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**CJ2021-4**

01/05/2021 3:11:10 PM



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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 18, Chapter 18.76, Airport Development ("AD") \*  
Zone, and Chapter 18.116, Supplementary Provisions, \*  
to streamline review of personal use hangars; reduce \*  
the front and rear yard setbacks; adopt Oregon \*  
Administrative Rule ("OAR") and Federal Aviation \*  
Administration ("FAA") definitions; and allow \*  
parking in the front yard. \*

ORDINANCE NO. 2020-018

WHEREAS, the City of Bend ("City") applied under land use file number 247-20-000482-TA to amend Chapter 18.76 of Title 18, Deschutes County Zoning, to streamline review of personal use hangars; reduce the front and rear yard setbacks; adopt OAR definition of "customary and usual aviation-related activities"; and adopt the FAA definition of "fixed based operator" and "hangar"; and

WHEREAS, the City applied under said land use file to amend Chapter 18.116 of Title 18, Deschutes County Zoning, allow parking in the front yard in the AD Zone; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on September 15, 2020, before the Deschutes County Hearings Officer; and

WHEREAS, on November 10, 2020, the Hearings Officer approved the amendments and recommended the Board adopt an ordinance; and

WHEREAS, pursuant to Deschutes County Code 22.28.030(B), the Board shall, in the absence of an appeal adopt the Hearings Officer's decision; now, therefore,

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

Section 1. AMENDMENT. DCC 18.76. Airport Development Zone, 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 ~~strike through~~.

Section 2. AMENDMENT. DCC 18.116. Supplementary Provisions, 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 ~~strike through~~.

Section 3. FINDINGS. The Board adopts as its findings, Exhibit "C," the Hearings Officer's decision, attached hereto and by this reference incorporated herein.

Dated this 30 of December, 2020

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON



PATTI ADAIR, Chair



ANTHONY DeBONE, Vice Chair

ATTEST:



Recording Secretary



PHILIP G. HENDERSON, Commissioner

Date of 1<sup>st</sup> Reading: 16<sup>th</sup> day of December, 2020.

Date of 2<sup>nd</sup> Reading: 30<sup>th</sup> day of December, 2020.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Patti Adair	<u>X</u>	—	—	—
Anthony DeBONE	<u>X</u>	—	—	—
Philip G. Henderson	<u>X</u>	—	—	—

Effective date: 30 day of March, 2021.

## Chapter 18.76. AIRPORT DEVELOPMENT ZONE – A-D

- 18.76.010. Purpose.
- 18.76.020. Standards in All Districts.
- 18.76.030. Uses Permitted Outright.
- 18.76.040. Conditional Uses.
- 18.76.050. Use Limitations.
- 18.76.060. Dimensional Standards.
- 18.76.070. Airfield Operations District (AOD).
- 18.76.080. Aviation Support District (ASD).
- 18.76.090. Aviation-Related Industrial District (ARID).
- 18.76.100. Design and Use Criteria.
- 18.76.110. Additional Requirements.

### 18.76.010. Purpose.

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County Year 2000 Comprehensive Plan and the 1994 most recently approved Bend Airport Master Plan ~~(as amended by a 2002 supplement)~~, while providing for public review of proposed development likely to have significant impact on surrounding lands.

The AD Zone is composed of three separate zoning districts, each with its own set of allowed uses and distinct regulations, as further set forth in DCC 18.76.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

### 18.76.015. Definitions.

The following definitions apply only to Chapter 18.76.

“Customary and usual aviation-related activities” include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

“Hangar” means an airport structure intended for the following uses:

- A. Storage of active aircraft.
- B. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of non-operational aircraft.
- C. Construction of amateur-built or kit-built aircraft.
- D. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft; items related to ancillary or incidental uses that do not affect the hangars' primary use.
- E. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the

hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).

F. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.

G. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.  
(Ord. 2020-018 §1, 2020)

#### **18.76.020. Standards in All Districts.**

A. Approval Required. Any use in an AOD, ASD, or ARID District shall be subject to DCC 18.124.

1. Hangars not associated with a commercial or industrial use are exempt from DCC 18.124.

2. Airfield improvements including but not limited to runways, taxiways, taxilanes, aircraft parking aprons, service roads, navigational aids, and runway and safety facilities required by the Federal Aviation Administration (FAA) are not subject to County review.

B. Solar Setbacks. The setback from the north lot line shall meet the solar setback requirements of DCC 18.116.180.

C. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or Deschutes County under DCC 15.04 shall be met.

D. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the parking provisions of DCC 18.116.

E. Outdoor Lighting. All outdoor lighting shall be installed in conformance with DCC 15.10.

F. Excavation, Grading and Fill and Removal. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be subject to DCC 18.120.050 and/or DCC 18.128.270.

G. Signs. All signs shall be constructed in accordance with the provisions of DCC 15.08.

H. Notification. Deschutes County shall provide notification of all land use applications in an AD zone to the airport manager owner's designee in accordance with the provisions of DCC Title 22.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

#### **18.76.030. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

A. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.

B. Class III road or street project.

C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

D. Farm use as defined in DCC Title 18.

E. Customary and usual aviation-related activities.

F. Hangars are subject to the standards and criteria established by DCC 18.76.105.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 93-043 §11, 1993; Ord. 91-020 §1, 1991)

#### **18.76.040. Conditional Uses.**

The following uses may be allowed in all of the Airport Districts subject to DCC 18.128.

A. Farm accessory buildings and uses, excluding residential uses.

B. Utility facility necessary for public service except landfills.

C. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.

(Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 91-038 §1, 1991)

**18.76.050. Use Limitations.**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
- B. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- C. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- D. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- E. No power lines shall be located in clear zones.
- F. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.060. Dimensional Standards.**

The following dimensional standards shall apply in the Airport Districts:

- A. The minimum lot size shall be determined subject to the provisions of DCC 18.76 relative to setback requirements, off-street parking and loading requirements, lot coverage limitations or as deemed necessary by the Planning Director or Hearings Body to maintain air, land and water resource quality, protect adjoining and area land uses, and to ensure resource carrying capacities are not exceeded.
- B. An airport related use or structure located adjacent to or across the street from an existing residential use or platted residential lot shall not exceed 70 percent lot coverage and shall require off-street parking and loading areas.
- C. The minimum setback between any structure and an arterial or collector right of way shall be 40-50 feet. ~~The minimum setback between any structure and a collector right of way shall be 50 feet.~~ The minimum setback between any structure and all local streets shall be 20 feet.
- D. The minimum setback between any structure and a property line adjoining a residential use or lot shall be 50 feet.
- E. The minimum lot frontage shall be 50 feet.
- F. The minimum side setback between any structure and a property line shall be three feet, and the minimum total of both side setbacks shall be 12 feet.
- G. The minimum rear setback between any structure and a rear property line shall be 50-20 feet.
- H. The minimum setback from internal airport streets, access roads, and drives shall be 10 feet from the edge of pavement.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 94-008 §24, 1994; Ord. 91-020 §1, 1991)

**18.76.070. Airfield Operations District (AOD).**

Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.~~The following uses and their accessory uses are permitted outright:~~

- ~~A. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~
- ~~B. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division specifically supporting airport operations.~~

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

**18.76.080. Aviation Support District (ASD).**

A. Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.~~The following uses and their accessory uses are permitted outright:~~

- ~~1. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~

- ~~2. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.~~
  - ~~3. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie-down areas and parking facilities.~~
- B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:
- 1. Restaurant, which may include a bar or cocktail lounge as an accessory use. One restaurant per airport. Restaurant, including any accessory use, to be 2,500 square feet or less in size.
  - 2. Airport or aviation-related businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2004-013 §8, 2004; Ord. 2003-036 §2, 2003)

**18.76.090. Aviation-Related Industrial District (ARID).**

Uses Permitted Outright. ~~The uses permitted outright are those listed under DCC 18.76.030. The following uses and their accessory uses are permitted outright:~~

- ~~A. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~
  - ~~B. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.~~
  - ~~C. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie-down areas and parking facilities.~~
  - D. Airport or aviation-related commercial or industrial businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

**18.76.100. Design and Use Criteria.**

The following dimensional standards shall apply in the Airport Districts:

The Planning Director or Hearings Body shall take into account the impact of any proposed conditional use within the AD Zone on nearby residential and commercial uses, and on the capacity of transportation and other public facilities and services. In approving a proposed conditional use, the Planning Director or Hearings Body shall find that:

- A. The proposed use is in compliance with the Comprehensive Plan, including the current version of the adopted Bend Airport Master Plan.
- B. The proposed use is in compliance with the intent and provisions of DCC Title 18.
- C. Any adverse social, economical, physical or environmental impacts are minimized.
- D. The proposed use is not sensitive to noise of the character anticipated by the current and expected noise level contours of the airport.
- E. The proposed use is compatible with adjacent agricultural and residential uses.
- F. There are sufficient public facilities and services to support the proposed use.
- G. The location and site design of the proposed facility will not be hazardous to the safety and general welfare of surrounding properties, and that the location will not unnecessarily restrict existing and future development of surrounding lands as indicated in the Comprehensive Plan.
- H. The use shall make the most effective use reasonably possible of the site topography, existing landscaping and building placement so as to preserve existing trees and natural features, preserve vistas and other views from public ways, minimize visibility of parking, loading and storage areas from public ways and neighboring residential uses, and minimize intrusion into the character of existing developments and land uses in the immediate vicinity of the proposed use.

(Ord. 2018-006 §9, 2018; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

18.76.105. Hangars.

A. Review Process.

1. Hangars, as defined in section 18.76.015, shall be processed as a development action pursuant to DCC 22.16 and are not subject to DCC 18.124.
2. Hangars intended to support fixed based operators, flight schools, paint shops, and other commercial and industrial uses are subject to DCC 18.124.

