



STAFF REPORT

FILE NUMBER: 247-21-000862-TA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97703

PROPERTY: N/A
OWNER:

REQUEST: Text Amendments to clarify existing standards and procedural requirements, incorporate changes to state and federal law, and to correct errors found in various sections of the Deschutes County Code.

STAFF CONTACT: Kyle Collins, Associate Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

A. PROPOSAL: The Planning Division determined minor changes were necessary to clarify existing standards and procedural requirements, incorporate changes to state and federal law, and correct errors found in various sections of the Deschutes County Code (DCC). Staff initiated the proposed changes and notified the Oregon Department of Land Conservation and Development.

III. FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

Exhibit B - Text Amendments Staff Report

FINDING: This criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and Board of County Commissioners.

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 by notice being published in the Bend Bulletin newspaper.

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

FINDING: This criterion will be met when notice is posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

- ##### **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 will be provided to the County public information official for wider media distribution. This criterion has been 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, which received a fee waiver. This criterion has been met.

Section 22.12.040. Hearings Body

Exhibit B - Text Amendments Staff Report

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: This criterion will be met because a public hearing will be held before the Deschutes County Planning Commission and subsequently the Board of County Commissioners.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in file no. 247-21-000862-TA will be implemented by ordinances upon approval and adoption by the Board. This criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~striketrough~~. Below are explanations of the proposed changes.

A. Title 15, Buildings and Construction:

Chapter 15.04. BUILDINGS AND CONSTRUCTION CODES AND REGULATIONS

Section 15.04.080. Fire Code; Adopted

DCC 15.04.080 contains a reference to the "2019 edition of the International Fire Code" as the locally adopted and applicable fire code for Deschutes County. The proposed amendment would alter this language to reference the "currently adopted edition of the International Fire Code" to prevent the need for future code amendments when future iterations of the International Fire Code are promulgated. This language was previously included in County Code, but was unintentionally altered by Ordinance no. 2020-007. **(See Exhibit A)**

B. Title 17, Subdivisions:

Chapter 17.24. FINAL PLAT

Section 17.24.150. Recording

Exhibit B - Text Amendments Staff Report

DCC 17.24.150(B) contains a reference to “blue line” copies of final plats and “cartography” fees when recording documents with the Planning Division. These specific standards are no longer required during the final plat recording process, and the proposed changes reflect the contemporary recording standards. **(See Exhibit B)**

C. Title 18, County Zoning:

Chapter 18.04. TITLE, PURPOSE, AND DEFINITION

Section 18.04.030. Definitions

Definition for Manufactured Home states: "Manufactured home" shall have the meaning as set forth in ORS 446.003(24)(a). The amendment corrects the ORS Reference to state: ORS 446.003(23)(a). **(See Exhibit C)**

Chapter 18.16. EXCLUSIVE FARM USE ZONES

Section 18.16.023. Lawfully Established Dwelling Replacement

In conformance with House Bill 3024 and ORS 215.291, the amendment prohibits the County from considering property tax classification of dwellings deemed unsafe for occupancy or constituting an attractive nuisance, or dwellings that were previously removed, destroyed, demolished or converted to nonresidential uses when reviewing applications for replacement dwellings on lands zoned for exclusive farm use.

Section 18.16.025. Uses Permitted Subject To The Special Provisions Under DCC Section 18.16.038 Or DCC Section 18.16.042 And A Review Under DCC Chapter 18.124 Where Applicable

In conformance with House Bill 2106 and OAR 660-033-0010, the amendment alters the established date requirements for any farm building used for dog training classes or testing trials.

In conformance with House Bill 2844 and ORS 215.255(2)(b), the amendment adds a new farm crop processing use provided that the operation uses less than 2,500 square feet for its processing area. The County may not impose any siting requirements which would prohibit these uses from being established on a property. Additionally, the proposed edits more generally align County Code with the OAR 660-033-0130 language describing facilities for processing of farm crops. No additional uses or restrictions are included within the general OAR alignment edits.

