

Recorded in Deschutes County
Nancy Blankenship, County Clerk
Commissioners' Journal

CJ2017-765
11/07/2017 1:59:33 PM



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Deschutes County Zoning; and Title 22, * **ORDINANCE NO. 2017-015**
Deschutes County Development Procedures *
Ordinance and Declaring an Emergency. *

WHEREAS, the Deschutes County Community Development Department (CDD) initiated an amendment (Planning Division File No. 247-17-000596-TA) to the Deschutes County Code (DCC) Title 18, Chapters 18.04, Title, Purpose and Definitions; 18.84, Landscape Management Combining Zone; 18.116, Supplementary Provisions; 18.120, Exceptions; Title 22, Chapters 22.04, Introduction and Definitions; 22.20, Review of Land Use Action Applications; 22.28, Land Use Action Decisions; 22.36, Limitations on Approvals; and 22.40, Declaratory Ruling; and

WHEREAS, the Deschutes County Planning Commission considered this matter after a duly noticed public hearing on August 24, 2017 and recommended to the Deschutes County Board of County Commissioners ("Board"), to adopt Ordinance No. 2017-015; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on September 20, 2017, and concluded that the public will benefit from a more limited amendment to Deschutes County Code ("DCC") Title 18, Chapters 18.04, Title, Purpose and Definitions; and Title 22, Chapter 22.04, Introduction and Definitions; 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 ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.120.020, Nonconforming Lot Sizes, is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 3. AMENDMENT. DCC 22.04, Introduction and Definitions, is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 4. AMENDMENT. DCC 22.28.040, Reapplication Limited, is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 5. AMENDMENT. DCC 22.36.010, Expiration of Approval, is amended to read as described in Exhibit "E," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. AMENDMENT. DCC 22.40.010, Availability of Declaratory Ruling, is amended to read as described in Exhibit "F," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

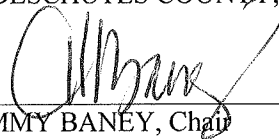
Section 7. FINDINGS. The Board adopts as its findings Exhibit "G", and incorporated by reference herein.

Section 8. 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 1 of November, 2017

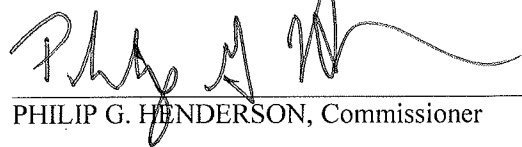
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



TAMMY BANEY, Chair

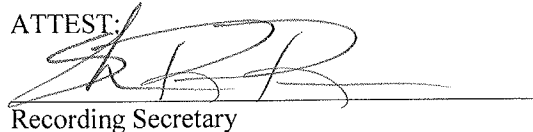


ANTHONY DeBONE, Vice Chair



PHILIP G. HENDERSON, Commissioner

ATTEST:



Recording Secretary

Date of 1st Reading: 1 day of November, 2017.

Date of 2nd Reading: 1 day of November, 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>			

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.
- C. 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 pursuant to subsection (A)(3) above, ~~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.~~

...

~~"Lot of record dwelling" means a dwelling approved pursuant to ORS 215.705.~~

...

(Ord. 2017-015§1, 2017; 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)

18.120.020. Nonconforming Lot Sizes.

- A. Any parcel of land or portion thereof which is to be dedicated to a public or other entity for a road, canal, railroad, utility or other public use shall be exempt from the minimum lot size requirements set forth by DCC Title 18.
- B. Whereas land sections in the County are affected by survey adjustments, minimum requirements relative to lot sizes, where applicable, shall be considered as standard metes and bounds land section division, (i.e., 160 acres, 80 acres, 40 acres, 20 acres, etc.); lot sizes, therefore, may be reasonably smaller than set forth by DCC Title 18 if a total section acreage reduction is due to a survey adjustment or other man-made barriers over which the applicant has had no control.
- C. Any lot or parcel that is smaller than the minimum area required in any zone may be occupied by an allowed use in that zone provided that:
 - 1. The lot or parcel is a lot of record, as defined in DCC 18.04.030~~(f)~~, Lot of record.
 - 2. The use conforms to all other requirements of that zone.
 - 3. If there is an area deficiency, residential use shall be limited to a single dwelling unit.
 - 4. All necessary permits are obtained.
- D. Lots or parcels within the Rural Residential Zone (RR-10) that are separated by an arterial right of way created after June 30, 1993, shall be exempt from the minimum lot dimension of 10 acres in size. Such parcels may be partitioned only as separated by the right of way and shall not be smaller than one acre.
(Ord. 2017-015§2, 2017; Ord. 93-034 §2, 1993; Ord. 87-015 §§1 and 2, 1987)