**B. Hangar Approval Criteria.**

1. The location and height of proposed structures must be clear of FAA protected surfaces including runway safety area, runway protection zone, runway object free area, taxiway/taxilane object free area, FAA Part 77 surfaces, FAA TERPS surfaces, and other clear areas identified on the currently adopted Airport Layout Plan.
2. No above ground utility installations shall be allowed
3. All exterior lighting shall be shielded so that direct light does not project off site pursuant to DCC 15.10.
4. Parking Requirement.
  - a. Hangars under 10,000 square feet of floor space are not subject to the parking requirement under DCC 18.116.030(8).
  - b. Hangars greater than or equal to 10,000 square feet of floor space are subject to the parking requirement under DCC 18.116.030(8). This required vehicle parking can be accommodated inside the hangar.

(Ord. 2020-018 §1, 2020)

**18.76. 110. Additional Requirements.**

As a condition of approval for any conditional use proposed within the AD Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the Comprehensive Plan.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

## **Chapter 18.116. SUPPLEMENTARY PROVISIONS**

- 18.116.010. Authorization of Similar Uses.**
- 18.116.020. Clear Vision Areas.**
- 18.116.030. Off-Street Parking and Loading.**
- 18.116.031. Bicycle Parking.**
- 18.116.035. Bicycle Commuter Facilities**
- 18.116.036. Special Parking Provisions for the Sunriver Town Center District**
- 18.116.040. Accessory Uses.**
- 18.116.050. Manufactured Homes.**
- 18.116.070. Placement Standards for Manufactured Homes.**
- 18.116.080. Manufactured Home or RV as a Temporary Residence on an Individual Lot.**
- 18.116.090. A Manufactured Home or RV as a Temporary Residence for Medical Condition.**
- 18.116.095. Recreational Vehicle as a Temporary Residence on an Individual Lot.**
- 18.116.100. Building Projections.**
- 18.116.200. Repealed.**
- 18.116.120. Fences.**
- 18.116.130. Hydroelectric Facilities.**
- 18.116.140. Electrical Substations.**
- 18.116.150. Endangered Species.**
- 18.116.160. Rimrock Setbacks Outside of LM Combining Zone.**
- 18.116.170. Solar Height Restrictions.**
- 18.116.180. Building Setbacks for the Protection of Solar Access.**
- 18.116.190. Solar Access Permit.**
- 18.116.200. Repealed.**
- 18.116.210. Residential Homes and Residential Facilities.**
- 18.116.215. Family Child Care Provider.**
- 18.116.220. Conservation Easements on Property Adjacent to Rivers and Streams-Prohibitions.**
- 18.116.230. Standards for Class I and II Road Projects.**
- 18.116.240. Protection of Historic Sites.**
- 18.116.250. Wireless Telecommunications Facilities.**
- 18.116.260. Rock Crushing Outside the SM Zone.**
- 18.116.270. Conducting Filming Activities in All Zones.**
- 18.116.280. Home Occupations.**
- 18.116.290. Amateur Radio Facilities**
- 18.116.300. Wind Energy Systems that Generate Less than 100 kW**
- 18.116.310. Traffic Impact Studies**
- 18.116.320. Medical Marijuana Dispensary**
- 18.116.330. Marijuana Production, Processing, and Retailing**
- 18.116.340. Marijuana Production Registered by the Oregon Health Authority (OHA)**
- 18.116.350. Accessory Dwelling Units in RR10 and MUA Zones**
- 18.116.360. Nursery Schools**

### **18.116.030. Off-street Parking and Loading.**

#### **E. General Provisions. Off-Street Parking.**

- 5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, and the La Pine UUC Business Park (LPBP)**

District, ~~and~~ the LaPine UUC Industrial District (LPI), and the Airport Development (AD) Zone, but such space may be located within a required side or rear yard.

(Ord. 2020-018 §2, 2020; Ord. 2020-001 §14, 2020; Ord. 2010-018 §1, 2010, Ord. 2004-013 §12, 2004; Ord. 2003-005 §2, 2003; Ord. 2002-015 §2, 2002, Ord. 2001-044 §4, 2001; Ord. 97-078 §6, 1997; Ord. 96-003 §7, 1996; Ord. 93 063 §2, 1993; Ord. 93 043 §19, 1993; Ord. 91 038 §1, 1991; Ord. 91 020 §1, 1991; Ord. 90 017 §1, 1990)

**DECISION, FINDINGS AND RECOMMENDATION OF  
THE DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBERS:** 247-20-000482-TA

**HEARING DATE:** September 15, 2020, 6:00 p.m.

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**APPLICANTS/OWNERS:** City of Bend

**AGENTS FOR APPLICANTS:** Tom Headley, PE  
Century West Engineering  
1020 SW Emkay Drive, Ste. 100  
Bend, OR 97239

**SUBJECT PROPERTIES:** The subject properties comprise the Bend Municipal Airport, which includes the following addresses and tax lots:

1. 63066 Powell Butte Highway; tax lot 200 on Assessor map 17-13-20;
2. 63110 Powell Butte Highway; tax lot 201 on Assessor map 17-13-20;
3. 63290 Powell Butte Highway; tax lot 100 on Assessor map 17-13-17C;
4. 63300 Powell Butte Highway; tax lot 200 on Assessor map 17-13-17;
5. 22550 Nelson Place; tax lot 202 on Assessor map 17-13-20.

**REQUEST:** Applicant requests a text amendment to Deschutes County Code Chapter 18.76, AD Zone, and Chapter 18.116, Supplementary Provisions ("Text Amendments"). The specific language of the Text Amendments is included as Exhibit A to this decision.

**STAFF CONTACT:** Anthony Raguine, Senior Planner

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** The Hearings Officer finds that the Applicant's request satisfies all precedural and substantive criteria necessary to approve the requested Text Amendments. The Hearings Officer recommends the Deschutes County Board of County Commissioners adopt the requested Text Amendments by ordinance.

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## **I. APPLICABLE STANDARDS AND CRITERIA**

### **Deschutes County Code**

Title 18, Deschutes County Zoning Ordinance  
Chapter 18.36, Amendments  
Title 22, Deschutes County Development Procedures Ordinance  
Chapter 22.28, Land Use Action Decisions

### **Statewide Planning Goals 1-19**

### **State Statutes**

ORS 836.610  
ORS 836.616

### **State Administrative Rules**

OAR Chapter 660, Division 013

## **II. BACKGROUND AND PROCEDURE**

### **A. Background**

The Applicant in this proceeding is the City of Bend (“City”). The City owns and operates the Bend Municipal Airport (“Airport”) on the subject properties. The subject properties are zoned Airport Development (AD) (“AD Zone”) and are the only properties in the County with that zoning designation. The City is requesting various text amendments to Deschutes County Code (“DCC” or “Code”) Chapter 18.76, relating to the AD Zone, and Chapter 18.116, relating to various Supplementary Provisions of that chapter applicable to the Airport. The Applicant included its requested text amendments in its application, and later submitted a revised version of the specific text amendments it seeks. This decision will refer to the final version of the text amendments, attached as Exhibit A, as the “Text Amendments.”

As described by the City and County Planning Staff (“Staff”), the proposed amendments to DCC 18.76 have the following purposes:

1. Streamline county review of personal use hangars
2. Revise outright permitted uses to include “customary and usual aviation-related activities”
3. Adopt Oregon Administrative Rule (“OAR”) definition of “customary and usual aviation-related activities”
4. Adopt Federal Aviation Administration (FAA) definitions of “fixed based operator” and “hangar”
5. Reduce the arterial roadway (Powell Butte Highway) front yard setback from 100 feet to 50 feet
6. Reduce the rear yard setback from 50 feet to 20 feet.

The City and Staff state that the purpose of the proposed amendment to DCC 18.116.030(E)(5) is to allow parking in the front yard for uses in the AD Zone.

#### B. Notice and Hearing

On August 12, 2020, the County issued a Notice of Public Hearing (“Notice”) for this matter. The County mailed the Notice to all owners of property within 250 feet of the AD Zone and the Airport boundaries. The County also published the Notice in the Bend Bulletin.

Pursuant to the Notice, the Hearings Officer presided over the evidentiary hearing on September 15, 2020 at 6:00 p.m. Due to ongoing restrictions for public gatherings in response to the COVID-19 outbreak, the hearing was held in part via videoconference. The Hearings Officer, Staff, and two of the Applicant’s representatives appeared in person.

At the beginning of the evidentiary hearing, the Hearings Officer noted that this phase of the adoption of the Text Amendments would be quasi-judicial in nature and, therefore directed participants to confine comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. At the conclusion of the evidentiary hearing, the Hearings Officer announced that the record would remain open for written materials as follows: (1) any participant could submit additional materials until September 29, 2020; (2) any participant could submit additional rebuttal materials until October 6, 2020; and (3) the Applicant could submit a final legal argument until October 13, 2020.

#### C. Nature of Decision

The Text Amendments involve changes only to the language of the DCC. Due to the unique nature of the AD Zone, the changes, if adopted, impact only one property owner – the City. This matter therefore involves a threshold question of whether the Text Amendments are legislative, or whether they are indeed quasi-judicial in nature. As explained below, this is a unique situation in which the Text Amendments are both. DCC 18.136.010 governs amendments to the Code:

*DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22*

By its express terms, this provision states that the process for a text amendment is as set forth in DCC 22.12. But DCC 22.12 broadly governs “legislative” procedures. DCC 22.04.020 defines legislative changes as follows:

*Legislative changes generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the*

*subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.*

As Staff points out in its Staff Report (attached to this decision as Exhibit B), the Text Amendments do not fit squarely within this definition, as they apply to a single property owner. Further, the Code does not expressly define “text amendment” in the context of legislative changes or in the context of a quasi-judicial land use application, even though DCC 22.12.030 allows an individual to seek legislative changes through an application process. Because of that gap, Staff believes the Text Amendments should be processed in the same manner as a quasi-judicial plan amendment, which is governed by DCC 22.28.030.

