline for bringing nonconforming signs that are subject to the amortization process into compliance with current sign standards. The extended deadline will provide time for the City of McMinnville to evaluate the amortization program for consistency with the intent of the Signs chapter and to ensure that the amortization process is legally permissible and does not violate any state or federal law or infringe on any property rights.

LOCATION: N/A

ZONING: N/A

APPLICANT: City of McMinnville

STAFF: Chuck Darnell, Associate Planner

DATE DEEMED COMPLETE: September 13, 2017

HEARINGS BODY: McMinnville Planning Commission

DATE & TIME: October 19, 2017. Meeting held at the Civic Hall, 200 NE 2nd Street, McMinnville, Oregon.

HEARINGS BODY: McMinnville City Council

DATE & TIME: November 28, 2017. Meeting held at the Civic Hall, 200 NE 2nd Street, McMinnville, Oregon.

COMMENTS: This matter was referred to the following public agencies for comment: Oregon Department of Land Conservation and Development. No comments in opposition have been provided.

DECISION

Based on the findings and conclusions, the Planning Commission recommends **APPROVAL** of the legislative zoning text amendments (G 8-17) to the McMinnville City Council.

//

DECISION: APPROVAL

//

City Council:_____ Date:_____
Scott Hill, Mayor of McMinnville

Planning Commission:_____ Date:_____
Roger Hall, Chair of the McMinnville Planning Commission

Planning Department:_____ Date:_____
Heather Richards, Planning Director

Attachments:
Attachment 1 – Amendments to Chapter 17.62 (Signs)

APPLICATION SUMMARY:

The City of McMinnville is proposing to amend Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance to update provisions related to the deadline of the amortization of certain types of existing nonconforming signs. The amendment will extend the deadline for bringing nonconforming signs that are subject to the amortization process into compliance with current sign standards. The extended deadline will provide time for the City of McMinnville to evaluate the amortization program for consistency with the intent of the Signs chapter and to ensure that the amortization process is legally permissible and does not violate any state or federal law or infringe on any property rights.

ATTACHMENTS:

1. Amendments to Chapter 17.62 (Signs)

COMMENTS:

This matter was referred to the following public agencies for comment: Oregon Department of Land Conservation and Development. No comments in opposition were received.

Additional Testimony

No notice was provided to property owners for this application. As of the date this report was written,

FINDINGS OF FACT

1. The City of McMinnville is proposing to amend Chapter 17.62 (Signs) of the McMinnville Zoning Ordinance to update provisions related to the deadline of the amortization of certain types of existing nonconforming signs. The amendment will extend the deadline for bringing nonconforming signs that are subject to the amortization process into compliance with current sign standards. The extended deadline will provide time for the City of McMinnville to evaluate the amortization program for consistency with the intent of the Signs chapter and to ensure that the amortization process is legally permissible and does not violate any state or federal law or infringe on any property rights.

2. This matter was referred to the following public agencies for comment: Oregon Department of Land Conservation and Development. No comments in opposition have been provided.

3. Public notification of the public hearing held by the Planning Commission was published in the October 10, 2017 edition of the News Register. No comments in opposition were provided by the public prior to the public hearing.

CONCLUSIONARY FINDINGS:

McMinnville's Comprehensive Plan:

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

Policy 188.00: The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

Finding: Goal X 1 and Policy 188.00 are satisfied in that McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed staff report prior to the McMinnville Planning Commission and/or McMinnville City Council review of the request and recommendation at an advertised public hearing. All members of the public have access to provide testimony and ask questions during the public review and hearing process.

McMinnville's City Code:

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) are applicable to the request:

Chapter 17.03 – General Provisions:

17.03.020 Purpose. The purpose of the ordinance codified in Chapters 17.03 (General Provisions) through 17.74 (Review Criteria) of this title is to encourage appropriate and orderly physical development in the city through standards designed to protect residential, commercial, industrial, and civic areas from the intrusions of incompatible uses; to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services; to provide adequate open space, desired levels of population densities, workable relationships between land uses and the transportation system, adequate community facilities; and to provide assurance of opportunities for effective utilization of the land resources; and to promote in other ways public health, safety, convenience, and general welfare.

Finding: Section 17.03.020 is satisfied by the legislative amendment in that the extension of the amortization deadline will provide time for the City of McMinnville to determine whether the amortization process meets the intent of the Signs chapter of the McMinnville Zoning Ordinance, thereby ensuring that the amortization process promotes the general welfare of community members in the city.

17.03.030 Severability. Where any word, phrase, clause, sentence, paragraph, or section, or other part of these regulations is held invalid by a court of competent jurisdiction, that judgment shall affect only that part held invalid and shall not impair the validity of the remainder of these regulations.

Finding: Section 17.03.020 is satisfied by the legislative amendment in that the extension of the amortization deadline will provide time for the City of McMinnville to complete research and ensure that the requirements of the amortization process have not been deemed invalid by any court of competent jurisdiction.

17.03.040 Interpretation - More restrictive provisions govern. Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by any other provisions of this title or of any other ordinance, resolution, or regulation, the provisions which are more restrictive shall govern.

Finding: Section 17.03.040 is satisfied by the legislative amendment in that the extension of the amortization deadline will provide time for the City of McMinnville to complete research and ensure that the requirements of the amortization process are not in violation of any other regulations, including state statute, federal law, or other private property rights.

CD:sjs

Attachments:
Attachment 1 – Amendments to Chapter 17.62 (Signs)

ATTACHMENT 1

Chapter 17.62

SIGNS
(as adopted by Ord. 4900, Nov. 5, 2008)

Sections:

[…]

17.62.110 Nonconforming Signs.

A. The following provision will require that a nonconforming sign be brought into compliance with this chapter: physical modification of a nonconforming sign or any action on a nonconforming sign that requires a building permit. This does not include replacement of a sign face without modification of the frame or general sign maintenance and repair.

B. All temporary or portable signs not in compliance with the provisions of this code shall be removed or made compliant immediately following adoption of this ordinance.

C. Amortization. Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, ~~**2017**~~**2018**, or at the time of occurrence of any of the actions outlined in provision ‘A’ above.

[…]

City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
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EXHIBIT 5 - STAFF REPORT

DATE: October 19, 2017
TO: McMinnville Planning Commission
FROM: Chuck Darnell, Associate Planner
SUBJECT: Neighborhood Meetings

Report in Brief:

The purpose of this discussion item is to consider requiring neighborhood meetings for certain types of land use applications, as a means of providing information to surrounding property owners and for the developer to identify neighborhood concerns that might be mitigated.

Background:

Based on the level and type of public testimony received at recent public hearings, the Planning Commission directed staff to explore the topic of neighborhood meetings and how they could potentially be included in the land use application review process. The Planning Commission's interest in exploring neighborhood meetings is driven by a desire to better provide information on land use applications and development projects to the residents and community members in the areas surrounding potential projects.

