

Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

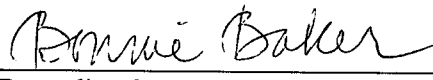
Dated this 8th of Sept., 2010

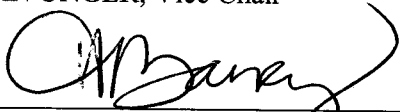
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, Chair


ALAN UNGER, Vice Chair

ATTEST:


Recording Secretary


TAMMY BANEY, Commissioner

Date of 1st Reading: 8th day of Sept., 2010.

Date of 2nd Reading: 8th day of Sept., 2010.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Dennis R. Luke	<u>✓</u>	—	—	—
Alan Unger	<u>✓</u>	—	—	—
Tammy Baney	<u>✓</u>	—	—	—

Effective date: 8th day of Sept., 2010.

“*****” Denotes sections of the Deschutes County Code remaining unchanged by Ordinance 2010-029

Chapter 18.61. URBAN UNINCORPORATED COMMUNITY ZONE - LA PINE

18.61.010. Purpose.

18.61.020. Standards for All Districts.

18.61.030. La Pine Planning Area.

18.61.040. Wickiup Junction Planning Area.

18.61.050. Neighborhood Planning Area.

***18.61.030 La Pine Planning Area.**

C. La Pine Industrial District.

1. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:
 - a. Agricultural use as defined in DCC Title 18.
 - b. Excavation, grading or fill and removal activities involved in creation of a wetland in areas not requiring a conditional use permit for fill or removal.
 - c. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
 - d. Class III road or street project.
 - e. Forest operation and forest practice including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash.
2. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to DCC 18.61.030(C)(4)(c)(2) and other applicable provisions of DCC 18.61 and DCC 18.116, Supplementary Provisions, and DCC 18.124, Site Plan Review:
 - a. Expansion of a valid use existing on December 5, 1994.
 - b. Public use compatible with industrial uses.
 - c. Uses that require proximity to rural resources, as defined in OAR 660-04-022(3)(a).
 - d. Scientific research or experimental development of materials, methods or products, including engineering and laboratory research.
 - e. Light manufacturing, assembly, fabricating or packaging and wholesale distribution.
 - f. Cold storage plant, including storage and office.
 - g. Kennel or veterinary clinic operated entirely within an enclosed building.
 - h. Processing use such as bottling plant, creamery, laboratory, blueprinting and photocopying, laundry, carpet and rug cleaning plant, cleaning and dyeing plant and tire retreading, recapping and rebuilding.
 - i. Contractor's equipment storage or sale yard, house mover, delivery vehicles, transit storage, trucking terminal and used equipment in operable condition.
 - j. Manufacture of concrete products and ceramic products using only previously comminuted raw materials.
 - k. All types of automobile, motorcycle, boat, trailer and truck sales, service, repair, storage and rental.
 - l. Retail or combination retail/wholesale lumber and building materials yard, not including concrete mixing.

