


REVIEWED  
*Je*  
LEGAL COUNSEL

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK  
COMMISSIONERS' JOURNAL  
CJ 2012-87  
02/29/2012 02:59:29 PM  
  
2012-87

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County  
Code Chapter 18.108 to Permit Churches in the  
Sunriver Urban Unincorporated Community  
Zone, Business Park District, and Declaring an  
Emergency.

\*  
\*  
\*  
\*

ORDINANCE NO. 2012-002

WHEREAS, on October 13, 2011, The Door at Three Rivers Church submitted an application to amend the Deschutes County Code ("DCC") Chapter 18.108, to allow for churches in a building or buildings not exceeding 5,000 square feet of floor area to be permitted outright in the Sunriver Urban Unincorporated Community Zone, Business Park District; and

WHEREAS, the Planning Commission held a public hearing on January 12, 2012, and forward to the Board of County Commissioners ("Board") a recommendation of approval as proposed; and

WHEREAS, the Board considered this matter after a public hearing on February 27, 2012 and concluded that the public will benefit from changes to Sunriver Urban Unincorporated Community Zone, Business Park District; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS  
as follows:

Section 1. AMENDMENT. DCC 18.108.110, Sunriver Urban Unincorporated Community Zone, Business Park District, Uses Permitted Outright is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. FINDINGS. The Board adopts as its findings Exhibit "B", attached and incorporated by reference herein.

///

Section 5. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this 27<sup>th</sup> of Feb., 2012


BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
ANTHONY DEBONE, Chair

  
ALAN UNGER, Vice Chair

ATTEST:

  
Recording Secretary

  
TAMMY BANEY, Commissioner

Date of 1<sup>st</sup> Reading: 27<sup>th</sup> day of Feb., 2012 .

Date of 2<sup>nd</sup> Reading: 27<sup>th</sup> day of Feb., 2012 .

Commissioner	Record of Adoption Vote			
	Yes	No	Abstained	Excused
Anthony DeBone	<input checked="" type="checkbox"/>			
Alan Unger	<input checked="" type="checkbox"/>			
Tammy Baney	<input checked="" type="checkbox"/>			

Effective date: 27<sup>th</sup> day of Feb., 2012 .

ATTEST

  
Recording Secretary

“\*\*\*\*\*” Denotes portions of the code not amended by Ordinance 2012-002.

**Chapter 18.108. URBAN UNINCORPORATED COMMUNITY ZONE - SUNRIVER**

\*\*\*\*

**18.108.110. Business Park – BP District.**

\*\*\*\*

**18.108.110. Business Park - BP District.**

A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright:

1. Residential uses existing as of March 31, 1997.
2. Administrative, educational and other related facilities in conjunction with a use permitted outright.
3. Library.
4. Recreational path.
5. Post office.

6. Church in building or buildings not exceeding 5,000 square feet of floor area.

67. A building or buildings each not exceeding 8,000 square feet of floor space housing any combination of:

Retail/rental store, office and service establishment, including but not limited to the following:

- a. Automobile, motorcycle, boat, recreational vehicle, trailer or truck sales, rental, repair or maintenance business, including tire stores and parts stores.
- b. Agricultural equipment and supplies.
- c. Car wash.
- d. Contractor’s office, including but not limited to, building, electrical, plumbing, heating and air conditioning, painter, etc..
- e. Construction equipment sales, rental and/or service.
- f. Exterminator services.
- g. Golf cart sales and service.
- h. Lumber yard, home improvement or building materials store.
- i. Housekeeping and janitorial service.
- j. Dry cleaner and/or self-service laundry facility.
- k. Marine/boat sales and service.
- l. Restaurant, bar and cocktail lounge including entertainment.

78. A building or buildings each not exceeding 20,000 square feet of floor space housing any combination of:

- a. Scientific research or experimental development of materials, methods or products, including engineering and laboratory research.
- b. Light manufacturing, assembly, fabricating or packaging of products from previously prepared materials, including but not limited to cloth, paper, leather, precious or semi-precious metals or stones, etc.
- c. Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, or the rendering of fats and oils.
- d. Warehouse and distribution uses in a building or buildings each less than 10,000 square feet of floor area.