The Planning Commission discussed the topic of neighborhood meetings at their September 21, 2017 work session meeting, and directed staff to begin to develop draft zoning text amendments to incorporate neighborhood meetings into the McMinnville land use application review process.

Discussion:

Based on the direction provided at the last Planning Commission work session meeting, staff has begun to draft zoning text amendments to incorporate neighborhood meetings into the McMinnville land use application review process. A copy of the draft zoning text amendments are attached to this staff report. Staff is proposing to add the language on neighborhood meetings to the Applications and Review Process chapter (Chapter 17.72) of the McMinnville Zoning Ordinance.

The main components of the proposed neighborhood meeting requirements and process are explained in more detail below:

1) Types of Applications Requiring a Neighborhood Meeting

Staff is proposing to require neighborhood meetings for most applications that also require a public hearing to be held by the Planning Commission. This will include the following types of applications:

Attachments:
Attachment A – Draft Zoning Text Amendments for Neighborhood Meetings

- Annexation
- Comprehensive Plan Map Amendment
- Conditional Use Permit
- Demolition of National Register of Historic Places Structure
- Planned Development
- Planned Development Amendment
- Tentative Subdivision (more than 10 lots)
- Urban Growth Boundary Amendment
- Variance
- Zone Change

Staff is proposing to not require neighborhood meetings for some applications that do require a public hearing. This will include the following types of applications:

- Comprehensive Plan Text Amendment
- Zoning Ordinance Text Amendment
- Appeal of a Planning Director's Decision
- Application with Planning Director's decision for which a public hearing is requested

In addition, staff is proposing to require neighborhood meetings for some applications that do not require public hearings, and are currently decided on by the Planning Director. This includes the following types of applications:

- Tentative Subdivisions (up to 10 lots)
- Vacation Home Rentals

Staff's reasoning for not requiring a neighborhood meeting for the comprehensive plan or zoning ordinance text amendments is that those types of amendments generally would be amending City policies that impact the entire city, not just one individual area or neighborhood. Staff's reasoning for not requiring a neighborhood meeting for the Planning Director's decision applications that are appealed or a public hearing is requested for is that those types of applications would already have been submitted and under official review by the City. Requiring a neighborhood meeting to be held would complicate the review process due to the state statute requirements for the City to take action on a land use application within 120 days of the application being deemed complete. The neighborhood meeting in that scenario would also be held after the application has been submitted, and would therefore not allow for early engagement in the land use process.

2) Meeting Date, Location, and Time

Staff is proposing that neighborhood meetings be held prior to the applicant submitting their land use application. This will ensure that the public is engaged early on in the development and land use process, and will allow for an applicant to take public comments into consideration prior to submitting their final proposal to the City for official review. Applicants will have the opportunity to revise their plans to address public comments, should they choose to do so. Requiring the neighborhood meeting to be held prior to the submittal of a land use application also will not complicate or delay the 120 day timeframe that the City has to take action on a land use application, as required by state statute.

Staff is also proposing that the neighborhood meeting be held within 180 days of the date the land use application is submitted. The meeting will be required to be held in an ADA accessible facility within the

city limits of McMinnville. The starting time of the meeting will be limited to between 6 PM and 8 PM on weekday evenings, or between 10 AM and 4 PM on Saturdays.

3) Notification of Meeting

Staff is proposing to require that the applicant provide a mailed notice of the neighborhood meeting to property owners surrounding the subject site. Staff is proposing to use the same notification distances as the zoning ordinance currently requires for notifications of public hearings. This notification distance could be increased if the Planning Commission believes that would generate better public engagement, but that could create confusion when a property owner receives a notice from an applicant and then not from the City for the formal public hearing. The proposed language includes requirements for the type of information that is provided in the mailed notice, which includes the date, time, and location of the meeting, the nature of the proposal, a map of the site, and a conceptual site plan. The applicant would also be required to send a notice of the neighborhood meeting to the Planning Department, so that staff is aware of the neighborhood meeting and can monitor the process or attend the meeting if necessary.

Staff is also proposing that the applicant post a waterproof sign on each frontage of the subject property. This posted sign will provide an additional means of communication to those that may be interested or to those that for one reason or another do not receive the mailed notice (i.e. renters instead of property owners, mistakes in mailing addresses on file, etc.).

For both the mailed and posted notice, staff is proposing that those be sent or posted not fewer than 20 calendar days nor more than 30 calendar days prior to the meeting. This is consistent with the notification timeframe for the City when sending notices of public hearings.

4) Meeting Agenda

Staff is proposing that the applicant provide a minimum level of information at the neighborhood meeting. This would include providing a conceptual site plan and a description of the major elements of their proposal, including proposed land uses, densities, building sizes, parking, landscaping, and protection of natural resources. The applicant will also be required to provide an opportunity for attendees of the meeting to speak at the meeting, ask questions of the applicant, and to identify any issues that they believe should be addressed. However, the overall format of the meeting will be at the discretion of the applicant. Staff does not believe the City should prescribe exactly how the meeting is conducted, so as long as the minimum level of information is provided, the applicant can create any type of meeting format (e.g. open house, formal presentation, question and answer process, etc.).

5) Evidence of Compliance

To ensure that an applicant has satisfied the neighborhood meeting requirements, staff is proposing to include a list of materials that must be provided by an applicant along with the submittal of their land use application. These materials will be required to be submitted in order for the land use application to be deemed complete, and will ensure that the neighborhood meeting happens prior to land use application submittal.

Fiscal Impact:

None.

Attachments:
Attachment A – Draft Zoning Text Amendments for Neighborhood Meetings

Recommendation/Suggested Motion:

No specific motion is required, but the Planning Commission may provide staff with any suggestions or modifications to the proposed zoning text amendments.

If the Planning Commission is comfortable with the proposed zoning text amendments, staff would likely prepare a final draft of the zoning text amendments, incorporating any additional amendments as suggested by the Commissioners during the work session discussion. This final draft of the zoning text amendments would come before the Planning Commission during a formal public hearing at the November 16, 2017 Planning Commission meeting.

Attachments:
Attachment A – Draft Zoning Text Amendments for Neighborhood Meetings

Chapter 17.72

APPLICATIONS AND REVIEW PROCESS
(as amended by Ord. 4920, January 12, 2010)

Sections:

[…]

*****Note – All of the language below would be new text added to Chapter 17.72*****

17.72.095 Neighborhood Meetings.

A. A neighborhood meeting shall be required for:
   1. All applications that require a public hearing as described in Section 17.72.120, except that neighborhood meetings are not required for the following applications:
      a. Comprehensive plan text amendment; or
      b. Zoning ordinance text amendment; or
      c. Appeal of a Planning Director's decision; or
      d. Application with Director's decision for which a public hearing is requested.
   2. Tentative Subdivisions (up to 10 lots)
   3. Vacation Home Rentals

B. Schedule of Meeting.
   1. The applicant is required to hold one neighborhood meeting prior to submitting a land use application for a specific site. Additional meetings may be held at the applicant's discretion.