- m. Manufactured home sales and service.
- n. Plant nursery and greenhouse.
- 3. Conditional Uses Permitted. The following uses may be allowed subject to the applicable provisions of DCC 18.61 and DCC 18.124, Site Plan Review, and DCC 18.128, Conditional Use:
 - a. Mini-storage facility.
 - b. Hydroelectric facility, subject to DCC 18.116.130 and 18.128.260.
 - c. Asphalt plant.
 - d. Lumber manufacturing and wood processing including pulp and paper manufacturing.
 - e. Electrical substation.
 - f. Concrete, asphalt and ready-mix plant.
 - g. Petroleum products storage and distribution.
 - h. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or Portland cement concrete.
 - i. Commercial feedlot, stockyard, sales yard, slaughterhouse and rendering plant.
 - j. Railroad track, freight depot and related facilities.
 - k. Agricultural products storage and processing plant.
 - l. Transfer station.
 - m. Automotive wrecking yard totally enclosed by a sight-obscuring fence.
 - n. Any use permitted by DCC 18.61.030(C)(2) that is expected to:
 - 1. Require lot coverage in excess of 70 percent;
 - 2. Require more than one acre of land; or
 - 3. Generate any odor, dust, fumes, glare, flashing lights or noise that would be perceptible without instruments 500 feet from the property line of the subject use.
 - o. Service commercial use, such as office, restaurant, cafe, refreshment stand, bar and tavern, whose primary purposes is to serve industrial uses in the surrounding area, provided that such use is allowed as part of an Industrial Park Master Plan.
 - p. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
 - q. Utility facilities
- 4. Use Limits. The following limitations and standards shall apply to uses listed in DCC 18.61.030(C)(2) and (3):
 - a. Sewer and Water Requirements:
 - 1. New uses that require DEQ Water Pollution Control Facility (WPCF) permits shall be required to connect to the La Pine Sewer Treatment Facility in lieu of obtaining a WPCF permit.
 - 2. Uses that do not require a WPCF permit shall demonstrate the ability to obtain approval for an on-site sewage disposal system either before approval of the land use permit or as a condition of permit approval.
 - 3. If a use requires more than 5,000 gallons of water per day, an application shall be made to the Oregon Water Resources Department for a water rights permit or the use must be connected to a municipal, community or public water system.
 - b. Compatibility:
 - 1. A use that requires a lot area exceeding 9,000 square feet shall not be permitted to locate adjacent to a lot in a residential district.
 - 2. A use expected to generate more than 30 truck trailer or other heavy equipment trips per day to and from the subject property shall not be permitted to locate on a lot adjacent to or across a street from a lot in a residential district.
 - 3. Any use on a lot adjacent to or across the street from a lot in a residential district shall not emit odor, dust, fumes, glare, flashing lights, noise or similar disturbances

- perceptible without instruments more than 200 feet in the direction of the affected residential use or lot.
4. Storage, loading and parking areas for uses permitted by DCC 18.61.030(C)(2) and (3) shall be screened from residential zones using trees, vegetation, and topography to the maximum extent practicable to screen the area from view of nearby residences.
 5. No use requiring air contaminant discharge permits shall be approved by the Planning Director or Hearings Body prior to review by the applicable state or federal permit reviewing authority, nor shall such uses be permitted adjacent to or across a street from a residential lot.
 6. A property hosting a service commercial use shall be subject to a waiver of remonstrance recorded in the Deschutes County Book of Records declaring that the operator and his or her successors will not now or in the future file a complaint aimed at curtailing industrial activities on adjacent properties conducted in conformance with DCC 18.61.
 7. Exhaust stacks shall be screened from residential zones using trees, vegetation, and topography to the maximum extent practicable to screen the stack from view of nearby residences.
- c. Traffic/Parking.
1. A use that generates more than 20 auto or truck trips during the busiest hour of the day to and from the premises shall be served directly by an arterial or collector.
 2. An applicant must demonstrate that affected transportation facilities are adequate to serve the proposed use, considering the functional classification, capacity and the level of service of such facilities.
 3. All parking demand created by any use permitted by DCC 18.61.030(C) shall be accommodated on the applicant's premises entirely off-street.
 4. There shall be only one ingress and one egress from properties accommodating uses covered by DCC 18.61.030(C) per each 300 feet or fraction thereof of street frontage. If necessary to meet this requirement, uses shall provide for shared ingress and egress.
- d. Requirements for Large Scale Uses. Any industrial use listed in DCC 18.61.030(C)(2) and (3) may be allowed in a building or buildings exceeding 20,000 square feet of floor space if the Planning Director or Hearings Body finds:
1. That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;
 2. That such uses would not rely upon a work force served by uses within urban growth boundaries; and
 3. That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries.
5. Additional Requirements. As a condition of approval of any use proposed, the Planning Director or Hearings Body may require:
- a. An increase in required setbacks.
 - b. Additional off-street parking and loading facilities.
 - c. Limitations on signs or lighting, hours of operation and points of ingress and egress.
 - d. Additional landscaping, screening and other improvements.
6. Dimensional Standards. The following dimensional standards shall apply:
- a. Minimum Lot Size. The minimum lot size shall be determined subject to the provisions of DCC 18.61.030(C) concerning setback requirements, off-street parking and loading.

