



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nicole Mardell, AICP, Senior Planner

DATE: January 5, 2023

SUBJECT: Public Hearing: Amateur (HAM) Radio Facility Amendments

The Deschutes County Planning Commission will conduct a public hearing to consider legislative amendments to streamline and clarify the review process for Amateur (HAM) Radio facilities (file no. 247-22-000912-TA) on January 12, 2023 at 5:30 P.M. The hearing will be held at the Barnes and Sawyer Room, Deschutes Service Center, 1300 Wall Street, Bend.

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development on November 28, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on December 8, 2022¹. Attached to this memorandum are the proposed text amendments and findings, which have not changed since the Planning Commission work session. Within the proposed amendments, added language is shown underlined and deleted shown as strikethrough. The public hearing will be conducted in-person, electronically, and by phone.

The record is available for inspection on the project website:

<https://www.deschutes.org/cd/page/247-22-000912-ta-amateur-ham-radio-text-amendments>

I. BACKGROUND

In 2008, the Deschutes County Board of County Commissioners adopted Ordinance 2008-007, establishing regulations for amateur radio facilities. The Board opted to apply the same regulations for any facility regardless of height and opted to except these facilities from the

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-23>

height limitations of the underlying zoning district.

In 2021 during the Community Development Department's annual work plan development, the Board of County Commissioners and the County's Planning Division received testimony from a HAM/amateur radio operator expressing concern regarding the onerous requirements to establish smaller scale amateur radio facilities (under 70 feet), including a requirement to provide written demonstrations of compliance from Federal Aviation Administration (FAA), Oregon Department of Aviation (ODAV), and Federal Communications Commission (FCC). Due to the scope of review authority, operators often found that these agencies were not able to provide written determinations for small-scale facilities outside of airport and airport overlay zones, which led to a conflict with the County's code provisions.

Operators were instead seeking a pathway to simplify establishment of facilities under 70 feet, while still maintaining regulations for larger scale facilities that may have significant aesthetic impacts to surrounding properties and require written compliance from FAA, ODA, and FCC.

Staff also notes that ORS 221.295 limits restrictions on amateur radio facilities that are 70 feet or lower to those that are clearly linked to a health, safety, or aesthetic objective. This results from FCC ruling in PRB-1 (codified in 47 CFR Part 97). Therefore, the County has limited authority to apply unnecessary regulations to amateur radio facilities outside of those directly addressing a health, safety, or aesthetic issue.

II. PROPOSAL

In coordination with the Deschutes County Building Division, Oregon Department of Aviation, and HAM radio operators, staff has drafted the revisions to DCC section 18.116.290 in Attachment 1. In summary, the amendments provide the following revisions:

- General cleanup of language and organization
- Cross-references requirement from 18.120.040(A)(1) that limits height to 30 feet in Airport Safety (AS), Airport Development (AD), and Landscape Management (LM) zones for clarity.
- Added two tiers of regulations based on height
 - For facilities under 70 feet
 - Streamline review process – allowed as outright permitted accessory use
 - No formal determination of written compliance from FAA, ODAV, FCC
 - Maintains aesthetic and setback requirements
 - For facilities between 70 and 200 feet
 - Explicitly requires land use review
 - Maintains requirement for coordination with FAA, ODAV, FCC
 - Maintains aesthetic and setback requirements

The applicant, in this case Deschutes County Community Development, has provided findings as an attachment which summarizes the amendments and demonstrates compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

III. PLANNING COMMISSION WORK SESSION

Planning Commissioners conducted a work session on December 8, 2022. At that time Commissioners raised the following questions:

- **How do the regulations reflect leasing of property or situations in which a renter is establishing a facility?**

Current language in DCC 18.116.290 requires a property owner to obtain a current, valid FCC Amateur Radio License in the name of the property owner and is not proposed to be amended. The use of the term “property owner” is consistently used in Deschutes County Code.

"Owner" means the owner of real property or the authorized agent thereof or the contract purchaser of real property of record as shown on the last available complete tax assessment roll or County Recorder's records.²

Staff notes that not all amateur radio operators require a facility on their property to receive the frequencies necessary for their operations. To establish a facility is a permanent change to the property that requires authorization from the property owner. A renter has two options in this scenario: 1) conduct amateur radio operations without a tower or 2) seek consent from the property owner to erect a facility as an “authorized agent”. Staff believes the existing text and definition of owner, as applied to other areas of code, allow for flexibility in unique situations, while still ensuring property owner authorization of equipment placement and installation.

- **How many transmission facilities are in Deschutes County?**

Staff has not been able to identify the number of transmission facilities in Deschutes County, although there appear to be few facilities in comparison to the number of operators (approximately 1,100 operators)³. No information on the number of transmission facilities was found through Deschutes County building permit data or FCC database.

² 18.04.030 Definitions

³ Information from Tony Partain, HiDarg Group and Central OR DX Club

IV. NEXT STEPS

At the conclusion of the public hearing, the Planning Commission may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing and commence deliberations.

Attachments:

1. Proposed Text Amendments – DCC Chapter 18.116.290
2. Proposed Findings