2. Land use applications shall be submitted to the City within 180 calendar days of the neighborhood meeting. If an application is not submitted in this time frame, the applicant shall be required to hold a new neighborhood meeting.

C. Meeting Location and Time.
   1. Neighborhood meetings shall be held at a location within the city limits of the City of McMinnville.
   2. The meeting shall be held at a location that is open to the public and must be ADA accessible.
   3. An 8 ½ x 11" sign shall be posted at the entry of the building before the meeting. The sign will announce the meeting, state that the meeting is open to the public and that interested persons are invited to attend.
   4. The starting time for the meeting shall be limited to weekday evenings between the hours of 6 pm and 8 pm or Saturdays between the hours of 10 am and 4 pm. Neighborhood meetings shall not be held on national holidays. If no one arrives within 30 minutes of the scheduled starting time for the neighborhood meeting, the applicant may leave.

D. Mailed Notice.
   1. The applicant shall mail written notice of the neighborhood meeting to surrounding property owners. The notices shall be mailed to property owners within certain distances of the exterior boundary of the subject property. The notification distances shall be the same as the distances used for the property owner notices for the specific land use application that will eventually be applied for, as described in Section 17.72.110 and Section 17.72.120.
   2. Notice shall be mailed not fewer than 20 calendar days nor more than 30 calendar days prior to the date of the neighborhood meeting.
   3. An official list for the mailed notice may be obtained from the City of McMinnville for an applicable fee and within 5 business days. A mailing list may also be obtained from other sources such as a title company, provided that the list shall be based on the most recent tax assessment rolls of the Yamhill County Department of Assessment and Taxation. A mailing list is valid for use up to 45 calendar days from the date the mailing list was generated.
   4. The mailed notice shall:
      a. State the date, time and location of the neighborhood meeting and invite people for a conversation on the proposal.
      b. Briefly describe the nature of the proposal (i.e., approximate number of lots or units, housing types, approximate building dimensions and heights, and proposed land use request).
      c. Include a copy of the tax map or a GIS map that clearly identifies the location of the proposed development.
      d. Include a conceptual site plan.
   5. The City of McMinnville Planning Department shall be included as a recipient of the mailed notice of the neighborhood meeting.

6. Failure of a property owner to receive mailed notice shall not invalidate the neighborhood meeting proceedings.

E. Posted Notice.
   1. The applicant shall also provide notice of the meeting by posting one waterproof sign on each frontage of the subject property not fewer than 20 calendar days nor more than 30 calendar days prior to the date of the neighborhood meeting.
   2. The sign(s) shall be posted within 20 feet of the adjacent right-of-way and must be easily viewable from the right-of-way.
   3. It is the applicant's responsibility to post the sign, to ensure that the sign remains posted until the meeting, and to remove it following the meeting.
   4. If the posted sign is inadvertently removed (i.e., by weather, vandals, etc.), that shall not invalidate the neighborhood meeting proceedings.

F. Meeting Agenda.
   1. The overall format of the neighborhood meeting shall be at the discretion of the applicant.
   2. At a minimum, the applicant shall include the following components in the neighborhood meeting agenda:
      a. An opportunity for attendees to view the conceptual site plan;
      b. A description of the major elements of the proposal. Depending on the type and scale of the particular application, the applicant should be prepared to discuss proposed land uses and densities, proposed building size and height, proposed access and parking, and proposed landscaping, buffering, and/or protection of natural resources;
      c. An opportunity for attendees to speak at the meeting and ask questions of the applicant. The applicant shall allow attendees to identify any issues that they believe should be addressed.

G. Evidence of Compliance. In order for a land use application that requires a neighborhood meeting to be deemed complete, the following evidence shall be submitted with the land use application:
   1. A copy of the meeting notice mailed to surrounding property owners;
   2. A copy of the mailing list used to send the meeting notices;
   3. One photograph for each waterproof sign posted on the subject site, taken from the adjacent right-of-way;
   4. One 8 ½ x 11" copy of the materials presented by the applicant at the neighborhood meeting; and
   5. Notes of the meeting, which shall include:
      a. Meeting date;
      b. Meeting time and location;
      c. The names and addresses of those attending;
      d. A summary of oral and written comments received; and
      e. A summary of any revisions made to the proposal based on comments received at the meeting.

[...]

City of McMinnville
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www.mcminnvilleoregon.gov

EXHIBIT 6 - STAFF REPORT

DATE: October 19, 2017
TO: Planning Commission
FROM: Heather Richards, Planning Director
SUBJECT: Draft City Code Amendments – Planning Commission

Report in Brief:

This is a discussion to review and consider proposed draft City Code amendments relative to the establishment, structure and responsibilities of the Planning Commission.

Background:

Chapter 2.32 is the enabling code for the Planning Commission. This language first originated in Ordinance No. 3688, adopted on December 4, 1973. Attached are proposed amendments to that language to bring the code up to date with Oregon Revised Statute 227 which governs planning commissions in the state of Oregon and the City of McMinnville's new standard for city codes relative to commissions and committees.

The proposed amendments include many of the original covenants from the 1973 Ordinance as well as an expanded Responsibilities and Power section to reflect the amendments made to ORS 227 since 1973.

Additionally the following items have been added to reflect the City's recent initiative to broaden its community outreach efforts and programs.

- Residency – Added language to reflect language in ORS 227 relative to make-up of the commission.
- Terms – establishes terms of four years and term limits of three full terms.
- Youth Ex-Officio – allows for the appointment of a youth ex-officio under the age of 21 years old. This provides the opportunity for a young person to participate on the committee and not only gain knowledge about planning but also the structure of city government. And it allows for the committee to benefit from the perspective of a different representative age group in their discussions.
- Establishes the need for an annual report to the City Council. In this way the commission can share with the City Council their past year's accomplishments and work plan for the following year. And it allows the City Council to engage with the volunteer committee and provide direction if necessary.

Attachments:
Attachment A – Proposed Amendments
Attachment B – Existing Code Language
Attachment C – ORS 227

Discussion:

The Planning Commission reviewed the proposed draft language at their work session on July 20, 2017. At that time they directed staff to add some additional language relative to quality of life initiatives in the code language. A track change document has been provided to demonstrate where that language has been added. (Attachment A).

Also attached to this staff report is the existing code language (Attachment B) and ORS 227 (Attachment C).

Fiscal Impact:

There is no anticipated fiscal impact.

Recommendation/Suggested Motion:

The Planning Department will provide a Power Point to help guide the Planning Commission through the proposed text amendments. Then per the direction of the Planning Commission, staff will revise the proposed text amendments and provide them at a future Planning Commission meeting as an action item. No motion is required at this time.