- b. Lot Coverage. Notwithstanding DCC 18.61.030(C)(3)(n), a use permitted by DCC 18.61.030(C) is located adjacent to or across the street from a lot in a residential district shall not exceed 70 percent lot coverage by all buildings, storage areas or facilities and required off-street parking and loading area.
- c. Setbacks.
 - 1. The minimum building setback between a nonrailroad related structure and a street, road or railroad right of way line shall be 50 feet unless a greater setback is required for compliance with Comprehensive Plan policies.
 - 2. The minimum setback between a structure and a property line adjoining a residential district shall be 50 feet.
 - 3. The minimum setback between a structure and an existing use shall be three feet from the property line and at least six feet from a structure on the adjoining property.
- d. Building Heights. The maximum building height for any structure shall be 30 feet on any lot adjacent to a residential district and 45 feet on any lot not adjacent to a residential district or that is separated from a residential district by a street or road. The following exceptions apply:
However,
 - 1. If a building on a lot adjacent to a residential district, but not separated by a street or road, is set back 100 feet or more from the residential district, the maximum height shall be 45 feet; and
 - 2. The maximum height for utility facility structures shall be 100 feet provided:
 - i. The structure is located on a lot that is not adjacent to a residential district;
 - ii. The structure is the minimum height necessary to accommodate machinery and equipment;
 - iii. The structure is equipped with fire sprinkler protection in accordance with current adopted editions of the Oregon Structural Specialty Code, Oregon Fire Code, and National Fire Protection Association 13; and
 - iv. The structure is at least 500 feet from the nearest residential district.
- e. Utility facility exhaust stacks shall meet the DEQ air quality permit requirements, but shall not exceed DEQ permit minimum height requirements or ~~100~~ 150 feet in height, whichever is less.
- f. Minimum Lot Frontage. The minimum lot frontage shall be 50 feet.
- g. Side Yard. None required, except when a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.
- h. Rear Yard. None required, except when abutting a yard in a Residential District, and then the rear yard shall be a minimum of 20 feet. A parcel or lot with a rear yard adjacent to zoned forest land shall have a minimum rear yard of 100 feet.

| (Ord. 2010-029 § 1, 2010; Ord. 2009-025 § 1, 2009; Ord. 2003-002 §1, 2003; Ord. 2002-033 §1, 2002; Ord. 2001-044 §3, 2001; Ord. 2000-015§ 2, 2000; Ord. 97-063 §3, 1997; Ord. 97-041 §1, 1997; Ord. 97-017 §4, 1997; Ord. 96-003 §1, 1996)

FINDINGS

After notice published in The Bulletin on August 1, 2010, the Deschutes County Planning Commission and Board of County Commissioners held a public hearing on August 26, 2010 on TA-2010-5 to consider legislative text amendments to Chapter 18.61 of the Deschutes County Code (DCC) Title 18 related to the development of utility facilities in the Industrial District of the La Pine Planning Area. The Planning Commission closed the record on August 26, 2010 and recommended that the Board of County Commissioners approve the proposed amendments. The Board of County Commissioners considered the Planning Commission's recommendation and staff comments and then closed the record on August 26, 2010. The Board of County Commissioners approved the proposed text amendments with the addition of a provision that will prohibit 100-foot tall buildings that are within 500 feet of a residential zoning district.