B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:

1. Public buildings and public utility structures and yards, including railroad yards.

2. A dwelling unit for a caretaker or watchman working on a developed property.
  3. Law enforcement detention facility.
  4. Parking lot.
  5. Radio and television broadcast facilities.
  6. A building or buildings each not exceeding 8,000 square feet of floor space housing any combination of:
    - a. Bowling alley.
    - b. Theater.
    - c. Veterinary clinic and/or kennel.
  7. A building or buildings each not exceeding 20,000 square feet of floor space housing any combination of:
    - a. Warehouses and distribution uses in a building or buildings exceeding 10,000 square feet of floor area.
    - b. Distillery and beer/ale brewing facility, including wholesale sales thereof.
    - c. Self/mini storage.
    - d. Trucking company dispatch/terminal.
    - e. Solid waste/garbage operator, not including solid waste disposal or other forms of solid waste storage or transfer station.
- C. Use Limits. The following limitations and standards shall apply to uses listed in DCC 18.108.110(A) or (B):
1. 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 the street from a lot in a residential district.
  2. Storage, loading and parking areas shall be screened from residential zones.
  3. 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 the street from a residential lot.
- D. Special Requirements for Large Scale Uses.
- 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:
1. That the intended customers for the proposed use will come from the community and surrounding rural area, or the use will meet the needs of the people passing through the area. For the purposes of DCC 18.108.110, the surrounding rural area shall be that area identified as all property within five miles of the boundary of the Sunriver Urban Unincorporated Community;
  2. The use will primarily employ a work force from the community and surrounding rural area; and
  3. That it is not practical to locate the use in a building or buildings under 8,000 square feet of floor space.
- E. Height Regulations. No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 45 feet in height.
- F. Lot Requirements. The following lot requirements shall be observed:
1. Lot Area. No requirements.
  2. Lot Width. No requirements.
  3. Lot Depth. Each lot shall have a minimum depth of 100 feet.
  4. Front Yard. The front yard shall be a minimum of 25 feet.
  5. Side Yard. No side yard required, except when adjoining a lot in an RS or RM District and then the required side yard shall be 50 feet. No side yards are required on the side of a building adjoining a railroad right of way.
  6. Rear Yard. No rear yard required, except when adjoining a lot in an RS or RM District and then the rear yard shall be 50 feet. No rear yard is required on the side of a building adjoining a railroad right of way.

7. Lot Coverage. The maximum lot coverage by buildings and structures shall be 50 percent of the total lot area.

| (Ord. 2012-002 §1, 2012; Ord. 97-078 §2, 1997)

## FINDINGS

The Deschutes County Board of Commissioners (Board) held a public hearing on February 27, 2012 on Ordinance 2012-002, amending the County's Sunriver Urban Unincorporated Community Zone, Business Park District (SUBP), regulations. The Board closed the hearing on February 27. On February 27, 2012, the Board chair conducted the first and second reading by title only and adopted the ordinance, declaring it an emergency.

### BACKGROUND

The Door at Three Rivers Church has proposed an amendment to the Deschutes County Code that would permit churches in the Business Park zoning district of the Urban Unincorporated Community Zone (UUC) of Sunriver. Currently, churches are not a use permitted in the SUBP Zone. The Sunriver Business Park includes a mix of uses permitted outright or conditionally that are commercial and light industrial in nature. However, there are other uses (e.g. library) not necessarily considered commercial or industrial in nature, as called for in the Comprehensive Plan policies, that are permitted. The applicant indicates that a church exhibits similar characteristics to those uses already permitted in the zone. The Planning Commission held a work session and public hearing on the proposed text amendment. There were no public comments at the hearing; however, the applicant did submit additional written comments. The Planning Commission has recommended, by a six to one majority vote, that the amendment be approved.