Attachments:
Attachment A – Proposed Amendments
Attachment B – Existing Code Language
Attachment C – ORS 227

ATTACHMENT A – PROPOSED AMENDMENTS

Note: This document tracks changes for the language that was amended based upon direction from the McMinnville Planning Commission at their July 20, 2017 work session.

Chapter 2.32

CITY PLANNING COMMISSION (Proposed Amendments – Clean Copy)

Sections:

2.32.000 Establishment. The McMinnville Planning Commission shall be the planning commission for the City of McMinnville as authorized in ORS 227.020.

2.32.010 Purpose. The purpose of the McMinnville Planning Commission is to serve in an advisory role to the City Council on the development and implementation of the City of McMinnville's Comprehensive Plan and its associated planning documents. The Planning Commission also serves in a quasi-judicial capacity on land-use decisions for the City of McMinnville, in order to ensure that the City of McMinnville grows and develops in an orderly fashion with adequate resources for housing, business, industry, transportation, recreation, culture, comfort, health and welfare of its population so that residents and businesses enjoy a high quality of life.

2.32.020 Responsibilities and Power. The Common Council of McMinnville delegates to the McMinnville Planning Commission such powers and duties as are now or may hereafter be provided by U.S. or Oregon state law, city charter or ordinances as may pertain to planning and subdivision matters, including but not limited to:

A. Per ORS 227, the Commission shall have the following powers and duties:

1. Recommend and make suggestions to the City Council and to all other public authorities concerning

a. The laying out, widening, extending, parking and locating of streets; sidewalks, bike paths, and boulevards, relief of traffic congestion; and

b. Betterment of housing and sanitation conditions; and

c. Establishment of zones of districts limiting the use, height, area and bulk of buildings and structures; and

d. Protection and assurance of access to incident solar radiation; and

e. Protection and assurance of access to wind for potential future electrical generation or mechanical application.

2. Recommend to the City Council and all other public authorities plans for regulation of all future growth, development and beautification of the City in respect to its public and private buildings and works, streets, parks, grounds and vacant lots and plans consistent with future growth and development of the City in order to secure to the City and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation ~~and harbor~~, shipping and transportation facilities.

3. Recommend to the City Council and all other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to private and public enterprises engaged in economic and industrial development pursuits.

4. Advertise the economic and industrial development advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

5. Encourage industrial and economic development ~~settlement~~ within the city.

6. Make economic surveys of ~~present~~ potential possibilities of the municipality with a view of ~~to~~ ascertaining its economic and industrial development needs.

7. Study needs of existing local industries with view to strengthening and developing local industries and stabilizing employment conditions.

8. Recommend to the City Council and all other public authorities plans for promotion, development and regulation of amenities which improve the quality of life for city residents.

9. Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 (Definition for ORS 227.030 to 227.300) to 227.170 (Hearing procedure), 227.175 (Application for permit or zone change) and 227.180 (Review of action on permit application).

10. Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and

Commented [HR1]: Do we want to include these. They are part of the recommended powers stated in ORS 227.090

Commented [HR2]: This is part of the state regulation, do we want to include it in the PC Charter?

welfare of the city and of the area within ~~six miles thereof~~ the city's urban growth boundary and adjacent properties.

B. The Commission shall serve in a quasi-judicial capacity on land development proposals, conducting public hearings and issuing decisions per federal, state and local regulations.

C. The Commission shall serve in an advisory capacity to the Common Council to recommend and make suggestions regarding preparation and revision of plans (land use goals and policies, comprehensive plan text and plan map, amendments to the urban growth boundary, amendments to the urban growth management agreement, zoning ordinance and zone map, implementation ordinances, etc.) for growth, development, and beautification of areas within the city limits and areas within the city's urban growth boundary, including but not limited to economic development (commercial and industrial), housing, transportation (all modes), parks and open space, public facilities (transportation, water, wastewater and drainage), institutions, quality of life initiatives, etc.

D. The Commission shall serve as the City of McMinnville's Committee for Citizen Involvement in accordance with the State of Oregon Land Conservation and Development Land Use Goal No. 1 and Oregon Administrative Rule (OAR) 660-015-0000(1), with the following responsibilities:

1. Evaluate the effectiveness of the citizen involvement program annually at its October meeting.

2. Recommend and make suggestions to the City Council regarding revisions in the citizen involvement program, as the Commission deems appropriate.

E. The Commission shall coordinate its activities with other jurisdictions, planning bodies and districts as appropriate.

F. The Commission shall do such other tasks as may be requested by the City Council.

2.32.030 Membership

A. Number of Members. The Planning Commission shall be composed of nine members. ~~The common council shall strive to appoint members who represent a cross-section of the citizens of McMinnville, and who will provide the planning commission with expertise in the area of planning, who possess broad areas of interest, and general concern with the planning process which is required for the functioning of this body. No more than two members shall be engaged principally in the buying, selling of real estate for profit as individuals, or be members of a partnership, or officers or employees of a corporation, that is engage principally in the buying, selling or developing of real estate for profit. No more than three members shall be engaged in the same kind of business, trade or profession.~~

Commented [HR3]: This is language from the state regulations – we would need a joint management agreement with the county in order to assume this role, or advise in this capacity. We currently have one and would need to strengthen the language to assume this role in an advisory capacity.

B. **Residency/Representation. The planning commission shall have at least two representatives from each ward. Appointment to the planning commission to secure this representation by ward shall occur as resignations are received or as current members' terms are completed. Subsequent appointments shall maintain this distribution and representation. Those individuals appointed to represent a particular ward must reside within that ward. In the event that a representative moves from his ward, then the position shall become vacant and the council will appoint a new member. If the boundaries of a ward are adjusted as required by the Charter or state election laws, then the individual may continue to hold office until his term expires. Three members of the planning commission shall be residents appointed at large from within the city or the urban growth boundary. In the event that a representative moves outside the urban growth boundary, then the position shall be declared vacant and the council shall appoint a new member.**

C. **Qualifications. The common council shall strive to appoint members who represent a cross-section of the citizens of McMinnville, and who will provide the planning commission with expertise in the area of planning, who possess broad areas of interest, and general concern with the planning process which is required for the functioning of this body. No more than two members shall be engaged principally in the buying, selling of real estate for profit as individuals, or be members of a partnership, or officers or employees of a corporation, that is engage principally in the buying, selling or developing of real estate for profit. No more than three members shall be engaged in the same kind of business, trade or profession.**

D. **Appointments. The Common Council will appoint the commission members.**

E. **Terms. All terms are for four years commencing with January of each year. Any vacancy which may occur shall be filled by the common council for the unexpired portion of the term. Members shall not serve more than three full terms.**

F. **Removal. A commission member may be removed by the Common Council for misconduct, nonperformance of duty, or three successive unexcused absences from regular meetings. The commission may, by motion, request that a member be removed by the appointing body. If the appropriate governing body finds misconduct, nonperformance of duties or three successive unexcused absences from regular meetings by the member, the member shall be removed.**

G. **Ex-Officio Members. One ex-officio youth (21 years of age and under) may be appointed by the Common Council, to serve a two year term. The ex-officio youth shall not be a voting member.**

2.32.040 Officers

A. **Chairperson / Vice-Chairperson. At its first meeting of each year, the Planning Commission shall elect from its membership a chairperson and**

vice-chairperson. The chairperson or vice-chairperson, acting as chairperson, shall have the right to make or correct motions and vote on all matters before the committee. A majority of the commission may replace its chairperson or vice-chairperson with another member at any time during the calendar year.