BACKGROUND

A. Existing Code

Utility facilities are allowed as a conditional use in the Industrial District of the La Pine Planning Area, DCC 18.61.030(C). The Industrial District applies to land in the La Pine industrial park. The park includes both public and privately owned industrial land. The height limitations and screening requirements of the zone, however, effectively preclude the installation and development of power generation facilities, including biomass power generation facilities. The height limit in the Industrial District is 30 feet adjacent to and within 100 feet of a residential district and 45 feet elsewhere. The height limit for exhaust stacks is 100 feet. The County code also requires that storage, loading and parking areas for any conditional use allowed in the Industrial zone be "screened from residential zones" without an explanation of what level of screening.

B. Utility Facility Needs

Many utility facility buildings, including biomass power generation facilities, exceed 45 feet in height. Exhaust stacks must extend above the power generation facility by a sufficient distance to capture airborne particulates. Stack heights must be approved by the Oregon Department of Environmental Quality. It is impossible to completely screen the tall buildings and exhaust stacks used to produce power.

In a dry climate, biomass utility facilities store raw materials outdoors in tall piles to dry before using the materials in the power generation plant. These piles can be as tall as 60 feet. Other industrial uses currently store materials outdoors in tall piles. It is not possible to completely screen these piles in the Industrial zone from all residential zones, in particular from residential properties located east of Highway 97.

C. La Pine Incorporation and Comprehensive Plan Adoption

The La Pine Planning Area has been incorporated as a part of the City of La Pine and is located inside the La Pine urban growth boundary. The City of La Pine adopted a comprehensive plan for the La Pine urban growth boundary in March of 2010. Deschutes County amended its comprehensive plan to state that the La Pine comprehensive plan is the controlling plan for land use development in the City of La Pine. DCC 23.48.030(2)(d). Deschutes County's land use regulations continue to apply to development in the City of La Pine as the community has not

yet adopted its own land use regulations. Deschutes County and La Pine have entered into a Joint Management Agreement for the La Pine area that provides that Deschutes County will administer the City's land use program and that recognizes that County land use laws govern the review of City land use applications.

D. Comprehensive Plan Industrial Goals

The La Pine comprehensive plan relies on land in the Industrial district to supply a part of the city's Goal 9 lands. The plan identifies targeted industries that the city wishes to attract to locate in the city. One such targeted industry is energy development. This industry provides jobs that support the plan's goal to provide more family wage jobs for La Pine residents.

E. City of La Pine and La Pine Planning Commission Recommendation

On July 21, 2010, the City Council and Planning Commission for the City of La Pine met together in a public meeting to consider the TA-2010-5 text amendments. Both bodies voted, unanimously, to support the text amendment with the addition of screening requirements proposed by County staff.

At the joint County Planning Commission and County Board of Commissioners hearing on August 26, 2010, the commissions received a unanimous recommendation from the La Pine City Council and the La Pine Planning Commission that the text amendment be approved.

F. Notice

Deschutes County followed the notice requirements i+

PROPOSED TEXT AMENDMENTS

Approval of the text amendment will make changes that will accommodate the bulk storage needs of many industrial users and the structure height needs of utility facility uses. The proposed text amendments create a building height limit for utility facilities on properties that are not adjacent to and at least 500 feet away from a residential property of 100 feet. They also increase the maximum height for an exhaust stack to 150 feet or the height approved by DEQ, whichever is lower.

The proposed text amendments will also impose a performance standard for screening and require that exhaust stacks be screened. All parking, loading and storage areas and exhaust stacks must be screened from residential zones "using trees, vegetation, and topography to the maximum extent practicable to screen the area from view of nearby residences."

The proposed text amendments are outlined in Exhibit A of Ordinance No. 2010-029 and underlined for new language and shown as ~~strikethrough~~ for deleted language.

LEGISLATIVE TEXT AMENDMENT

The text amendments will apply to most industrial properties in the La Pine Industrial District. They involve policy choices by the community that require it to balance economic development goals with community aesthetics. DCC 22.040.020 provides that amendments of this type are legislative matters. DCC 22.040.020 states:

“Legislative changes generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.”

REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18 and 22, the applicable zoning and land use procedures laws, for reviewing a legislative text amendment. The amendment, therefore, must be consistent with any applicable provisions of the La Pine comprehensive plan. The La Pine comprehensive plan also lacks specific criteria for the review of legislative text amendments.

The approval of the text amendments is consistent with the goals of the La Pine comprehensive plan. The plan identifies energy development as a target, desired industry for La Pine. The plan states that the city will need to make sure that new zoning rules can accommodate targeted industries.¹ The La Pine comprehensive plan also states that it is expected that community leaders will continue to aggressively focus efforts on attracting large industrial development to La Pine and to reduce barriers to all economic development.²

The approval of the text amendments is clearly consistent with the following Energy plan policy (Chapter 11, Section IV, Goal #1, fourth policy):

“The City shall encourage the development of alternative energy sources such as wind, geothermal and bio-mass.”

The requirement to encourage the development of alternative energy sources is echoed in the Public Facility plan policy (Chapter 7, Section IV, Goal #2, third policy) that says:

“Alternative energy sources should be explored as a complement to existing resources and industries and as a way for the City to reach an energy consumption neutral status.”

These policies support the proposed text amendments because the amendments would improve the potential for the development of facilities such as bio-mass power generation plants that are capable of powering a majority of the homes in the La Pine community using local forest resources. Currently, a majority of the biomass resources that are produced in the area are shipped out of Deschutes County and used in the manufacture of building materials or pelletized fuel, or used to generate power. Fossil fuels, which are not produced in Central Oregon, are used to ship those resources out of the area. A biomass power generation plant would be an opportunity to use local raw materials to produce electricity that would enter the marketplace via the existing grid. The electrical power market is complex and the Pacific Northwest benefits from an abundance of inexpensive hydropower. However, a local biomass power generation facility would have the potential to reduce the outflow of local dollars to purchase energy and would provide a measure of energy stability that could prove to be invaluable.

¹ See page 94, La Pine Comprehensive Plan, Chapter 9, Economy, Section V.

² See page 95, La Pine Comprehensive Plan, Chapter 9, Economy, Section V.

The text amendments will also allow for a broader range of heavy industrial applications to develop on some of the parcels in the industrial district, including targeted energy development uses. Biomass and other energy generation facilities require building heights over 45 feet. Exhaust stack heights for energy development facilities can exceed the 100 feet currently allowed by the Industrial District. The text changes to the maximum height rules will make it possible for energy facilities to locate in La Pine's Industrial District. The presence of energy facilities in the community can help the community attract larger industrial facilities to the community, as contemplated by the comprehensive plan.

To protect the quality of life of residents in residential areas of the community, a 500-foot minimum setback to tall buildings was imposed. In addition, no lots adjacent to residential areas can be developed with buildings over 45 feet tall. These measures address concerns raised about noise and visual impacts as both are significantly reduced by adding distance between the uses. Exhaust stacks protect air quality and need to be able to be tall enough to meet DEQ environmental quality standards. The new code language will allow stacks that are as tall as needed to meet DEQ standards but no taller to minimize visual impacts on the community and nearby residential areas. These measures further the city's economic lands policy to ensure a high quality of life and the small town atmosphere that is essential to addressing citizen concerns about growth and economic development.³

A utility facility is a conditional use that must meet strict conditional use and site plan approval criteria. DCC 18.128.015. These rules require that utility facilities be compatible with nearby residential or industrial development and that transportation access be adequate. This code assures the city that the approved text amendments will not allow development that will cause a significant adverse impact on the community and gives the community the tools needed to address concerns about noise, air quality, water table, traffic and other, similar impacts associated with industrial development. A utility facility that does not meet these standards will be denied or conditioned to assure compliance with these requirements.

