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LEGAL COUNSEL

DESCHUTES COUNTY OFFICIAL RECORDS  
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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code  
Title 18 to Revise the Definition of "Lot of Record,"  
and Declaring an Emergency. \* \* \* ORDINANCE NO. 2016-026

WHEREAS, the Deschutes County Community Development Department (CDD) initiated an amendment (Planning Division File No. 247-16-000609-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Title, Purpose and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed this ordinance at a work session on October 13, 2016 and, on that same date, forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation to adopt Ordinance No. 2016-026; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 31, 2016, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

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

Section 1. AMENDMENT. DCC 18.04.030, Definitions, 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", and incorporated by reference herein.

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Section 3. 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 9<sup>th</sup> of Nov., 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Alan Unger  
ALAN UNGER, Chair

Tammy Baney  
TAMMY BANEY, Vice Chair

ATTEST:

Bonnie Baker  
Recording Secretary

Anthony DeBone  
ANTHONY DeBONE, Commissioner

Date of 1<sup>st</sup> Reading: 9<sup>th</sup> day of Nov., 2016.

Date of 2<sup>nd</sup> Reading: 9<sup>th</sup> day of Nov., 2016.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Alan Unger	<u>✓</u>	<u>   </u>	<u>   </u>	<u>   </u>
Tammy Baney	<u>✓</u>	<u>   </u>	<u>   </u>	<u>   </u>
Anthony DeBone	<u>✓</u>	<u>   </u>	<u>   </u>	<u>   </u>

Effective date: 9<sup>th</sup> day of Nov., 2016.

ATTEST:

Bonnie Baker  
Recording Secretary

## Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

### 18.04.030. Definitions.

...

"Lot of Record" means:

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:
  1. By partitioning land as defined in ORS 92;
  2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;
  3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;
  4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or
  5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.
- B. Notwithstanding subsection (A), a lot or parcel validated pursuant to ORS 92.176 shall be recognized as a lot of record.
- BC. The following shall not be deemed to be a lot of record:
  1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.
  2. A lot or parcel created by an intervening section or township line or right of way.
  3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030(B).
  4. A parcel created by the foreclosure of a security interest.

For the purposes of DCC Title 18, "lot" or "parcel" means a lot of record as defined DCC 18.04.030.

...

(Ord. 2016-026§1, 2016; Ord. 2016-015§1, 2016; Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 3, 2010, Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007- 020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. Chapter 18.04 35 ( 04/2015) 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93- 038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88- 050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)

## FINDINGS

### I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

### II. BASIC FINDINGS:

Proposal: The definition of "lot of record" is being amended to incorporate ORS 92.176, which grants a county the ability to acknowledge the validation of a unit of land not lawfully established where a building permit has been issued.

### III. CONCLUSIONARY FINDINGS:

#### A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

##### 1. Section 22.12.010.

###### ***Hearing Required***

**FINDING:** The applicant meets this criterion because a public hearing will be held before the Board of County Commissioners on October 31, 2016.

##### 2. 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 is met because notice was published in the Bend Bulletin newspaper on October 16, 2016 describing the proposal.

###### ***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 is met because notice was 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 amendment in question does not apply to any specific property, no individual notices were sent. This criterion has been met.

***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.

3. 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.

4. 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.***

**FINDING:** This criterion will be met.

***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 Planning Commission held a work session on October 13, 2016 to review the text amendment. The Board held a public hearing on October 31, 2016. The criterion is met

5. Section 22.12.050 Final Decision

***All legislative changes shall be adopted by ordinance***

**FINDING:** 247-16-000609-TA will be implemented by an ordinance upon approval and adoption by the Board; this criterion will be met.

**IV. PROPOSED TEXT AMENDMENTS:**

The proposed text amendment IS detailed in the ordinance exhibit with additional text identified by underline and deleted text identified by ~~strikethrough~~. Below are explanations of the proposed changes.

Title 18 of the Deschutes County Code Amendments  
Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS  
Section 18.04.030, Definitions.

"Lot of Record" means:

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:
    1. By partitioning land as defined in ORS 92;
    2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;
    3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;
    4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or
    5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.
  - B. Notwithstanding subsection (A), a lot or parcel validated pursuant to ORS 92.176 shall be recognized as a lot of record.
  - BC. The following shall not be deemed to be a lot of record:
    1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.
    2. A lot or parcel created by an intervening section or township line or right of way.
    3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030(B).
    4. A parcel created by the foreclosure of a security interest.
- For the purposes of DCC Title 18, "lot" or "parcel" means a lot of record as defined DCC 18.04.030.

## V. REVIEW CRITERIA:

**FINDING:** This County initiated text amendment incorporates provisions of State law, ORS 92.176 that grants a county the ability to acknowledge the validation of a unit of land not lawfully established, where a building permit has been issued.

The definition of "lot of record" is amended to incorporate ORS 92.176, which addresses the validation of a unit of land not lawfully established, where a building permit has been issued. Based on ORS 92.176(2), a county may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 (Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780) or 227.160 (Definitions for ORS 227.160 to 227.186), respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale.

ORS 92.176(3) recognizes that a county or city may approve an application for a permit, as defined in ORS 215.402 (Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780) or 227.160 (Definitions for ORS 227.160 to 227.186), respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

- a. The dwelling or other building was lawfully established prior to January 1, 2007; and,
- b. The permit does not change or intensify the use of the dwelling or other building.

### **Statewide Planning Goals**

**FINDING:** Only two Statewide Planning Goals apply to this amendment, Goals 1 and 2, which are discussed below.

- **Goal 1, Citizen Involvement** is met through this adoption process because this amendment received a work session before the County Planning Commission, the County's citizen review board for land use matters, and a hearing before the Board.
- **Goal 2, Land Use Planning** is met because ORS 197.610 allows local governments to initiate post acknowledgment amendments. An Oregon Land Conservation and Development Department 35-day notice was initiated on October 7, 2016.<sup>1</sup>

### **Comprehensive Plan**

The text amendment is consistent with Deschutes County Comprehensive Plan. Section 1.3, Land Use Planning states:

- Goal 1 – Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.
- Policy 1.33 – Involve the public when amending County Code

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**FINDING:** This goal and policy is met because this amendment received a work session before the County Planning Commission, the County's citizen review board for land use matters, and a hearing before the Board. As noted above, the amendment incorporates provisions of State law, ORS 92.176 that grants a county the ability to acknowledge the validation of a unit of land not lawfully established, where a building permit has been issued.

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<sup>1</sup> Staff alerted Scott Edelman, DLCD Central Oregon Regional Representative on October 7, 2016 of the amendment recognizing that the 35-day notice is a few days short of the first evidentiary hearing with the Board, scheduled on October 31.