Chapter 22.04. INTRODUCTION AND DEFINITIONS

22.04.010. Introduction and Application.

22.04.020. Definitions

22.04.030. Repealed.

22.04.040. Verifying Lots of Record.

22.04.010. Introduction and Application.

- A. DCC Title 22 is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the Planning Division of the Deschutes County Community Development Department under the applicable County comprehensive plan, land use regulations, subdivision and partition ordinance, and other ordinances which by their terms incorporate by reference the procedures in this title. DCC Title 22 shall be known as the Deschutes County Development Procedures Ordinance.
- B. Except as addressed in DCC 22.04.040, the provisions of DCC Title 22 do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, structural building, electrical, mechanical, or plumbing permits except as they relate to Planning Division consideration of permitted uses.
- C. Notwithstanding DCC 22.04.010(A), inside acknowledged urban growth boundaries and where authorized by an intergovernmental agreement, the functions of the county Planning Director and county Hearings Bodies identified herein may be exercised by their counterparts in the respective cities in accordance with the respective intergovernmental agreements.

(Ord. 2017-015§3, 2017; Ord. 99-031 §1, 1999; Ord. 98-068 §1, 1998; Ord. 98-042 §1, 1998; Ord. 90-007 §1, 1990)

22.04.020. Definitions.

The following definitions apply to DCC Title 22.

...

“Lot of record dwelling” means a dwelling approved pursuant to ORS 215.705.

...

(Ord. 2017-015§3, 2017; Ord 96-071 § 1A, 1996; Ord. 95-045 § 1, 1995; Ord. 90-007 § 1, 1990)

22.04.040 Verifying Lots of Record.

A. Purpose; scope. Concurrent with or prior to the issuance of certain permits, a lot or parcel shall be verified pursuant to this section to reasonably ensure compliance with the zoning and land division laws in effect on the date the lot or parcel was created. Not all permits require verification. If required, verifying that the lot or parcel was lawfully created is a threshold issue that should be addressed before the permit may be issued, but does not supersede or nullify other permit requirements. This section 22.04.040 provides an applicant the option to concurrently verify a lot or parcel as part of applying for a permit that requires verification, or preliminarily apply for a declaratory ruling to thereby determine the scope of available permits.

B. Permits Requiring Verification.

1. Unless an exception applies pursuant to subsection (B)(2) below, verifying a lot or parcel pursuant to subsection (C) shall be required prior to the issuance of the following permits:

- a. Any land use permit for a unit of land in the Exclusive Farm Use Zones (DCC Chapter 18.16), Forest Use Zone – F1 (DCC Chapter 18.36), or Forest Use Zone – F2 (DCC Chapter 18.40);
- b. Any permit for a lot or parcel that includes wetlands as shown on the Statewide Wetlands Inventory;
- c. Any permit for a lot or parcel subject to wildlife habitat special assessment;