B. The City shall provide a secretary who shall keep an accurate record of all Commission proceedings.

C. Annual Report to City Council. The Chairperson of the commission shall make an annual report to the City Council by December 31 of each year. The annual report shall include a survey and report of the Commission's activities during the preceding year, in addition to specific recommendations to the City Council not otherwise requested by the City Council, relating to the planning process, plan implementation measures within the City, or the future activities of the Commission.

2.32.050 Meeting/Quorum

A. Meeting Schedule. The Commission shall meet as required to accomplish their responsibilities.

B. Meeting Conduct. The Rules of Parliamentary Law and Practice as in Roberts Rules of Order Revised Edition shall govern each commission meeting.

C. Open to the Public. All meetings shall be open to the public.

D. Quorum. A majority of the members of the commission shall constitute a quorum. Quorum will be based on the number of people officially appointed to the committee at the time and should not include vacancies.

E. The common council shall assign to the city planning commission an office or headquarters in the City Hall, if possible, in which to hold its meetings, transact its business and keep its records. The city planning commission shall have the power and authority to employ consulting advice on municipal problems, a secretary, and such other clerks as may be necessary and to pay for their service and for such other expenses as may be lawfully incurred, including the necessary disbursements incurred by the members in the performance of their duties as members of said commission as may be specifically authorized by the common council.

2.32.060 Expenses / Reimbursements. Commission members shall receive no compensation. Any expense incurred by a commission member that will need to be reimbursed by the City of McMinnville must be pre-authorized by the City Manager or designee.

2.32.070 Special Provisions.

A. The Planning Commission shall operate within the laws and guidelines of the federal government, the state government, Yamhill County and the City of McMinnville.

B. **The Common Council may appoint an ad-hoc committee to address issues that are not under the purview of the existing committee.**

2.32.080 Staff Support. Staffing shall be determined by the City Manager or City Manager designee

ATTACHMENT B – CURRENT CODE LANGUAGE

Chapter 2.32

CITY PLANNING COMMISSION– (Current Language)

Sections:

2.32.010 Re-establishment. The city recreates and reestablishes the city planning commission. Members of the planning commission shall be appointed by the common council in accordance with the terms as set forth in this chapter. (Ord. 3688 §1, 1973).

2.32.020 Membership—Qualifications for appointment. The city planning commission shall consist of nine members who shall be appointed by the council. The common council shall strive to appoint members who represent a cross-section of the citizens of McMinnville, and who will provide the planning commission with expertise in the area of planning, who possess broad areas of interest, and general concern with the planning process which is required for the functioning of this body. (Ord. 3688 §2, 1973).

2.32.025 Representatives from each ward.

A. Commencing January 1, 1980 the planning commission shall have at least two representatives from each ward (established by the McMinnville Charter 1970 amended 1978). Appointment to the planning commission to secure this representation by ward shall occur as resignations are received or as current members' terms are completed. Subsequent appointments shall maintain this distribution and representation.

B. Those individuals appointed to represent a particular ward must reside within that ward. In the event that a representative moves from his ward, then the position shall become vacant and the council will appoint a new member. If the boundaries of a ward are adjusted as required by the Charter or state election laws, then the individual may continue to hold office until his term expires.

C. Three members of the planning commission shall be residents appointed at large from within the city or the urban growth boundary. In the event that a representative moves outside the urban growth boundary, then the position shall be declared vacant and the council shall appoint a new member. (Ord. 4069 §1-§3, 1980).

2.32.030 Terms of office. The terms of office of the appointed members shall be four years except as this chapter may otherwise provide. Any vacancy which may occur shall be filled by the common council for the unexpired portion of the term. Those members presently occupying positions on the city planning commission are reappointed and shall serve for the duration of their original term of office. At such time as the common council appoints the new

planning commission members in January, 1974, they shall choose two individuals to serve for three-year terms and two individuals to serve for four-year terms. (Ord. 3688 §3, 1973).

2.32.040 Officers. The city planning commission at its first meeting of each calendar year shall elect a chairman and vice-chairman who shall hold office during the remainder of said year. (Ord. 3688 §4, 1973).

2.32.050 Compensation—Secretary.

A. Members of the city planning commission shall receive no compensation.

B. The city planning commission shall elect a secretary who need not be a member of the commission. Such secretary shall keep an accurate record of all proceedings of said commission, and the commission shall regularly make and file a monthly report with the common council of all transactions of the commission. (Ord. 3688 §5, 1973).

2.32.060 Powers and duties—Meetings—Quorum. Five members of the city planning commission shall constitute a quorum. The city planning commission, with two-thirds of its members concurring, may make and alter rules and regulations for its government and procedure consistent with the laws of the state and with the city charter and ordinances, and shall meet at least once a month. The common council shall assign to the city planning commission an office or headquarters in the City Hall, if possible, in which to hold its meetings, transact its business and keep its records. The city planning commission shall have the power and authority to employ consulting advice on municipal problems, a secretary, and such other clerks as may be necessary and to pay for their service and for such other expenses as may be lawfully incurred, including the necessary disbursements incurred by the members in the performance of their duties as members of said commission as may be specifically authorized by the common council. (Ord. 3688 §6, 1973).

2.32.070 Delegation of authority. The common council of the city delegates to the city planning commission such powers and duties as are now or may hereafter be provided by U.S. or Oregon state law, city charter or ordinances as may pertain to planning and subdivision matters. (Ord. 3688 §7, 1973).

ATTACHMENT C

OREGON REVISED STATUTES

Chapter 227 — City Planning and Zoning

2015 EDITION

CITY PLANNING AND ZONING

CITIES

CITY PLANNING COMMISSION

PLANNING AND ZONING HEARINGS AND REVIEW

CITY PLANNING COMMISSION

227.010 Definition for ORS 227.030 to 227.300. As used in ORS 227.030 to 227.300, "council" means a representative legislative body. [Amended by 1975 c.767 §1]

227.020 Authority to create planning commission. (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an intergovernmental agency for planning as authorized by ORS 190.003 to 190.130. [Amended by 1973 c.739 §1; 1975 c.767 §2]

227.030 Membership. (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the

same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

227.035 [1973 c.739 §5; renumbered 244.135 in 1993]

227.040 [Repealed by 1973 c.739 §13]

227.050 [Amended by 1969 c.430 §2; repealed by 1975 c.767 §16]

227.060 [Repealed by 1975 c.767 §16]

227.070 [Amended by 1969 c.430 §3; 1973 c.739 §3; repealed by 1975 c.767 §16]

227.080 [Repealed by 1973 c.739 §13]

227.090 Powers and duties of commission. (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

(D) Protection and assurance of access to incident solar radiation; and

(E) Protection and assurance of access to wind for potential future electrical generation or mechanical application.

