

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Chapter 18.116.090, Manufactured Home or RV as \*                   ORDINANCE NO. 2017-001  
Temporary Residence for Medical Condition, to \*  
Allow an Existing Building in the Exclusive Farm \*  
Use (EFU) and Forest (F-1 and F-2) Zones to be \*  
Used as a Temporary Residence in the Case of a \*  
Medical Hardship and Declaring an Emergency.

WHEREAS, the Deschutes County Board of County Commissioners ("Board") has received public testimony during the preparation of the Fiscal Year 2016-17 Planning Division work plan regarding the financial burden to property owners due to the County code being more restrictive than Oregon Revised Statute ("ORS") 215.283(2)(L) which allows existing dwellings in the EFU zone to be used as temporary residences; and

WHEREAS, the Board agreed with the public testimony and directed the Deschutes County Community Development Department ("CDD") to initiate a text amendment to DCC 18.116.090; and

WHEREAS, CDD initiated a text amendment (Planning Division File 247-16-000511-TA) to amend DCC 18.116.090 to allow existing buildings in the EFU zone to be used as a temporary residences in cases of medical hardship; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on October 13, 2016, and on November 10, 2016, forwarded to the Board a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on January 30, 2017, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Chapter 18.116.090, Manufactured Home or RV as Temporary Residence for Medical Condition, by adding the Forest zones to the original proposal for EFU zone only; and

WHEREAS, Deschutes County Code required a re-noticing of the hearing due to the Board's preference to consider adding the F-1 and F-2 lands to Ordinance 2017-001; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on February 22, 2017, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Chapter 18.116.090, Manufactured Home or RV as Temporary Residence for Medical Condition, the Board considered this matter now, therefore,

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

Section 1. AMENDMENT. The Deschutes County Code, Chapter 18.116 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 3. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect 30 days after its passage.

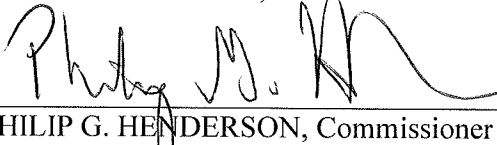
Dated this 27 of February, 2017

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

*- absent -*

\_\_\_\_\_  
TAMMY BANEY, Chair

  
\_\_\_\_\_  
ANTHONY DEBONE, Vice Chair

  
\_\_\_\_\_  
PHILIP G. HENDERSON, Commissioner

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

Date of 1<sup>st</sup> Reading: 27 day of February, 2017.

Date of 2<sup>nd</sup> Reading: 27 day of February, 2017.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Tammy Baney	___	___	___	<u>X</u>
Anthony DeBone	<u>X</u>	___	___	___
Philip G. Henderson	<u>X</u>	___	___	___

Effective date: 27 day of February, 2017.

**Chapter 18.116.090 A Manufactured Home or RV as a Temporary Residence as a Temporary Residence for Medical Condition**

- (A) A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists. In the Exclusive Farm Use and Forest zones only, an existing building may be used as a temporary dwelling. For the purposes of this section, "existing" means the building was in existence on or before March 29, 2017.
- (B) The person with the medical condition must be either one of the property owners or a relative of one of the property owners.
- (C) For the purpose of this section, a relative is defined as a grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt, or first cousin.
- (D) Such medical condition must be verified by a doctor's written statement, which shall accompany the permit application.
- (E) The temporary use permit shall be reviewed annually for compliance with the terms of DCC 18.116.090.
- (F) The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use and Forest zones the existing building will be converted to a permitted non-residential use within 90 days following the date the medical condition requiring the temporary use permit ceases to exist.
- (G) If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.
- (H) The applicant shall obtain all necessary permits from the County Building and Environmental Health Divisions prior to initiating the use.

## FINDINGS

### I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

Title 23, Deschutes County Comprehensive Plan

Statewide Planning Goals

Oregon Administrative Rules

OAR 660-033 (Agricultural Lands)

OAR 660-006 (Forest Lands)

### II. BASIC FINDINGS:

- A. **PROPOSAL:** Board Ordinance 2017-001, which implements File 247-16-000511-TA, amends DCC 18.116.090 to allow an existing building in the EFU or Forest zones to be used as a temporary dwelling in the case of medical hardship. Currently, Deschutes County is more restrictive than state law and only allows manufactured homes or RVs to be used as medical hardship dwellings in all zones. Oregon Revised Statute (ORS) 215.283(2)(L)(2) allows temporary residential use of an existing building as a hardship dwelling in the EFU zone. ORS 215.755(2) allows the temporary residential use of an existing building as a hardship dwelling in the Forest zone. Both ORSs require the structure be returned to a non-residential use once the medical hardship has expired.

