

Attachment 2: Proposed Findings 247-22-000912-TA

FINDINGS

I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendments is to streamline the review process for certain Amateur Radio (HAM Radio) facilities.

Section 18.116.290, the code section regulating Amateur Radio Facilities, currently contains unclear language regarding the type of land use review application needed and requires written statements of compliance from Oregon Department of Aviation (ODAV), Federal Communications Commission (FCC), and Federal Aviation Administration (FAA), which are often difficult to acquire for smaller facilities.

Staff is proposing the following revisions to clarify the land use process and requirements for these facilities:

- 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

II. 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 height limitations of the underlying zoning district¹.

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 HAM/amateur radio operators expressing concern regarding the onerous requirements to establish

¹ DCC 18.120.040(A)(1) Building Height Exceptions

smaller scale amateur radio facilities (under 70 feet), including a requirement to provide written demonstrations of compliance from FAA, ODAV, and FCC. Due to the scope of review authority, operators often found that these agencies were not able to provide written determinations of 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 aesthetic impacts to surrounding properties.

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.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating the amendment, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission on January 12, 2023 and Board of County Commissioners on February 15, 2023.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing on December 27, 2022, and the Board of County Commissioners' public hearing on February 15, 2023.

- B. *Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.***

FINDING: Posted notice was determined by the Planning Director not to be necessary.

- C. *Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.***

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. *Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.***

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. The Planning Commission.***
 - 2. The Board of County Commissioners.***

- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

FINDING: The Deschutes County Planning Commission held the initial public hearing on January 12, 2023. The Board then held a public hearing on February 15, 2023. These criteria are met.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. [number TBD] upon approval and adoption by the Board of County Commissioners. This criterion will be met.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose any changes to the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on November 28, 2022 The Planning Commission held a public hearing on January 12, 2023 and the Board of County Commissioners held a public hearing on February 15, 2023. This Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: The proposed amendments are to clarify existing requirements for amateur radio facilities. Staff is streamlining requirements for facilities under 70 feet while maintaining the current requirements for facilities over 70 feet up to 200 feet. As noted above, ORS 221.295 limits a local government's authority to regulate towers outside of concerns related to health, safety, or aesthetics. Adverse impacts to farming practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for amateur/HAM radio facilities under 200 feet in exclusive farm use zones. The amendments are consistent with Goal 3.

Goal 4: Forest Lands: The proposed amendments are to clarify existing requirements for amateur radio facilities. Staff is streamlining requirements for facilities under 70 feet while maintaining the current requirements for facilities over 70 feet up to 200 feet. As noted above, ORS 221.295 limits a local government's authority to regulate towers outside of concerns related to health, safety, or aesthetics. Adverse impacts to forestry practices are not anticipated under these amendments and no such impacts have been identified in the record. Oregon Revised Statute and Rule do not contain specific requirements for amateur/HAM radio facilities under 200 feet in forest zones. The amendments are consistent with Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed amendment is not seeking to change any requirements in the Wildlife Area overlay zone which protects inventoried wildlife resources. The height exemption currently in 18.120.040(A)(1) does not allow for a facility over 30 feet in the County's Landscape

Management Overlay Zone. This zone protects scenic resources through additional aesthetic requirements. The code provision will remain unchanged. Staff finds that the amendments are consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6, they comply.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they comply. Additionally, amateur radio facilities and operators may be of use during times of emergency response and loss of standard means of communication.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs; therefore, they are in compliance.

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. Compliance is met.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. Compliance with Goal 14 is met.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.