- d. In all zones, a land use permit relocating property lines that reduces in size a lot or parcel;
 - e. In all zones, a land use, structural, or non-emergency on-site sewage disposal system permit if the lot or parcel is smaller than the minimum area required in the applicable zone;
2. Exceptions. Verification shall not be required if one of the following exceptions apply:
- a. The lot or parcel was created by a subdivision plat, partition plat, condominium plat, or town plat so long as the plat was recorded and approved by the County, another political subdivision of the State of Oregon, or the State of Oregon;
 - b. The lot or parcel was previously validated by the County and an applicable partition plat was subsequently recorded within 90 days as required by ORS 92.176(4);
 - c. The lot or parcel was previously determined to be a lot of record in a formal decision issued by the County or a finding in a land use action prior to November 1, 2017;
 - d. The lot or parcel was previously verified pursuant to subsection (C) and a finding was issued to that effect in a land use action or declaratory ruling; or
 - f. For permits listed in subsection (B)(1)(e) only, the lot or parcel previously received a land use or building permit prior to November 1, 2017, a structural permit after November 1, 2017, or a non-emergency on-site sewage disposal permit.
- C. Verified Lots of Record. Permits that require verification shall only be issued to lots or parcels that meet the "lot of record" definition in 18.04.030.
- D. Findings: Declaratory Ruling. If an applicant is applying for a land use permit listed in subsection (B)(1), the County shall include a finding verifying that the lot or parcel meets the "lot of record" definition in 18.04.030, a finding noting that the lot or parcel does not meet the "lot of record" definition in 18.04.030, or a finding noting that verification was not required because the lot or parcel qualified for an exception pursuant to subsection (B)(2). If an applicant is applying for a permit listed in subsection (B)(1) that does not require public notice, or prior to applying for any permit, an applicant may request a declaratory ruling pursuant to DCC Chapter 22.40. If the lot or parcel meets the "lot of record" definition in 18.04.030, the County shall issue the declaratory ruling determining that the lot or parcel qualifies for all permits listed in subsection (B)(1). If the lot or parcel does not meet the "lot of record" definition in 18.04.030, the County shall not issue the declaratory ruling and instead shall provide the applicant information on permit options that do not require verification and information on verification exceptions that may apply pursuant to subsections (B)(2).
- (Ord. 2017-015§3, 2017)

22.28.040. Reapplication Limited.

- A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.
 - B. Notwithstanding DCC 22.28.040(A), a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated. A lot of record declaratory ruling~~determination~~ shall be subject to reapplication under DCC 22.28.040(A) only if the applicant presents new factual evidence not submitted with the prior application.
- (Ord. 2017-015§4, 2017; Ord. 98-019 §1, 1998; Ord. 95-045 §24, 1995; Ord. 90-007 §1, 1990)

22.36.010. Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.
2. DCC 22.36.010 does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, verifying a lot or parcel meets the "lot of record" definition in 18.04.030. ~~determinations and expiration determinations~~, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.
 - c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.
4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:
 - a. Nonfarm dwelling
 - b. Lot of record dwelling
 - c. Large tract dwelling
 - d. Template dwelling.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, and two years for those dwellings listed in DCC 22.36.010(B)(4) above, regardless of whether the applicable criteria have changed, if:
 - a. An applicant makes a written request for an extension of the development approval period;
 - b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;
 - c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and
 - d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

2. Up to two additional one-year extensions, or two-year extensions for those dwellings listed under DCC 22.36.010(B)(4) above, may be granted under the above criteria by the Planning Director or the Planning Director's designees where applicable criteria for the decision have not changed.
3. In addition to the extensions granted in DCC 22.36.010(C)(1), one additional two-year extension for a land use approval or a phase of a land use approval may be granted by the Planning Director or the Planning Director's designee under the criteria listed under DCC 22.36.010(C)(1) for approvals issued prior to June 8, 2011. This subsection does not apply for those dwellings listed under DCC 22.36.010(B)(4) above.

D. Procedures.

1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.
2. Approval of an extension granted under DCC 22.36.010 is an administrative decision, is not a land use decision described in ORS 197.015 or Title 22 and is not subject to appeal as a land use decision and shall be processed under DCC Title 22 as a development action, except to the extent it is necessary to determine whether the use has been initiated.

E. Effect of Appeals. The time period set forth in DCC 22.36.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

(Ord. 2017-015§5, 2017; Ord. 2015-017 §s5, 2015; Ord. 2011-016, 2011; Ord. 2004-001 §4, 2004; Ord. 95-045 §43A, 1995; Ord. 95-018 §1, 1995; Ord. 90-007 §1, 1990)

22.40.010. Availability of Declaratory Ruling.

- A. Subject to the other provisions of DCC 22.40.010, there shall be available for the County's comprehensive plans, zoning ordinances, the subdivision and partition ordinance and DCC Title 22 a process for:
1. Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
 2. Interpreting a provision or limitation in a land use permit issued by the County or quasi-judicial plan amendment or zone change (except those quasi-judicial land use actions involving a property that has since been annexed into a city) in which there is doubt or a dispute as to its meaning or application;
 3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;
 4. Determining the validity and scope of a nonconforming use; ~~and~~
 5. Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit; ~~and~~
 6. Verifying that a lot or parcel meets the "lot of record" definition in 18.040.030 pursuant to DCC 22.04.040(D).