The Sunriver Resort includes a mixture of residential, commercial, and industrial uses within its boundaries. The Sunriver Business Park District is one (1) of 18 zoning districts included in the Sunriver UUC. The County Comprehensive Plan indicates the Sunriver Business Park "was originally established to accommodate light industrial development to support the employment needs of the community and surrounding area." However, through the formation of the current zoning regulations in the area, it was determined that the Business Park was "primarily commercial in nature" and less industrial. Therefore, the County zoning ordinance reflects the progression from industrial to commercial, while still allowing light industrial development. The Comprehensive Plan provides three policies related to the Business Park District. The policies are as follows:

- *A variety of commercial uses which support the needs of the community and surrounding rural area, and not uses solely intended to attract resort visitors, should be encouraged.*
- *Allow small-scale, low-impact commercial uses in conformance with the requirements of OAR Chapter 660, Division 22. Larger more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area and the travel needs of people passing through the area.*
- *Small-scale, low-impact industrial uses should be allowed in conformance with the requirements of OAR Chapter 660, Division 22.*

Although the Comprehensive Plan accommodates both commercial and light industrial uses in the Business Park District, as indicated above, the zoning ordinance includes uses that may not be considered commercial or industrial in nature. These include uses such as a library and post office, which are permitted outright and a law enforcement detention facility, which is permitted conditionally. Furthermore, there are some commercial uses permitted conditionally in the Business Park District that could be considered comparable to churches in the sense that they

bring together people in one place for an event. These uses include theaters and bowling alleys. As indicated in the submitted application, the applicant requests that churches be included as a use permitted outright in the Business Park District. For reference, the Sunriver UUC allows churches in six (6) of its 18 zoning districts. Of the six zoning districts, churches are allowed with a conditional use permit in residential zoning districts and allowed outright in commercial and community related zoning districts.

### STATEWIDE PLANNING GOALS

The proposed amendment would revise Deschutes County Code, Title 18, to permit churches as a use permitted outright in the SUBP Zone. The following findings demonstrate compliance with applicable statewide planning goals and state law.

- Goal 1, Citizen Involvement, will be satisfied through our County text amendment process that includes public hearings with the County Planning Commission and with the Board.
- Goal 2, Land Use Planning, was reviewed by staff for compliance. Staff determined the proposed amendment satisfies the intent of the goal to assure an adequate factual base and be in accordance with the County's Comprehensive Plan Urban Growth Management Chapter. In addition, this specific text amendment takes into account federal conformance with the Religious Land Use and Institutionalization Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1 et seq. Based on a Land Use Board of Appeals (LUBA) case, *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375 (2004), it is staff's understanding that RLUIPA does not require local governments to provide for churches in all zones within its jurisdiction or prohibit local governments from excluding churches from some zoning districts. Although the Sunriver UUC provides for churches in six of its 18 zoning districts, staff believes that allowing churches in the Business Park zoning district will continue to provide a mixture of land uses in Sunriver. For reference, the general rule of RLUIPA indicates the following:

*(a) General rule*

*No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—*

*(1) is in furtherance of a compelling governmental interest; and*

*(2) is the least restrictive means of furthering that compelling governmental interest.*

- Goal 3 and 4, Agricultural and Forest Lands, was reviewed by staff and determined that amending DCC Chapter 18.108 to allow church use in an urban unincorporated community would not adversely affect agricultural and forest lands.
- Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces, is met through existing County policy and regulations.
- Goal 6, Air, Water and Land Resources Quality, is not applicable because the amendment to DCC Chapter 18.108 will allow church use in an urban unincorporated community and not affect air, water, and land resource quality already allocated for commercial and light industrial use.
- Goal 7 and 8, Natural Hazards and Recreational Needs, are satisfied through existing County policy and regulations.

