



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Peter Russell, Senior Transportation Planner
RE: Potential Approach to Land Use Applications on Properties with Code Violations
DATE: October 22, 2015

Background

At the behest of the Board of County Commissioners, Planning staff formed a stakeholders group to discuss how the County could deal with land use applications on properties that had either an existing code enforcement case, unfilled conditions of approval from a previous land use decision, or both. Stakeholders representing a wide array of opinions on the topic met several times between January and April to discuss the topic of code enforcement and land use applications and building permits.

The discussion focused on four variables, which overlap to a degree:

- What defines a code violation;
- Whether a code violation should stop a building permit;
- Whether a code violation should stop a land use application;
- Whether unfulfilled conditions of approval are a code violation

Staff presented existing ordinances from several other jurisdictions in Oregon on the topic. The group agreed the language from Multnomah and Jefferson counties provided an acceptable starting template. Staff then prepared a draft language based on the Multnomah and Jefferson examples and distributed it to the stakeholders for comments and revisions. The draft language went through multiple iterations before all came to an agreement in May.

Stakeholders agreed that violation means the matter has been decided by a court of law, a hearing's officer, a deliberative body, or a signed Voluntary Compliance Agreement (VCA). It was agreed that the applicant at the time of submittal should state that to the best of the applicant's knowledge no code violations exist on the property and if there are previous conditions of approval, the applicant is in compliance with those and existing applicable laws.

If there is a code violation, the County will not process the application, unless the application will remedy the violation or complete previous conditions of approval that are currently unfulfilled. There is language that exceptions can be made in case of emergency.

Summary

Staff initiated 247-15-000491-TA to amend Deschutes County Code (DCC) to create 22.20.015 to add language that the County does not have to process a land use application on property with existing code violations. Additionally, 247-15-000491 would amend DCC 1.16.010 to add a reference to 22.20.015 at DCC 1.16.010.

Staff then held a work session with the Planning Commission on September 10, 2015.

Next Steps

The Planning Commission opens the public hearing for public testimony. After receiving testimony, the Planning Commission then has several options.

- Close the record to oral and written testimony and deliberate
- Close the record to oral and written testimony and set a date certain for deliberation
- Close the oral record and leave the written record open to a date certain
- Continue the public record to a date certain

During deliberations, the Planning Commission has three broad courses in its recommendation to the Board of County Commissioners.

- Recommend approval of the text amendment as submitted
- Recommend approval of the text amendment as modified by the Planning Commission
- Recommend denial of the text amendment

Once the Planning Commission has made its recommendation, staff will schedule a work session with the Board followed by a public hearing.

Attachments:

Findings for 247-15-000491-TA

Exhibit A, Proposed DCC 22.20.015 Code Enforcement and Land Use

Exhibit B, Revised DCC 1.16.010, Violations Deemed Class A or B Classifications – Penalties

Chapter 22.20.015 Code Enforcement and Land Use

(A) Except as described in (E) below, if any property is in violation of applicable land use regulations, and/or the conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:

1. Approve any application for land use development;
2. Make any other land use decision, including land divisions and/or property line adjustments;
3. Issue a building permit

(B) As part of the application process, the applicant shall certify:

1. That to the best of the applicant's knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or
2. That the application is for the purpose of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.

(C) Section A shall not apply to uses permitted outright

(D) A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement ("VCA").

(E) A permit or other approval, including building permit applications, may be authorized if:

1. It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;
2. It is necessary to protect the public health or safety;
3. It is for work related to and within a valid easement over, on, or under the affected property; or
4. It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic

(F) Public Health and Safety.

1. For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on

the property that endanger life, health, personal property, or safety of the residents of the property or the public.

2. Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.