In support of its conclusion, Staff provides a detailed analysis under *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979) (“*Strawberry Hill 4 Wheelers*”). In that case, the Oregon Supreme Court set out a multi-factor test to determine what process applies to a land use application:

Generally, to characterize a process as adjudication presupposes that the process is bound to result in a decision and that the decision is bound to apply preexisting criteria to concrete facts. The latter test alone [applying preexisting criteria to concrete facts] proves too much; there are many laws that authorize the pursuit of one or more objectives stated in general terms without turning the choice of action into an adjudication. Thus a further consideration has been whether the action, even when the governing criteria leave much room for policy discretion, is directed at a closely circumscribed factual situation or a relatively small number of persons. The coincidence both of this factor and of preexisting criteria of judgment has led the court to conclude that some land use laws and similar laws imply quasijudicial procedures for certain local government decisions. *Strawberry Hill 4 Wheelers* at 602-03.

As Staff correctly notes, the *Strawberry Hill 4 Wheelers* decision sets out three factors which must be considered:

1. Is the inquiry bound to result in a decision?
2. Are there preexisting criteria that are applied to concrete facts?
3. Is the inquiry directed at a closely circumscribed factual situation or a relatively small number of persons?

Although it is a close call, the Hearings Officer agrees with County Planning Staff that the three factors listed above, in this case, warrant following a quasi-judicial process for the City’s Application, at least initially. First, even if the Text Amendments are legislative changes, the Code provides an opportunity for an individual to make an application to initiate amendments. Whether the County approves or denies that application, a decision will result, so the inquiry is bound to result in a decision. Second, although Staff does not make this argument, there are preexisting criteria applicable to the City’s request. Specifically, as explained in more detail below, ORS 836.610 *et seq.* and various state administrative rules require the County to have certain provisions in its Code relating to the operation of airports. An examination of the Text Amendments can determine if those requirements are met. Third, as already

acknowledged, this matter is directed at a relatively small number of persons because the City is the only property owner within the AD Zone and, therefore, the only property owner directly impacted by the Text Amendments.

At the same time, the Text Amendments carry the qualities of a legislative act. The language in DCC 22.04.020 provides that legislative changes “generally involve broad public policy decisions that apply to other than an individual property owner,” (emphasis added), and that definition does not state that decisions applicable to an individual property owner cannot be legislative. Indeed, that Code provision goes on to list examples of legislative decisions, including amendments to the text of zoning ordinances.

An important component of DCC 22.12 is DCC 22.12.050, addressing final decisions. That Code provision states that “[a]ll legislative changes shall be adopted by ordinance.” That language does not distinguish between purely legislative changes and those legislative changes that may be processed using a quasi-judicial process. This makes sense because the DCC is adopted by ordinance, and any changes to the text of the DCC would be an amendment to that adopted ordinance. It also makes sense because ORS 215.503(2) requires that “[a]ll legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.” (Emphasis added).

Based on the foregoing, the Hearings Officer finds that, in this case, the ultimate adoption of the Text Amendments is a two-step process. The role of the Hearings Officer is to apply the law, not to change it. In the first step of the process, the Applicant has a right under the DCC to submit and to have considered an application to amend the Code’s text. This phase of the process is quasi-judicial in nature and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer is addressing the application of the County’s existing laws. The second step of the process is for the Deschutes County Board of Commissioners (“Board”) to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County’s law, and only the Board can make such a change. In other words, the Hearings Officer is without authority to amend the County’s Code. The Hearings Officer, however, can make a recommendation to the Board based on what develops in the quasi-judicial phase of the process.

### **III. FINDINGS AND CONCLUSIONS**

The specific amendments the Applicant requests to the Code are attached as Exhibit A.

#### **A. Compliance with Deschutes County Comprehensive Plan**

**Finding:** The Hearings Officer finds that the request in the Application is consistent with the County’s Comprehensive Plan. As noted by Staff, the Comprehensive Plan includes a Transportation System Plan (“TSP”), which in turn includes an Airport Plan with an associated Goal and Policies. The Goal and Policies are codified into the DCC, specifically Chapter 18.76. No participant in this proceeding identified mandatory approval criteria within the Goal and Policies of the Airport Plan, or otherwise provided evidence or argument that the Text Amendments will violate the Comprehensive Plan.

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**B. Compliance with Code Provisions**

*Section 18.136.010. Amendments.*

*DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.*

**Finding:** The Hearings Officer finds that the request in the Application satisfies DCC 18.136.010 because, as explained below, it is consistent with DCC 22.12. No participant in this proceeding provided evidence or argument that this provision is not met.

*DCC 22.12*

*22.12.010. Hearing Required.*

*No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.*

**Finding:** The Hearings Officer finds that the request in the Application satisfies DCC 22.12.010. It is the Hearings Officer's understanding that, in the case of a text amendment initiated by an applicant (as opposed to one initiated by the Board), the Board has delegated to the Hearings Officer the authority to conduct the hearing on which the final decision will be made. It is also the Hearings Officer's understanding that the Planning Director has exercised discretion not to set a hearing before the Planning Commission. No participant in this proceeding provided evidence or argument that a different process should be followed or that this provision is not met.

*22.12.020. 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.*

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

*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.*

*D. Media Notice. Copies of the notice of hearing shall be transmitted to other newspapers published in*

*Deschutes County.*

**Finding:** The Hearings Officer finds that the request in the Application satisfies DCC 22.12.020. As previously noted, the County provided notice of the proposed Text Amendments. No participant in this proceeding provided evidence or argument that this provision is not met.

*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 Commissioners or the Planning Commission.*

**Finding:** The Hearings Officer finds that the Application satisfies DCC 22.12.030 because it involves legislative changes initiated by the application from the City of Bend.

*22.12.050. Final Decision.*

*All legislative changes shall be adopted by ordinance.*

**Finding:** The Hearings Officer finds that the request in the Application satisfies DCC 22.12.050 if the Board makes a final decision by adopting an ordinance with any approved amendments to the DCC. The Hearings Officer's decision is therefore a recommendation to the Board on which the Board can take final action. The decision and recommendation of the Hearings Officer does not purport to mandate any particular proceeding the Board must follow as part of its adoption. No participant in this proceeding provided evidence or argument that a different process should be followed or that this provision is not met.

### C. Compliance with Statewide Planning Goals and Associated Rules

Pursuant to 197.835(7), an amendment to a local land use regulation must either be consistent with the Comprehensive Plan or, if the Comprehensive Plan does not provide a basis for the amendment, must be consistent with the Statewide Planning Goals ("Goals"). Amendments to local land use regulations may also be subject to specific administrative rules implementing the Goals. Because the Hearings Officer concludes above that the Text Amendments are consistent with the County's Comprehensive Plan, this general requirement is met. In the alternative, however, the Hearings Officer finds that the Text Amendments are consistent with the Goals. In support of this finding, the Hearings Officer adopts the reasoning set forth in pages 11 through 15 of the Staff Report (Exhibit B) with respect to each Goal, with the exception of Goal 12, which is addressed individually below. The Hearings Officer further notes that no participant in this proceeding provided evidence or argument that a requirement of any Statewide Planning Goal is not met.

*Goal 11 - To provide and encourage a safe, convenient and economic transportation system*

**Findings:** Goal 12 is implemented, in part, through OAR 660-012-0060 (the Transportation Planning Rule or "TPR"). The TPR requires a local government to put in place certain measures if a land use regulation "would significantly affect an existing or planned transportation facility."

The City addressed the TPR in its Application initially through the submittal of a memorandum from Transight Consulting (Appendix 3 to the Application) (“Transight Memo”). That memorandum presents an analysis of potential impacts to the County’s transportation system if the Text Amendments are adopted.

A Senior Transportation Planner for the County reviewed and provided comment on the Transight Memo. Those comments were submitted to the record and also are reflected in the Staff Report. In general, the County’s transportation planner agreed with the methodologies and conclusions in the Transight Memo, but also pointed out that the analysis had not yet addressed potential impacts that would result from new uses allowed by the Text Amendments. Specifically, the revisions to DCC 18.76.070 would add “customary and usual aviation-related activities” to uses allowed outright, which in turn would add “fixed-base operator facilities” as an allowed use. The County’s transportation planner noted that changes proposed for 18.76.015, defining “fixed-based operator”, includes a “commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.” The County’s transportation planner expressed a specific desire to have the Applicant document the transportation impact of flight schools.

The City provided additional information regarding potential transportation impacts arising from the newly-allowed uses – specifically addressing the addition of flight schools. In another memorandum dated September 14, 2020, Transight Consulting provided an analysis describing what it believed to be the appropriate classification for flight schools and the corresponding trip generation to be expected from that use. In a third memorandum from Transight Consulting, dated September 21, 2020, the Applicant refined its analysis and presented a “worst-case” scenario of traffic impacts that could result from new flight schools under the Text Amendments. The Applicant’s ultimate conclusion was that the Text Amendments would result in no more than fifteen (15) weekday p.m. peak hour trips (adding hangars and flight schools), well below the County’s significance threshold of 25 or more weekday p.m. peak hour trips. Neither the County nor any other participant disputed the conclusions in the Applicant’s updated analyses.

Goal 12 is also implemented through the application of OAR 660-013. Specifically, OAR 660-013-0160(3) states that compliance with the requirements of OAR 660-013 “shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning”. The provisions of OAR 660-013 are addressed below and the Hearings Officer finds that the Text Amendments comply with those provisions.

The Hearings Officer notes that no other participant in this proceeding provided evidence or argument regarding the Text Amendments’ compliance with the TPR. Based on the foregoing, the Hearings Officer finds that the Text Amendments would not significantly affect an existing or planned transportation facility, no additional measures are therefore required, and that Goal 12 and its implementing rules are satisfied.

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D. Compliance with Other State Statutes and Administrative Rules

According to the Applicant, the Text Amendments are necessary in part to comply with various state laws. These rules are set forth below, followed by the Finding of the Hearings Officer.