New code language is shown as underlined and deleted language is shown as ~~strikethrough~~.

DCC 18.116.090(A) would be revised as follows:

"A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists. In the Exclusive Farm Use and Forest zones only, an existing building may be used as a temporary dwelling."

DCC 18.116.090(F) would be revised as follows:

"The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use and Forest zones the existing building will be returned to a permitted non-residential use within 90 days following the date the medical condition requiring the temporary use permit ceases to exist."

- B. **BACKGROUND:** The Board held a public hearing on January 30, 2017, to accept public testimony on Ordinance 2017-001. During that hearing, the Board decided to

modify the original proposal which would have only affected properties zoned EFU. The Board requested Forest zone lands be added to the ordinance. Adding the F-1 and F-2 zones to the text amendment of DCC 18.116.090 was a significant enough modification to require re-noticing the hearing to February 22. The re-notice highlighted the addition of F-1 and F-2 zoned lands. The Board's modification was based on a combination of public outreach directed to the Board and also relayed at Board work session on January 23. The public comments came after the Planning Commission's (PC) decision on 247-16-000511-TA. The Board continued the January 30 hearing to February 22.

Staff briefed the PC on the proposed changes at the PC's February 9, 2017, public hearing. The PC supported the Board's request to add the Forest zoned lands to DCC 18.116.090.

Previously, the PC held a public hearing on October 13, 2016, on File 247-16-000511-TA which would amend DCC 18.116.090(A) and (F) as described above to allow existing buildings in the Exclusive Farm Use (EFU) zone only to be used as temporary dwellings in cases of medical hardship. The PC closed the oral record that night but kept the written record open until November 4. No written testimony was received. At the November 10 PC meeting the PC voted 3-1 to recommend the Board of County Commissioners (BOCC) approve the proposed text amendment.

The County-initiated text amendment began as a result of public input into the proposed work plan for the Planning Division for Fiscal Year 2016-17. On May 12 and 26, 2016, the Planning Commission accepted public testimony on the proposed work plan. A citizen proposed amending DCC 18.116.090 to allow existing buildings on EFU lands of more than 80 acres to be used as temporary residences in cases of medical hardship. The citizen pointed out that state law already allows this to occur and discussed how requiring the placement of a manufactured home on the property represented a financial burden on those already experiencing hardship. Additionally, whether the temporary dwelling is a manufactured home, an RV, or stick-built home, both state law and County code require the dwelling to be either demolished, removed, vacated, or be returned to a non-residential use once the hardship has ended.

The Planning Commission accepted the proposal and recommended to the Board that a text amendment be added to the Planning Division work plan to accomplish the task. The Board at its June 22, 2016, public hearing on the work program approved adding the task to the Planning Division's FY 2016-17 tasks. The Board did not specify any acreage size, but rather referred to just the EFU zone. Staff initiated the text amendment on August 26, 2016.

### **III. CONCLUSIONARY FINDINGS:**

#### **A. CHAPTER 22.12, LEGISLATIVE PROCEDURES**

1. Section 22.12.010.

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

**FINDING:** A public hearing was held before the Board on Jan. 30, 2017. The Planning Commission held a public hearing on October 13, 2016. The Board finds this criterion is met.

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:** Notice of the Board hearing was published in the Bend Bulletin newspaper on January 15, 2017, and described the original proposal. The re-noticed hearing was published in the Bend Bulletin on Feb. 5, 2017, and described the modified proposal. The Board finds this criterion has been met.

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

**FINDING:** Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend, as well as having the materials placed on-line under the Board's calendar. The Board finds this criterion has been met.

**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:** The ordinance is for a text amendment, which is a legislative land use action and thus notice to individual property owners is not required, The Board finds 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 was provided to the County public information official for wider media distribution. The Board finds 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, at the direction of the Board of County Commissioners. The proposed text amendment is an item from the approved Planning Division work plan. The Board finds 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:** The Planning Commission held a public hearing on October 13, 2016, on File 247-16-000511-TA and recommended approval to the Board on November 10, 2016. The Board held a public hearing on January 30, 2017, on Ordinance 2017-001, which implements File 247-16-000511-TA. The hearing was continued to February 22, 2017. Staff briefed the PC at the February 9, 2017, meeting on the addition of F-1 and F-2 zone to the text amendment. After discussion, the PC supported the modification. The Board finds this criterion has been 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:** The Planning Commission public hearing preceded the Board public hearing. The Board finds this criterion has been met.