- Goal 9 and 10, Economic Development and Housing, are satisfied through existing County policy and regulations.
- Goal 11, Public Facilities and Services, is not applicable because the amendment to allow churches in an urban unincorporated community will not impact the public facilities and services already established for the community.
- Goal 12, Transportation, provides and encourages a safe, convenient, and economic system of moving people and goods. The applicant submitted a Trip Generation Report to illustrate that the addition of church use to the Business Park District would “create a minimal amount of weekday traffic” when compared to other commercial and light industrial uses currently permitted in the zone. Senior Transportation Planner, Peter Russell, reviewed the Trip Generation Report submitted by the applicant and, based on three factors, initially determined that the applicant needed to demonstrate compliance with the Transportation Planning Rule (TPR), Section 0060 of OAR Chapter 660, Division 12. Specifically, the trip generation report does not adequately conclude whether there is a significant effect on the affected roads based on the intended change to the zone. Mr. Russell indicated in his December 21, 2011 memorandum, “[t]he applicant has only submitted an inventory of the number of lanes, posted speed, and functional classification, etc...” but had not provided an evaluation of the performance standards of the intersection of South Century Drive and Venture Lane (affected roads). Therefore, Planning staff initially required the applicant to provide a detailed traffic study analyzing the level of service for affected roads to a planning horizon year. The resulting data would have determined whether there would be significant effect as defined by the TPR. The applicant indicated that the submitted “trip generation report satisfies all applicable requirements” and the proposed text amendment will not result in greater impact to the affected roads. In addition, the applicant submitted legal interpretation by two land use attorneys, Bruce W. White and Liz Fancher, regarding whether the proposed text amendment necessitates a detailed traffic study as required by staff. The Planning Commission recommended approval of the proposed text amendment without a detailed traffic study. Moreover, after further review, Planning staff finds no additional transportation analysis required based on the fact the proposed church will generate less traffic than other outright permitted uses in the zone.
- Goal 13, Energy Conservation, is satisfied through existing County policy and regulations.
- Goal 14, Urbanization, was reviewed by staff and determined that by amending DCC Chapter 18.108 to allow church use in the urban unincorporated community of Sunriver would not adversely affect agricultural and forest operations in the surrounding area. Furthermore, the proposed amendment would not interfere with the efficient functioning of the closest urban growth boundaries associated with the cities of Bend and La Pine.

In addition, staff reviewed the Oregon Administrative Rules for unincorporated communities, OAR 660, Division 22. Staff determined the proposed amendment to allow churches in the Sunriver Business Park District will coincide with the requirement to provide a mixture of land uses within the UUC. Furthermore, the proposed land use is intended to serve the community and surrounding rural area. The proposed amendment limits building size to a maximum 5,000 square feet. The applicant states, “Churches are not included in the definitions nor considered ‘commercial’ or ‘industrial’ under the rule, and thus is not subject to the rules’ building size limitations.” Staff believes the proposed size limitation is a reasonable request. This amendment does not propose enlargement of the UUC boundaries. As indicated above, the proposal would not

adversely affect agricultural and forest uses. Transportation planning related to the amendment is addressed above under Goal 12.

- Goals 15 through 19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources, were reviewed and found not applicable to this proposal.

#### **DESCHUTES COUNTY COMPREHENSIVE PLAN**

The Deschutes County Comprehensive Plan contains policies that address urban growth management. Staff determined the proposed amendment would be consistent with the County's Urban Growth Management purpose and policies for the Sunriver UUC. The Sunriver Business Park District is one (1) of 18 zoning districts included in the resort. Although six (6) of the 18 zoning districts allow for churches, adding the church use to the Business Park will continue to provide a mixture of land uses in the Sunriver UUC. As indicated previously, the Comprehensive Plan includes three policies accommodating commercial and light industrial uses in the Business Park District. Other uses permitted in the zoning district that are not commercial or industrial in nature (e.g. library) and those commercial uses that have similar operational characteristics to a church (e.g. theater) illustrate that adding churches to the zone would not significantly affect the area. Amending the SUBP zone to allow churches in the SUBP zone would coincide with the theme of providing the "greatest practical degree of flexibility for future growth and development in Sunriver," as agreed upon when first establishing the Sunriver Resort as a UUC. As indicated above, six of the 18 zoning districts allow churches. For purposes of comparison, churches are permitted outright in three Sunriver zoning districts including Commercial, Community General, and Community Neighborhood Districts. Three residential zones allow churches with a conditional use permit. To provide consistency, staff concurs with the applicant regarding allowing churches outright in the SUBP zone. Lastly, staff believes the proposed church use will support the needs of the community and surrounding rural area.