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with DCC 22.40. In all cases, as part of making a determination or interpretation the Planning Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.

- B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.
- C. Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.
- D. The Planning Director may refuse to accept and the Hearings Officer may deny an application for a declaratory ruling if:
1. The Planning Director or Hearings Officer determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director or Hearings Officer's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or
 2. The Planning Director or Hearings Officer determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

The Planning Director or Hearings Officer's determination to not accept or deny an application under DCC 22.40.010 shall be the County's final decision.

(Ord. 2017-015§6, 2017; Ord. 95-045 §47, 1995)

FINDINGS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

Proposal: The process of verifying that lots and parcels meet the definition of "lot of record" is being amended to require verification as a prerequisite to only certain permits. Also, other instances whereby the term "lot of record" is used through the code are being amended to ensure consistent terminology throughout.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because public hearings were held before the Planning Commission on August 24, 2017 and the Board on September 20, October 16 and October 25.

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 July 30, 2017 and September 3 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 was 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: Both the Planning Commission and the Board of County Commissioner held hearings. This criterion is 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 public hearing on August 24, 2017. This criterion is met

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: 247-17-000596-TA will be implemented by an ordinance upon approval and adoption by the Board. Ordinance 2017-015 is formatted for emergency adoption. The reason for it to take effect immediately is due to the number of property owners that previously received land use, building, or septic permits. They are currently affected by a 2016 Land Use Board of Appeal decision that changes the County's past policies in these circumstances. Upon adoption, Ordinance 2017-015 clarifies that a lot or parcel must only meet the lot of record definition prior to the County approving certain, enumerated permits. This criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendment is detailed in the Ordinance 2017-015, Exhibits A through F with additional text identified by underline and deleted text by ~~strikethrough~~.

V. REVIEW CRITERIA:

FINDING: As recently determined by the Land Use Board of Appeals in LUBA No. 2016-056, “[t]he term ‘lot of record’ as defined at DCC 18.04.030 is not interchangeable with the terms ‘lots’ or ‘parcels’ as those terms are defined in ORS chapter 92, or the definition of ‘parcel’ at ORS 215.010(1). As noted, the key significance of designating a unit of land as a ‘lot of record’ defined at DCC 18.04.030 is that Deschutes County will recognize a lot of record as a developable unit of land under the DCC. For purposes of the DCC, a unit of land may be recognized under real estate law or other sources of law, but not be recognized as a ‘lot of record,’ and hence a developable unit of land, unless it is found to have been created in one of the ways specified in DCC 18.04.030.” Although originally intended to reasonably ensure that a lot or parcel was created in compliance with the laws then in effect, the requirement that a lot or parcel meets the “lot of record” definition has evolved to instead distinguish a developable unit of land. Through this amendment, Deschutes County intends to reclaim the original intent of the “lot of record” definition by codifying the limited circumstances when a lot or parcel must meet the “lot of record” definition. Through this code amendment, not all permits require that the lot or parcel meet the “lot of record” definition. Consistent with state statutes, case law, and county policies, this amendment ensures that lots or parcels must only meet the “lot of record” definition as a prerequisite to obtaining certain, enumerated permits. As a matter primarily constrained to the Deschutes County Code, so long as consistent with state statutes and case law, nothing precludes Deschutes County from amending its Code to limit the circumstances when a lot or parcel must meet the “lot of record” definition either through enumerating certain permits or through granting exceptions to the listed permits. Lastly, this amendment updates “lot of record” terminology throughout the code to ensure consistent usage and meaning.

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 acknowledgments amendments. An Oregon Land Conservation and Development Department 35-day notice was initiated on June 21, 2017.

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

FINDING: This goal and policy is met because this amendment received a public hearing with the Planning Commission, the County's citizen review board for land use matters, and hearings before the Board. As noted above, the amendment recognizes as equivalent to a lot of record for purposes of DCC Title 18, a previously-developed lot or parcel that received a land use permit, building permit, or septic permit.