*836.610, Local government land use plans and regulations to accommodate airport zones and uses; funding; rules.*

*(1) Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and Development Commission under ORS 836.616 and 836.619. Airports subject to the rules shall include:*

*(a) Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft;*

**FINDING:** The Hearings Officer finds that ORS 836.610(1) imposes a mandatory requirement on the County to amend its Code to be consistent with rules for airports adopted by the Land Conservation and Development Commission (“LCDC”). Based on the information in this record, the Bend Municipal Airport is a publicly owned airport recognized by the Oregon Department of Aviation (“ODA”). No other participant in this proceeding provided evidence or argument that this statute is not mandatory. The applicable LCDC rules are addressed below.

*836.616, Rules for airport uses and activities.*

*(2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:*

*(a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;*

*(b) Emergency medical flight services;*

*(c) Law enforcement and firefighting activities;*

*(d) Flight instruction;*

*(e) Aircraft service, maintenance and training;*

*(f) Crop dusting and other agricultural activities;*

*(g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;*

- (h) *Aircraft rental;*
- (i) *Aircraft sales and sale of aviation equipment and supplies; and*
- (j) *Aviation recreational and sporting activities.*

**FINDING:** The Hearings Officer finds that ORS 836.616(2) imposes a mandatory requirement on the County to authorize the uses listed in that statute. The Text Amendments adopt the term “customary and usual aviation-related activities”, thereby bringing the Code into conformance with this statutory requirement. The statute does not specify the extent to which each use must be authorized. That is, the statute appears to provide the County with discretion to authorize such uses by right or subject to additional regulations. As a result, the other uses listed in the statute remain authorized, but subject to Site Plan Review under DCC 18.124 and, where applicable, Conditional Use Permit approval under DCC 18.128. No other participant in this proceeding provided evidence or argument that this statute is not mandatory or that the Text Amendments are inconsistent with the statutory mandate.

*660-013-0030, Preparation and Coordination of Aviation Plans*

*(2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.*

**FINDING:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt land use regulations consistent with the statutes identified in the rule – addressed above – and the provisions of this rule.

The Staff report notes that the Notice of Public Hearing was sent to multiple agencies, including ODA, but that no comments were received from those agencies.

Various information throughout the record indicates that the Text Amendments will encourage and support continued operation of the Airport. In addition to the strong statements made by Ms. Williams, manager of the Airport, regarding the need for the Text Amendments and the demand the Airport is trying to meet by streamlining the development of hangars, the director of the Redmond

Airport echoed those sentiments and provided testimony that the approach in the Text Amendments is consistent with airport regulations and operations around the country. No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate.

*660-013-0040, Aviation Facility Planning Requirements*

*A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include: [various figures and be based on certain market information].*

**FINDING:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt land use regulations for the Airport subject to ORS 836.610(1). That statute and the Hearings Officer's finding on that statute are addressed above. Although the record indicates the County has adopted airport planning documents that contain the required figures, the City asserts that the figures are not current in that they do not illustrate hangars currently under development. The City states that it has provided forecast information to the County in the form of the most recently adopted, FAA-approved Airport Master Plan. No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate. The Hearings Officer therefore finds the Text Amendments satisfy this rule's mandate and will better conform the County's Code to that mandate.

*660-013-0050, Implementation of Local Airport Planning*

*A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.*

**FINDING:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt land use regulations consistent with the applicable elements of the adopted state Aviation System Plan ("ASP") and applicable statewide planning requirements. The Applicant asserts that the Text Amendments, specifically the changes to DCC 18.80.032, are proposed to update the uses allowed in the safety zone, as required by this administrative rule. Other findings above address applicable statewide planning requirements, and the Hearings Officer has concluded the Text Amendments are consistent with those requirements.

No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate. The

Hearings Officer therefore finds the Text Amendments satisfy this rule's mandate and will better conform the County's Code to that mandate.

***660-013-0070, Local Government Safety Zones for Imaginary Surfaces***

*(1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.*

\* \* \*

*(2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.*

**FINDING:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt an Airport Safety Overlay Zone. The Staff Report notes that the County's Zoning Map and the provisions of DCC 18.76 already incorporate the required safety zones for imaginary surfaces and that the Text Amendment do not alter that map or the associated safety provisions. The Applicant asserts that the Text Amendments propose to amend the existing provisions only to update the description of uses in the protected areas, and that proposed development remains subject to FAA review for compliance with the currently-adopted Airport Layout Plan and airspace through the FAA 7460 review process.

No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate. The Hearings Officer therefore finds the Text Amendments satisfy this rule's mandate and will better conform the County's Code to that mandate as proposed by the Applicant.

***660-013-0080, Local Government Land Use Compatibility Requirements for Public Use Airports***

*(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1).*

**FINDING:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt specific airport compatibility requirements for each public use airport. The Staff Report notes that the provisions of DCC 18.76 already incorporate the compatibility requirements required by this rule and that the Text Amendments do not alter those requirements. The Applicant asserts that the Text Amendments propose to amend the existing provisions only to update the description of uses allowed under the DCC.

No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate. The Hearings Officer therefore finds the Text Amendments satisfy this rule's mandate and will better conform the County's Code to that mandate as proposed by the Applicant.

*660-013-0100, Airport Uses at Non-Towered Airports*

*Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:*

*(1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.*

**FINDINGS:** The Hearings Officer finds that this administrative rule imposes a mandatory requirement on the County to adopt land use regulations authorizing the uses and activities specified in the rule. The applicant proposes to adopt the term "customary and usual aviation-related activities" to conform the DCC to this rule and to make that use an outright permitted use. The rule does not specify the extent to which each use must be authorized. That is, the rule appears to provide the County with discretion to authorize such uses by right or subject to additional regulations. Other uses and activities specified in the rule will therefore remain authorized, but subject to Site Plan Review under DCC 18.124 and, where applicable, Conditional Use Permit approval under DCC 181.128.

No other participant in this proceeding provided evidence or argument that this administrative rule is not mandatory or that the Text Amendments are inconsistent with the rule's mandate. The Hearings Officer therefore finds the Text Amendments satisfy this rule's mandate and will better conform the County's Code to that mandate as proposed by the Applicant.

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## **V. CONCLUSION AND RECOMMENDATION**

Based on the Findings above, the Hearings Officer concludes that the Applicant's proposed amendments to Chapter 18.76, AD Zone, and Chapter 18.116, Supplementary Provisions of the Deschutes County Code comply with the County's provisions for amending the Code, and that they bring the County's land use regulations into further compliance with mandates imposed by state statutes and rules relating to planning for airports. The Hearings Officer therefore recommends that the Deschutes County Board of Commissioners adopt the amendments presented in Exhibit A by ordinance.

Dated this 9th day of November 2020



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Tommy A. Brooks  
Deschutes County Hearings Officer

Attachment:  
Exhibit A – Text Amendments  
Exhibit B – Staff Report

EXHIBIT A

**TRACKED CHANGES FOR PROPOSED  
AIRPORT DEVELOPMENT ZONE TEXT AMENDMENT**

**FILE NUMBER:** 247-20-000482-TA

**APPLICANT:** City of Bend – Bend Municipal Airport  
63132 Powell Butte Road  
Bend, OR 97701

**A. BASIS FOR CHANGE**

The following text amendments are proposed to allow for streamlined approval of hangar development projects and allow hangar development in all zones on the airport. The proposed text amendments are shown as strikeout for text to be removed, and underline for text to be added. These change include the suggestions provided with the Staff Report and changes resulting from the September 15, 2020, Public Hearing.

**B. PROPOSED TEXT AMENDMENTS**

**Amend Section 18.116.030(E)(5) to:**

5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, ~~and the La Pine UUC Business Park (LPBP) District, and the La Pine UUC Industrial District (LPI), and the Airport Development (AD) Zone.~~ but such space may be located within a required side or rear yard.

**Amend the following Sections of Chapter 18.76 to:**

**18.76.010. Purpose.**

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County ~~Year 2000~~ Comprehensive Plan and the most recently approved ~~1994~~ Bend Airport Master Plan ~~(as amended by a 2002 supplement)~~, while providing for public review of proposed development likely to have significant impact on surrounding lands. The AD Zone is composed of three separate zoning districts, each with its own set of allowed uses and distinct regulations, as further set forth in DCC 18.76. (Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.015 Definitions.**

The following definitions applies only to Chapter 18.76.

“Customary and usual aviation-related activities” include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this

rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

“Hangar” means an airport structure intended for the following uses:

- A. Storage of active aircraft.
- B. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of non-operational aircraft.
- C. Construction of amateur-built or kit-built aircraft
- D. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft: items related to ancillary or incidental uses that do not affect the hangars' primary use.
- E. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
- F. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
- A-G. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.

**18.76.020. Standards in All Districts.**

- A. Approval Required. Any use in an AOD, ASD, or ARID District shall be subject to DCC 18.124.
  - 1. Hangars not associated with a commercial or industrial use are exempt from DCC 18.124.
  - 2. Airfield improvements including but not limited to runways, taxiways, taxilanes, aircraft parking aprons, service roads, navigational aids, and runway and safety facilities required by the Federal Aviation Administration (FAA) are not subject to County review.
- B. Solar Setbacks. The setback from the north lot line shall meet the solar setback requirements of DCC 18.116.180.
- C. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or Deschutes County under DCC 15.04 shall be met.
- D. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the parking provisions of DCC 18.116.
- E. Outdoor Lighting. All outdoor lighting shall be installed in conformance with DCC 15.10.
- F. Excavation, Grading and Fill and Removal. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be subject to DCC 18.120.050 and/or DCC 18.128.270.
- G. Signs. All signs shall be constructed in accordance with the provisions of DCC 15.08.