(b) Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3; 1981 c.590 §8; 1987 c.447 §118]

227.095 Definitions for ORS 227.100 and 227.110. As used in ORS 227.100 and 227.110, "subdivision" and "plat" have the meanings given those terms in ORS 92.010. [1955 c.756 §28]

227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report. All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official. [Amended by 1955 c.756 §26]

227.110 City approval prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city; exception. (1) All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, if the county governing body has adopted ordinances or regulations for subdivisions and partitions under ORS 92.044, land within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) It shall be unlawful to receive or record such plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply. [Amended by 1955 c.756 §27; 1983 c.570 §5; 1991 c.763 §25]

227.120 Procedure and approval for renaming streets. Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or

road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on the county surveyor's copy of any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same. The original plat may not be corrected or changed after it is recorded with the county clerk. [Amended by 2001 c.173 §4]

227.130 [Repealed by 1975 c.767 §16]

227.140 [Repealed by 1975 c.767 §16]

227.150 [Repealed by 1975 c.767 §16]

PLANNING AND ZONING HEARINGS AND REVIEW

227.160 Definitions for ORS 227.160 to 227.186. As used in ORS 227.160 to 227.186:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or designated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. "Permit" does not include:

(a) A limited land use decision as defined in ORS 197.015;

(b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;

(c) A decision which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(d) An expedited land division, as described in ORS 197.360. [1973 c.739 §6; 1975 c.767 §5; 1991 c.817 §8a; 1995 c.595 §13; 2015 c.260 §5]

227.165 Planning and zoning hearings officers; duties and powers. A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c.739 §7; 1975 c.767 §6]

227.170 Hearing procedure; rules. (1) The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes.

(2) The city council shall prescribe one or more rules stating that all decisions made by the council on permits and zone changes will be based on factual information, including adopted comprehensive plans and land use regulations. [1973 c.739 §8; 1975 c.767 §7; 1997 c.452 §3]

227.172 Siting casino in incorporated city. (1) As used in this section:

(a) "Casino" means a facility in which casino games, as defined in ORS 167.117, are played for the purpose of gambling.

(b) "Tribal casino" means a facility used for:

(A) Class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act of October 17, 1988 (25 U.S.C. 2701 et seq.);

(B) Class III gaming conducted under a tribal-state compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(8)); or

(C) Gaming conducted in accordance with the Indian Gaming Regulatory Act and federal regulations.

(2) A casino may not be sited on land in an incorporated city unless the electors of the city approve the development.

(3) Before a permit, as defined in ORS 227.160, can be approved authorizing a proposed development of land in an incorporated city as a site for a casino, the governing body of the city that contains the site shall submit the question of siting the casino to the electors of the city for approval or rejection.

(4) Subsections (2) and (3) of this section do not apply to a tribal casino. [2007 c.724 §2]

227.173 Basis for decision on permit application or expedited land division; statement of reasons for approval or denial. (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(3) Approval or denial of a permit application or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(4) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b; 1991 c.817 §16; 1995 c.595 §29; 1997 c.844 §6; 1999 c.357 §3]

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a “public use airport” if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway “approach surface” as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this

subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2]

227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section does not apply to a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The period set forth in subsection (1) of this section and the period set forth in subsection (5) of this section may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated. [1983 c.827 §27; 1989

c.761 §16; 1991 c.817 §15; 1995 c.812 §3; 1997 c.844 §8; 1999 c.533 §8; 2003 c.150 §1; 2003 c.800 §31; 2009 c.873 §16; 2011 c.280 §12]

227.179 Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days; jurisdiction; notice of petition. (1) Except when an applicant requests an extension under ORS 227.178 (5), if the governing body of a city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application was submitted to compel the governing body or its designee to issue the approval.

(2) The governing body shall retain jurisdiction to make a land use decision on the application until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.

(3) A person who files a petition for a writ of mandamus under this section shall provide written notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any person who participated orally or in writing in any evidentiary hearing on the application held prior to the filing of the petition. The notice shall be mailed or hand delivered on the same day the petition is filed.

(4) If the governing body does not take final action on an application within 120 days of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the local comprehensive plan and land use regulations or to file a petition for a writ of mandamus under this section. If the applicant elects to proceed according to the local plan and regulations, the applicant may not file a petition for a writ of mandamus within 14 days after the governing body makes a preliminary decision, provided a final written decision is issued within 14 days of the preliminary decision.

(5) The court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate a substantive provision of the local comprehensive plan or land use regulations as those terms are defined in ORS 197.015. The writ may specify conditions of approval that would otherwise be allowed by the local comprehensive plan or land use regulations. [1999 c.533 §10; 2003 c.150 §2]

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer’s action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee therefor, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

227.181 Final action required within 120 days following remand of land use decision. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 120-day period established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand, but if the city does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the city shall deem the application terminated.

(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The city shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The 120-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610. [1999 c.545 §5; 2011 c.280 §13; 2015 c.522 §3]

227.182 Petition for writ of mandamus authorized when city fails to take final action within 120 days of remand of land use decision. (1) If the governing body of a city or its designee fails to take final action on an application for a permit, limited land use decision or zone change within 120 days as provided in ORS 227.181, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the city or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section. [1999 c.545 §6; 2015 c.522 §4]

227.184 Supplemental application for remaining permitted uses following denial of initial application. (1) A person whose application for a permit is denied by the governing body of a city or its designee under ORS 227.178 may submit to the city a supplemental application for any or all other uses allowed under the city's comprehensive plan and land use regulations in the zone that was the subject of the denied application.

(2) The governing body of a city or its designee shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within 240 days after the application is deemed complete. Except that 240 days shall substitute for 120 days, all other applicable provisions of ORS 227.178 shall apply to a supplemental application submitted under this section.

(3) A supplemental application submitted under this section shall include a request for any rezoning or zoning variance that may be required to issue a permit under the city's comprehensive plan and land use regulations.

(4) The governing body of a city or its designee shall adopt specific findings describing the reasons for approving or denying:

(a) A use for which approval is sought under this section; and

(b) A rezoning or variance requested in the application. [1999 c.648 §4]

227.185 Transmission tower; location; conditions. The governing body of a city or its designate may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §27a]

227.186 Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost. (1) As used in this section, "owner" means the owner of the

title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number_____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ is available for inspection at the _____ City Hall located at_____. A copy of Ordinance Number _____ also is available for purchase at a cost of_____.