Chapter 1.16.010 Violations Deemed Class A or B Classification-Penalties

- (A) Violation of a county ordinance shall be punishable, upon conviction, by fine or by the specific remedies specified within the County Code.
- (B) Each county ordinance specifying a county offense shall classify the ordinance violation a Class A or Class B violation.
- (C) A sentence to pay a fine for violation of a county ordinance shall be a sentence to pay an amount not exceeding the Maximum Fines provided by ORS 153.018.
- (D) Notwithstanding this section and DCC 1.16.030, for violations of Chapters 13.04, 13.08, 13.36, 15.04 and 15.10 and Titles 17, 18, and 19, the Presumptive and Minimum fine amount shall be the Maximum Fine amount described in DCC 1.16.010(D).
- (E) For violations of County Code provisions not listed in DCC 1.16.010(D), the Presumptive and Minimum Fine amounts shall be as provided in OR Chapter 153.
- ~~(F) Notwithstanding DCC 1.16.010(D), the court or the hearings officer may impose a fine lower than the fine provided in those two sections, upon a finding of mitigating factors including, but not limited to, indigence of the defendant, severity of the violation, number of times the defendant has been previously cited for Deschutes County Code violations; length of time the violation has existed; and reason(s) the violation has not been cured.~~
- (F) A land use application for a property with an existing code violations will be accepted, but not processed by the County based on DCC 22.20.015.
- (G) Notwithstanding DCC 1.16.010(D), the court or the hearings officer may impose a fine lower than the fine provided in those two sections, upon a finding of mitigating factors including, but not limited to, indigence of the defendant, severity of the violation, number of times the defendant has been previously cited for Deschutes County Code violations; length of time the violation has existed; and reason(s) the violation has not been cured.



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FINDINGS

FILE NUMBER: 247-15-000491-TA

APPLICANT: Peter Russell
Deschutes County Community Development Department
P.O. Box 6005
117 NW Lafayette
Bend, OR 97708-6005

PROPERTY OWNERS: N/A

REQUEST: Amend Deschutes County Code (DCC) Chapter 22.20, Review of Land Use Applications, to enable the County to not process land use applications or building permits for properties with existing code violations by creation of DCC 22.20.015, Code Violations and Land Use, and amend DCC 1.16, Code Violations, to include a reference to newly created DCC 22.20.015.

STAFF CONTACT: Peter Russell, Senior Transportation Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

Title 23, Deschutes County Comprehensive Plan

Statewide Planning Goals

II. BASIC FINDINGS:

- A. **PROPOSAL:** The applicant requests approval of a new section of County code (DCC 22.20.015) that would enable the County to not process land use applications and/or building permits for properties with existing code violations. The County would only process the land use application or building permit if the application or permit would remedy the existing violation. An exception could be made in emergency situations involving public health, safety, or welfare. DCC 1.16.010 would be amended to reference the newly created DCC 22.20.015.

The proposal stems from issues raised by the public during the Board of County Commissioners' (Board) October 2014 review and approval of an update to the County's *Code Enforcement Manual*. After the Board's approval, the Board directed staff to form a stakeholders committee with representatives from the land use activist community, the development community, and interested private citizens to explore potential solutions. The Board included this task on the Planning Division's 2015 approved work plan.

The resulting committee met on Jan. 6 and April 23, 2015, and via e-mail exchanges. The group reviewed language from other Oregon county codes on the topic and discussed issues specific to Deschutes County. The group reached consensus in mid-May on how a code violation would be defined, how language on County land use forms should be modified (this does not require a land use approval), and the text for the proposed code at DCC 22.20.015, Code Enforcement and Land Use, which will be placed in DCC 22.20, Review of Land Use Applications. Finally, 1.16 Code Violations and Enforcement, will be amended by creating a new 1.16.010(F) that references DCC 22.20.015 and relettering the old (F) into (G).

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

III. **CONCLUSIONARY FINDINGS:**

A. **CHAPTER 22.12, LEGISLATIVE PROCEDURES**

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because public hearings will be held before the Planning Commission on October 22, 2015, and a public hearing before the Board of County Commissioners on a date yet to be determined.

2. Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion has been met as notice was published in the Bend Bulletin newspaper and described the proposal.

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

FINDING: This criterion has been met as notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the land use in question does not apply to any specific property, no individual notices were sent. This criterion has been met.

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

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

FINDING: This criterion has been met as the order of public hearings has been followed.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: This criterion will have been met as the Planning Commission public hearing will precede the Board public hearing.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: File 247-15-000419-TA will be implemented by Ordinances 2015-019, which establishes DCC 22.20.015 and 2015-020, which creates a reference in DCC 1.16.010(F) to DCC 22.20.015; this criterion has been met.

B. CHAPTER 23, DESCHUTES COUNTY COMPREHENSIVE PLAN

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

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

FINDING: This criterion has been met as the coordination between code enforcement and review of development permits was an item on Planning Division's approved 2015 work plan, which was adopted after public hearings before the Planning Commission and the Board. Additionally, the Board during the October 2014 update of the Code Enforcement Manual, directed staff to form a stakeholders committee to work on this topic. The County recruited stakeholders from the land use activist community, the development community, and interested private citizens to serve on the committee.