Section 18.16.030. Conditional Uses Permitted – High-Value and Non-High Value Farmland

DCC 18.16.030(D) implies that a medical hardship dwelling in the EFU Zone can only be a manufactured home or a recreation vehicle (RV). However, OAR 660-033-0130 also allows

Exhibit B - Text Amendments Staff Report

existing buildings to be used for temporary hardship dwellings. This amendment will maintain conformance with the existing standards of DCC 18.16.050(H)(1)(a) and OAR 660-033-0130.

Section 18.16.050. Standards for Dwellings in the EFU Zones

DCC 18.16.050(A) references 18.16.030(A). 18.16.050(A) should reference 18.16.025(A) to address “dwellings customarily provided in conjunction with farm use.”

In conformance with OAR 660-033-0135, the amendment adds “Except for seasonal farmworker housing approved prior to 2001” to all references of “no other dwelling on the subject tract” and/or “land.” (**See Exhibit D**)

Chapter 18.32. MULTIPLE USE AGRICULTURAL ZONE - MUA

Section 18.32.030. Conditional Uses Permitted

DCC 18.32.030(AD) contains a reference to OAR 660-004-0040(7)(g), which does not exist. The amendment adds the correct reference which outlines Goal 14 exceptions for new manufactured home parks which exceed the density allowed under OAR 660-004-0040. (**See Exhibit E**)

Chapter 18.36. FOREST USE ZONE; F-1

Section 18.36.050. Standards For Single-Family Dwellings

In conformance with House Bill 2225 and OAR 660-006-0027, the amendment adds additional standards and clarifications for template dwellings approved in the Forest Zone, as well as general conformance edits in line with the OAR language. The amendments associated with OAR 660-006-0027 do not become active across all jurisdictions until November 1, 2021. (**See Exhibit F**)

Chapter 18.40. FOREST USE ZONE; F-2

Section 18.40.050. Standards For Single-Family Dwellings

In conformance with House Bill 2225 and OAR 660-006-0027, the amendment adds additional standards and clarifications for template dwellings approved in the Forest Zone, as well as general conformance edits in line with the OAR language. The amendments associated with OAR 660-006-0027 do not become active across all jurisdictions until November 1, 2021. (**See Exhibit G**)

Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

Section 18.67.020. Residential (TuR) District

Exhibit B - Text Amendments Staff Report

DCC 18.67.020(D)(2)(b) currently reads “the standards set forth in DCC 18.67.020(C)(1) shall apply.” This reference was unintentionally established by Ordinance 2020-010, as part of the broader child care amendments. The amendment changes this reference back to its original state, with the correct use listed as DCC 18.67.020(D)(1).

Section 18.67.040. Commercial (TuC) District

DCC 18.67.040(D) currently contains a reference to DCC 18.67.040(C)(11), which describes wireless communication facilities. This reference was established by Ordinance 2020-010, as part of the broader child care amendments. The previous reference listed under DCC 18.67.040(D) referred to “The following uses may be conducted in a building or buildings not to exceed 10,000 square feet of floor space...” The amendment changes this reference back to its original state, with the correct use listed as DCC 18.67.040(C)(10). (**See Exhibit H**)

Chapter 18.74. RURAL COMMERCIAL ZONE

Section 18.74.020. Uses Permitted; Deschutes Junction And Deschutes River Woods Store

DCC 18.74.020(B) states “Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.128.” DCC 18.128 refers to the Conditional Use chapter rather than the Site Plan chapter. The amendment alters DCC 18.74.020(B) to reflect the actual Site Plan chapter, DCC 18.124. (**See Exhibit I**)

Chapter 18.80. AIRPORT SAFETY COMBINING ZONE; A-S

Section 18.80.044. Land Use Compatibility

DCC 18.80.044(A) refers to FAA Order 5100.38A. However, FAA Order 5100.38A has been canceled and replaced with FAA Order 5100.38D. The amendment alters DCC 18.80.044(A) to remove any specific FAA appendix or chapter references, but still maintain compliance with the FAA guidance established in Order 5100.38 (**See Exhibit J**)

Chapter 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE; LM

Section 18.84.010. Purpose

DCC 18.84.010 currently states “The purposes of the Land Management Combining Zone...” The amendment corrects the reference to the zoning chapter title as “Landscape Management Combining Zone.” (**See Exhibit K**)

Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE; SUNRIVER

Section 18.108.110. Business Park; BP District

Exhibit B - Text Amendments Staff Report

DCC 18.108.110(D) states “Any of the uses listed in DCC 18.108.110(A)(6) or (B)(6) may be allowed in a building or buildings each exceeding 8,000 square feet of floor space if the Planning Director or Hearings Body finds...” Reference to 18.108.110(A)(6) is for “Religious institutions or assemblies.” DCC 18.108.110(A)(6) originally referred to “A building or buildings each not exceeding 8,000 square feet of floor space...” This reference was unintentionally altered pursuant to Ordinance 2012-002 and Ordinance 2019-008. Given the unintentional reference changes, and the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), the amendment changes this reference back to its original state, with the correct use listed as DCC 18.108.110(A)(8). **(See Exhibit L)**

Chapter 18.116. SUPPLEMENTARY PROVISIONS

Section 18.116.250. Wireless Telecommunications Facilities

The amendment adds language to maintain compliance with federal law. In accordance with Section 6409 of The Middle Class Tax Relief and Job Creation Act (2012), state and local jurisdictions “may not deny, and shall approve any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station.”

Section 18.116.330. Marijuana Production, Processing, Retailing, And Wholesaling

DCC 18.116.330(B) needs clarification to match legislative intent. Specifically, DCC 18.116.330(B) contains the language “A change in location for a marijuana production or processing use is prohibited by DCC 18.120.010 and DCC 22.36.040 as any location change will have a greater adverse impact on the neighborhood and/or significant additional impacts on surrounding properties.” As presently written, it is unclear if the code clarifies whether a “location change” refers to intra-property changes, inter property changes, or both. Staff understands the legislative intent to refer specifically to inter-property location changes (i.e. - relocation of a marijuana production or processing use to another property). The amendment clarifies the existing code language to match this legislative intent. **(See Exhibit M)**

Chapter 18.120. EXCEPTIONS

Section 18.120.010. Nonconforming Uses

DCC 18.120.010(F)(3) states “For the purposes of DCC 18.120.010(E)(2), an “alteration of a nonconforming use” shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.” The amendment changes the reference to correctly identify the standards for “alteration of a nonconforming use.” **(See Exhibit N)**

D. Title 19, Bend Urban Growth Boundary Zoning Ordinance:

Chapter 19.76. SITE PLAN REVIEW

Exhibit B - Text Amendments Staff Report

Section 19.76.090. Deschutes River Corridor Design Review

DCC 19.76.090 contains references to the “Bend Urban Area Planning Commission” as the appropriate review body for development which requires site plan and design review in the Deschutes River Corridor. However, the Bend Urban Area Planning Commission is no longer an active review body. The amendment replaces this reference with the “Deschutes County Planning Commission” as the appropriate review body for all new site plan development which occurs in Title 19 areas associated with the Deschutes River Corridor. **(See Exhibit O)**

E. Title 22, DESCHUTES COUNTY DEVELOPMENT PROCEDURES ORDINANCE:

Chapter 22.04. INTRODUCTION AND DEFINITIONS

Section 22.04.020. Definitions

“Development Actions” (B) states: “Involves the application of standards other than those referred to in DCC 22.040.030(A), such as the sign ordinance.” DCC 22.04.030(A) has been repealed. Ordinance 95-045 contains a reference to section (A) of the “Development Actions” definition. Subsequent Ordinance 96-071 provided each definition in DCC 22.04 with a given a section number, including section 22.04.030 for Development Actions. Subsequent ordinances removed section numbers from definitions in Title 22 broadly. The amendment removes the irrelevant section numbers from the “Development Actions” definition. **(See Exhibit P)**

Chapter 22.24. LAND USE ACTION HEARINGS

Section 22.24.130. Close Of The Record

The amendment alters DCC 22.24.030(D) to match the requirements of ORS 197.763(6). **(See Exhibit Q)**

V. CONCLUSION:

Based on the information provided herein, the staff recommends the Board of County Commissioners approve the proposed text amendments that make minor changes necessary to clarify existing standards and procedural requirements, incorporate changes to state and federal law, and to correct errors.