For additional information concerning Ordinance Number_____, you may call the (city) Planning Department at_____.

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(6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use regulation by a city pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633 and 197.636, the city shall cause a written individual notice of the land use change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment may affect the use of the property. The notice also shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

As a result of an order of the Land Conservation and Development Commission, (city) has proposed Ordinance Number _____. (City) has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ will become effective on (date).

Ordinance Number _____ is available for inspection at the _____ City Hall located at_____. A copy of Ordinance Number _____ also is available for purchase at a cost of_____.

For additional information concerning Ordinance Number_____, you may call the (city) Planning Department at_____.

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(7) Notice provided under this section may be included with the tax statement required under ORS 311.250.

(8) Notwithstanding subsection (7) of this section, a city may provide notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is required under subsections (3) and (4) of this section.

(9) For purposes of this section, property is rezoned when the city:

(a) Changes the base zoning classification of the property; or

(b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(10) The provisions of this section do not apply to legislative acts of the governing body of the city resulting from action of the Legislative Assembly or the Land Conservation and Development Commission for which notice is provided under ORS 197.047 or resulting from an order of a court of competent jurisdiction.

(11) The governing body of the city is not required to provide more than one notice under this section to a person who owns more than one lot or parcel affected by a change to the local comprehensive plan or land use regulation.

(12) The Department of Land Conservation and Development shall reimburse a city for all usual and reasonable costs incurred to provide notice required under subsection (6) of this section. [1999 c.1 §3; 1999 c.348 §11; 2003 c.668 §3]

227.187 Public sale of copies of city comprehensive plan and land use regulations. A city shall maintain copies of its comprehensive plan and land use regulations, as defined in ORS 197.015, for sale to the public. [1991 c.363 §3]

SOLAR ACCESS ORDINANCES

227.190 Solar access ordinances; purpose; standards. (1) City councils may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The city council shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The State Department of Energy shall actively encourage and assist city councils' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c.722 §5]

227.195 Effect of land use regulations and comprehensive plans. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §6]

227.210 [Repealed by 1975 c.767 §16]

DEVELOPMENT ORDINANCES

227.215 Regulation of development. (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

(2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city. [1975 c.767 §11 (enacted in lieu of 227.220 to 227.270); 1977 c.654 §3]

227.220 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.220)]

227.230 [Amended by 1971 c.739 §2; 1975 c.153 §4; repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.230)]

227.240 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.240)]

227.250 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.250)]

227.260 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.260)]

227.270 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.270)]

227.280 Enforcement of development legislation. The council may provide for enforcement of any legislation established under ORS 227.215. [Amended by 1975 c.767 §14]

227.285 [1959 c.601 §1; repealed by 1969 c.460 §2 (227.286 enacted in lieu of 227.285)]

227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary. [1969 c.460 §3 (enacted in lieu of 227.285); 1975 c.767 §12]

227.290 Building setback lines established by city council; criteria. (1) The council or other governing body of any incorporated city, under an exercise of its police powers, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway or other public way in such city. It may make it unlawful and provide a penalty for erecting after said establishment any building or structure closer to the street line than such setback line, except as may be expressly provided by ordinance. The council or body shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons owning property affected before establishing any such setback line. Such setback lines may be established without requiring a cutting off or removal of buildings existing at the time.

(2) The council may consider, in enacting ordinances governing building setback lines, the site slope and tree cover of the land with regard to solar exposure. The council shall not restrict construction where site slope and tree cover make incident solar energy collection unfeasible, except an existing solar structure's sun plane shall not be substantially impaired.

(3) The council may consider, in enacting ordinances governing building setback lines and maximum building height, the impact on available wind resources. The ordinances shall protect an existing wind energy system's wind source to the extent feasible.

(4) The powers given in this section shall be so exercised as to preserve constitutional rights. [Amended by 1979 c.671 §4; 1981 c.590 §9]

227.300 Use of eminent domain power to establish setback lines. The council or other governing body of any incorporated city, under an exercise of the power of eminent domain, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway, or other public way in such city in cases where the establishment of such setback lines is for street widening purposes, and in cases where the establishment of such setback lines affects buildings or structures existing at the time. The council or other governing body of the city shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons whose property is affected by such establishment. In case of the exercise of the power of eminent domain, provision shall be made for ascertaining and paying just compensation for any damages caused as the result of establishing such setback lines.

227.310 [1957 c.67 §1; 1975 c.767 §13; repealed by 1977 c.766 §16]

WETLANDS DEVELOPMENT

227.350 Notice of proposed wetlands development; exception; approval by city. (1) After the Department of State Lands has provided the city with a copy of the applicable portions of the Statewide Wetlands Inventory, the city shall provide notice to the department, the applicant and the owner of record, within five working days of the acceptance of any complete application for the following activities that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory:

(a) Subdivisions;

(b) Building permits for new structures;

(c) Other development permits and approvals that allow physical alteration of the land involving excavation and grading, including permits for removal or fill, or both, or development in floodplains and floodways;

(d) Conditional use permits and variances that involve physical alterations to the land or construction of new structures; and

(e) Planned unit development approvals.

(2) The provisions of subsection (1) of this section do not apply if a permit from the department has been issued for the proposed activity.

(3) Approval of any activity described in subsection (1) of this section shall include one of the following notice statements:

(a) Issuance of a permit under ORS 196.600 to 196.905 by the department required for the project before any physical alteration takes place within the wetlands;

(b) Notice from the department that no permit is required; or

(c) Notice from the department that no permit is required until specific proposals to remove, fill or alter the wetlands are submitted.

(4) If the department fails to respond to any notice provided under subsection (1) of this section within 30 days of notice, the city approval may be issued with written notice to the applicant and the owner of record that the proposed action may require state or federal permits.

(5) The city may issue local approval for parcels identified as or including wetlands on the Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the affected parcel a written notice of the possible presence of wetlands and the potential need for state and federal permits and providing the department with a copy of the notification of comprehensive plan map or zoning map amendments for specific properties.

(6) Notice of activities authorized within an approved wetland conservation plan shall be provided to the department within five days following local approval.

(7) Failure by the city to provide notice as required in this section will not invalidate city approval. [1989 c.837 §31; 1991 c.763 §26]

TRUCK ROUTES

227.400 Truck routes; procedures for establishment or revision; notice; hearing. (1) A city council shall not establish a new truck route or revise an existing truck route within the city unless the council first provides public notice of the proposed truck route and holds a public hearing concerning its proposed action.

(2) The city council shall provide notice of a public hearing held under this section by publishing notice of the hearing once a week for two consecutive weeks in some newspaper of general circulation in the city. The second publication of the notice must occur not later than the fifth day before the date of the public hearing.