G-H. Notification. Deschutes County shall provide notification of all land use applications in an AD zone to the airport manager owner's designee in accordance with the provisions of DCC Title 22.  
(Ord. 2003-036 §2, 2003)

**18.76.030. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

D. Farm use as defined in DCC Title 18.

E. Customary and usual aviation-related activities.

~~D-F. Hangars are subject to the standards and criteria established by DCC 18.76.105.~~

(Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 93-043 §11, 1993; Ord. 91-020 §1, 1991)

**18.76.040. Conditional Uses.**

The following uses may be allowed in all of the Airport Districts subject to DCC 18.128.

- A. Farm accessory buildings and uses, excluding residential uses.
- B. Utility facility necessary for public service except landfills.
- C. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.

(Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 91-038 §1, 1991)

**18.76.050. Use Limitations.**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
- B. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- C. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- D. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- E. No power lines shall be located in clear zones.
- F. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

**18.76.060. Dimensional Standards.**

The following dimensional standards shall apply in the Airport Districts:

- A. The minimum lot size shall be determined subject to the provisions of DCC 18.76 relative to setback requirements, off-street parking and loading requirements, lot coverage limitations or as

deemed necessary by the Planning Director or Hearings Body to maintain air, land and water resource quality, protect adjoining and area land uses, and to ensure resource carrying capacities are not exceeded.

- B. An airport related use or structure located adjacent to or across the street from an existing residential use or platted residential lot shall not exceed 70 percent lot coverage and shall require off-street parking and loading areas.
- C. The minimum setback between any structure and an arterial or collector right of way shall be 50+00 feet. ~~The minimum setback between any structure and a collector right of way shall be 50 feet.~~ The minimum setback between any structure and all local streets shall be 20 feet.
- D. The minimum setback between any structure and a property line adjoining a residential use or lot shall be 50 feet.
- E. The minimum lot frontage shall be 50 feet.
- F. The minimum side setback between any structure and a property line shall be three feet, and the minimum total of both side setbacks shall be 12 feet.
- G. The minimum rear setback between any structure and a rear property line shall be 50-20 feet.
- G.H. The minimum setback from internal airport streets, access roads, and drives shall be 10 feet from the edge of pavement.

(Ord. 2003-036 §2, 2003; Ord. 94-008 §24, 1994; Ord. 91-020 §1, 1991)

#### **18.76.070. Airfield Operations District (AOD).**

Uses Permitted Outright. ~~The uses permitted outright are those listed under DCC 18.76.030. The following uses and their accessory uses are permitted outright:~~

~~Runway, taxiway, service road, fuel storage and sales and emergency repair.~~

~~Facilities approved or mandated by the FAA or Oregon State Aeronautics Division specifically supporting airport operations.~~

(Ord. 2003-036 §2, 2003)

#### **18.76.080. Aviation Support District (ASD).**

A. Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030. ~~following uses and their accessory uses are permitted outright:~~

~~0. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~

~~0. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.~~

~~0. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie-down areas and parking facilities.~~

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

1. Restaurant, which may include a bar or cocktail lounge as an accessory use. One restaurant per airport. Restaurant, including any accessory use, to be 2,500 square feet or less in size.
2. Airport or aviation-related businesses that benefit from an on-airport location.

(Ord. 2004-013 §8, 2004; Ord. 2003-036 §2, 2003)

#### **18.76.090. Aviation-Related Industrial District (ARID).**

Uses Permitted Outright. The uses and permitted outright are those listed under DCC 18.76.030, following uses and their accessory uses are permitted outright:

- ~~A. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~
- ~~B. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.~~
- ~~C. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie-down areas and parking facilities.~~
- A. Airport or aviation-related commercial or industrial businesses that benefit from an on-airport location.

(Ord. 2003-036 §2, 2003)

#### **18.76.100. Design and Use Criteria.**

The following dimensional standards shall apply in the Airport Districts:

The Planning Director or Hearings Body shall take into account the impact of any proposed conditional use within the AD Zone on nearby residential and commercial uses, and on the capacity of transportation and other public facilities and services. In approving a proposed conditional use, the Planning Director or Hearings Body shall find that:

- A. The proposed use is in compliance with the Comprehensive Plan, including the current version of the adopted Bend Airport Master Plan.
- B. The proposed use is in compliance with the intent and provisions of DCC Title 18.
- C. Any adverse social, economical, physical or environmental impacts are minimized.
- D. The proposed use is not sensitive to noise of the character anticipated by the current and expected noise level contours of the airport.
- E. The proposed use is compatible with adjacent agricultural and residential uses.
- F. There are sufficient public facilities and services to support the proposed use.
- G. The location and site design of the proposed facility will not be hazardous to the safety and general welfare of surrounding properties, and that the location will not unnecessarily restrict existing and future development of surrounding lands as indicated in the Comprehensive Plan.
- H. The use shall make the most effective use reasonably possible of the site topography, existing landscaping and building placement so as to preserve existing trees and natural features, preserve vistas and other views from public ways, minimize visibility of parking, loading and storage areas from public ways and neighboring residential uses, and minimize intrusion into the character of existing developments and land uses in the immediate vicinity of the proposed use.

(Ord. 2018-006 §9, 2018; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

#### **18.76.105. Hangars.**

##### **A. Review Process.**

1. Hangars, as defined in section 18.76.015, shall be processed as a development action pursuant to DCC 22.16 and are not subject to DCC 18.124.
2. Hangars intended to support fixed based operators, flight schools, paint shops, and other commercial and industrial uses are subject to DCC 18.124.

##### **B. Hangar Approval Criteria.**

1. The location and height of proposed structures must be clear of FAA protected surfaces including runway safety area, runway protection zone, runway object free area, taxiway/taxilane object free

area, FAA Part 77 surfaces, FAA TERPS surfaces, and other clear areas identified on the currently adopted Airport Layout Plan.

2. No above-ground utility installations shall be allowed
3. All exterior lighting shall be shielded so that direct light does not project off-site pursuant to DCC 15.10.
4. Parking Requirement.
  - a. Hangars under 10,000 square feet of floor space are not subject to the parking requirement under DCC 18.116.030(8).
  - b. Hangars greater than or equal to 10,000 square feet of floor space are subject to the parking requirement under DCC 18.116.030(8). This required vehicle parking can be accommodated inside the hangar.

**18.76. 110. Additional Requirements.**

As a condition of approval for any conditional use proposed within the AD Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the Comprehensive Plan.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

## EXHIBIT B



**STAFF REPORT  
AIRPORT DEVELOPMENT ZONE TEXT AMENDMENT**

**FILE NUMBER:** 247-20-000482-TA

**SUBJECT PROPERTY:** The Airport Development ("AD") Zone, as illustrated in the attached Exhibit A, encompasses the Bend Municipal Airport ("Airport"), which includes the following addresses and tax lots:

1. 63066 Powell Butte Highway; tax lot 200 on Assessor map 17-13-20;
2. 63110 Powell Butte Highway; tax lot 201 on Assessor map 17-13-20;
3. 63290 Powell Butte Highway; tax lot 100 on Assessor map 17-13-17C;
4. 63300 Powell Butte Highway; tax lot 200 on Assessor map 17-13-17;
5. 22550 Nelson Place; tax lot 202 on Assessor map 17-13-20.

**APPLICANT/OWNER:** City of Bend ("City")

**STAFF CONTACT:** Anthony Raguine, Senior Planner  
[anthony.raguine@deschutes.org](mailto:anthony.raguine@deschutes.org)  
(541) 617-4739

**DOCUMENTS:** Can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov) – search by file number; and  
<http://dial.deschutes.org> - search by account number 15174

**I. REQUEST**

Amendments to Deschutes County Code (DCC) Chapter 18.76, AD Zone, and Chapter 18.116, Supplementary Provisions, as detailed below.

The purpose of the DCC 18.76 amendments is to:

1. Streamline county review of personal use hangars;

2. Revise outright permitted uses to include 'customary and usual aviation-related activities';
3. Adopt Oregon Administrative Rule ("OAR") definition of 'customary and usual aviation-related activities';<sup>1</sup>
4. Adopt Federal Aviation Administration (FAA) definitions of 'fixed based operator'<sup>2</sup> and 'hangar';<sup>3</sup>
5. Reduce the arterial roadway (Powell Butte Highway) front yard setback from 100 feet to 50 feet; and
6. Reduce the rear yard setback from 50 feet to 20 feet.

The purpose of the DCC 18.116.030(E)(5) amendment is to allow parking in the front yard for uses in the AD Zone.

## II. BACKGROUND

The primary intent of any zoning ordinance is to serve as the regulatory tool required to implement the vision, goals, and objectives laid out within the governing comprehensive plan. The 2012 Bend Airport Master Plan ("Master Plan") was never formally adopted as part of the Deschutes County Comprehensive Plan. However, this FAA-approved Master Plan has still served as the guiding document for development at the Airport due to federal grant obligations.

The City states that recent attempts to develop aviation related activities at the Bend Municipal Airport have identified a division between the Deschutes County zoning ordinance and the planned development depicted in the Master Plan during several attempts to develop aviation related facilities that would otherwise be approved by the FAA. For this reason, the applicant perceives the AD Zone, which identifies three distinct aviation related development sub-districts, as a hindrance to implementing aviation related development at the airport.

In support of this argument, the applicant notes that modern planning practitioners have suggested the proliferation of zoning districts is a common problem within conventional zoning. "As the number of districts grows, it becomes harder to distinguish among them; as the distinctions become less clear, the purpose of any given district becomes blurred, and the formal distinctions become less defensible" (Levy, John M, Contemporary Urban Planning, 10<sup>th</sup> Edition, 2016). Levy goes on to say that;

"...an increase in the number of districts results in fewer uses being permitted in any single district. This decreases the likelihood that an available site will be properly zoned to meet a developer's needs. This, in turn, increases the probability that a zoning amendment will be sought."

---

<sup>1</sup> Reference OAR 660-013-0100

<sup>2</sup> Reference FAA Circular 150/5190-7

<sup>3</sup> Reference FAA website [https://www.faa.gov/airports/airport\\_compliance/hangar\\_use/#q1](https://www.faa.gov/airports/airport_compliance/hangar_use/#q1).