The committee met on January 6 and April 23, 2015, and via e-mail. The group reached consensus in mid-May on the topic based on a review of the ordinances of other counties, the proposed code language and the insertion of language on County land use applications that to property owner's best knowledge, the property is currently in compliance with Deschutes County codes and conditions of approval from previous land use decisions. The latter does not require land use approval.

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

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

FINDING: This criterion has been met as task was an outgrowth of public hearings before the Board on the Planning Division work program and the update to the *Code Enforcement Manual*. The proposed text amendment will be the subject of public hearings before the Planning Commission and the Board. Finally, in the text for the proposed DCC 22.20.15, code violations are defined as matters that have been adjudicated by either a prior decision by the County or other deliberative body; through the review process of the current application; or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement, (VCA). Thus, the presence/absence of a code violation would be a factual matter and not one of interpretation or discretion. The application to be processed would have to bring the property into compliance with Deschutes County land use regulations and/or prior land use approvals.

C. STATEWIDE PLANNING GOALS

1. Goal 1, Citizen Involvement

FINDING: The text amendment includes workshops before both Deschutes County Planning Commission (PC) and the Board. The text amendment also includes publically noticed public hearings before the PC and Board. This criterion is met.

2. Goal 2, Land Use Planning

FINDING: Oregon Revised Statute (ORS) 197.610 allows local governments to initiate post acknowledgement plan amendments or changes to land use regulations. The County on September 17, 2015, provided the Department of Land Conservation and Development (DLCD) with the required notice 35 days prior to the first evidentiary hearing, which will be on October 22, 2015. The notice included the proposed changes with additions indicated by underlined text and text to be eliminated indicated by ~~strike through~~ text. The text amendment was processed via the County's development code procedures set for in Title 22, Chapter 22.12 for legislative amendments. This criterion has been met.

3. Goal 3, Agricultural Lands

FINDING: The text amendment is not proposing any changes to land use designations, so this has been met.

4. Goal 4, Forest Lands

FINDING: The text amendment is not proposing any changes to land use designations, so this criterion has been met.

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

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

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

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

7. Goal 7, Natural Hazards

FINDING: The text amendment allows for exception in cases of public, health, safety, and welfare. Additionally, the dominant natural hazards in the County are wildfire, winter storms, and flooding. The text amendment leaves County building codes and planning setbacks untouched, which are the planning mechanisms which the County uses to ameliorate natural hazards. This criterion has been met.

8. Goal 8, Recreational Needs

FINDING: The text amendment will not remove any recreational opportunities and will provide a path to ensure any Goal 8 destination resorts comply with their obligations. This criterion has been met.

9. Goal 9, Economic Development

FINDING: The text amendment still allows properties to develop and that any violations can be corrected, ensuring continued appropriate use of the property. This criterion has been met.

10. Goal 10, Housing

FINDING: This goal pertains to urban or urbanizable lands. The proposed text amendment will not result in any changes or elimination of residentially zoned lands in the County. The criterion has been met.

11. Goal 11, Public Facilities and Services

FINDING: This goal pertains more to water and sewer services. The text amendment will ensure any water or sewer service which first receives or has received a Goal 11 Exception will comply with any conditions of approval for site plans, building permits, or similar County approvals. This criterion has been met.

12. Goal 12, Transportation

FINDING: The text amendment will not change the functional classification, performance standards, or access management of any highways or roads. This criterion has been met.

13. Goal 13, Energy Conservation

FINDING: This plan amendment does not affect the County's regulation of solar setbacks, siting of small-scale windmills, land use or density, etc. The text amendment will ensure compliance with any conditions of approval for site plans, building permits, or similar County approvals. This criterion has been met.

14. Goal 14, Urbanization

FINDING: No land use plan designations, zoning designations, or map changes will result from this plan amendment. This criterion has been met.

15. Goals 15-19

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

IV. CONCLUSION:

The proposed text amendment to create a DCC 22.20.015, Code Enforcement and Land Use, to be located in DCC 22.20, Review of Land Use Applications, will ensure remedying code violations will be incorporated into the land use process. The text amendment will result in greater public confidence in the County's land use process and Code Enforcement program.

Attachments

Exhibit A, Proposed DCC 22.20.015 Code Enforcement and Land Use

Exhibit B, Revised DCC 1.16.010, Violations Deemed Class A or B Classifications – Penalties