### 5. Section 22.12.050 Final Decision

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

**FINDING:** If adopted, Ordinance 2017-0001 will be the implementing ordinance to allow an existing building in the EFU and F-1 and F-2 zones to be used as a temporary dwelling for a medical hardship. The Board finds this criterion has been met.

## **B. CHAPTER 23, DESCHUTES COUNTY COMPREHENSIVE PLAN**

### 1. Chapter 1, Comprehensive Planning, Section 1.2 Community Involvement Policies

**Goal 1, Maintain an active and open community involvement program that is accessible to all members of the community and engages the community during development and implementation of land use policies and codes.**

**FINDING:** The task to amend DCC 18.116.090 to allow for the use of existing buildings in the EFU and F-1 and F-2 zones as temporary dwelling units in the case of medical hardship was a direct result of community involvement. A citizen suggested the text amendment to allow this during the public hearings for the Planning Division's FY 2016-17 work plan held before the Planning Commission and the Board. In turn, the text amendment itself was the subject of public hearings before those two same bodies, ensuring further community involvement. During the Board hearing, a citizen testified that the F-1 and F-2 zones should be included as well, which the Board supported. The proposal is consistent with this section of the Comprehensive Plan. The Board finds this criterion has been met.

### 2. Chapter 1, Comprehensive Planning, Section 1.3 Land Use Planning Policies

**Goal 1, Maintain an open public land use process in which decisions are based on the objective valuations of facts.**

**FINDING:** The proposed text amendment was an outgrowth of public hearings before the Planning Commission and the Board on the Planning Division's FY 2016-17 work program. The proposal is consistent with state law (ORS 215.283(2)(L) and administrative rule (OAR 660-033-0130(10))), which allow an existing dwelling in EFU to be used as a temporary dwelling in a case of medical hardship. The proposal is also consistent with state law (ORS 215.755(2)) and

rule (OAR 660-06-0025(4)(t)) regarding use of an existing building on Forest lands as a temporary dwelling in the case of medical hardship. The presence/absence of an existing building would be a factual matter as would be the medical hardship itself. The text amendment was the subject of public hearings before the Planning Commission and the Board. The proposal is consistent with this section of the Comprehensive Plan. The Board finds this criterion has been met.

3. Chapter 2, Resource Management, Section 2.12 Agricultural Lands Policies

**Goal 1, Preserve and maintain agricultural lands and the agricultural industry.**

**FINDING:** The proposed text amendment will help preserve agricultural and forest lands by using existing buildings instead of requiring a manufactured home or RV be brought onto EFU or F-1 or F-2 zoned lands. Siting new structures or paved areas for an RV to park and/or maneuver can lead to a loss of agricultural or forest lands. The proposal is consistent with this section of the Comprehensive Plan. The Board finds this criterion is met.

**C. STATEWIDE PLANNING GOALS**

1. Goal 1, Citizen Involvement

**FINDING:** The text amendment included workshops before both the PC and the Board, which the public could attend. The text amendment also included publically noticed public hearings before the PC and Board. The Board finds this criterion has been met.

2. Goal 2, Land Use Planning

**FINDING:** Oregon Revised Statute (ORS) 197.610 allows local governments to initiate post acknowledgement plan amendments or changes to land use regulations. The County on September 2, 2016, provided the Department of Land Conservation and Development (DLCD) with the required notice 35 days prior to the first evidentiary hearing, which was held on October 13, 2016. The notice included the proposed changes with additions indicated by underlined text and text to be eliminated indicated by ~~strikethrough~~ text. The text amendment was processed via the County's development code procedures set forth in Title 22, Chapter 22.12 for legislative amendments. The Board finds this criterion has been met.

3. Goal 3, Agricultural Lands

**FINDING:** The text amendment is not proposing any changes to land use designations. Additionally, ORS 215.283(2)(L) allows an existing building, in conjunction with an existing dwelling, as a temporary residential use for a hardship suffered by the existing resident or relative of the resident. The temporary use of an existing building for a residential use in case of hardship is also permissible under OAR 660-033-0130(10), which applies to EFU lands. The Board finds this criterion has been met.

4. Goal 4, Forest Lands

**FINDING:** The text amendment is not proposing any changes to land use designations. Additionally, ORS 215.755(2) and OAR 660-06-0025(4)(t) allow the temporary use of an existing building for residential use in the case of medical hardship. The Board finds this criterion has been met.

5. Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

**FINDING:** The text amendment is neither proposing any changes to land use designations nor proposing any changes to previously designated Goal 5 resources. Therefore, the Board finds this criterion has been met.

6. Goal 6, Air, Water and Land Resource Quality

**FINDING:** No development or land use changes are being proposed that impact air, water, or land resource qualities. Other areas of the County's code deal with protecting air, water, and land remain in full force and effect. The Board finds this criterion has been met.

7. Goal 7, Natural Hazards

**FINDING:** The dominant natural hazards in the County are wildfire, winter storms, and flooding. The text amendment leaves County building codes and planning setbacks untouched, which are the planning mechanisms which the County uses to ameliorate natural hazards. The Board finds this criterion has been met.

8. Goal 8, Recreational Needs

**FINDING:** The text amendment does not change the uses allowed in the EFU, F-1, or F-2 zones, some of which are recreational. The Board finds this criterion has been met.

9. Goal 9, Economic Development

**FINDING:** The text amendment still allows properties to develop as allowed under their zoning. Any continuing residential use of a temporary dwelling after the medical hardship has ended can be resolved through the County's code enforcement process. The Board finds this criterion has been met.

10. Goal 10, Housing

**FINDING:** This goal pertains to urban or urbanizable lands. The proposed text amendment will not result in any changes or elimination of residentially zoned lands in the County. Additionally, the proposed text amendment is for temporary residential use of existing building for a medical hardship, not permanent housing. The Board finds this criterion has been met.

11. Goal 11, Public Facilities and Services

**FINDING:** This goal pertains more to water and sewer services. Under OAR 660-033-0130(10) and 660-06-0025(4)(t), a temporary residential dwelling used in the case of medical hardship must connect to an existing subsurface sewage disposal system, assuming said system has adequate capacity. DCC 18.116.090(H) requires the applicant to obtain all necessary permits from the County's Environmental Soils Division prior to initiating the temporary use. The Board finds this criterion has been met.

12. Goal 12, Transportation

**FINDING:** The text amendment will not change the functional classification, performance standards, or access management of any highways or roads. The combination of a few EFU, F-1, and F-2 parcels which utilize the medical hardship, the temporary nature of the residential use, and the low traffic volumes of rural roads ensures no adverse effects of the text amendment. The Board finds this criterion has been met.

13. Goal 13, Energy Conservation

**FINDING:** This plan amendment does not affect the County's regulation of solar setbacks, siting of small-scale windmills, land use or density, etc. The text amendment will ensure compliance with any conditions of approval for site plans, building permits, or similar County approvals. The use of existing buildings means no RVs or tractor-trailers hauling manufactured homes, vehicles which have poor fuel mileage, will be needed at the site. The Board finds this criterion has been met.

14. Goal 14, Urbanization

**FINDING:** No land use plan designations, zoning designations, or map changes will result from this plan amendment. The temporary residential use of an existing building is limited to the EFU, F-1, and F-2 zone only. By definition, EFU and Forest properties are not urban. The Board finds this criterion has been met.

15. Goals 15-19

**FINDING:** These criteria do not apply as the County lacks these lands (Willamette Greenway, estuaries, coasts, beaches, etc.).

**D. OREGON ADMINISTRATIVE RULE 660-033, AGRICULTURAL LAND**

1. 660-033-0130, Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

*The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law...*

*(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons*

**FINDING:** The proposed text amendment would make DCC 18.116.090 consistent with state law and administrative rule regarding temporary residential uses for existing buildings in cases of medical hardship. Currently, Deschutes County is more restrictive as the County only allows manufactured homes or RVs to be used as temporary residences. The use of an existing building as a temporary residence would be allowed in the EFU and Forest zones; for all other zones the restriction that only manufactured homes and RVs could be used as temporary residences in cases of medical hardship would remain in effect. The proposal is consistent with this administrative rule. The Board finds this criterion has been met.

#### **E. OREGON ADMINISTRATIVE RULE, FOREST LAND**

1. 660-06-0025, Uses Authorized in Forest Zones

***(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:***

***(t) A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(o) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;***

**FINDING:** The proposed text amendment would make DCC 18.116.090 consistent with state law and administrative rule regarding temporary residential uses for existing buildings in cases of medical hardship. Currently, Deschutes County is more restrictive as the County only allows manufactured homes or RVs to be used as temporary residences. The use of an existing building as a temporary residence would only be allowed in the EFU and Forest zones; for all other zones the restriction that only manufactured homes and RVs could be used as temporary residences in cases of medical hardship would remain in effect. The proposal is consistent with this administrative rule. The Board finds this criterion has been met.