To alleviate this issue and standardize outright permitted uses in the AD Zone, the applicant proposes amendments which will include adoption of definitions from the OAR and from FAA documents.

Finally, the applicant notes recent challenges with obtaining development approval of aviation related uses on the Airport. It is staff's understanding the challenges are most acute for proposed personal use hangars which, under the current code, require Site Plan Review pursuant to DCC 18.124. To alleviate this issue, the City proposes a streamlined review process for personal use hangars. In sum, the City is requesting Deschutes County adopt the proposed zoning text amendments to ensure development-ready projects consistent with the language of the text amendment are processed efficiently.

### III. AMENDMENTS

The proposed amendments are shown as ~~strikeout~~ for text to be removed, and underline for text to be added.

#### Chapter 18.76, Airport Development Zone

##### Section 18.76.010. Purpose.

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County Year 2000 Comprehensive Plan and the most recently approved 1994 Bend Airport Master Plan (~~as amended by a 2002 supplement~~), while providing for public review of proposed development likely to have significant impact on surrounding lands. The AD Zone is composed of three separate zoning districts, each with its own set of allowed uses and distinct regulations, as further set forth in DCC 18.76.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

STAFF COMMENT: Staff suggests striking the word 'Year' from the text as a minor adjustment to the applicant's proposed language. With this adjustment, the first sentence of the Purpose statement would read,

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County Year-2000 Comprehensive Plan and the most recently approved 1994 Bend Airport Master Plan (~~as amended by a 2002 supplement~~), while providing for public review of proposed development likely to have significant impact on surrounding lands.

##### **New Section 18.76.015. Definitions.**

##### 18.76.015. Definitions.

The following definitions apply only to Chapter 18.76.

"Customary and usual aviation-related activities" include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

"Fixed-base operator or FBO" means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

"Hangar" means an airport structure intended for the following uses:

- A. Storage of active aircraft.
- B. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of non-operational aircraft.
- C. Construction of amateur-built or kit-built aircraft
- D. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft; items related to ancillary or incidental uses that do not affect the hangars' primary use.
- E. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
- F. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
- G. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters. Any commercial or industrial use in a hangar requires additional land use review.

(Ord. 2020-xxx)

**Section 18.78.020. Standards in All Districts.**

- A. Approval Required. Any use in an AOD, ASD, or ARID District shall be subject to DCC 18.124.
  - 1. Hangars not associated with a commercial or industrial use are exempt from DCC 18.124.
  - 2. Airfield improvements including but not limited to runways, taxiways, taxilanes, aircraft parking aprons, service roads, navigational aids, and runway and safety facilities required by the Federal Aviation Administration (FAA) are not subject to County review.
- ...
- H. Notification. Deschutes County shall provide notification of all land use

applications in an AD zone to the airport manager owner's designee in accordance with the provisions of DCC Title 22.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003)

**Section 18.76.030. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

...

E. Customary and usual aviation-related activities.

F. Hangars are subject to the standards and criteria established by DCC 18.76.105.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 93-043 §11, 1993; Ord. 91-020 §1, 1991)

**Section 18.76.060. Dimensional Standards.**

The following dimensional standards shall apply in the Airport Districts:

...

C. The minimum setback between any structure and an arterial or collector right of way shall be 50 feet. The minimum setback between any structure and a collector right of way shall be 50 feet. The minimum setback between any structure and all local streets shall be 20 feet.

...

G. The minimum rear setback between any structure and a rear property line shall be 50 feet.

H. The minimum setback from internal airport streets, access roads, and drives shall be 10 feet from the edge of pavement.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003; Ord. 94-008 §24, 1994; Ord. 91-020 §1, 1991)

STAFF COMMENT: The Road Department does not object to the amended minimum setbacks.

**Section 18.76.070. Airfield Operations District (AOD).**

Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030. The following uses and their accessory uses are permitted outright:

A. Runway, taxiway, service road, fuel storage and sales and emergency repair.

B. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division specifically supporting airport operations.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003)

**Section 18.76.080. Aviation Support District (ASD).**

A. Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030. The following uses and their accessory uses are permitted outright:

1. Runway, taxiway, service road, fuel storage and sales and emergency repair.

2. Facilities approved or mandated by the FAA or Oregon State Aeronautics

Division.

- ~~3. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie down areas and parking facilities.~~
- B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:
1. Restaurant, which may include a bar or cocktail lounge as an accessory use. One restaurant per airport. Restaurant, including any accessory use, to be 2,500 square feet or less in size.
  2. Airport or aviation-related businesses that benefit from an on-airport location.

(Ord. 2020-xxx; Ord. 2004-013 §8, 2004; Ord. 2003-036 §2, 2003)

**Section 18.876.090. Aviation-Related Industrial District (ARID)**

Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030. The following uses and their accessory uses are permitted outright:

- ~~A. Runway, taxiway, service road, fuel storage and sales and emergency repair.~~
- ~~B. Facilities approved or mandated by the FAA or Oregon State Aeronautics Division.~~
- ~~C. Related uses which are customarily appurtenant to airports, including but not limited to hangars, tie down areas and parking facilities.~~
- ~~DA.~~ Airport or aviation-related commercial or industrial businesses that benefit from an on-airport location.

(Ord. 2020-xxx; Ord. 2003-036 §2, 2003)

**New Section 18.76.105. Hangars**

18.76.105. Hangars.

A. Review Process.

1. Hangars, as defined in section 18.04.030, shall be processed as a development action pursuant to DCC 22.16 and are not subject to DCC 18.124.
2. Hangars intended to support fixed based operators, flight schools, paint shops, and other commercial and industrial uses are subject to DCC 18.124.

B. Hangar Approval Criteria.

1. The location and height of proposed structures must be clear of FAA protected surfaces including runway safety area, runway protection zone, runway object free area, taxiway/taxilane object free area, FAA Part 77 surfaces, FAA TERPS surfaces, and other clear areas identified on the currently adopted Airport Layout Plan.
2. No above ground utility installations shall be allowed
3. All exterior lighting shall be shielded so that direct light does not project off site pursuant to DCC 15.10.
4. Parking Requirement.
  - a. Hangars under 10,000 square feet of floor space are not subject to the parking requirement under DCC 18.116.030(8).

- b. Hangars greater than or equal to 10,000 square feet of floor space are subject to the parking requirement under DCC 18.116.030(8). This required vehicle parking can be accommodated inside the hangar.

## Chapter 18.116, Supplementary Provisions

### Section 18.116.030. Off-Street Parking and Loading.

#### E. General Provisions. Off-Street Parking.

...

- 5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, and the La Pine UUC Business Park (LPBP) District, ~~and~~ the La Pine UUC Industrial District (LPI), and the Airport Development (AD) Zone, but such space may be located within a required side or rear yard.

STAFF COMMENT: Staff suggests striking the word 'and' before the phrase 'the La Pine UUC Business Park (LPBP) District.' With this minor adjustment, the language would read,

#### E. General Provisions. Off-Street Parking.

...

- 5. Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, ~~and~~ the La Pine UUC Business Park (LPBP) District, ~~and~~ the La Pine UUC Industrial District (LPI), and the Airport Development (AD) Zone, but such space may be located within a required side or rear yard.

## IV. REVIEW PROCESS

### Chapter 18.136, Amendments

#### Section 18.136.010. Amendments.

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***

**FINDING:** As noted by the above criteria, the procedures for a text change, more commonly referred to as a text amendment, are set forth in DCC 22.12, Legislative Procedures. Deschutes County Code 22.04.020 includes the following definition,

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

Pursuant to this definition, policy decisions and zoning text amendments which apply to a single property owner are not considered legislative changes. For this reason, staff finds the proposal by the City, which is the sole owner of the Airport, is not a legislative change. Given this finding, staff looks at whether the proposal is appropriately processed as a quasi-judicial matter.

Deschutes County Code 22.04.020 provides the following definition of 'quasi-judicial',

*"Quasi judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi judicial changes must ultimately be made on a case by case basis with reference to case law on the subject.)*

Staff notes the DCC does not define 'text amendment.' For this reason, staff finds a text amendment that does not fall within the definition of 'legislative changes' can be considered a 'quasi-judicial plan amendment' based on the facts of the case and reference to appropriate case law.

With respect to appropriate case law, staff cites to *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012), which addresses the question of whether an inquiry is quasi-judicial or legislative.

"The Oregon Supreme Court decision that set out the inquiry that is currently applied to determine whether a decision is properly viewed as quasi-judicial (an adjudication) or legislative is *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979). That inquiry, as described by the Oregon Supreme Court, is set out below:

"Generally, to characterize a process as adjudication presupposes that the process is bound to result in a decision and that the decision is bound to apply preexisting criteria to concrete facts. The latter test alone [applying preexisting criteria to concrete facts] proves too much; there are many laws that authorize the pursuit of one or more objectives stated in general terms without turning the choice of action into an adjudication. Thus a further consideration has been whether the action, even when the governing criteria leave much room for policy discretion, is directed at a closely circumscribed factual situation or a relatively small number of persons. The coincidence both of this factor and of preexisting criteria of judgment has led the court to conclude that some land use laws and similar laws imply quasijudicial procedures for certain local government decisions." *Id.* At 602-03."

As recognized by the courts, the *Strawberry Hill* decision sets out the three *Strawberry Hill* factors

which must be considered:

1. Is the inquiry bound to result in a decision?
2. Are there preexisting criteria that are applied to concrete facts?
3. Is the inquiry directed at a closely circumscribed factual situation or a relatively small number of persons?

Below, staff addresses each of the *Strawberry Hill* factors.

#### Bound to result in a decision

The City is the applicant for the proposed text amendment. Per the Procedures Ordinance, regardless of whether the application is processed as a quasi-judicial text amendment or a legislative text amendment, the Board of County Commissioners ("Board") would be the decision-making body. Unless the application is withdrawn by the applicant, the Board would be bound to make a decision on the proposal. Consequently, staff finds that under this *Strawberry Hill* factor, the proposal would be considered quasi-judicial.