The text changes to the screening requirements of the Industrial zone are needed to attract large industrial users and utility facilities to locate in the Industrial District. Prior to amendment, the code required that all parking, storage and loading areas for conditional uses be screened from residential zones. This code section could have been read to require complete visual screening of these parts of an industrial site. Such a requirement cannot be met by businesses such as secondary wood products and power generation facilities that store large amounts of raw materials outdoors. The approved code language will continue to require screening but will establish a performance standard tied to practicability. The approved code language will require similar screening be provided for exhaust stacks.

The La Pine comprehensive plan states that one of its industrial lands goals is to reduce the daily commute for local residents by the creation of additional family wage jobs within the community.⁴ The broadening in the range of industrial uses will reduce the need for travel to and from the other urban and industrial areas in Deschutes County by providing more local, family wage job and business opportunities. For uses such as a biomass power generation facility, the location of La Pine in a forested region will provide beneficial relationships between raw material sources, urban infrastructure, and a willing work force. The shorter work commute and material transportation distances will also help conserve energy resources and promote alternative modes of travel.

³ See page 105, La Pine Comprehensive Plan.

⁴ See Chapter 9, Economy, Section V, pg 85, 86, and 95, Section VI, page 96, Section VII, page 102.

The La Pine comprehensive plan, in Chapter 9, Section X, Goal #2, third policy, includes a policy that says “[p]romoting an entrepreneurial climate for existing and new business is a key factor in strategic planning.” This policy implements the city’s goal of developing an economic development strategic plan and other mechanisms to support and enhance the local economy. The proposed amendments will promote an entrepreneurial climate and broaden the range and scale of potential future uses in the La Pine Industrial District, provide more economic opportunities in La Pine, and create more local jobs. Increased local job opportunities will be created by uses such as a biomass power generation facility and other utility facilities. New jobs will be created, for biomass facilities, within forest management agencies, in the forest with thinning and fuels reduction efforts, in the transportation of the raw materials to the industrial district, in construction of new facilities to process the materials, and in the operation and maintenance of a plant.

The La Pine comprehensive plan aims to create a “safe convenient, balanced, functional and economical transportation system to maximize and extend the life of transportation facilities and improve livability throughout the La Pine community.”⁵ The development of additional industrial uses, such as a biomass power generation facility, could reduce the need for travel to and from the other urban and industrial areas in Deschutes County by providing more convenient local work sources. The location of more industrial businesses in La Pine’s industrial park will also provide more opportunities to promote transportation efficiency and conservation of fossil fuel energy by reducing travel distances between home and work and the haul distances between the forest and processing plant. The shortened work commute distances will encourage and promote the use of alternate modes of travel. Utilizing the raw material resource locally, rather than shipping it out of the area, will also promote more economic prosperity and livability for all County residents.

The text amendment will have no effect on the transportation system and will not have a significant effect on transportation facilities. No new roads are proposed. No change in roadway classifications is proposed. The text changes will not increase transportation system impacts. Taller building heights are needed to house tall machinery rather than more employees.⁶ The additional height allowed, therefore, will not increase the density of development and related vehicle trips in the Industrial zone. Likewise, the change in the height of exhaust stacks will not increase the number of employees and vehicle trips in the Industrial zone. The required screening requirements, also, are transportation system impact neutral.

The La Pine comprehensive plan is an acknowledged plan. As the text amendments are consistent with that plan, they also comply with the Statewide Planning Goals. No exceptions to the Statewide Planning Goals are needed as the amendments continue to allow the area to be used for industrial uses consistent with its comprehensive plan and zoning designations as industrial land.

⁵ Chapter 8, Transportation, Section IV, Goal #1, page 70, La Pine Comprehensive Plan.

⁶ This fact was noted, as it relates to the Biogreen biomass facility, by Deschutes County’s transportation system planner, Peter Russell in his August 23, 2010 (9:11 am) e-mail that is a part of the record. Mr. Russell said “[i]n this case, however, the building is increasing in size to accommodate special machinery without adding additional workers so the trip production stays the same.”