(3) The notice required under this section shall state the time and place of the public hearing and contain a brief and concise statement of the proposed formation of the truck route, including a description of the roads and streets in the city that will form the truck route.

(4) As used in this section:

(a) "Truck" includes motor truck, as defined in ORS 801.355, and truck tractor, as defined in ORS 801.575.

(b) "Truck route" means the roads or streets in a city which have been formally designated by the city council as the roads or streets on which trucks must travel when proceeding through the city. [1985 c.564 §1]

RECYCLING CONTAINERS

227.450 Recycling containers; recommendations for new construction. (1) Each multifamily residential dwelling with more than 10 individual residential units that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(2) Each commercial building and each industrial and institutional building that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(3) As used in this section, "commercial," "recyclable material" and "solid waste" have the meanings given in ORS 459.005. [1997 c.552 §32]

CLUSTERED MAILBOXES

227.455 Clustered mailboxes in city streets and rights-of-way. Each city in this state shall adopt standards and specifications for clustered mailboxes within the boundaries of city streets and rights-of-way that conform to the standards and specifications for such mailboxes contained in the State of Oregon Structural Specialty Code. [2011 c.488 §2]

Note: 227.455 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PERMITTED USES IN ZONES

227.500 Use of real property for religious activity; city regulation of real property used for religious activity. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations. [2001 c.886 §4]

227.505 Solar energy systems on residential and commercial structures. (1) The installation and use on a residential structure of a solar photovoltaic energy system or a solar thermal energy system is an outright permitted use in any zone in which residential structures are an allowed use.

(2) The installation and use on a commercial structure of a solar photovoltaic energy system or a solar thermal energy system is an outright permitted use in any zone in which commercial structures are an allowed use.

(3) Approval of a permit application under ORS 227.160 to 227.186 is, notwithstanding the definition of "permit" in ORS 227.160, a ministerial function if:

(a) The installation of a solar energy system can be accomplished without increasing the footprint of the residential or commercial structure or the peak height of the portion of the roof on which the system is installed; and

(b) The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof.

(4) As part of the permit approval process, a city:

(a) May not charge a fee pursuant to ORS 227.175 for processing a permit;

(b) May not require extensive surveys or site evaluations including, but not limited to, vegetation surveys, contour maps and elevation drawings; and

(c) May charge building permit fees pursuant to ORS 455.020, 455.210 and 455.220.

(5) Subsections (3) and (4) of this section do not apply to a permit application for a residential or commercial structure that is:

(a) A federally or locally designated historic building or landmark or that is located in a federally or locally designated historic district.

(b) A conservation landmark designated by a city or county because of the historic, cultural, archaeological, architectural or similar merit of the landmark.

(c) Located in an area designated as a significant scenic resource unless the material used is:

(A) Designated as anti-reflective; or

(B) Eleven percent or less reflective.

(6) As used in this section, "solar photovoltaic energy system" has the meaning given that term in ORS 757.360. [2011 c.464 §2]

Note: 227.505 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PLANNING AND ZONING PREAPPLICATION PROCESS

227.600 Land use approval preapplication review. (1) As used in this section:

(a) “Compost” has the meaning given that term in ORS 459.005.

(b) “Disposal site” has the meaning given that term in ORS 459.005.

(c) “Local government” has the meaning given that term in ORS 174.116.

(2) Before an applicant may submit an application under ORS 227.160 to 227.186 for land use approval to establish or modify a disposal site for composting that requires a permit issued by the Department of Environmental Quality, as provided in subsection (3) of this section, the applicant shall:

(a) Request and attend a preapplication conference described in subsections (4) to (6) of this section; and

(b) Hold a preapplication community meeting described in subsections (7) to (9) of this section.

(3) Subsection (2) of this section applies to an application to:

(a) Establish a disposal site for composting that sells, or offers for sale, resulting product; or

(b) Allow an existing disposal site for composting that sells, or offers for sale, resulting product to:

(A) Accept as feedstock nonvegetative materials, including dead animals, meat, dairy products and mixed food waste; or

(B) Increase the permitted annual tonnage of feedstock used by the disposal site by an amount that requires a new land use approval.

(4) During the preapplication conference:

(a) The applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(b) The city with land use jurisdiction over the proposed disposal site for composting and the other representatives described in subsection (5) of this section shall inform the applicant of permitting requirements to establish and operate the proposed disposal site for composting and provide all application materials to the applicant.

(5) The applicant shall submit a written request to the city with land use jurisdiction to request a preapplication conference. A representative of the planning department of the city and a representative of the Department of Environmental Quality shall attend the conference along with representatives, as determined necessary by the city, of the following entities:

(a) Any other state agency or local government that has authority to approve or deny a permit, license or other certification required to establish or operate the proposed disposal site for composting.

(b) A state agency, a local government or a private entity that provides or would provide to the proposed disposal site for composting one or more of the following:

(A) Water systems.

(B) Wastewater collection and treatment systems, including storm drainage systems.

(C) Transportation systems or transit services.

(c) A city or county with territory within its boundaries that may be affected by the proposed disposal site for composting.

(d) The Department of Land Conservation and Development.

(e) The State Department of Agriculture.

(6) The city with land use jurisdiction may use preapplication procedures, if any, in the acknowledged land use regulations of the city, consistent with the requirements that the city shall:

(a) Provide notice of the preapplication conference to the entities described in subsection (5) of this section by mail and, as appropriate, in any other manner that ensures adequate notice and opportunity to participate;

(b) Hold the preapplication conference at least 20 days and not more than 40 days after receipt of the applicant's written request; and

(c) Provide preapplication notes to each attendee of the conference and the other entities described in subsection (5) of this section for which a representative does not attend the preapplication conference.

(7) After the preapplication conference and before submitting the application for land use approval, the applicant shall:

(a) Hold a community meeting within 60 days after the preapplication conference:

(A) In a public location in the city with land use jurisdiction; and

(B) On a business day, or Saturday, that is not a holiday, with a start time between the hours of 6 p.m. and 8 p.m.

(b) Provide notice of the community meeting to:

(A) The owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located;

(B) The resident or occupant that receives mail at the mailing address of the real property described in subparagraph (A) of this paragraph if the mailing address of the owner of record is not the mailing address of the real property;

(C) Neighborhood and community organizations recognized by the governing body of the city if a boundary of the organization is within one-half mile of the proposed disposal site for composting;

(D) A newspaper that meets the requirements of ORS 193.020 for publication;

(E) Local media in a press release; and

(F) The entities described in subsection (5) of this section.

(8) During the community meeting, the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(9) The applicant's notice provided under subsection (7)(b) of this section must include:

(a) A brief description of the proposed disposal site for composting;

(b) The address of the location of the community meeting; and

(c) The date and time of the community meeting. [2013 c.524 §2]

Note: 227.600 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CHAPTERS 228 TO 235

[Reserved for expansion]