#### Preexisting criteria

Unlike a proposal to rezone a property, Chapter 18.36, Amendments, does not include specific approval criteria for text amendments. For this reason, staff finds that under this *Strawberry Hill* factor, the proposal would be considered legislative in the context of the DCC.

However, staff notes there are specific provisions of the OAR which do provide approval criteria for amendments to airport-related ordinances. For this reason, staff finds that under this *Strawberry Hill* factor, the proposal would be considered quasi-judicial in the context of the OAR.

#### Small number of persons

As noted above, the City is the sole owner of the Airport. Further, because the AD Zone only affects the Airport property, the proposed text amendment only affects the City of Bend. Consequently, staff finds that under this *Strawberry Hill* factor, the proposal would be considered quasi-judicial.

With respect to how the *Strawberry Hill* factors should be considered when determining whether an action is legislative or quasi-judicial, Staff cites further to *Heitsch v. City of Salem*, detailed below.

"Those three general criteria do not, however, describe a bright-line test. As we noted in *Estate of Gold v. City of Portland*, 87 Or App 45, 51, 740 P2d 812, rev den, 304 Or 405 (1987), *Strawberry Hill 4 Wheelers* 'contemplates a balancing of the various factors which militate for or against a quasi-judicial characterization and does not create [an] 'all or nothing' test[.]' (Citation omitted.) In particular, we noted that the criteria are applied in light of the reasons for their existence--viz., 'the assurance of correct factual decisions' and 'the assurance of fair attention to individuals particularly affected.' *Estate of Gold*, 87 Or App at

51, (quoting *Strawberry Hill 4 Wheelers*, 287 Or at 604)."

In consideration of the *Strawberry Hill* factors as a whole, staff finds the proposed text amendment is most appropriately viewed as a quasi-judicial plan amendment. Consequently, staff finds the proposed text amendment should be processed pursuant to DCC 22.20, Review of Land Use Action Applications, DCC 22.24, Land Use Action Hearings and DCC 22.28.030, Land Use Action Decisions. With regard to 'the assurance of fair attention to individuals particularly affected', notice of the public hearing was published in the *Bend Bulletin* and mailed to all owners of property within 250 feet of the AD Zone and the Airport boundaries.

## **Chapter 22.28, Land Use Action Decisions**

### **Section 22.28.030. Decision on Plan Amendments and Zone Changes**

- A. *Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi judicial zone changes and plan amendments. Prior to becoming effective, all quasi judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. *In considering all quasi judicial zone changes and those quasi judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***
- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***

**FINDING:** As discussed in detail above, staff finds the proposal is most appropriately viewed as a quasi-judicial plan amendment. The amendments do not require a goal exception and do not include lands designated for forest or agricultural use. For these reasons, staff finds the Hearings Officer's decision shall be adopted by the Board unless appealed or the Board initiates review.

## **V. DESCHUTES COUNTY COMPREHENSIVE PLAN**

**FINDING:** The Deschutes County Comprehensive Plan includes a Transportation System Plan ("TSP"). The TSP includes an Airport Plan with an associated Goal and Policies.<sup>4</sup> The Goal and Policies are codified into the DCC, specifically Chapter 18.76. No mandatory approval criteria exist within the Goal and Policies of the Airport Plan.

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<sup>4</sup> Goal 16 and Policies 16.1 and 16.2 of the TSP.

## VI. STATEWIDE PLANNING GOALS

**Goal 1: Citizen Involvement.** To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

**FINDING:** The applicant's burden of proof ("BoP") provides the following proposed findings.

"These amendments are being adopted by a process that provides the opportunity for citizen involvement by including public hearings before adoption. The County will hold public hearings before its Planning Commission and Board of Commissioners before any amendment is adopted."

With the exception of the reference to the Planning Commission, staff agrees with the applicant's findings.

**Goal 2: Land Use Planning.** To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

**FINDING:** The proposed amendments are being reviewed through the county's the land use planning process. Compliance with applicable local codes and policies, as well as statutes, rules and Goals, are addressed in this staff report. The amendments will provide guidelines for future land use decisions at the Airport. Staff finds Goal 2 will be met.

**Goal 3: Agricultural Lands.** To preserve and maintain agricultural lands.

**FINDING:** The area subject to the AD Zone is exception land. Therefore, Goal 3 does not apply.

**Goal 4: Forest Lands.** To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

**FINDING:** The area subject to the AD Zone is exception land. Therefore, Goal 4 does not apply.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.** To protect natural resources and conserve scenic and historic areas and open spaces.

**FINDING:** The proposed amendments do not affect any inventoried Goal 5 natural resources, scenic or historic area or open space. Further, the amendments do not affect any Combining Zones which seek to identify and protect natural, scenic, historic, open space, or surface mining resources.

**Goal 6: Air, Water and Land Resources Quality.** To maintain and improve the quality of the

air, water and land resources of the state.

**FINDING:** The applicant provides the following proposed findings,

“Goal 6 is primarily concerned with the preservation of air, land and water resources from pollution. The amendments to Deschutes County Code Chapter 18.76 will allow industrial and commercial uses outright in some areas where they are currently conditional uses. Because those uses can currently be permitted as conditional uses, the amendments are unlikely to have any effect on what development occurs at the airport. At most, the amendments will affect where within the airport certain types of development will occur. The amendments are consistent with Goal 6 because they do not allow any additional impact on air, water or land quality compared to what is allowed under current zoning.”

Staff agrees with the applicant’s findings.

**Goal 7: Areas Subject to Natural Hazards.** To protect people and property from natural hazards.

**FINDING:** The most likely natural hazard which could adversely affect the Airport is wildfire. Given the existing uses at the Airport, staff finds the proposed amendments will not significantly exacerbate the wildfire risk to the property. Further, the Airport is within the service boundary of the Bend Rural Fire Protection District. For these reasons, staff finds the Airport would not be subject to a substantial increase to wildfire risk nor significantly increase the risk of wildfire ignition.

**Goal 8: Recreational Needs.**

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

**FINDING:** The applicant provides the following proposed findings.

“The Bend Municipal Airport is used for the following types of recreational activities:

1. Recreational aviation (both flying for enjoyment and flying to and/or from recreational destinations).
2. Gliding.
3. Hobby construction of aircraft.

Aircraft used for recreational purposes are manufactured, maintained and repaired at the Bend Municipal Airport. By allowing the airport to continue to provide these recreational opportunities and by increasing the possibility of aircraft manufacture, the proposed amendments further Goal 8.”

Staff agrees with the applicant’s findings.

**Goal 9: Economic Development.** To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

**FINDING:** The applicant provides the following proposed findings.

"The amendments will allow the Bend Municipal Airport to continue to provide a variety of economic activities and remove limitations on aviation related development in some zones. Economic activities at the airport include aircraft manufacturing, aircraft maintenance and repair, aircraft leasing and chartering, flight schools, fuel sales and other aviation-related economic activities."

Staff agrees with the applicant's findings.

**Goal 10: Housing.** To provide for the housing needs of citizens of the state.

**FINDING:** The applicant provides the following proposed findings.

"The Bend Municipal Airport is subject to federal grant restrictions which do not permit residential use at the airport. Goal 10 is therefore not applicable to this application."

Staff agrees with the applicant's findings.

**Goal 11: Public Facilities and Services.**

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

**FINDING:** The applicant provides the following proposed findings.

"The Bend Municipal Airport is already served by a private water utility and sewer and water from the City of Bend, through the City's Public Facility Plan. The proposed amendments do not include any amendments that would affect the Airport's existing water and sewer service. The proposed changes are therefore consistent with Goal 11."

Staff agrees with the applicant's findings and further finds the amendments would not allow the extension or creation of public facilities and services beyond the boundaries of the Airport.

**Goal 12: Transportation.** To provide and encourage a safe, convenient and economic transportation system.

**FINDING:** The applicant provides the following proposed findings.

"Please refer to Appendix 3 – Transight Consulting Memorandum "Bend Municipal Airport Rezone," dated May 28, 2020. The Bend Municipal Airport is part of the County's multi-modal transportation system. Planning for airport development is part of what makes the system safe, convenient and economic. All uses proposed for the Airport are already

allowed either outright or conditionally. However, as part of this proposed text amendment, a memorandum was prepared to assess Transportation Planning Rule compliance under 660-012-060. This memorandum, dated May 28, 2020, and prepared by Transight Consulting, LLC, concluded , the goals and policies within the aviation section of the County Transportation System Plan and federal requirements related to runway and taxiway protection would substantially limit any development within the Airport Operations District. The net impact of the proposed text amendment would allow up to seven additional private aircraft hangars (up to nine aircraft) on the west side of the runway. This would not result in a significant impact to the transportation system. The application is consistent with Goal 12.”

The County’s Senior Transportation Planner, Peter Russell, submitted the following response,

“I have reviewed the transmittal materials of File 247-20-00482-TA by the City of Bend to amend Deschutes County Code (DCC) 18.76, Airport Development (AD) zone and Chapter 18.116, Supplementary Provisions. Included in the application materials was a May 28, 2020, traffic analysis of the potential effects of allowing aircraft hangars in the Airport Operations District (AOD) as currently that zone only allows runways, taxiways, and navigation equipment.

I agree with the report’s methodologies and conclusions that the adding hangars to the AOD would result in five (5) additional p.m. peak hour trips being generated by the Bend Airport. While the study does not have a Level of Service (LOS) analysis of the affected intersections on either the west or east side of the Bend Airport for both current and post-amendment operations, staff finds the result of five (5) additional p.m. peak hour trips would be de minimis for two reasons. One, the County already has a planned roundabout at the intersection of Powell Butte Highway/Butler Market road in the Transportation System Plan (TSP). Two, the average daily traffic (ADT) volumes on Nelson Road and McGrath Road along the east side of the airport are 433 ADT (2019) and 1,001 ADT (2019), respectively. The County in the TSP allows 9,600 ADT as acceptable. Thus from a TPR standpoint, allowing hangars as an outright permitted use would have no significant effect and would comply with the TPR at 660-012-0060.

Staff does note the application does change the text for uses allowed outright in DCC 18.76.070 (AOD) by adding “customary and usual aviation-related activities” which will add “fixed-base operator facilities.” Elsewhere in changes proposed for 18.76.015 (Definitions) “fixed-based operator” is defined as a “...commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.” The “customary and usual aviation-related activities” language would be added to DCC 18.76.080 Aviation Support District (ASD) and DCC 18.76.090 Aviation-Related Industrial District (ARID). The traffic study does not discuss or analyze the effect of allowing those listed uses as outright permitted uses in the AOD, ASD, and ARID. From a trip generation standpoint, staff’s main concern is with flight instruction. Does that mean one-on-one instruction or a flight school with 500 students driving to the Bend Airport?

Staff would request the City provide more information on this topic of flight instruction

and update the traffic study to include a reasonable worst-case analysis regarding flight instruction and trip generation. One could argue flight instruction is a related use customarily appurtenant to an airport and thus is already allowed outright via 18.76.080(A)(3) in the ASD and 18.76.090(C) in the ARID zone, but clearly flight instruction is currently not allowed in 18.76.070(B) in the AOD.”

Based on this response, it is unclear to staff if the proposal complies with Goal 12 and the Transportation Planning Rule requirements. Staff asks the applicant to provide additional information and for the Hearings Officer to determine whether the proposal complies with Goal 12.

**Goal 13: Energy Conservation.** To conserve energy.

**FINDING:** Per the Department of Land Conservation and Development’s webpage<sup>5</sup> for Goal 13,

“Goal 13 encourages communities to look within existing urban neighborhoods for areas of potential redevelopment before looking to expand, to ‘recycle and re-use vacant land.’”

Staff finds the proposed amendments will allow the Airport to more efficiently utilize land within its boundaries rather than expand the Airport to accommodate additional uses. Staff notes the proposed amendments do not preclude any future expansion of the Airport’s boundaries or allowed uses. Staff finds the proposed amendments are consistent with Goal 13.

**Goal 14: Urbanization.** To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

**FINDING:** Goal 14 is not applicable because the Airport is outside of any urban growth boundary. As noted above, it is on exception land.

**Goals 15 – 19.** Willamette River Greenway; Estuarine Resources; Coastal Shorelands; Beaches and Dunes; Ocean Resources

**FINDING:** The Airport is not within or adjacent to the Willamette River Greenway, estuaries, beaches, dunes or the Pacific Ocean. For this reason, these Goals do not apply.

## VII. OREGON REVISED STATUTES

**836.610, Local government land use plans and regulations to accommodate airport zones and uses; funding; rules.**

(1) Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and Development

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<sup>5</sup> <https://www.oregon.gov/lcd/OP/Pages/Goal-13.aspx>

- Commission under ORS 836.616 and 836.619. Airports subject to the rules shall include:
- (a) Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft;

**FINDING:** The Bend Municipal Airport is a publicly owned airport recognized by the Oregon Department of Aviation ("ODA"). Therefore, ORS 836.616 and 836.619 apply, and are addressed below.

- (3) The Oregon Department of Aviation by rule shall adopt a list of airports described in subsection (1) of this section. The rules shall be reviewed and updated periodically to add or remove airports from the list. An airport may be removed from the list only upon request of the airport owner or upon closure of the airport for a period of more than three years.

**FINDING:** The Bend Municipal Airport is listed with the ODA as a publicly owned airport and is on the Oregon Aviation State System Plan.

**836.616, Rules for airport uses and activities.**

- (1) Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules for uses and activities allowed within the boundaries of airports identified in ORS 836.610 (1) and airports described in ORS 836.608 (2).
- (2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:
  - (a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;
  - (b) Emergency medical flight services;
  - (c) Law enforcement and firefighting activities;
  - (d) Flight instruction;
  - (e) Aircraft service, maintenance and training;
  - (f) Crop dusting and other agricultural activities;
  - (g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;
  - (h) Aircraft rental;
  - (i) Aircraft sales and sale of aviation equipment and supplies; and
  - (j) Aviation recreational and sporting activities.

**FINDING:** The applicant proposes to adopt the term 'customary and usual aviation-related activities', as defined in subsection (a). The purpose of this adoption is to standardize outright permitted uses in the AD Zone. Staff notes the definition of customary and usual aviation-related activities includes fixed-based operator facilities. As part of the amendments, the applicant also proposes the following definition of fixed based operator,

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.”

Based on this definition, staff notes that FBOs could include uses which are listed in subsections (b) through (j). At this time, the applicant does not propose to amend the AD Zone to specifically allow the uses listed under subsections (b) through (j) as outright permitted uses. For this reason, and in the context of the proposed text amendment, staff finds that FBOs would have the following characteristics: 1) Commercial business; 2) Granted a right by the Airport to operate on the Airport; 3) Provides aeronautical services; and 4) Is not an ORS 836.616(2)(b-j) use. Pursuant to the AD Zone, the uses listed under subsection (b) through (j) will continue to be subject to Site Plan Review under DCC 18.124 and, where applicable, Conditional Use Permit approval under DCC 18.128.

### **836.619, State compatibility and safety standards for land uses near airports; rules.**

Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules establishing compatibility and safety standards for uses of land near airports identified in ORS 836.610 (1).

**FINDING:** Applicable Oregon Administrative Rules are addressed below.

## **VIII. OREGON ADMINISTRATIVE RULES**

### **660-013-0030, Preparation and Coordination of Aviation Plans**

- (2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.

**FINDING:** Applicable sections of ORS 836 are addressed above. The Notice of Public Hearing was sent to multiple agencies, including ODA. As of the date of this staff report, no comments have been received from public agencies. The applicant’s BoP states the proposed amendments

will encourage and support continued operation of the Airport. Staff agrees.

**660-013-0040, Aviation Facility Planning Requirements**

A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include:...

**FINDING:** The applicant provides the following findings,

“The County has adopted airport planning documents as required by this section. The City is the sponsor and has provided forecast information to the County in the form of the most recently adopted, FAA-approved Airport Master Plan. The proposed amendments are consistent with OAR 660-013-0040.”

Staff agrees.

**660-013-0050, Implementation of Local Airport Planning**

A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.

**FINDING:** The applicant provides the following findings,

“Revisions to DCC Chapter 18.80, specifically DCC 18.80.032, are proposed as part of this application and the revisions update the text of the uses allowed in the safety zone, consistent with OAR 660-013-0050.”

Staff agrees. The Airport is publicly owned and, therefore, is not subject to ORS 636.608, which addresses requirements for private airports. As noted above, staff asks the Hearings Officer to determine if the proposal complies with Goal 12.

**660-013-0070, Local Government Safety Zones for Imaginary Surfaces**

**FINDING:** The County’s Zoning Map and the provisions of DCC 18.76 incorporate the required safety zones for imaginary surfaces. The proposed text amendment does not alter the Map or safety provisions.

**660-013-0080, Local Government Land Use Compatibility Requirements for Public Use Airports**

**FINDING:** The provisions of DCC 18.76 incorporate the compatibility requirements under this section. The proposed text amendment does not alter those requirements.

## **660-013-0100, Airport Uses at Non-Towered Airports**

Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:

- (1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.
- (2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.
- (3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.
- (4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.
- (5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.
- (6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.
- (7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.
- (8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops

includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

- (9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.
- (10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.
- (11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

**FINDINGS:** The applicant proposes to adopt the term 'customary and usual aviation-related activities', as defined in subsection (1). At this time, the applicant does not propose to amend the AD Zone to specifically allow the uses listed under subsections (2) through (11) as outright permitted uses. For this reason, and in the context of the proposed text amendment, staff finds that FBOs would have the following characteristics: 1) Commercial business; 2) Granted a right by the Airport to operate on the Airport; 3) Provides aeronautical services; and 4) Is not an OAR 660-013-0100(2-11) use. Pursuant to the AD Zone, the uses listed under subsections (2) through (11) will continue to be subject to Site Plan Review under DCC 18.124 and, where applicable, Conditional Use Permit approval under DCC 181.128.

### **660-013-0160, Applicability**

This division applies as follows:

- (2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.

**FINDING:** Sections 197.610 to 197.625 of the ORS address submission of the text amendment to, and review by, the Department of Land Conservation and Development ("DLCD"). The County submitted the proposed text amendment to DLCD on August 4, 2020, with confirmation of receipt by DLCD on the same day. The County is coordinating review of this text amendment with the City of Bend, the applicant.

- (3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.

**FINDING:** Staff asks the Hearings Officer to determine if the proposal complies with the requirements of Division 13.

- (4) Uses authorized by this division shall comply with all applicable requirements of other laws.

**FINDING:** To staff's knowledge, all applicable local regulations, along with relevant statutes and rules, are identified in this staff report. With the exception of Goal 12, staff believes the proposal complies with applicable law.

- (5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

**FINDING:** As noted previously, staff believes the proposal complies with applicable law, with the possible exception of Goal 12. The applicant does not argue that the safe harbor provisions of OAR 660-013-0140 apply.



Deschutes County Board of Commissioners  
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**AGENDA REQUEST & STAFF REPORT**

**For Board of Commissioners BOCC Wednesday Meeting of December 30, 2020**

**DATE:** December 17, 2020

**FROM:** Anthony Raguine, Community Development, 541-617-4739

**TITLE OF AGENDA ITEM:**

SECOND READING: Consideration of Ordinance No. 2020-018, Amendments to Chapter 18.76, Airport Development Zone, and Chapter 18.116, Supplementary Provisions.

**FISCAL IMPLICATIONS:** None.

**ATTENDANCE:** Anthony Raguine, Senior Planner